

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

January 27, 2022
10:15 a.m.

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

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services- Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	212113 C	North Shore University Hospital (Nassau County)
2.	212135 C	University Hospital SUNY Health Science Center (Onondaga County)

Hospice Services – Construction

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	212149 C	Hospice of Jefferson County/Palliative Care of Jefferson County (Jefferson County)

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

Ambulatory Surgery Centers- Establish and Construct

Exhibit # 3

	<u>Number</u>	<u>Applicant/Facility</u>
1.	201004 B	Pelham Parkway SC, LLC d/b/a Pelham Parkway Surgery Center (Bronx County)
2.	202057 B	Premier SC, LLC t/b/k/a Premier Ambulatory Surgery Center of New York, LLC (Queens County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 192211 B	Beach Channel D&TC, LLC d/b/a Beach Channel Diagnostic and Treatment Center (Queens County)
2. 211085 B	KD Hudson Ventures, LLC d/b/a Avalon Medical Group (Orange County)
3. 211151 B	W Medical, LLC d/b/a W Health Center (Kings County)
4. 211226 E	Perry Avenue Family Medical, Inc. (Bronx County)

Dialysis Centers - Establish/Construct

Exhibit # 5

<u>Number</u>	<u>Applicant/Facility</u>
1. 211201 E	MVNY Partners I, LLC d/b/a U.S. Renal Care Faxton Dialysis (Oneida County)
2. 211202 B	MVNY Partners II, LLC d/b/a U.S. Renal Care St. Luke's Home Dialysis (Oneida County)
3. 211203 B	MVNY Partners III, LLC d/b/a U.S. Renal Care Masonic Care Community Dialysis (Oneida County)
4. 211204 B	MVNY Partners IV, LLC d/b/a U.S. Renal Care Rome Dialysis (Oneida County)
5. 211205 B	MVNY Partners V, LLC d/b/a U.S. Renal Care Herkimer Dialysis (Herkimer County)
6. 211206 B	MVNY Partners VI, LLC d/b/a U.S. Renal Care Hamilton Dialysis (Madison County)
7. 211207 B	MVNY Partners VII, LLC d/b/a U.S. Renal Care Oneida Dialysis (Madison County)

Certified Home Health Agencies - Establish/Construct

Exhibit # 6

<u>Number</u>	<u>Applicant/Facility</u>
1. 202185 E	Wellbound II LLC (Westchester County)



**Project # 212113-C
North Shore University Hospital**

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: October 21, 2021

Executive Summary

Description

North Shore University Hospital (NSUH), a 756-bed, voluntary not-for-profit, Article 28 acute care hospital at 300 Community Drive, Manhasset (Nassau County), seeks approval to fit out the 5th and 6th-floor core and shell space in the eight-story addition being constructed at the hospital's main campus and to certify 38 intensive care unit (ICU) beds.

This application amends and supersedes CON 172212, which included shell space to be reclassified as Article 28 space at a later time and approval of 18 ICU beds, which are included in the 38 net new ICU beds in this CON. The additional 20 ICU beds will be acquired through an intra-network transfer of 20 Medical/Surgical beds from Long Island Jewish Valley Stream (LIJVS) hospital. Northwell Healthcare, Inc. is the active parent and co-operator of both hospitals. Upon completion of this transfer, NSUH's will have 794 beds including 135 ICU beds.

The new building, known as the Advanced Surgical Pavilion (ASP), is being constructed to replace undersized and antiquated operating rooms and to renovate and expand post-surgical and critical care unit space. The proposed project will expand the capacity of the facility's surgical programs and related critical care services to meet volume demands and the increasingly complex needs of NSUH's patient population.

NSUH is a member of the Northwell Health Obligated Group.

OPCHSM Recommendation

Contingent approval

Need Summary

The addition of 38 ICU beds will address NSUH's existing needs and future growth. A modernized critical care infrastructure with expanded capacity will play an important role in ensuring access to advanced tertiary and quaternary services for patients in the region.

Program Summary

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

Financial Summary

Total project costs of \$560,705,671 includes \$338,562,858 approved under CON 172212-C. The project cost will be met via equity of \$56,070,567 and the issuance of tax-exempt bonds for a 30-year term at 4% interest for the remaining \$504,635,104. The budget is as follows:

	<u>Incremental Budget</u>	
	<u>Year One</u>	<u>Year Three</u>
Revenues	\$83,323,800	\$166,647,700
Expenses	<u>111,194,000</u>	<u>163,647,700</u>
Net Income	(\$27,870,200)	\$3,645,300

	<u>Incremental Enterprise Budget</u>	
	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,811,945,400	\$1,895,269,300
Expenses	<u>1,719,011,600</u>	<u>1,770,820,000</u>
Net Income	\$92,933,800	\$124,449,300

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 bond resolution acceptable to the Department. 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 acceptable responses to resolve four architectural and two electrical outstanding DD review comments that remain open in DrChecks. [DAS]

Approval conditional upon:

1. This project must be completed by **August 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must be completed by **May 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 10, 2022

Need and Program Analysis

Background

The applicant reports over the last five years, the overall inpatient volume has increased. Trends in medical/surgical discharges have shown a near 10% increase. The construction of the ASP and the greater critical care capacity will ensure NSUH can meet the needs of its patient communities in the future. NSUH projects growth in the hospital's critical care average daily census by its planned program drivers. The hospital anticipates ongoing growth resultant from demographic shifts and ensuring access to advanced services requiring extensive post-operative care. They also anticipate a rising volume of patient transfers to its facility from both within and outside of Northwell's coordinated network of providers. The increased capacity in critical care, particularly with rooms built to modern standards, will also equip the hospital with the necessary space to withstand large-scale emergencies and disasters.

Staffing is expected to increase as a result of this construction/expansion project by 74.4 FTEs in Year One of the completed project and increase by 74.9 FTEs by Year Three of the completed project.

Analysis

The primary services area is Nassau County, and the secondary service area includes Suffolk and Queens Counties. The population of Nassau County in 2010 was 1,339,532 with 204,681 individuals (15.3%) who are 65 and over. This population group (65 and over) is estimated to grow to 301,494 by 2025 and represent 21.4% of the projected population of 1,410,875. According to Data USA, in 2019, 95.7% of the population of Nassau County has health coverage as follows:

Employer Plans	58.9%
Medicaid	10.4%
Medicare	13.7%
Non-Group Plans	12.4%
Military or VA	0.9%

20 of the 38 total ICU beds that are a part of this project will come from an intra-network transfer and conversion of medical/surgical beds from LIJVS. The charts below show the current and proposed beds at NSUH and LIJVS:

North Shore University Hospital Beds			
Bed Type	Current	Change	Proposed
AIDS	30		30
Bone Marrow Transplant	4		4
Coronary Care	15		15
Intensive Care	97	38	135
Maternity	73		73
Medical / Surgical	486		486
Neonatal Continuing Care	5		5
Neonatal Intensive Care	32		32
Neonatal Intermediate Care	14		14
Total	756	38	794

LIJ Valley Stream Hospital Beds			
Bed Type	Current	Change	Proposed
Coronary Care	8		8
Intensive Care	8		8
Pediatric	20		20
Medical / Surgical	248	-20	228
Total	284	-20	264

The historical utilization of NSUH and LIJVS beds is as depicted below:

North Shore: Inpatient Bed Utilization							
	Beds 2016-2018	2016	2017	2018	Beds 2019-2020	2019	2020
Medical/Surgical*	614	100.0%	97.9%	100.0%	632	100.0%	95.6%
Obstetric	73	80.8%	79.5%	82.2%	73	79.5%	60.3%
High-risk Neonates	51	47.1%	51.0%	43.1%	51	47.1%	43.1%
Total	738	95.3%	92.8%	95.4%	756	97.8%	88.8%

Source SPARCS

* For SPARCS utilization calculations, all bed types, except as broken out, are rolled into the Medical/Surgical category.

LIJ Valley Stream: Inpatient Bed Utilization						
	Beds	2016	2017	2018	2019	2020
Medical/Surgical*	264	47.7%	43.9%	46.2%	46.2%	45.8%
Pediatric	20	0%	0%	0%	0%	0%
Total	284	44.4%	40.8%	43.0%	43.0%	42.6%

Source SPARCS

* For SPARCS utilization calculations, all bed types, except as broken out, are rolled into the Medical/Surgical category.

NSUH anticipates a rising need for tertiary services and is pursuing ongoing physician recruitment and programmatic growth to meet the needs of its service area. They are the only major hospital in the Long Island region that provides advanced quaternary services, such as heart and liver transplants for adults. The hospital anticipates the demographics of its large service area will trend toward an older and sicker patient population. Case complexity is expected to increase with comorbidities, longer lengths of stay, and post-operative care across the care continuum. A modernized critical care infrastructure with expanded capacity will play an important role in ensuring access to advanced tertiary and quaternary services for patients in the region.

Even before the pandemic, NSUH was experiencing strong growth in ICU volume over the last several years.

Historical Trend of NSUH ICU Cases						
Discharges	2015	2016	2017	2018	2019	% Change
Total	1,951	1,776	2,357	2,627	3,391	73.8%

Source: NSUH Institutional Cost Reports 2015 - 2019; Prepared by the Office of Strategic Planning at Northwell Health

As a major tertiary and quaternary provider of advanced medical and surgical care in the Long Island region, NSUH, based on the trends and demographic shifts, also anticipates a rising volume of patient transfers to its facility from both within and outside of Northwell's coordinated network of providers. Taken as a whole, NSUH projects ICU average daily census to increase by over 25% by 2025, after completion of the CON.

Projected NSUH ICU Average Daily Census			
	2021	2023	2025
ICU	95	112	119

Compliance with Applicable Codes, Rules, and Regulations

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

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, 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.

Prevention Agenda

NSUH is implementing interventions to support two goals of the 2019-2024 New York State Prevention Agenda:

1. Early detection/screening
2. Educational workshops and seminars

The application states that NSUH engaged Long Island Health Collaborative, a partnership of hospitals, county health departments, academic institutions, non-profits, and the business sector in their Prevention Agenda efforts. NSUH cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Decreasing disparities
- Services provided

In 2019 the applicant spent \$7,821,203 on community health improvement services, representing 0.27% of total operating expenses.

Conclusion

Approval of this project will result in a modern state-of-the-art facility, with increased capacity to meet the needs of an aging and increasingly complex patient population. 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 Analysis

Background

Total project costs of \$560,705,671 includes the \$338,562,858 approved under CON 172212-C. The project cost will be met via equity of \$56,070,567 and the issuance of tax-exempt bonds for a 30-year term at 4% interest for the remaining \$504,635,104. Citigroup Global Markets Inc. has provided a letter of interest to underwrite the bonds to be issued through the Dormitory Authority of the State of New York (DASNY) using tax-exempt financing. BFA Attachment A is the Financial Statement of Northwell Health, Inc., showing the availability of sufficient resources to meet the equity requirements. The projected first-year loss is due to the interest and depreciation expenses associated with the project. Without these expenses, the facility would show positive operating income in the first year. The third-year contribution margin was sufficient to absorb all incremental costs leading to a positive net income,

The CFO of Northwell Health, Inc. has submitted a letter attesting that Northwell Healthcare, Inc. is committed to supporting the project to serve the needs of the community and will provide financial support to absorb budgeted operating losses in Year One at NSUH related to this project.

Total Project Cost and Financing

The total project cost of \$560,705,671 includes the \$338,562,858 approved under CON 172212, detailed as follows:

	Prior Approved Total Project Costs via CON 172212	Amended Total Project Costs
New Construction	\$201,969,788	\$332,810,835
Renovation & Demolition	12,200,000	12,527,279
Temporary Utilities	50,000	600,000
Asbestos Abatement/ Removal	400,000	595,000
Design Contingency	13,509,677	3,015,212
Construction Contingency	8,686,207	18,445,352
Planning Consultant Fees	150,000	3,352,600
Architect/Engineering Fees	13,050,000	22,312,477
Construction Manager Fees	600,000	2,362,127
Other Fees	2,263,798	9,887,863
Movable Equipment	70,750,000	125,483,061
Financing Costs	16,324,617	26,244,863
Application Fee	2,000	2,000
Processing Fee	<u>1,550,527</u>	<u>3,067,002*</u>
Total Project Cost	\$338,562,858	\$560,705,671

**Due to increased project costs, the application processing fee has increased to \$3,067,002. The applicant paid \$1,550,527 based on the previously approved total project cost under CON 172212. Therefore, the facility shall pay the Department the remaining application processing fee balance of \$1,516,475.*

The applicant's financing plan appears as follows:

Equity	\$56,070,567
Tax-Exempt Bonds (30-year term, 4% interest)	<u>\$504,635,104</u>
Total	\$560,705,671

Citigroup Global Markets Inc. has provided a letter of interest to underwrite the bonds to be issued through DASNY using tax-exempt financing. NSUH is a member of the Northwell Health Obligated Group.

Incremental Operating Budget

The applicant has submitted an incremental operating budget, in 2022 dollars, for the first and third years, summarized as follows:

	<u>First Year</u>		<u>Third Year</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid -FFS	\$96,691	\$7,445,200	\$96,691	\$14,890,400
Medicaid-MC	\$70,843	11,901,600	\$70,843	23,803,200
Medicare -FFS	\$8,916	4,431,400	\$8,925	8,862,900
Medicare-MC	\$69,981	19,104,800	\$70,109	38,209,500
Commercial -MC	\$109,630	37,383,800	\$109,630	74,767,700
All Other	\$45,627	<u>3,057,000</u>	45,289	<u>6,114,000</u>
Total		\$83,323,800		\$166,647,700

<u>Expenses</u>	<u>First Year</u>		<u>Third Year</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
Operating	\$38,637	\$54,981,100	\$37,821	\$107,600,000
Capital	<u>\$39,503</u>	<u>56,212,900</u>	<u>\$19,473</u>	<u>55,402,400</u>
Total Expenses	\$78,140	\$111,194,000	\$57,294	\$163,002,400
Net Income (Loss)		<u>(\$27,870,200)</u>		<u>\$3,645,300</u>
Discharges		1,423		2,845

Incremental utilization by payor source for the first and third year is summarized below:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>
Medicaid FFS	77	5.41%	154	5.41%
Medicaid MC	168	11.81%	336	11.81%
Medicare FFS	497	34.93%	993	34.90%
Medicare MC	273	19.18%	545	19.16%
Commercial MC	341	23.96%	682	23.97%
All Other	<u>67</u>	<u>4.71%</u>	<u>135</u>	<u>4.75%</u>
Total	1423	100%	2845	100%

The breakeven utilization is projected at 2,782 discharges in the third year.

Northwell Health's internal cost accounting system was used to generate the revenue, expense, utilization, and payor rate assumptions based upon the inpatient DRGs applicable to the program. The CFO of Northwell Health, Inc. has submitted a letter stating that Northwell Healthcare, Inc. is committed to supporting the project to serve the needs of the community and will provide financial support to absorb the budgeted losses.

Capability and Feasibility

The total project cost is \$560,705,671 includes \$338,562,858 previously approved under CON 172212. The project cost will be met with \$56,070,567 in accumulated funds and the remaining \$504,635,104 will be funded via a tax-exempt DASNY bond issuance with a 30-year term at 4% interest. Citigroup has provided a letter of interest to underwrite the bond financing.

Working capital requirements are estimated at \$27,167,067 based on two months of third-year expenses and will be funded from operations. A review of BFA Attachment A shows Northwell Health's 2019-2020 Consolidated Certified Financial Statements and their internal financial statements as of September 30, 2021, indicates the availability of sufficient resources to meet the equity contribution for the project cost and any working capital needs.

The submitted incremental budget indicates a loss in the first year of \$27,870,200 and a third year profit of \$3,645,300. The projected loss is due to the interest and depreciation expenses associated with this project. Without these expenses, the facility would show positive operating income. The CFO of Northwell Health, Inc. has provided a letter stating Northwell Health Care, Inc (NHCI) will provide financial support to absorb the budgeted operational losses to this program. NSUH's aim for the project is to replace existing outdated facilities, accommodate current surgical and critical care volume, and allow for future growth responsive to a patient population with increasingly complex healthcare needs and comorbidities. Revenue and payor rate assumptions are based upon the current experience of the existing volume and payor mix at North Shore University Hospital. The budget is reasonable.

BFA Attachment A shows Northwell Health maintained average positive working capital and net asset positions and achieved an average positive net operating income of \$740,820,000 for the 2019-2020 period and a positive net income of \$686,008,000 for the period ending September 30, 2021.

Conclusion

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

Attachments

BFA Attachment A	2019-2020 Consolidated Certified and 1/1/2021- 9/30/2021 Internal Financial Summary of Northwell Health, Inc.
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Project # 212135-C
University Hospital SUNY Health Science Center

Program: Hospital
Purpose: Construction

County: Onondaga
Acknowledged: October 19, 2021

Executive Summary

Description

University Hospital SUNY Health Science Center d/b/a Upstate University Hospital (Upstate), a 438-bed hospital at 750 East Adams Street, Syracuse (Onondaga County), requests approval to create a new division of Upstate to provide inpatient behavioral health services to adolescents and children. The new division will be at 620 Madison Avenue, Syracuse, and will be named "Upstate Hospital at Hutchings". The applicant requests certification of 29 inpatient psychiatric beds, which includes an 18-bed inpatient adolescent behavioral health unit serving individuals age 12 to 17, and an 11-bed dual-diagnosis inpatient unit to meet the needs of children age 5 to 17 with a developmental disability and a psychiatric condition.

As part of this proposal, Richard H. Hutchings Psychiatric Center (Hutchings) will close its Children and Adolescent Inpatient Service Units (a total of 30 beds), and Upstate will take professional jurisdiction of Building 7 at Hutchings to operate the proposed new division. Renovations will be performed to bring the space into compliance with Article 28 standards.

This application has been developed with the cooperation and support of the New York State Office of Mental Health (OMH) and the New York State Office for People With Developmental Disabilities (OPWDD) to address major shortages in behavioral health services for children and adolescents in the Central New York (CNY) region and to address a need for an inpatient program specifically designed for children with dual diagnoses and co-morbid

destructive behavior. There is currently no inpatient program in New York that is specifically designed to address the clinical needs of children with dual diagnoses and co-morbid destructive behavior. Families seeking this specialized inpatient care currently need to go to out-of-state facilities.

The concurrent OMH application is tentatively scheduled for the February 16, 2022 Behavioral Health Service Advisory Council.

OPCHSM Recommendation

Contingent Approval

Need Summary

The new Upstate Hospital at Hutchings will allow children and adolescents, including those who are dually diagnosed, to receive appropriate levels of inpatient mental health care closer to home.

Program Summary

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

Financial Summary

The total project cost of \$3,086,375 will be met with equity from accumulated funds. The projected incremental budget is as follows:

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (Department). Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation of approval from the Office of Mental Health, acceptable to the Department. [PMU]

Approval conditional upon:

1. This project must be completed by **August 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **July 1, 2022**, and construction must be completed by **May 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 10, 2022

Need and Program Analysis

Background

This application has been developed in conjunction with the NYS Office of Mental Health (OMH) and the NYS Office for People with Developmental Disabilities (OPWDD) to address major shortages in behavioral health services for children and adolescents in the Central New York Region and to address a need for an inpatient program specifically designed for children with dual diagnoses (i.e., developmental disability and psychiatric condition) and co-morbid destructive behavior. The new division will be located on the campus of the Richard H. Hutchings Psychiatric Center (Hutchings). Hutchings, operated by OMH, is a comprehensive, community-based mental health facility providing an integrated network of inpatient and outpatient services for children and adults residing in the Central New York region. The 12-building campus is adjacent to Upstate SUNY Medical University.

Upstate is currently certified for 438 beds, including 32 psychiatric beds. Upon approval, the new division will have 29 inpatient psychiatric beds, for a total of 61 psychiatric beds across the two campuses. As mentioned previously, the new division will have two units, an 18-bed inpatient adolescent behavioral health unit serving individuals age 12 to 17, and an 11-bed dual-diagnosis inpatient unit to meet the needs of children age 5 to 17 with a developmental disability and a psychiatric condition.

Analysis

The following factors were considered by Upstate and their partners in the assessment of the need for the proposed pediatric inpatient psychiatric beds under the auspices of Upstate:

- The demographics within the geographic service area.
- The lack of mental health services within the geographic area for children and adolescents.
- The need for improved accessibility to mental health care for underserved pediatric residents of the geographic region with acute mental health conditions.
- The proposed closure of the Hutchings children and adolescent units, which was announced by OMH in 2013 as part of a larger reconfiguration of the New York State mental health system.
- The importance of ensuring that children and adolescents who need inpatient mental health services receive them in a timely manner in a dually-certified Article 31 and Article 28 facility with strong surveillance and quality controls.
- The importance of providing comprehensive health care services at Upstate.

The primary services area (PSA) is Upstate's 17-county geographic region, which includes Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins, Otsego, Seneca, and Chemung Counties. It is expected that families from across New York will seek out the specialized services proposed in this CON, as implementation of this project will result in the only inpatient unit addressing the clinical needs of children with dual diagnoses and co-morbid destructive behavior in the state.

Need for Inpatient Psychiatric Services for Children and Adolescents

As indicated in the table below, there are currently only 44 approved and operational inpatient psychiatric beds for children and adolescents in the primary service area:

Facility Name	Type of Facility	Number of Beds	Note(s)
University Hospital SUNY	Article 28	8	Adolescent Unit
Cayuga Medical Center at Ithaca	Article 28	6	Adolescent Unit
Richard H. Hutchings Psychiatric Ctr	Article 31	30	Child & Adolescent Units
Total		44	

Another 12 child and adolescent inpatient psychiatric beds are projected to become operational in mid-2022 at Claxton-Hepburn Medical Center in Ogdensburg (St. Lawrence County), which received contingent approval from the Public Health and Health Planning Council at its December 9, 2020 meeting to create a 12-bed inpatient psychiatric unit to serve children and adolescents (CON 202029).

This proposal, which adds 29 certified beds to Upstate and decertifies 30 certified beds from Hutchings, and the approved Claxton-Hepburn Medical Center 12-bed unit will result in a total of 55 inpatient psychiatric beds for children and adolescents in the CNY Region.

Facility Name	Current # of Beds	Change in Beds	Future # of Beds
University Hospital SUNY	8	+29	37
Cayuga Medical Center at Ithaca	6	0	6
Richard H. Hutchings Psychiatric Center	30	-30	0
Claxton-Hepburn Medical Center	0	+12	12
Total	44	+11	55

Up until 2004, there was a total of 100 inpatient psychiatric beds for children and adolescents in CNY. In 2004, a private 64-bed inpatient psychiatric treatment center for children and adolescents in Syracuse operated by Four Winds closed, reducing inpatient children and adolescent psychiatric bed availability in CNY to 36 beds. In fact, the Richard H. Hutchings Psychiatric Center was the only inpatient facility in Syracuse to provide inpatient children and adolescent services until early 2020 when Upstate opened an 8-bed adolescent unit.

However, as indicated in the 2017 Final Report on the Youth Mental Health Task Force, issued by a task force created in 2015 by Congressman John Katko (NY-24) and Assemblyman William B. Magnarelli (AD 129) to examine the mental health system for youth in CNY, Hutchings lacked contracts with major insurance carriers and many private health insurance companies would not pay for treatment at Hutchings, resulting in families sending children to facilities in Buffalo and Saratoga in New York and out-of-state to other facilities for services that would be covered by health insurance.

In 2016, 240 children and adolescents in need of psychiatric hospitalization came to Upstate. Of these, almost half (111) had be sent out of Onondaga County to find an available bed. Moreover, children and adolescents can be held for days in Comprehensive Psychiatric Emergency Programs (CPEPs), emergency departments, or in pediatric inpatient beds while waiting for an inpatient psychiatric bed to become available somewhere in State or out-of-state.

In 2013, OMH announced plans to close the Hutchings children and adolescent units as part of a larger reconfiguration of the OMH Statewide mental health system. The loss of the 30 inpatient beds at Hutchings, without creating additional capacity elsewhere in the region, would result in a shortage of inpatient beds for mentally ill children and adolescents in CNY, affecting an estimated 1,000 patients with many of them having to be transported to other parts of the state, making uninterrupted care more difficult.

Through this proposal, Upstate seeks to preserve and enhance access to child and adolescent inpatient psychiatric beds that will help to address an identified shortage of inpatient mental health services for children and adolescents in the geographic region served by Upstate. In addition, as a regulated Article 28 entity, Upstate has a quality assurance improvement program in place with strong surveillance and quality controls to ensure that the children and adolescents who need inpatient psychiatric care will receive them in a timely manner.

Capacity and Utilization of Inpatient Child and Adolescent Psychiatric Beds

As indicated in the table below, 12 of the 17 counties within Upstate’s geographic region had a higher average daily census (ADC) rate per 100,000 children/adolescents during 2017-2018 (latest data available) compared to the Statewide rate.

Child Total Psychiatric Inpatient Bed Capacity by Provider County and ADC by Patient County of Residence				
Region/County	Total Inpatient Capacity¹	Total Bed Capacity per 100,000	Total Inpatient ADC^{2,3}	Total ADC per 100,000
Statewide	1,606	38.2	1,343.9	32.0
Central New York	183	44.2	172.5	41.7
Broome	14	34.9	14.1	35.2
Cayuga	42	270.7	6.5	42.0
Chenango	18	180.9	6.7	67.0
Cortland	0	0.0	6.8	65.8
Herkimer	0	0.0	2.9	21.9
Jefferson	0	0.0	12.7	46.3
Lewis	0	0.0	1.6	26.9
Madison	0	0.0	4.5	30.0
Oneida	46	92.3	15.5	31.0
Onondaga	23	22.4	33.1	32.3
Oswego	0	0.0	13.0	50.2
Otsego	0	0.0	4.0	35.8
St. Lawrence	28	115.9	17.1	70.9
Western New York	258	41.8	229.0	37.1
Chemung	13	70.2	8.2	44.3
Seneca	0	0.0	1.4	20.5
Tioga	0	0.0	3.6	34.7
Tompkins	6	30.1	6.8	34.0

Source: *County Capacity and Utilization Data Book, Calendar Years 2017-2018*, New York State Office of Mental Health

1. Includes General Hospital (Article 28), Private Psychiatric Hospital (Article 31), State Psychiatric Centers' Budgeted Capacity for the county of the providers and Residential Treatment Facility (RTF) children beds for the county of the providers.
2. Average Daily Census (ADC) covers General, Private Psychiatric, State Psychiatric Hospital and RTF.
3. ADC is shown for county of residence.

Within Upstate’s geographic region, nine counties (Cortland, Herkimer, Jefferson, Lewis, Madison, Oswego, Otsego, Seneca and Tioga) do not have any inpatient capacity for child and adolescent psychiatric services, three counties (Broome, Onondaga and Tompkins) have an ADC over their total inpatient capacity (as defined in the OMH table above) and five counties (Cayuga, Chenango, Oneida, St. Lawrence and Chemung) have a lower ADC than their total inpatient capacity. Overall, the ADC for CNY is 94.3% of the total inpatient capacity and the total ADC for Western New York is 88.8% of the total inpatient capacity, indicating a need to preserve the number of inpatient psychiatric beds for children and adolescents in Upstate’s geographic region.

Central New York Region Mental Health Profile

The following tables show information on the number of pediatric and adolescent Medicaid individuals who reside in the CNY region who received services in a mental health program (i.e., emergency room, inpatient program) between 2014 and 2019, compared to Statewide.

Emergency Department Services Over Time – Psychiatric Services (includes CPEP)							
Number of Pediatric and Adolescent Medicaid Individuals Served							
Region	2014	2015	2016	2017	2018	2019	CAGR 2014-2019
Statewide	28,206	29,939	31,647	34,029	34,947	34,544	3.44%
Central NY	3,599	3,940	4,417	4,355	4,526	4,688	4.50%

Source: NYS OMH Medicaid Population Characteristics and Service Utilization Trends, New York State Office of Mental Health

As demonstrated in the above table, the number of children/adolescent Medicaid enrollees Statewide seen in the emergency department (ED) increased between 2015 and 2018, with a slight decrease in 2019. As noted in the table above, the compound annual growth rate (CAGR) of the CNY ED utilization was 4.5%, which is higher than the Statewide CAGR rate of 3.44% for the same time period.

Inpatient Services Over Time – Psychiatric Inpatient							
Number of Pediatric and Adolescent Medicaid Individuals Served							
Region	2014	2015	2016	2017	2018	2019	CAGR 2014-2019
Statewide	11,850	12,240	12,009	12,283	11,558	11,322	-0.76%
Central NY	1,009	1,161	1,246	1,304	1,286	1,276	3.99%

Source: NYS OMH Medicaid Population Characteristics and Service Utilization Trends, New York State Office of Mental Health

As demonstrated in the above table, the number of children/adolescent Medicaid enrollees Statewide who were admitted to an inpatient psychiatric program increased from 11,850 in 2014 to 12,283 in 2017, an increase of 3%. Since 2017, the number of children/adolescents admitted for inpatient services has been declining, resulting in a 4.5% decrease overall between 2014 and 2019 or a negative CAGR of -0.76%. The number of children/adolescent Medicaid enrollees residing in CNY who were admitted to an inpatient program increased from 1,009 in 2014 to 1,304 in 2017, an increase of 29%. Since 2017, the number of children/adolescents admitted for inpatient services has been relatively flat, resulting in a 26.5% increase overall between 2014 and 2019 or a CAGR of 3.99%.

The increases in ED utilization and inpatient utilization of psychiatric services for children/adolescents in the CNY region support the need for the children/adolescent inpatient psychiatric beds being requested by Upstate.

Need for Inpatient Program Specifically Designed for Children with Dual Diagnoses

As part of Upstate's proposal, the Hospital will create an 11-bed dual-diagnosis inpatient unit to meet the needs of children age 5 to 17 with a developmental disability and psychiatric condition. There is currently no inpatient program in New York that is specifically designed to address the clinical needs of children with dual diagnoses and co-morbid destructive behavior. There are only nine specialized inpatient psychiatric programs (units) in the United States for children with autism and developmental disorders (see table below). There are only regional, short-term admission placements such as comprehensive psychiatric emergency programs (CPEPs), which are ineffective in meeting the needs of this population. Therefore, patients needing these specialized services must seek out-of-state placements, travelling anywhere from five to 11 hours by car to seek these specialized services. Such distances make it difficult and sometimes impossible for parents to visit, provide the needed family support and participate in the treatment process. Additionally, there is typically a wait for a placement to become available in one of these nine specialized programs and patients remain in CPEP placement for days, instead of hours, or have to be admitted to acute inpatient beds while they await placement. This delays treatment when a patient is in crisis.

Specialized Inpatient Psychiatric Programs for Children with Autism and Developmental Disorders

Facility Name	City/State	# of Inpatient Units	Miles from Syracuse	Hours from Syracuse
Streamwood Behavioral Healthcare	Streamwood, IL	1	713.4	11
Spring Harbor Hospital	Westbrook, ME	1	410.2	6
Seacoast Mental Health Center	Portsmouth, NH	2	360.1	5.5
Bradley Hospital	East Providence, RI	2	308.7	5
Kennedy Krieger Institute	Baltimore, MD	2	332.4	5
UPMC Western Psychiatric Hospital	Pittsburgh, PA	1	361.0	5.5

Source: Siegel M, Doyle K, Chemelski B, Payne D, Ellsworth B, Harmon J, Robbins D, Milligan B, Lubetsky M. Specialized inpatient psychiatry units for children with autism and developmental disorders: a United States survey. *J Autism Dev Disord.* 2012 Sep;42 (9):1863-9.

Per the applicant, New York State historically places approximately 400 children in out-of-state psychiatric inpatient facilities per year. The vast majority of these placements (90.1%) are for children and adolescents who present with the problems that will be targeted in Upstate's specialized inpatient unit. As there are presently no programs to provide this level of care in New York State, this equates to approximately 360 children per year who are placed at an out-of-state facility for inpatient psychiatric or residential services.

Continuum of Care

The CNY region is in need of an expanded continuum of care for children and adolescent behavioral health services in order to allow youth to receive appropriate levels of care in their own communities and to reduce unnecessary psychiatric hospitalizations. In addition to this proposal to create two inpatient psychiatric units for children and adolescents, Upstate is in the process of developing a child and adolescent psychiatry intensive outpatient program (IOP) to provide an intensive intermediate level of psychiatric care for children and adolescents who are transitioning from hospitalization to outpatient treatment and those who are at-risk for hospitalization. Currently, Syracuse is the only community from Albany to Buffalo that does not provide this intermediate level of care.

Compliance with Applicable Codes, Rules, and Regulations

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

Prevention Agenda

University Hospital SUNY Health Science Center states that the proposed project will advance local Prevention Agenda priorities by collaborating on goals related to well-being and mental and substance use disorder prevention.

Upstate is implementing interventions to support three goals of the 2019-2024 New York State Prevention Agenda which are (1) Promote well-being and prevent mental and substance use disorders; (2) Support and enhance children and adolescents' social-emotional development and relationships; and (3) Increase supports for children and youth with special health needs. These interventions include:

- Collaboration in developing the community health assessment and improvement plan
- Community engagement

Upstate engaged non-profits, hospitals, and local health departments in their Prevention Agenda efforts. They cite data indicators that are tracked to measure progress toward achieving local Prevention Agenda goals, including:

- New York State Department of Health County Health Assessment Indicators, Bureau of Vital Statistics, and Prevention Agenda Dashboard.
- New York State Planning and Research Cooperative System (SPARCS).
- Expanded Behavioral Risk Factor Surveillance System.
- County Health Rankings.
- Focus groups of community members and local organizations.

Conclusion

The CNY region is in need of an expanded continuum of care for children and adolescent behavioral health services in order to allow youth to receive appropriate levels of care in their own communities and to reduce unnecessary psychiatric hospitalizations. This proposal will enhance the continuum of care by allowing children and adolescents to receive appropriate levels of inpatient mental health care closer to home. 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 Analysis

Total Project Cost and Financing

Total project cost for renovation, moveable equipment, and fees of \$3,086,375 are as follows:

Renovation & Demolition	\$1,848,386
Design Contingency	184,839
Construction Contingency	184,839
Architect/Engineering Fees	143,104
Other Fees	20,000
Movable Equipment	686,336
CON Application Fee	2,000
Additional CON Fees	<u>16,871</u>
Total Project Cost	<u>\$3,086,375</u>

The applicant will fund project costs with equity.

Incremental Operating Budget

The applicant has provided the first- and third-year operating budgets, in 2022 dollars:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid-FFS	\$891.26	\$1,364,526	\$1,344.79	\$7,183,875	\$1,344.79	\$7,183,875
Medicaid-MC	\$981.22	6,988,242	\$1,209.21	14,372,643	\$1,209.21	14,372,643
Medicare-FFS	\$1,043.84	3,069,936	\$1,043.84	3,069,936	\$1,043.84	3,069,936
Medicare-MC	\$1,198.86	2,885,644	\$1,198.86	2,885,644	\$1,198.86	2,885,644
Commercial-FFS	\$1,845.63	6,601,804	\$1,845.63	6,601,804	\$1,845.63	6,601,804
Commercial -MC		0	\$2,205.32	2,097,264	\$2,205.32	2,097,264
Private Pay	\$12.65	898	\$12.65	898	\$12.65	898
All Other	\$1,035.58	424,588	\$1,035.58	424,588	\$1,035.58	424,588
Other Operating*		130,851		407,353		407,353
Non- Operating**		0		<u>1,333,333</u>		<u>1,333,333</u>
Total Revenues		\$21,466,489		\$38,377,338		\$38,377,338

<u>Expenses</u>	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Operating	\$1,137.86	\$20,548,527	\$1,303.47	\$35,956,217	\$1,303.47	\$35,956,217
Capital	<u>0</u>	<u>0</u>	<u>\$33.61</u>	<u>927,154</u>	<u>\$33.08</u>	<u>912,524</u>
Total Expenses	\$1,137.86	\$20,548,527	\$1,337.08	\$36,883,371	\$1,336.55	\$36,868,741
Net Income		<u>\$917,962</u>		<u>\$1,493,967</u>		<u>\$1,508,597</u>
Patient Days		18,059		27,585		27,585

* Represents estimated professional revenue that physicians would bill, collect, and remit to Upstate as part of the professional services agreement that will be put into place.

** Includes State Support via a 3-year VAP funding (public notice published 8-25-21 in NYS Register)

The following is noted concerning the submitted inpatient behavioral health services operating budget:

- Current year information reflects all of Upstate's inpatient psychiatric units (adult and adolescent).
- The projected utilization is based upon Upstate's experience and its knowledge of the service area, which is Central NY(CNY).
- The applicant reports that no rate history exists for the dual-diagnosis unit. The Medicaid rates for the dual-diagnosis unit were assumed to reflect a rate that allows the hospital to break even from operations and are based on ongoing discussions with OMH to establish such a rate. Professional (physician) revenue is based on specific billable CPT codes for physician services and the rates earned by the physicians for those services.
- Commercial revenue reflects projections of what Upstate expects to contract for with the primary commercial payors in the hospital's service area. The professional (physician) revenue is based on specific billable CPT codes for physician services and the rates earned by the physicians for those services.
- The breakeven utilization is projected at 26,497 patient days in the first year.
- The expense assumptions are as follows:
 - Staffing levels for the new units were developed by hospital management in concert with physician leadership;
 - Fringe benefit expense is based on Upstate's experience, at approximately 43% of salary expense;
 - Professional fees reflect physicians' services and were estimated based on the hospital's experience;
 - Supply costs, purchased services, and other direct expenses were based on the hospital's experience.

Utilization, broken down by payor source for the first and third year is summarized below:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
Medicaid FFS	1,531	8.48%	5,342	19.36%	5,342	19.36%
Medicaid MC	7,122	39.44%	11,886	43.08%	11,886	43.08%
Medicare FFS	2,941	16.28%	2,941	10.66%	2,941	10.66%
Medicare MC	2,407	13.33%	2,407	8.73%	2,407	8.73%
Commercial FFS	3,577	19.81%	3,577	12.97%	3,577	12.97%
Commercial -MC	0	0.00%	951	3.45%	951	3.45%
Private Pay	71	0.39%	71	0.26%	71	0.26%
All Other	<u>410</u>	<u>2.27%</u>	<u>410</u>	<u>1.49%</u>	<u>410</u>	<u>1.49%</u>
Total	18,059	100%	27,585	100%	27,585	100%

Transfer Jurisdiction

The applicant has submitted an executed agreement, Acknowledge of Intent to Transfer Jurisdiction of Building 7 from OMH to SUNY. SUNY intends to seek permission and approval of the SUNY Board of Trustees to accept and approve the transfer of jurisdiction. Ownership of Building 7 will remain with the People of the State of New York and will be under the professional jurisdiction of SUNY. SUNY will assume a part of the outstanding bond debt related to Building 7 not to exceed the fair market value as summarized in BFA Attachment B.

Capability and Feasibility

The total project cost of \$3,086,375 will be met with equity from accumulated funds. SUNY will assume a part of the outstanding bond debt related to Building 7 at the time of the transfer of jurisdiction, but in no event will SUNY's obligation exceed the fair market value (FMV) of the building. As of May 2021, the outstanding principal on the bond debt associated with Building 7 was \$8,925,957 at stated terms. The debt will continue to be financed with personal income tax (PIT) revenue bonds and be treated consistently with other debt services of Upstate. The transaction will not involve defeasing existing debt and re-issuing new debt. Review SUNY's 2020 certified financial statement and June 30, 2021 internal statement shows sufficient liquid resources to meet funding requirements (BFA Attachment A).

Working capital is estimated at \$6,144,790 based on two months of third-year expenses, which will be funded from operations. SUNY's 2020 certified financial statements (BFA Attachment A) show \$310.8M in working capital available to meet equity and working capital requirements. As of June 30, 2021, SUNY had \$239.6M in cash and a positive working capital ratio. The operating losses in 2020 and 2021 are attributable to increased staffing and supply costs and lower revenue due to decreases in the number of surgical cases, non-COVID-related inpatient admissions, and ambulatory care visits as a result of the COVID-19 pandemic. Upstate is working to address the loss from operations by monitoring expenses, reopening services that were curtailed during the pandemic, and investing resources and capital with a focus on return on investment (ROI).

The submitted budget indicates an incremental net income of \$1,493,967 and \$1,508,597 in years one and three, respectively. The budget appears reasonable.

Conclusion

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

Attachments

- BFA Attachment A State University of New York Upstate Medical University, 2019 - 2020 Certified Financial Statement and June 30, 2021 Internal Financial Statement
- BFA Attachment B Legal Agreement



Project # 212149-C
Hospice of Jefferson County/Palliative Care of Jefferson County

Program: Hospice
Purpose: Construction

County: Jefferson
Acknowledged: November 3, 2021

Executive Summary

Description

Hospice of Jefferson County, Inc., an existing not-for-profit, Article 40 hospice located at 1398 Gotham Street, Watertown, is seeking approval to certify four additional hospice residence beds and decertify two dually certified inpatient beds at the existing eight-bed hospice. Upon completion of the CON, the hospice will have 12 Residence-only beds and no Inpatient beds. Hospice of Jefferson County Inc. is approved to serve Jefferson and St. Lawrence counties. Currently, the facility averages three patients per day on the admission waiting list.

This addition will include enhanced acoustic material to be incorporated into the structure which will allow patients with dementia to receive care without disturbing other patients and their families. In addition, due to the COVID 19 pandemic, the HVAC system will be enhanced to improve air flow and add filtration and ionization. Two of the new rooms will have the capacity to be converted to negative pressure rooms to allow us to care for a hospice patient with an air borne infection.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant currently manages a wait list to enter their facility. Adding four residence beds will allow the hospice to accommodate ongoing and sustained demand.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance.

Financial Summary

Total project costs of \$2,207,196 will be met as follows: Equity of \$200,000 via accumulated funds, Fundraising of \$1,310,000, Government Grants of \$307,196 and other Grants of \$390,000. The applicant projects an excess or revenues of \$139,014 and \$167,319 during the first and third years. The projected incremental budget is as follows:

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

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 4006(9)(b) states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of thirty-hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of fundraising that is acceptable to the Department of Health. (BFA)
3. Submission of grant funding that is acceptable to the Department of Health. (BFA)
4. Submission of government grant funding that is acceptable to the Department of Health. (BFA)

Approval conditional upon:

1. This project must be completed by **July 15, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 1, 2022**, and construction must be completed by **April 15, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 10, 2022

Need and Program Analysis

Project Description

Hospice of Jefferson County Inc., an existing Article 40 hospice located at 1398 Gotham Street, Watertown, 13601, is seeking approval to certify four additional hospice residence beds and decertify two dually certified inpatient beds at the existing eight-bed hospice. The Hospice will use Inpatient Swing Beds at Samaritan Medical Center in Watertown on a as needed basis to cover any need for this service that arises. Upon completion of the CON, the hospice will have 12 Residence-only beds and no Inpatient beds. Hospice of Jefferson County Inc is approved to provide the following services in Jefferson and St. Lawrence counties:

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

Hospices can be certified to operate a residence unit of three to 16 beds. While operating eight residence and 2 inpatient beds, Hospice of Jefferson County's a daily census from September 30, 2018 through September 30, 2021 averaged 6.79 with a wait list averaging three patients per day.

Typically, patients near their end of life would prefer to remain at home or in a more home-like setting. However, often there is no available alternative to placement in a nursing facility. Thus, a patient is transferred to a higher than necessary level of care unit until suitable placement can be made which may not be appropriate if the patient's acuity level is high. The applicant's proposal will allow additional hospice patients to meet their life closure goals of remaining "at home" to die, avoiding nursing home or hospital admission.

The residence is staffed 24/7 with a compilation of LPN's, RN's, RN charge nurse(s), Hospice aides (HHA) and support services staff. In order to staff the additional beds, the applicant intends to add one home health aide per shift seven days per week. One full-time Registered Nurse will be added to cover 3PM – 11PM shifts and weekends.

The applicant intends to incorporate enhanced acoustic material into the structure of the four new rooms to allow for the care of patients with dementia behaviors without disturbing other patients and their families. The applicant intends for two of the new rooms to be able to convert to negative pressure rooms to allow for the care of patients with airborne infections while improving the safety of staff, patients, and families. Additionally, in response to the COVID-19 pandemic, the residence's HVAC system will be enhanced to improve air flow and add filtration and ionization. Lastly, the applicant intends to add additional family and staff space as part of this project. These spaces include an additional family room, a meditation room, and a solarium.

Conclusion

Adding four residence beds will accommodate demand. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance.

Financial Analysis

Total Project Cost and Financing

New Construction	\$1,519,600
Renovation and Demolition	77,000
Site Development	176,000
Design Contingency	168,000
Construction Contingency	84,000
Architect/Engineering Fees	174,000
CON Fee	2,000
Additional Processing Fee	<u>6,596</u>
Total Project Cost	\$2,207,196

The applicant's financing plan is as follows:

Equity	\$200,000
Fundraising	1,310,000
Government Grants	307,196
Grants	<u>390,000</u>
Total	\$2,207,196

Operating Budget

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

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare	\$394,994	\$227,247	\$239,854
Medicaid	273,979	129,897	137,092
Private Pay	26,425	153,501	162,004
Other	<u>348,575</u>	<u>0</u>	<u>0</u>
Total Revenues	\$1,043,973	\$510,645	\$538,950
<u>Expenses</u>			
Operating	\$843,817	\$306,478	\$306,478
Capital	<u>126,238</u>	<u>65,153</u>	<u>65,153</u>
Total Expenses	\$970,055	\$371,631	\$371,631
 Excess Revenues	 \$73,918	 \$139,014	 \$167,319
 Utilization (Patient Days)	 2,440	 1,314	 1,314

The following is noted with respect to the submitted budget:

- Utilization will be 100% Medicare.
- The applicant has indicated that when patients stay in their residence, they are paid separately for their routine hospice care and the associated room and board fee. Medicare pays for almost all of their patients' routine hospice care, but Medicare does not pay the associated room and board fee for those patients who stay in the residence. Approximately 55% of these patients pay their room and board fee privately. For the remaining 45% of patients, their room and board fee are paid by Medicaid or Medicare replacement policies.
- Expense and utilization assumptions are based on historical experience.

Capability and Feasibility

Total project costs of \$2,207,196 will be met as follows: Equity of \$200,000 via accumulated funds from hospice operations, Fundraising of \$1,310,000, Government Grants of \$307,000 and other Grants of \$390,000. BFA Attachment A is the September 30, 2019 and September 30, 2020 certified financial statements of Hospice of Jefferson County, Inc. The applicant has indicated that they have received \$410,000 in CARES funding.

The submitted budget indicates an excess of revenues over expenses of \$139,014 and \$167,319 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for inpatient hospice beds. 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 the period October 1, 2018 through September 30, 2020.

Conclusion

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	September 30, 2019 and September 30, 2020 certified financial statements of Hospice of Jefferson County.
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Project # 201004-B
Pelham Parkway SC, LLC d/b/a
Pelham Parkway Surgery Center

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: February 11, 2020

Executive Summary

Description

Pelham Parkway SC, LLC d/b/a Pelham Parkway Surgery Center, an existing New York State limited liability company, requests approval to establish and construct a multi-specialty Article 28 Ambulatory Surgery Center (ASC) to be located on the first floor of 1000 Pelham Parkway South, Bronx (Bronx County). The surgical specialties to be provided will include Orthopedic, Ophthalmology, Podiatry, and Vascular Access Surgery. Other physicians have expressed an interest in providing gastroenterology surgery services at the center, but no commitments have yet been made. The proposed center will be housed in a five-story, multi-use medical building that contains the following entities: Morningside Nursing & Rehabilitation Center, a 314 bed Article 28 Residential Health Care Facility (RHCF); Morningside Assisted Living Program (ALP), a 40-bed ALP; and Morningside Dialysis Center, LLC d/b/a Cassena Care Dialysis at Morningside, a 21-station Article 28 chronic renal dialysis center. Upon completion of renovations, the ASC will have four operating rooms and two GI procedure rooms. The current space is unoccupied and was formerly used for RHCF administrative and executive offices that have been relocated to other areas including off-site locations.

The proposed operator of the ASC is as follows:

Table with 2 columns: Member, %
Proposed Operator: Pelham Parkway SC, LLC
Members: Pasquale DeBenedictis (33.34%), Alex Solovey (33.33%), Solomon Rutenberg (33.33%)

All three proposed members will be managing members of the ASC and are currently operating entity members of the RHCF, ALP and Dialysis Center housed in the building.

Samar Syed Razza, MD, who is Board Certified in Internal Medicine, will be the Medical Director of the Center. The applicant will enter into a Transfer and Affiliation Agreement with Bronx Lebanon Hospital Center, located 2 miles (4 minutes travel time) from the proposed ASC, for backup and emergency care.

OPCHSM Recommendation

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

Need Summary

The applicant projects 1,823 procedures in Year One and 2,202 in Year Three, with Medicaid at 6.0% and Charity Care at 2.0% each year.

Program Summary

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

Financial Summary

The total project costs of \$8,393,727 will be met with \$1,259,059 in equity from the proposed members and a bank loan for \$7,134,668 at 6.0% interest with a ten-year term and an amortization period of 20 years. Peapack-Gladstone Bank has provided a letter of interest for the financing at the stated terms. The budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$5,540,376	\$6,908,327
Expenses	<u>4,501,294</u>	<u>5,898,718</u>
Net Income	\$1,039,082	\$1,009,609

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. 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 centers commitment to meet the health care needs of the community, including the provision of services to those in need, regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. (RNR)
4. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. (RNR)
5. Submission of an executed Licensing Agreement, acceptable to the Department of Health. (BFA)
6. Submission of an executed loan commitment, acceptable to the Department of Health. (BFA)
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01.
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01.
9. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. (CSL)
10. Submission of fully executed sublease, acceptable to the Department. (CSL)
11. Submission of a photocopy of an executed amendment of the applicant's articles of organization, acceptable to the Department. (CSL)
12. Submission of a photocopy of the applicant's fully executed operating agreement, acceptable to the Department. (CSL)
13. Submission of a list of members and managers of the applicant's second-level member, acceptable to the Department. (CSL)
14. Submission of a photocopy of an executed amendment of the applicant's second-level member's articles or organization, acceptable to the Department. (CSL)

15. Submission of a photocopy of the applicant's second-level member's fully executed operating agreement, acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **July 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 1, 2022**, and construction must be completed by **April 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The 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)
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 10, 2022

Need and Program Analysis

Program Description

Pelham Parkway SC, LLC d/b/a/ Pelham Parkway Surgery Center seeks approval for the establishment and construction of a multi-specialty ambulatory surgery center to be located at 1000 Pelham Parkway South in Bronx (Bronx County). The proposed center will be housed in a multi-use building which contains a skilled nursing facility, an assisted living program, and a dialysis center..

Proposed Operator	Pelham Parkway SC, LLC
Doing Business As	Pelham Parkway Surgery Center
Site Address	1000 Pelham Parkway South Bronx, New York 10461 (Bronx County)
Surgical Specialties	Multi-Specialty, to initially include: Orthopedics Podiatry Vascular Access Ophthalmology
Operating Rooms	4
Procedure Rooms	2
Hours of Operation	Monday Friday 7:00 am to 6:00 pm through
Staffing (1st / 3rd Year)	14.3 FTEs / 24.3 FTEs
Medical Director	Syed Samar Raza, M.D.
Emergency, In-Patient & Back-up Support Services Agreement and Distance	Bronx Lebanon Hospital 4.9 miles / 14 minutes
After-hours access	The patient will be provided with discharge instructions that included information on when to call their surgeon, primary care physician, or 911 when the surgery center is closed. The Center will also have an answering machine that will provide instructions for the patient to contact their surgeon, primary care physician, or 911.

The Center will initially provide orthopedic, ophthalmology, podiatry, and vascular access surgery services and expects to provide gastroenterology services in the near future.

Analysis

The service area consists of Bronx County. The population of Bronx County in 2010 was 1,385,108 with 464,959 individuals (33.6%) who are 45 and over, which are the primary population group utilizing ambulatory surgery services. Per PAD projection data, this population group (45 and over) is estimated to grow to 595,345 by 2025 and represent 38.0%% of the projected population of 1,567,988. According to Data USA, in 92.1% of the population of Bronx County has health coverage as follows:

Employer Plans	31.3%
Medicaid	42.3%
Medicare	6.9%
Non-Group Plans	11.0%
Military or VA	0.4%

The table below shows the number of patient visits for ambulatory surgery centers in Bronx County for 2018 through 2020. 2020 utilization was impacted by COVID 19.

Spec Type	Facility Name	Total Patient Visits		
		2018	2019	2020
Gastroenterology	Advanced Endoscopy Center	11,008	11,310	7,686
Multi	Ambulatory Surgery Center of Greater NY	8,905	8,836	4,939
Multi	Avicenna ASC, Inc	5,249	6,200	4,516
Multi	Downtown Bronx ASC ²	2,115	3,508	0
Multi	East Tremont Medical Center ^{1,2}	0	0	0
Multi	Empire State Ambulatory Surgery Center	3,827	5,633	5,062
Ophthalmology	Eye Surgery Center of NY ³	3,327	3,973	1,544
Gastroenterology	Mid-Bronx Endoscopy Center	4,514	6,363	4,721
Gastroenterology	New York GI Center	9,291	9,512	6,310
Multi	Triborough ASC (opened 12/24/20)	N/A	N/A	N/A
Total Visits		48,236	55,335	34,778

¹ No SPARCS data located for 2018 or 2019

² No SPARCS data located for 2020

³ 2020 data is for a partial year

The number of projected procedures is 1,823 in Year One and 2,202 in Year Three with Medicaid at 6.0% and Charity Care at 2.0% each year. These projections are based on the current practices of participating surgeons. Of the procedures moving to the new ASC, 21% are currently performed in a hospital, 36% are currently performed in another ASC and the remaining 43% are performed in an office-based setting. The table below shows the projected payor source utilization for first and third years.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	456	25.01%	507	23.02%
Commercial MC	328	17.99%	440	19.98%
Medicare MC	839	46.02%	1,013	46.00%
Medicaid MC	109	5.98%	132	6.00%
Private Pay	55	3.02%	66	3.00%
Charity Care	36	1.98%	44	2.00%
Total	1,823	100.00%	2,202	100.00%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Health First, Affinity Health Plan, Age Well New York LLC, and Cigna. The Center will work collaboratively with local Federally Qualified Health Centers (FQHCs) such as: Urban Health, The Institute for Family Health, Acacia Health Network, Perry Avenue Family Medical Center and Doctors United within the service area to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational.

Character and Competence

The proposed members and managers of Pelham Parkway SC, LLC is:

Name	Interest
Pasquale DeBenedictis	33.34%
Alex Solovey	33.33%
Soloman Rutenberg	33.33%
Total	100.0%

Pasquale DeBenedictis is a Managing Member and Chief Financial Officer of Cassena Care. He also operates multiple nursing homes and other health related facilities, including dialysis and adult homes. His job functions include the day-to-day financial concerns of the business, billing, employee resources, and compliance services. Mr. DeBenedictis discloses ownership interest in the following healthcare facilities:

<i>Barwell Nursing Home</i>	<i>11/2003-12/2017</i>
<i>East Neck Nursing and Rehabilitation Center</i>	<i>02/2005-present</i>
<i>JOPAL@ St. James</i>	<i>10/2010-05/2018</i>
<i>Petit Fleur Nursing Home</i>	<i>12/2012-05/2018</i>
<i>Workman's Circle Multicare Center</i>	<i>07/2013-present</i>
<i>Shoreview Nursing and Rehabilitation</i>	<i>06/2014-present</i>
<i>Morningside Acquisition I, LLC</i>	<i>07/2014-present</i>
<i>Peninsula Nursing and Rehabilitation Center</i>	<i>08/2014-present</i>
<i>Upper East Side Rehabilitation and Nursing Center</i>	<i>06/2015-present</i>
<i>Sea-Crest Nursing and Rehabilitation</i>	<i>07/2015-present</i>
<i>Fordham Nursing and Rehab</i>	<i>08/2016-present</i>
<i>Long Beach Nursing and Rehabilitation Center</i>	<i>08/2016-present</i>
<i>Workman's Circle Dialysis Center</i>	<i>08/2015-present</i>
<i>East Neck Dialysis Center</i>	<i>09/2015-present</i>
<i>Cassena Care Dialysis at Peninsula</i>	<i>11/2016-present</i>
<i>Morningside Dialysis Center</i>	<i>11/2016-present</i>
<i>Hillside Manor Certified Home Care Agency</i>	<i>10/2017-present</i>
<i>Sea-Crest Dialysis Center</i>	<i>09/2017-present</i>
<i>Downtown Brooklyn Nursing and Rehabilitation Center</i>	<i>Pending</i>
<i>Margaret Tietz Nursing and Rehabilitation Center</i>	<i>02/2019-present</i>
 <u><i>Out-of-State</i></u>	
<i>Cassena Care at Stamford</i>	<i>02/2016-present</i>
<i>Cassena Care at New Britain</i>	<i>02/2016-present</i>
<i>Cassena Care at Norwalk</i>	<i>07/2013-present</i>

Soloman Rutenberg is the CEO of Workman's Circle Multicare Center, a multicare center. His job duties include participating in floor rounds, meeting with vendors, participating in Quality Assurance and Corporate Compliance, meeting with various administrators, Department Heads, and Directors. He works with key personnel implementing new programs regarding reimbursement. Mr. Rutenberg discloses ownership interest in the following healthcare facilities:

<i>Workman's Circle Multicare Center</i>	<i>08/2012-present</i>
<i>Shoreview Nursing and Rehabilitation</i>	<i>06/2014-present</i>
<i>Morningside Acquisition, III LLC (ALP)</i>	<i>Pending</i>
<i>Morningside Acquisition, III LLC (LHCSA)</i>	<i>Pending</i>
<i>Centerlight Certified Home Health Agency</i>	<i>Pending</i>
<i>Sea-Crest Nursing and Rehabilitation</i>	<i>07/2015-present</i>
<i>Workman's Circle Dialysis Center</i>	<i>08/2015-present</i>
<i>Mills Pond Nursing and Rehabilitation Center</i>	<i>05/2014-05/2018</i>
<i>Terrace Health Care Center</i>	<i>06/2015-08/2016</i>
<i>Morningside Nursing and Rehabilitation Center</i>	<i>07/2014-present</i>
<i>Upper East Side Rehabilitation and Nursing Center</i>	<i>03/2016-present</i>
<i>Morningside Dialysis Center</i>	<i>07/2019-present</i>
<i>Fordham Nursing and Rehabilitation</i>	<i>08/2016-present</i>
<i>Sea-Crest Dialysis Center</i>	<i>09/2017-present</i>
<i>Long Beach Nursing and Rehabilitation Center</i>	<i>03/2017-present</i>
<i>Hillside Manor Certified Home Care Agency</i>	<i>10/2017-present</i>
<i>Downtown Brooklyn Nursing and Rehabilitation Center</i>	<i>06/2018-present</i>
<i>Margaret Tietz Nursing and Rehabilitation Center</i>	<i>02/2019-present</i>
 <u><i>Out-of-State</i></u>	
<i>Cassena Care at Stamford</i>	<i>02/2019-present</i>
<i>Cassena Care at New Britain</i>	<i>02/2016-present</i>

Alex Solovey is the Director of Rehabilitation at Theradynamics, a therapy company. He provides physical therapy services to and at health entities. He works with other therapists on programs geared towards individuals who receive dialysis treatments. He understands the fragility of patients residing in skilled nursing facilities. Mr. Solovey discloses ownership interest in the following healthcare facilities:

<i>Barnwell Nursing and Rehabilitation</i>	<i>11/2003-12/2017</i>
<i>East Neck Nursing and Rehabilitation Center</i>	<i>02/2005-present</i>
<i>JOPAL at St. James</i>	<i>10/2010-05/2018</i>
<i>Petit Fleur Nursing Home</i>	<i>12/2012-05/2018</i>
<i>Workman's Circle Multicare Center</i>	<i>07/2013-present</i>
<i>Shoreview Nursing and Rehabilitation</i>	<i>06/2014-present</i>
<i>Morningside Acquisition, I LLC</i>	<i>07/2014-present</i>
<i>Morningside Acquisition, III LLC (ALP)</i>	<i>Pending</i>
<i>Morningside Acquisition, III LLC (LHCSA)</i>	<i>Pending</i>
<i>Peninsula Nursing and Rehabilitation Center</i>	<i>08/2014-present</i>
<i>Upper East Side Rehabilitation and Nursing Center</i>	<i>06/2015-present</i>
<i>Sea-Crest Nursing and Rehabilitation</i>	<i>07/2015-present</i>
<i>Long Beach Nursing and Rehabilitation</i>	<i>08/2016-present</i>
<i>Workman's Circle Dialysis</i>	<i>08/2015-present</i>
<i>East Neck Dialysis Center</i>	<i>08/2015-present</i>
<i>Cassena Care at Peninsula</i>	<i>11/2016-present</i>
<i>Morningside Dialysis Center</i>	<i>07/2019-present</i>
<i>Fordham Nursing and Rehabilitation</i>	<i>08/2016-present</i>
<i>Hillside Certified Home Care Agency</i>	<i>10/2017-present</i>
<i>Sea-Crest Dialysis Center</i>	<i>09/2017-present</i>
<i>Downtown Brooklyn Nursing and Rehabilitation Center</i>	<i>06/2018-present</i>
<i>Margaret Tietz Nursing and Rehabilitation Center</i>	<i>02/2019-present</i>

Out-of-State

<i>Cassena Care at Stamford</i>	<i>02/2016-present</i>
<i>Cassena Care at New Britain</i>	<i>02/2016-present</i>
<i>Cassena Care at Norwalk</i>	<i>07/2013-present</i>

Syed Samar Raza, MD is the proposed Medical Director. He is board certified in Internal Medicine with a focus in Hospital Medicine. He is the current Chief Medical Officer of Cassena Car, providing oversight of all the physicians providing care at the Cassena facilities focusing on standardization of processes, reviewing, and providing current clinical guidelines to physicians, prioritizing quality improvement initiatives, and coordinating community relationships. He is also the current site Medical Director of East Neck Nursing and Rehab Center, providing oversight and coordination of medical care to all patients in each facility. He received his medical degree from the Ross University School of Medicine in Dominica. He completed his Internal Medicine residency at Maryland General Hospital. Dr. Raza discloses offices held in the healthcare facilities:

<i>Cassena Care</i>	<i>07/2019-present</i>
<i>Southside Hospital</i>	<i>01/2019-present</i>
<i>East Neck Nursing and Rehab Center</i>	<i>06/2019-present</i>
<i>Huntington Hospital</i>	<i>11/2010-12/2013</i>
<i>J. T. Mather Hospital</i>	<i>09/2007-10/2010</i>

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.

The applicants disclosed multiple legal actions.

A civil action was filed December 10, 2014 in the Supreme Court of the State of New York, Suffolk County. The suit was filed on behalf resident by the Estate Representative who allege medical malpractice and development of a sacral ulcer against Petit Fleur. The action was settled in January 2019 through the defense's insurance counsel.

A civil action was disclosed on January 15, 2016 in the Supreme Court of the State of New York, Nassau County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and theft of resident's property against Long Beach Nursing Home. The case was dismissed by the court on January 11, 2017.

A civil action filed on November 10, 2016 in the Supreme Court of the State of New York, Nassau County. The suit alleged negligence and medical malpractice. The case was dismissed on January 3, 2017 based on the defendant's motion to dismiss the plaintiff's summons and complaint based on failure to state a cause of action.

A civil suit was filed on May 3, 2018 in the Supreme Court of the State of New York State, Bronx County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and allegations of professional liability against Workman's Circle related to wound care issues and development of a sacral ulcer. The case is being actively by the insurance defense counsel.

A civil suit was filed on February 2, 2020 in the Supreme Court of the State of New York, Columbia County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and allegations of negligence, ulcers, dehydration, and malnutrition against Barnwell. The action was discontinued against Messrs. Solovey and DeBenedictis on June 24, 2020.

A civil suit was filed on May 3, 2020 in the Supreme Court of the State of New York, Bronx County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and allegations of negligence, ulcers, dehydration, and malnutrition against Workman's Circle. The action is being defended by the insurance's defense counsel.

A civil suit was filed on May 26, 2020 in the Supreme Court of the State of New York, New York County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and care related allegations due to a fall against Dewitt Rehab & Nursing. The action is being actively defended by the insurance's defense counsel.

A civil suit was filed on May 26, 2020 in the Supreme Court of the State of New York, Queens County on behalf of the resident by the Estate Representative who allege medical malpractice and care related allegation due to wound care issues/failure to treat pressure ulcers against Margaret Tietz Center for Nursing. The allegations relate to are being actively defended by the insurance's defense counsel.

A civil suit was filed on August 18, 2020 in the Supreme Court of the State of New York, Suffolk County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and failure/negligence in preventing pressure ulcers against Mills Pond. The action is being discontinued.

A civil suit was filed on October 27, 2020 in the Supreme Court of the State of New York, New York County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and allegations of negligence and failure to treat pressure ulcers against Upper East Side. These allegations are being defended by insurance's defense counsel.

A civil suit was filed on January 16, 2021 in the Supreme Court of the State of New York, Suffolk County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and professional liability relation to pressure ulcers and wrongful death against Downtown Brooklyn Nursing Home. The lawsuit was dismissed and refiled on April 29, 2021.

A civil suit was filed on April 16, 2021 in the Supreme Court of the State of New York, Suffolk County. The suit was filed on behalf of the resident by the Estate Representative who allege medical malpractice and

allegations of pressure ulcers and public health law violations against St. James. The action was dismissed with prejudice on September 17, 2021 against the facility and Messrs. DeBenedictis and Solovey.

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.

Barnwell Nursing Home

- The Department issued a Stipulation and Order (S&O) dated November 13, 2015 and fined Barnwell \$15,000 for the results of a survey that was completed on February 1, 2013 and September 26, 2013. Deficient practice was cited in the area of: Quality of care, Significant Medication Errors; Administration; Quality Assurance; Free from Mistreatment, Neglect, and Misappropriation of Property, and Quality of Care, Highest Practicable Potential.
- The Department issued a Stipulation and Order (S&O) dated November 3, 2015, and fined Barnwell \$6,000 based on an investigation that was completed February 1, 2013. Deficient practice was found in the following areas: Quality of Care-Free of Significant Med Errors and Administration-Effective Administration/Resident Well-Being/Quality Assurance Agency Committee Members/Meet Quarterly/Plans. Specifically, the facility failed to ensure that residents who were newly admitted or readmitted, received their physician-ordered medications in a timely manner. Additionally, the facility failed to follow the standard of practice in administering medications. Also, the Quality Assurance program failed to have a procedure in place to identify and investigate medications that were not administered and/or not administered on time, due to the unavailability of medications from the pharmacy.
- The Department issued a Stipulation and Order (S&O) dated January 12, 2014 and fined Barnwell \$2,000 for the results of a survey that was completed on March 13, 2012. Deficient practice was cited in the area of: Quality of Care, Accidents/Supervision.

East Neck Nursing and Rehabilitation and Center

- The Department issued a Stipulation and Order (S&O) dated November 3, 2015, and fined East Neck Nursing and Rehabilitation \$6,000 based on an investigation that was completed on March 21, 2014. Deficient practice was found in the following areas: Resident Rights-Right to Refuse, Formulate Advance Directives, Administration-Effective Administration/Resident Well Being, and Administration-Quality Assurance Agency (QAA) Committee Members/Meet Quarterly/Plans. Specifically, the facility failed to establish and implement an effective system for communicating each resident's advanced directive choices to the interdisciplinary team and follow physician's order. Additionally, the administration failed to ensure that there was a system in place to ensure that each resident's right to accept or refuse medical treatment and formulate an advance directive was maintained in accordance with State law and failed to provide a quality assessment program to provide for such.
- East Neck is being Investigated by the Attorney General's Office with respect to services provided by the facility from January 1, 2012 through December 31, 2014.

Long Beach Nursing and Rehab

- The Department issued a Stipulation and Order (S&O) dated September 29, 2020 and fined \$4,000. Long Beach Nursing and Rehab for the results of an Infection Control Survey completed on July 27, 2020. Deficient practice was cited in the area: Infection Control.
- The Department issued a Stipulation and Order (S&O) dated November 4, 2021 and fined Long Beach Nursing and Rehabilitation Center \$2,000 in the area of Infection Control based on an investigation dated July 13, 2021. The facility failed to maintain an infection prevention and control program and to ensure hand hygiene occurs.

Workmen's Circle Multicare Center

- The Department issued a Stipulation and Order (S&O) dated November 15, 2021 and fined Workmen's Circle \$10,000 based on an investigation on May 11, 2021 the facility was fined based on deficiencies found during the survey for Quality of Care -Free of Accident Hazards/supervision/devices. Staff did not properly transfer a resident, resulting in a fall and injury.

Morningside Nursing and Rehabilitation Center

- The Department issued a Stipulation and Order (S&O) dated July 10, 2020 and fined Morningside \$6,000 based on findings from a survey that was completed on May 20, 2020. Deficient practice was cited in the area Infection Control.

Upper East Side Rehabilitation and Nursing Center

- The Department issued a Stipulation and Order (S&O) dated May 10, 2018 and fined Upper East Side \$12,000 based on findings from a survey that was completed on February 20, 2108. Deficient practice was cited in the following areas: Residents Free from Significant Med Errors and Physician Visits-Review Care/notes/orders. Specifically, the facility failed to ensure that the Primary Medical Doctor reviewed and confirmed telephone medication orders before signing off on the orders. This resulted in the PMD anticipating signing off on orders for Simethicone 80 mg but actually signing off on orders Methadone 40 mg two tablets by mouth every 6 hours. The resident received this incorrect medication and required transport *to the hospital*.

Integration with Community Resources

The Applicant is committed to serving patients without the ability to pay the full charge or who is uninsured. The Applicant is committed to serving all persons in need of services and there will be no discrimination based on personal characteristics or ability to pay. There is a financial assistance policy with a sliding fee schedule. The Applicant will participate in community health events and with local religious institutions to ensure that the local organizations are aware of the services available. If the patient does not have a relationship with a primary care physician, the Center seeks to align with local hospitals, including Bronx-Lebanon Hospital and will notify any patient who comes to the Center without a primary care physician of the primary care services offered by the hospital affiliates. The Applicant plans on using an electronic medical record (EMR) system from the onset of initial services.

Conclusion

Approval of this project will increase access to a variety of outpatient surgical specialties to the residents of Bronx County. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Total Project Costs

The total project cost for renovations and movable equipment is estimated at \$8,393,727, as follows:

Renovation & Demolition	\$4,120,000
Design Contingency	206,000
Construction Contingency	412,000
Architect/Engineering Fees	360,500
Other Fees (Consulting)	128,750
Movable Equipment	2,813,652
Financing Costs	130,681
Interim Expense	174,242
Application Fee	2,000
Additional Processing Fee	<u>45,902</u>
Total Project Cost	\$8,393,727

The financing for this project will be as follows:

Cash	\$1,259,059
Construction loan (10 years, 20 year-amortization, 6% interest)	<u>7,134,668</u>
Total Funds	\$8,393,727

Peapack-Gladstone Bank provided a letter of interest for the bank loan. Pasquale DeBenedictis and Solomon Rutenberg have provided affidavits to fund the balloon payment with personal equity should terms acceptable to the Department of Health be unavailable at the time of refinancing. BFA Attachment A shows that the members of Pelham Parkway SC, LLC have sufficient resources to fund the equity contribution for project costs and the balloon payment.

Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for Years One and Three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$4,045.96	\$1,844,958	\$4,218.30	\$2,138,676
Commercial MC	\$3,374.92	1,106,975	\$3,544.21	1,559,451
Medicare MC	\$2,697.44	2,263,149	\$2,785.65	2,821,864
Medicaid MC	\$2,667.58	290,766	\$2,659.84	351,099
Private Pay	\$2,683.58	147,597	\$2,700.35	178,223
Bad Debt		<u>(113,069)</u>		<u>(140,986)</u>
Total Revenue		\$5,540,376		\$6,908,327
<u>Expenses</u>				
Operating	\$1,664.54	\$3,034,460	\$2,007.59	\$4,420,709
Capital	<u>804.63</u>	<u>1,466,834</u>	<u>671.21</u>	<u>1,478,009</u>
Total Expense	\$2,469.17	\$4,501,294	\$2,678.80	\$5,898,718
Net Income		<u>\$1,039,082</u>		<u>\$1,009,609</u>
Total Procedures		1,823		2,202
Cost/Procedure		\$2,469.17		\$2,678.80

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	25.01%	23.02%
Commercial MC	17.99%	19.98%
Medicare MC	46.02%	46.00%
Medicaid MC	5.98%	6.00%
Private Pay	3.02%	3.00%
Charity Care	<u>1.98%</u>	<u>2.00%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Projected utilization is based upon the estimated surgical volume provided by surgeons who have indicated interest in performing surgeries at the proposed center.
- Expenses are based on historical data from similar ASCs in New York State and reflect the experiences of the proposed members who operate other health related facilities.
- The Medicare rate is based on the 2019 Medicare rate schedule, Medicare fees are based on location of service and previous experience of proposed operators.
- Commercial rates are projected based on a percentage of the 2019 Medicare fee-for-service (FFS) rate, ranging from 200% for Commercial FFS payors, and 150% for Commercial Managed Care payors.

Agreements

BFA Attachment B details the following:

- The terms of an executed lease agreement for the site.
- The terms of a draft license agreement for the space.

The applicant has submitted an affidavit confirming that the lease and licensing agreements are non-arm's length agreements as common ownership exists between the manager(s) / member(s) of Pelham Parkway SC, LLC as licensee, and Morningside Acquisition I, LLC as licensor to the proposed Center who is also a tenant to Morningside Acquisition II, LLC the landlord and owner of the real property.

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

Capability and Feasibility

The total project costs of \$8,393,727 will be met with \$1,259,059 equity from the proposed members and a bank loan for \$7,134,668 at 6.0% interest with a ten-year term and an amortization period of 20 years. Peapack-Gladstone Bank has provided a letter of interest for the loan at the stated terms. The proposed members have provided affidavits to fund the balloon payment with personal equity should terms acceptable to the Department of Health be unavailable at the time of refinancing. BFA Attachment A, the proposed members' net worth statements, shows the members of Parkway SC, LLC have sufficient resources to fund the equity contribution for project costs and the balloon payment.

Working capital requirements are estimated at \$983,120 based on two months of third year expenses. The working capital will be funded through members equity. BFA Attachment A shows sufficient funds available.

The submitted budget projects a net income of \$1,039,082 and \$1,009,609 during the first and third years of operations, respectively. Medicare and Medicaid reimbursement rates are based on the current and projected federal and state government rates for FASCs. The budget appears reasonable.

BFA Attachment C is the Pro-Forma balance sheet for Pelham Parkway SC, LLC, which shows the operation will start with \$1,750,619 in members' equity.

Conclusion

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

Supplemental Information

DOH Comment

The Department reached out to proximate hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC). None of the hospitals responded. Therefore, in the absence of comments from hospitals near the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

Attachments

BHFP Attachment	Map
BFA Attachment A	Proposed Net Worth Statements
BFA Attachment B	Legal Agreements
BFA Attachment C	Pro-Forma Balance Sheet



Project # 202057-B
Premier SC, LLC t/b/k/a
Premier Ambulatory Surgery Center of New York, LLC

Program: Diagnostic and Treatment Center County: Queens
Purpose: Establishment and Construction Acknowledged: August 20, 2020

Executive Summary

Description

Premier SC, LLC, an existing limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a multi-specialty freestanding ambulatory surgical center (FASC). The FASC will be located at 176-60 Union Turnpike, Fresh Meadows (Queen County), and will have four operating rooms. All projected cases are currently being performed in the participating physicians' office-based practices. Through this project, the center will bring the office-based medical practices of the physicians into the regulatory environment of an Article 28 FASC.

The proposed ownership is as follows:

Table with 3 columns: Member, Proposed Operator, %

The sole member of the applicant is Premier SC Holdings, Inc., a to-be-formed not-for-profit corporation. The Center will be managed by a Board of Managers appointed by Premier SC Holdings, Inc. The members of the Board of Managers of Premier SC, LLC are the same as the members of the Board of Directors of Premier SC Holdings, Inc. The sole member and passive parent of Premier SC Holdings, Inc. is MediSys Health Network, Inc. an existing not-for-profit corporation.

The proposed medical director is Moustafa Mourad, MD. Jamaica Hospital Medical Center, 3.2 miles, 11 minutes away, will serve as the backup hospital for the Center.

Upon approval of this application by the Public Health and Health Planning Council, Premier SC, LLC will change its name to Premier Ambulatory Surgery Center of New York, LLC.

OPCHSM Recommendation

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

Need Summary

The Center will have four operating rooms. The applicant projects 3,000 procedures in Year One and 3,371 in Year Three with Medicaid at 5% and charity care at 2% each year.

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 \$10,576,961 will be met as follows: An equipment Lease of \$2,294,203, an equipment lease of \$825,364, a loan of \$6,000,000 (3.75% interest rate with 2 rate adjustments at 5-year intervals, 15-year term, 15-year payout), and accumulated cash of \$1,457,394 from MediSys Health Network, Inc.'s

system hospitals operations. The budget is summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,819,310	\$4,293,302
Expenses	<u>4,102,640</u>	<u>4,248,977</u>
Net Income/ (Loss)	\$(283,330)	\$44,325

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to the Department. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures
 - b. Data displaying the breakdown of visits by payor source
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery
 - d. Data displaying the number of emergency transfers to a hospital
 - e. Data displaying the percentage of charity care provided
 - f. The number of nosocomial infections recorded during the year reported
 - g. A list of all efforts made to secure charity cases
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed sublease that is acceptable to the Department. [BFA]
6. Submission of an executed equipment lease (Karl Storz Capital) that is acceptable to the Department. [BFA]
7. Submission of an executed equipment lease (Phillips Medical Capital) that is acceptable to the Department. [BFA]
8. Submission of an executed Restated Articles of Organization, acceptable to the Department. [CSL]
9. Submission of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
10. Submission of an amended and executed Certificate of Incorporation of Premier SC Holdings, Inc., acceptable to the Department. [CSL]
11. Submission of executed Bylaws of Premier SC Holdings, Inc., acceptable to the Department. [CSL]
12. Submission of an amended and executed Sublease Agreement, acceptable to the Department. [CSL]
13. Submission of an amended Master Lease, acceptable to the Department. [CSL]
14. Submission of landlord consent pursuant to Master Lease, acceptable to the Department. [CSL]
15. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
16. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **December 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **September 1, 2022**, and construction must be completed by **September 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. 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. [PMU]
3. 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]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 10, 2022

Need and Program Analysis

Program Description

Proposed Operator	Premier SC, LLC t/b/k/a Premier Ambulatory Surgery Center of New York, LLC
Site Address	170-60 Union Turnpike Fresh Meadows, New York 11366 (Queens County)
Surgical Specialties	Multi-Specialty, initially including: Gastroenterology General Surgery Ophthalmology Otolaryngology Podiatry Plastic Surgery Urology Vascular Surgery
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday through Friday 7:30 am to 3:30 pm Weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling times.
Staffing (1st Year / 3rd Year)	15.94 FTEs / 16.33 FTEs
Medical Director(s)	Moustafa Mourad, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by: Jamaica Hospital Medical Center 3.2 miles / 11 minutes
On-call service Emergency, In-Patient and Backup	Patients who require assistance during off-hours will engage the 24 hours a day, seven (7) day a week on-call service, to immediately refer the patient to the Center's on-call physician.

Analysis

The service area consists of Queens County. The population of Queens County in 2010 was 2,230,722 with 862,706 individuals (38.7%) who are 45 and over, which are the primary population group utilizing ambulatory surgery services. Per PAD projection data, this population group (45 and over) is estimated to grow to 1,084,283 by 2025 and represent 43.2% of the projected population of 2,508,764. According to Data USA, in 2019, 90.7% of the population of Queens County has health coverage as follows:

Employer Plans	43.4%
Medicaid	25.7%
Medicare	10.5%
Non-Group Plans	10.8%
Military or VA	0.27%

The number of projected procedures is 3,000 in Year One and 3,372 in Year Three. These projections are based on the current practices of participating surgeons. The applicant states that all of the procedures are currently being performed in an office-based setting.

The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	600	20.0%	674	20.0%
Commercial MC	1,260	42.0%	1,416	42.0%
Medicare FFS	150	5.0%	169	5.0%
Medicare MC	600	2.0%	674	20.0%
Medicaid MC	150	5.0%	169	5.0%
Private Pay	30	1.0%	34	1.0%
Charity Care	60	2.0%	67	2.0%
Other	150	5.0%	169	5.0%
Total	3,000	100.0%	3,372	100.0%

The table below shows the number of patient visits for ambulatory surgery centers in Queens County for 2018 through 2020. 2020 visits were significantly impacted by COVID-19.

Spec Type	Facility Name	Patient Visits		
		2018	2019	2020
Ophthalmology	Apex Eye Surgery Center ³	1,864	2,071	389
Multi	Choices Women's Medical Center, Inc ^{1,2}	0	0	0
Multi	CitiMed Surgery Center (opened 11/20/20)	N/A	N/A	N/A
Multi	EMU Health	6,393	7,297	2,947
Gastroenterology	Flushing Endoscopy Center	11,304	8,739	5,275
Multi	Gramercy Surgery Center, Inc.-Queens	1,828	1,818	1,578
Multi	New York Surgery Center Queens, LLC	2,769	1,820	1,676
Multi	North Queens Surgical Center	4,449	7,907	7,440
Multi	Physicians Choice Surgicenter	571	586	537
Gastroenterology	Queens Boulevard ASC, LLC ²	10,662	11,590	0
Gastroenterology	Queens Endoscopy ASC, LLC	12,055	9,663	6,485
Multi	Queens Surgical Center (opened 12/24/20)	N/A	N/A	N/A
Multi	Rockaways ASC Development (opened 5/23/19) ²	N/A	1,798	0
Gastroenterology	The Endoscopy Center of Queens	6,042	7,195	5,477
Ophthalmology	The Mackool Eye Institute ²	6,021	7,988	0
Total Visits		63,958	68,462	31,804

¹ No data for 2018 or 2019.

² No data for 2020

³ 2020 data is for a partial year.

The FASC initially plans to obtain contracts with the following Medicaid Managed care plans: Affinity, Fidelis Care, Healthfirst, Metroplus, and WellCare. The Center will work collaboratively with local Federally Qualified Health Centers (FQHCs) such as Charles B Wang Community Health, Community Healthcare Network, and Joseph P Addabbo Family Health Center to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational.

Character and Competence

The sole member of Premier SC, LLC is Premier SC Holding, Inc, a to-be-formed not-for-profit corporation. The sole (passive) member of Premier SC Holding, Inc. is MediSys Health Network, Inc., an existing not-for-profit affiliated with Flushing Hospital Medical Center and Jamaica Hospital Medical Center. The Board of Managers of the FASC will be appointed by Premier SC Holdings, Inc. and is identical to the Board of Directors of Premier SC Holding, Inc.:

Board Members	Interest
Premier SC Holding, Inc <i>Nageswara Mandava, M.D, Director</i> <i>Asit Mehta, M.D., Director</i> <i>Robert Mendelson, M.D., Director</i> <i>Alessandro Solinas, M.D., Director</i>	100%
TOTAL	100%

Dr. Nageswara Mandava is a practicing Physician, the Chairman of the Department of Surgery, and the Program Director of the General Surgical Residency at Flushing Hospital Medical Center (13 years). His responsibilities include establishing a vision for the department and effectively communicating the same to the department staff; recruiting and retaining staff to fulfill the mission of the department; working with hospital administration to develop the department's annual budget; overseeing and maintaining a high quality of care for the department's providers; and participating in hospital leadership meetings. He has owned and operated Dr. N. Mandava PC for 31 years. He received his medical degree from Rangaraya Medical College in India and completed his General Surgery Internship at the Catholic Medical College Brooklyn Queens. He is board-certified in Surgery.

Dr. Asit Mehta is a Practicing Physician and has been the Director in the Division of Gastroenterology at TJH Medical Services for over 25 years. He received his medical degree from the NHL Municipal Medical College in India and completed his residency in Internal Medicine at Catholic Medical College Mary Immaculate and his Gastroenterology residency at Catholic Medical College Brooklyn Queens. He is board-certified in Internal Medicine with a sub-certification in Gastroenterology.

Dr. Robert Mendleson is a practicing Physician who has been employed at TJH Medical Services for over 26 years. His responsibilities include providing practice management and practice expertise. He is also responsible for establishing a vision for the department and effectively communicating the same to the department staff; recruiting and retaining staff to fulfill the mission of the department; working with hospital administration to develop the department's annual budget; overseeing and maintaining a high quality of care for the department's providers, and participating in hospital leadership meetings. He is the Chairman of Medicine at Jamaica Hospital Medical Center. He received his medical degree from the Medical College of Pennsylvania and completed his residency in Internal Medicine at NYU School of Medicine and his residency in Cardiovascular Disease at Northshore University Hospital. He is board-certified in Cardiovascular Medicine. Dr. Mendelson discloses board membership on MediSys Management, LLC since 2015, which has a relationship with Flushing Hospital Medical Center, Jamaica Hospital Medical Center, and MediSys Health Network, Inc.

Dr. Alessandro Solinas has been a Practicing Physician at TJH Medical Services for over 22 years and has been the Chairman of Medicine at Flushing Hospital for over eight years. He received his medical degree from the University di Sassari in Italy and completed his residency in Internal Medicine at Jamaica Hospital. He is board-certified in Internal Medicine.

Dr. Moustafa Mourad, the proposed medical director is a Practicing Physician and the Division Chief of Otolaryngology-Head and Neck Surgery at TJH Medical Services. He provides guidance in the operation of the facility to meet the surgical volume. He is also the Director of Ambulatory Surgical Services at New York Specialty Surgery and works closely with surgeons of other specialties to coordinate their ambulatory surgical needs to operate a standalone surgery center. It is the foundational work that he can draw on the essential skills needed for the new endeavor. He was previously employed at Metropolitan Hospital as the Division Chief of Otolaryngology Head and Neck Surgery, Facial Plastic, and Reconstruction Surgery. He received his medical degree from the University of Kentucky College of

Medicine and completed his residency at New York Eye and Ear Infirmary of Mt. Sinai and Beth Israel Hospital.

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

The following legal actions against MediSys Management, LLC were disclosed:

1. 2013-United States ex rel. Deshpande. et al. v. The Jamaica Hospital Medical Center. et al.. Civil Action No.13-CV-4030 (E.D.N.Y. Filed July 15, 2013)

On July 15, 2013, Relator Dr. Satish Deshpande on behalf of himself and the United States Government (the U.S. Government) filed the above-referenced action in the United States District Court for the Eastern District of New York (the "Civil Action") against MediSys Health Network, **MediSys Management, LLC**, Jamaica Hospital Medical Center, Flushing Hospital Center and TJH Medical Services, P.C. (collectively, "MediSys"). The U.S. Government conducted an investigation. The U.S. Government alleged that MediSys violated the Stark Law by (1) providing compensation to physicians in the absence of written documentation signed by the parties, and (2) allowing physicians to use hospital space for their private medical practices without complying with the requirements of the Stark Law. The U.S. Government further contended that because of the Stark Law violations, MediSys violated the False Claims Act, by submitting false claims to the Medicare program for services rendered by MediSys to patients that were referred to MediSys by these physicians.

MediSys denied these allegations. The U.S. Attorney's Office, U.S. Department of Justice, and Office of Inspector General entered into a Settlement Agreement, effective August 31, 2017, with MediSys and Relator. In exchange for a release, MediSys agreed to pay \$4,000,000 in installments to the United States. On November 8, 2017, the Civil Action was dismissed.

2. EEOC Charge of Discrimination No.520-2019-05183C filed September 3, 2019 Robin Haas v. MediSys Management, LLC.

A former employee filed a complaint with the Equal Employment Opportunity Commission (EEOC). The Company is working with outside counsel and their Position Statement was filed with the EEOC on November 11, 2019. The case is pending.

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers, including a broad array of services offered by the center's back up hospital. Prior to leaving the center, each patient will be provided information concerning the local availability of primary care services. The applicant is committed to serving all persons in need of services and there will be no discrimination based on personal characteristics or ability to pay. There is a financial assistance policy with a sliding fee schedule. The applicant has proposed an operating budget that includes 5% Medicaid and 2% Charity Care, demonstrating the center's expected outreach to this traditionally underserved population.

The center intends on using an Electronic Medical Record (EMR) program and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinical referral and event notifications.

Conclusion

Approval of this project will provide increased access to multi-specialty surgery services in an Article 28 setting for the residents of Queens County. 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 Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$10,576,961, further broken down as follows:

Renovation and Demolition	\$5,508,000
Design Contingency	550,800
Construction Contingency	550,800
Planning Consultant Fees	102,000
Architect/Engineering Fees	469,200
Other Fees (Consultant)	25,500
Moveable Equipment	3,119,567
Financing Costs	60,000
Interim Interest Expense	131,250
CON Fee	2,000
Additional Processing Fee	<u>56,792</u>
Total Project Cost	\$10,576,961

The applicant’s financing plan is:

Equipment Lease 1 (Philips Medical Capital)	\$2,294,203
Equipment Lease 2 (Karl Storz Capital)	825,364
Accumulated Cash of System Hospitals	1,457,394
Mortgage (3.75% Interest Rate with 2 rate adjustments at 5-year intervals, 15-Year Term, 15-Year Payout, Maspeth Federal Savings and Loan)	<u>6,000,000</u>
Total Project Financing	\$10,576,961

Operating Budget

The applicant has submitted an operating budget, in 2020 dollar, for the first and third years of operation, summarized below:

	<u>Year 1 (2023)</u>		<u>Year 3 (2025)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid MC	\$973.78	\$146,067	\$981.08	\$165,802
Medicare FFS	\$1,049.20	157,380	\$1,046.40	176,842
Medicare MC	\$891.82	535,091	\$892.08	601,264
Commercial FFS	\$1,678.72	1,007,230	\$1,679.22	1,131,791
Commercial MC	\$1,521.34	1,916,885	\$1,521.14	2,153,940
Private Pay	\$314.77	9,443	\$312.09	10,611
Other	\$314.76	<u>47,214</u>	\$313.92	<u>53,053</u>
Total Revenues		\$3,819,310		\$4,293,303

	<u>Year 1 (2023)</u>		<u>Year 3 (2025)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Expenses</u>				
Operating	\$653.00	\$1,958,996	\$618.18	\$2,083,891
Capital	\$714.55	<u>\$2,143,644</u>	\$642.27	<u>\$2,165,087</u>
Total Expenses	\$1,367.55	<u>\$4,102,640</u>	\$1,260.45	<u>\$4,248,978</u>
Net Income or (Loss)		<u>(\$283,330)</u>		<u>\$44,325</u>
Utilization (Visits)		3,000		3,371

The following is noted with respect to the submitted budget:

- Expense assumptions are based on the experience of the participating physicians in providing healthcare services to patients through their private practices and other ambulatory surgery centers in New York State.
- The projected utilization for this project is based on the experience of the participating physicians and their estimate of the number of cases they will bring to the FASC. The applicant submitted physician referral letters in support of utilization projections.
- Operating revenues by payor are based on the experience of participating providers, in accordance with the expected collection rate of the FASC.

Lease Rental Agreements

The applicant has submitted an executed master lease agreement and a draft sublease agreement for the site (see BFA Attachment B). The applicant has indicated that the sublease agreement is a non-arm's length lease arrangement in that they share certain board members in common. The applicant submitted real estate letters attesting to the reasonableness of the per square foot rental.

Capability and Feasibility

Total project costs of \$10,576,961 will be met as follows: an equipment lease of \$2,294,203 (5-year term, 5.49% interest rate, \$43,812 monthly payment), an equipment lease of \$825,364 (4-year term, 6.98% interest rate, \$19,757 monthly payment), a mortgage of \$6,000,000 (3.75% interest rate with 2 rate adjustments at 5-year intervals, 15-year term, 15-year payout), and accumulated cash of \$1,457,394 via operations of MediSys Health Network Inc.'s system hospitals. The applicant has provided letters of interest for equipment leases and a loan approval letter.

The working capital requirement for this project is \$614,740 based on two months of Year Three expenses. The applicant has stated that it will be funded through the ongoing operations of MediSys Health Network. BFA Attachment C is the Pro Forma Balance Sheet, which shows \$5,191,701 in Members' Equity on day one of operations.

BFA Attachment A is the October 31, 2021 internal financial statements of MediSys Health Network, which indicates the availability of sufficient funds for the equity contribution. The internal financial statements indicate that MediSys Health Network had negative working capital, a positive net asset position, and a positive net income of \$43,443,315 as of October 31, 2021.

The submitted budget projects a net loss in Year One of \$283,300 and a net income of \$44,325 by Year Three. MediSys has supplied a loss mitigation letter stating that the loss in Year One of operations will be funded by MediSys Health Network, Inc. from cash and investments.

The Year One loss is contributed to start-up costs and the ramp-up of inpatients. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

Conclusion

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

Supplemental Information

DOH Comment

The Department reached out to proximate hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC). None of the hospitals responded. Therefore, in the absence of comments from hospitals near the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

Attachments

BHFP Attachment	Map
BFA Attachment A	Internal financial statements of MediSys Health Network as of October 31, 2021
BFA Attachment B	Lease and Sub-Lease Agreements
BFA Attachment C	Pro-Forma Balance Sheets



Project # 192211-B
Beach Channel D&TC, LLC d/b/a
Beach Channel Diagnostic and Treatment Center

Program: Diagnostic and Treatment Center County: Queens
Purpose: Establishment and Construction Acknowledged: October 30, 2019

Executive Summary

Description

Beach Channel D&TC, LLC (Beach Channel), a to-be-formed New York State limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) at 50-15 Beach Channel Drive, Far Rockaway (Queens County). The applicant requests certification for Medical Services - Primary Care, Medical Services - Other Medical Specialties, Physical Therapy, and Occupational Therapy to provide primary care, physician specialties, including diagnostic radiology and physical and occupational therapy services. Upon Public Health and Health Planning Council (PHHPC) approval, the D&TC will be known as Beach Channel Diagnostic & Treatment Center.

The D&TC will be housed in a newly renovated space on the first floor of a building owned by Beach 50th Street, LLC (landlord) and leased to Cardiff Bay Center, LLC (lessee). The applicant will sublease the D&TC space from Cardiff Bay Center, LLC. There is a relationship between landlord, lessee, and sublessee in that the entities have members in common.

The four-story building currently houses the Peninsula Nursing and Rehabilitation Center, a 200-bed residential health care facility (RHCF) operated by Cardiff Bay Center, LLC, and Quality Kidney Care, an Article 28 chronic renal dialysis center operated by Peninsula Continuum Services, LLC. The D&TC will be a separate and distinct facility with a dedicated entrance separate from the RHCF entry. The applicant's goal is to complement the existing services available within the building to serve

the residents of the Rockaway and Broad Channel areas of Queens County. The residents of the RHCF may use the D&TC services, however, primary care physician services are provided by the RHCF credentialed attending physicians, thus the D&TC will not be providing primary care to the RHCF residents.

The proposed members of Beach Channel D&TC, LLC are:

Table with 2 columns: Members, %
Members: Pasquale DeBenedictis (30%), Alex Solovey (30%), Leopold Friedman (30%), Soloman Rutenberg (10%)

Syed Samar Raza, MD, who is Board-Certified in Internal Medicine, will serve as Medical Director and will be a practicing physician at the D&TC. The applicant will enter into a Transfer and Affiliation Agreement with Mount Sinai-South Nassau Community Hospital located 10.9 miles (37 minutes travel time) from the proposed D&TC for backup and emergency care.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 5,185 in Year One and 10,260 in Year Three with Medicaid at 35% and Charity Care at 3% each year.

Program Summary

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

Financial Summary

The total project cost of \$1,276,882 for leasehold improvements to the space will be funded by the sublandlord via equity. Proposed member Pasquale DeBenedictis, who is a member of the landlord and sublandlord entities, has submitted an affidavit confirming he will personally fund any capital requirements to meet project costs if additional capital resources are needed. The budget is summarized below:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$725,706	\$1,436,294
Expenses	\$773,197	\$1,178,663
Gain/(Loss)	(\$47,491)	\$257,631

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. This project must be completed by **February 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU].
2. Construction must start on or before **August 1, 2022**, and construction must be completed by **November 1, 2022**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

February 10, 2022

Need and Program Analysis

Project Proposal

Proposed Operator	Beach Channel D&TC, LLC
To Be Known As	Beach Channel Diagnostic and Treatment Center
Site Address	5015 Beach Channel Drive, Far Rockaway (Queens County)
Services	Medical Services - Primary Care Medical Services - Other Medical Specialties Infectious disease Gastroenterology Pain management Orthopedics Oncology Cardiology Urology Diagnostic Radiology Physical Therapy Occupational Therapy
Hours of Operation	Monday through Friday, 8 AM to 6 PM As needed the hours can be expanded or modified to address additional needs.
Staffing (1st Year / 3rd Year)	7.94 FTEs / 13.13 FTEs
Medical Director(s)	Syed Samar Raza, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Mount Sinai - South Nassau Community Hospital. 10.9 miles / 37 minutes away.

The center will be located at the site of Peninsula Nursing and Rehabilitation Center, a 200-bed residential health care facility (RHCF). Primary care physician services are provided by the RHCF credentialed attending physicians, thus the D&TC will not be providing primary care to the RHCF residents. However, the residents will have the option of utilizing the other medical specialties within the center at their discretion.

Analysis

The primary service area is the neighborhoods of Rockaway and Broad Channel and the extended service area is Queens County. The population of Queens County was 2,230,772 in 2010 and is projected to grow to 2,508,764 by 2025, an increase of 12.5%. The Rockaway section of Queens County is a Medicaid Eligible Health Professional Shortage Area for Primary Care services, per HRSA. According to Data USA, in 2019, 90.7% of the population of Queens County has health coverage as follows:

Employer Plans	43.4%
Medicaid	25.7%
Medicare	10.5%
Non-Group Plans	10.8%
Military or VA	0.3%

The applicant projects 5,185 visits in Year One and 10,260 in Year Three with Medicaid utilization at 35% and charity care at 3%. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

Character and Competence

The members of Beach Channel, LLC are:

<u>Name</u>	<u>Interest</u>
Pasquale DeBenedictis, <i>Manager</i>	30%
Alex Solovey, <i>Manager</i>	30%
Leopold Friedman	30%
Soloman Rutenberg	10%
Total	100%

Pasquale DeBenedictis is currently employed as the Managing Member and Chief Financial Officer of Cassena Care, LLC. He has an interest in the day-to-day financial concerns of the business. Cassena Care provides back-office operational support, including but not limited to billing, accounts payable, employee resources, and compliance services. Cassena care also provides back-office services for non-health-related entities, including Theradynamics Rehab. He was previously employed in the Account and Finance Department of Theradynamic Rehab and was the Controller of Hillside Manor Certified Home Health Agency, where he was responsible for the financial stability of the organization. He was the Chief Financial Officer of Center for Nursing and Rehabilitation and was responsible for the accounts receivable and accounts payable to improve cash flow. This included the renegotiation of managed care contracts and payment terms with vendors. He spent 14 years as the Controller of Carillion Nursing and Rehabilitation.

Alex Solovey is a licensed Physical Therapist that is currently employed as Director of Rehabilitation at Theradynamics, a Rehabilitation and Occupational Therapy facility. He provides therapy services to and at various health entities via private practice. He takes interest in the operational components of therapy services at related nursing homes. He has taken his therapy background and worked with the therapists on programs geared toward individuals who receive dialysis treatments, as the patients can be chair-bound for many hours. He previously was employed as Director of Operations at Hillside Manor Certified Home Health Agency, a certified home health agency, and was also the Chief Operating Officer at Center for Nursing and Rehabilitation, a nursing and rehabilitation center.

Soloman. Rutenberg is currently employed as Chief Executive Officer at Workmen's Circle Multicare Center, a skilled nursing facility. He has leveraged his experience into understanding the formal complexities of maintaining and updating various nursing homes. He works with key personnel to implement new programs with the ever-changing landscape of reimbursement and has regular interaction with community administrators, Medical Directors and Directors of Nursing, and key staff to address challenges and how they will address potential challenges. He previously was employed as an Assistant Administrator at Kingsbridge Heights.

Leopold Friedman is currently an operating member of Peninsula Center for Extended Care and Rehabilitation, a skilled nursing facility where he oversees the day-to-day operations of the facility. He is also the Chief Executive Officer of Advanced Care Staffing, a staffing organization that provides staffing services to licensed home care agencies. He is responsible for the overall performance of the organization and works with staff to make sure there is a constant database of available resources to meet the client's needs. He has recently been working with staff to train for higher levels of education (LPN top RN).

Dr. Syed Samar Raza is the proposed Medical Director. He is the current Chief Medical Officer at Cassena Care, Woodbury, a residential health care facility where he has been providing oversight of all the physicians providing care at the facility and ensuring that the best care is being provided by focusing on standardization of processes, reviewing and providing current clinical guidelines to physicians, prioritizing quality improvement initiatives, and coordinating community relationships. Dr. Raza is also the current site Medical Director of East Neck Nursing & Rehabilitation Center, where, he has been providing administrative oversight and coordination of medical care to all patients in each facility. Dr. Raza received his medical degree from Ross University School of Medicine in 1999 and is Board Certified in Internal Medicine with a focused practice in Hospital Medicine.

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

Pascale DeBenedictis, Leopold Friedman, Soloman Rutenberg, and Alex Solovey disclosed multiple legal actions, as follows.

Alex Solovey

- A civil suit was filed on March 25, 2016 in the Supreme Court of the State of New York, Bronx County. The suit was filed against Excellence Rehab and Physical Therapy, P.C. by a patient who alleged negligence in relation to alleged injuries sustained during the provision of physical therapy services. The action was discontinued with prejudice as to Mr. Solovey on April 23, 2018.
- A civil suit was filed on September 29, 2020 in the United States District Court, Eastern District. The suit was filed against Mr. Solovey on behalf of an employee who alleged employment violations. The case was settled in May 2021.

Leopold Friedman

- A civil suit was filed on July 14, 2017 in the Supreme Court of the State of New York, Bronx County. The suit was filed against Kingsbridge Heights Rehabilitation Center on behalf of the resident by the Estate Representative, who alleged wrongful death and negligence in relation to alleged pressure ulcers. The case is settled pending Surrogate Court Approval.
- A civil suit was filed on March 4, 2020 in the Supreme Court of the State of New York, New York County against The Plaza Rehab & Nursing Center on behalf of the resident by the Administrator of the Estate who allege medical malpractice, negligence, and wrongful death relating to alleged pressure ulcers and dehydration. This case is currently in discovery
- A civil suit was filed on December 11, 2020 in the Supreme Court of the State of New York, New York County against the Plaza Rehab & Nursing Center on behalf of the resident by the Administrator of the Estate who alleges negligence relating to the treatment of blisters and ulcers to the ankle. The case is in discovery.
- A civil suit was filed on October 13, 2021 in the Supreme Court of the State of New York, New York County. The suit was filed against Hudson Pointe at Riverdale Center for Nursing and Rehabilitation on behalf of the resident by the Administrator of the Estate who allege medical malpractice and wrongful death from alleged urinary tract infection. The case is still in litigation.

Pascale DeBenedictis and Alex Solovey

- A civil action was filed on December 10, 2014 in the Supreme Court of the State of New York, Suffolk County. The suit was filed against Sayville Nursing and Rehabilitation Center on behalf of the resident by the Estate Representative who alleged medical malpractice and negligence in the alleged development of a sacral ulcer. The action was settled in January 2019
- A civil suit was filed on February 12, 2020 in the Supreme Court of the State of New York, Columbia County. The suit was filed against Barnwell Nursing & Rehabilitation Center on behalf of the resident by the Estate Representative who alleged medical malpractice and negligence relating to ulcers, dehydration, and malnutrition. The action was discontinued against Alex Solovey and Pascale DeBenedictis on June 24, 2020.

Pascale DeBenedictis and Leopold Friedman

- A civil suit was filed on January 16, 2021 in the Supreme Court of the State of New York, Suffolk County. The suit was filed on behalf of the resident by the Estate Representative against Downtown Brooklyn Nursing Home who alleges medical malpractice, wrongful death, and negligence in relation to alleged pressure ulcers. The lawsuit was dismissed and refiled on April 29, 2021. It is still in active litigation.

Pascale DeBenedictis, Leopold Friedman, and Alex Solovey

- A civil action was filed on January 15, 2016 in the Supreme Court of New York State in Nassau County. The suit was filed against Long Beach Nursing Home d/b/a Komanoff Center on behalf of the resident by the Estate Representative, who alleged medical malpractice and negligence related to the alleged theft of property and care issues. The case was dismissed on January 11, 2017
- A civil suit was filed on May 26, 2020 in the Supreme Court of the State of New York, New York County. The suit was filed against Upper East Side on behalf of the resident by the Estate Representative who allege medical malpractice and negligence relating to alleged ulcers, dehydration, and malnutrition. The case is still in litigation.
- A civil suit was filed on October 27, 2020 in the Supreme Court of the State of New York, New York County. The suit was filed against Upper East Side on behalf of the resident by the Estate Representative who alleges medical malpractice and negligence in relation to alleged pressure ulcers. The case is in active litigation.

Pascale DeBenedictis, Alex Solovey, and Soloman Rutenberg

- A civil suit was filed on May 3, 2018 in the Supreme Court of the State of New York, Bronx County. The suit was filed against Workmen's Circle Multicare Center on behalf of the resident by the Estate Representative who alleges medical malpractice and negligence relating to alleged wound care and sacral. The case is in litigation.
- A civil suit was filed on August 18, 2020 in the Supreme Court of the State of New York, Suffolk County. The suit was filed against Mills Pond Nursing & Rehabilitation Center on behalf of the resident by the Estate Representative who alleges medical malpractice and negligence relating to alleged pressure ulcers. The action is being discontinued against Messrs. DeBenedictis, Rutenberg, and Solovey.
- A civil suit was filed on April 16, 2021 in the Supreme Court of the State of New York, Suffolk County. The suit was filed against Mills Pond Nursing & Rehabilitation Center on behalf of the resident by the Estate Representative who alleges medical malpractice and negligence in relation to alleged pressure ulcers. The action was dismissed with prejudice on September 17, 2021.

Pascale DeBenedictis, Leopold Friedman, Soloman Rutenberg, and Alex Solovey

- A civil suit was filed on May 26, 2020 in the Supreme Court of the State of New York, Queens County against Margaret Tietz Center for Nursing on behalf of the resident by the Estate Representative who allege medical malpractice and negligence related to alleged wound care issues/failure to treat pressure ulcers. The case is still in active litigation.

Leopold Friedman Out of State Legal Actions from the State of Florida

- A civil suit was filed on June 20, 2019 in the Middle District Court of Florida of the State of Florida, on behalf of the Purchaser alleging a Dispute regarding old A/R of facilities purchased against Leopold Friedman and 919 Old Winter Haven Reality, LLC et al. The lawsuit is Open and Pending.
- A civil suit was filed on December 18, 2020 in the Circuit Court of Florida, Pinellas County on behalf of a resident by the Estate Representative, who alleges wrongful death, breach of fiduciary duty, negligence, abuse, and neglect in relation to alleged infections, poor hygiene, pressure ulcers, weight loss, understaffing, and failure to follow doctor's orders. The case is in litigation.
- A civil suit was filed on May 12, 2021 in the Circuit Court of the State of Florida, Pinellas County against Kensington Gardens Rehab and Nursing Center on behalf of the Estate Representative who alleges violations in nursing home resident's rights and negligence resulting in injuries, including Urinary Tract Infection, Urosepsis with septic shock, a fall resulting in a right eye contusion, and death. The case is in discovery.
- A civil suit was filed on August 17, 2021 in the Circuit Court of the State of Florida, Duval County against Fouraker Hills, et al. on behalf of the son (POA) of the resident who alleges resident right violations, negligence, breach of fiduciary duty and abuse and neglect in relation to alleged bruising, infections, pressure ulcers, poor hygiene, and fungal wounds to the scalp. The case is in active litigation.
- A civil suit was filed on November 2, 2021 in the Circuit Court of the State of Florida, Polk County Auburndale Oaks, et al. on behalf of the Estate of a Resident, which alleges resident rights violations, wrongful death, assault, breach of fiduciary duty, and abuse and neglect in relation to alleged, falls,

pressure ulcers on the coccyx, right ankle, heel and shin, contractures, poor nutrition, infections and understaffing. The case is in active litigation.

- Leopold Friedman discloses a claim in Pre-Suit Status in the Circuit Court of the State of Florida, Pinellas County against Kensington Gardens Rehab and Nursing Center on behalf of the Estate of a Resident, which alleges resident rights violations and wrongful, pressure ulcers, infections, and the failure to follow doctor's orders. No Lawsuit has been filed to date

Additionally, the staff from the DHDTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health, as well as, information from other states. 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.

Pascale DeBenedictis, Leopold Friedman, and Alex Solovey disclosed ownership in the following facilities in **New York State**, which have had enforcements and other actions, as listed below.

The Grand Nursing and Rehabilitation at Barwell (f/k/a Barnwell Nursing Home and Rehabilitation Center)

- The Department issued a Stipulation and Order (S&O) dated November 3, 2015, and fined The Grand Nursing and Rehabilitation at Barnwell \$12,000 based on an investigation that was completed September 26, 2013. Deficient practice was found in the following areas: Resident Behavior and Facility Practices-Investigate/Report Allegations/Individuals and Provide Care/Services for Highest Well Being. Specifically, the facility failed to ensure that all alleged violations involving mistreatment, neglect, or abuse were reported immediately to the administrator of the facility and that all alleged violations were thoroughly investigated. Also, the facility did not provide the necessary care and services to attain or maintain the highest practicable physical and psychosocial wellbeing in accordance with the comprehensive assessment and plan of care.
- The Department issued a Stipulation and Order (S&O) dated November 3, 2015, and fined The Grand Nursing and Rehabilitation at Barnwell \$6,000 based on an investigation that was completed February 1, 2013. Deficient practice was found in the following areas: Quality of Care-Free of Significant Med Errors and Administration-Effective Administration/Resident Well-Being/Quality Assurance Agency Committee Members/Meet Quarterly/Plans. Specifically, the facility failed to ensure that residents who were newly admitted or readmitted, received their physician-ordered medications in a timely manner. Additionally, the facility failed to follow the standard of practice in administering medications. Also, the Quality Assurance program failed to have a procedure in place to identify and investigate medications that were not administered and/or not administered on time, due to the unavailability of medications from the pharmacy.
- The Department issued a Stipulation and Order (S&O) dated January 12, 2014, and fined The Grand Nursing and Rehabilitation at Barnwell \$2,000 based on an investigation that was completed on March 13, 2012. Deficient practice was in the following area: Quality of Care-Free of Accidents/Hazards/Supervision/devices.

East Neck Nursing and Rehabilitation and Center

- The Department issued a Stipulation and Order (S&O) dated November 3, 2015, and fined East Neck Nursing and Rehabilitation \$6,000 based on an investigation that was completed on March 21, 2014. Deficient practice was found in the following areas: Resident Rights-Right to Refuse, Formulate Advance Directives, Administration-Effective Administration/Resident Well Being, and Administration-Quality Assurance Agency (QAA) Committee Members/Meet Quarterly/Plans. Specifically, the facility failed to establish and implement an effective system for communicating each resident's advanced directive choices to the interdisciplinary team and follow physician's order. Additionally, the administration failed to ensure that there was a system in place to ensure that each resident's right to accept or refuse medical treatment and formulate an advance directive was maintained in accordance with State law and failed to provide a quality assessment program to provide for such.
- East Neck is being Investigated by the Attorney General's Office with respect to services provided by the facility from January 1, 2012 through December 31, 2014.

Upper Eastside Rehabilitation and Nursing Center

- The Department issued a Stipulation and Order (S&O) dated May 10, 2018 and fined Upper Eastside Rehabilitation and Nursing Center \$12,000 based on an investigation that was completed on February 20, 2018. Deficient practice was identified in the following areas: Quality of Care-Residents Free of Significant Med Error and Physician Visits-Review Care/Notes/Orders. Specifically, the facility did not ensure that a resident was given the correct medication that was ordered. The facility did not ensure that the Primary Medical Doctor reviewed and confirmed telephone medication orders before signing the orders.

Bronx Gardens Rehabilitation and Nursing Center

- The Department issued a Stipulations and Order (S&O) dated January 11, 2017, and fined Bronx Gardens Rehabilitation and Nursing Center \$10,000 based on an investigation that was completed on August 11, 2016. Deficient practice was identified in the following area: Quality of Care-Resident Free of Significant Med Errors. Specifically, the facility did not ensure that the resident received the correct medication. The resident received narcotic medication intended for the resident's roommate and required transport to the hospital.

The Citadel Rehabilitation and Nursing Center at Kingsbridge

- The Department issued a Stipulation and Order (S&O) dated November 29, 2016, and fined The Citadel Rehabilitation and Nursing Center at Kingsbridge \$4,000 based on an investigation completed on August 1, 2016. Deficient practice was found in the following areas: Quality of Care-Free of accidents and Hazards/Supervision/Devices and Effective Administration/Resident Well Being. Specifically, the facility failed to ensure that the side rails exceeded the FDA recommendation that spaces between the bedside rails should be no larger than 4 3/4 inches. The Administrator failed to ensure that there were systems in place to provide a safe environment.

Long Beach Nursing and Rehabilitation Center

- The Department issued a Stipulation and Order (S&O) dated September 29, 2020, and fined Long Beach Nursing and Rehab for \$4,000, the results of an Infection Control Survey completed on July 27, 2020. Deficient practice was cited in the area: Infection Control for two citations issued.
- The Department issued a Stipulation and Order (S&O) dated November 4, 2021, and fined Long Beach Nursing and Rehabilitation Center \$2,000 in the area of Infection Control based on an investigation dated July 13, 2021. The facility failed to maintain an infection prevention and control program and to ensure hand hygiene occurs.

Morningside Nursing and Rehabilitation Center

- The Department issued a Stipulation and Order (S&O) dated July 10, 2020, and fined Morningside \$6,000 based on findings from a survey that was completed on May 20, 2020. Deficient practice was cited in the area of Infection Control.

Workmen's Circle Multicare Center

- The Department issued a Stipulation and Order (S&O) dated November 15, 2021, and fined Workmen's Circle \$10,000 based on an investigation on May 11, 2021, the facility was fined based on deficiencies found during the survey for Quality of Care -Free of Accident Hazards/supervision/devices. Staff did not properly transfer a resident, resulting in a fall and injury.

New Riverdale Rehabilitation and Nursing Center

- The Department issued a Stipulation and Order (S&O) dated October 2021 and fined New Riverdale \$10,000 based on an investigation on April 30, 2021, the facility was fined for deficiencies related to Quality of Care for Free of Accident Hazards/supervision/devices, resulting in an injury to the resident who received a second-degree burn.

Leopold Friedman disclosed ownership interest in the following **out of state facilities** that have recent enforcement actions imposed:

Sea Breeze Rehabilitation and Nursing Center

- On April 24, 2019, the State of Florida Agency for Health Care Administration issued a Final Order and fined Sea Breeze Rehabilitation and Nursing Center \$1,000 and assigned conditional licensure status for deficiencies found on a survey that concluded on August 16, 2018. Specifically, the facility failed to ensure that it had on file a current disaster preparedness plan.

Oak Haven Rehabilitation and Nursing Center

- Oak Haven has been placed on the Special Focus Facility List in 2019. Deficiencies were cited in Quality of Care and Quality of Life, Resident Rights, Resident Assessment, Care Planning, Pharmacy Services and Administration from 7/28/16, 9/22/17, and Immediate Jeopardy was identified at the 12/13/18 survey. The facility was fined \$147,689.00 for Substandard Quality of Care on 11/6/2018 for deficiencies over the past three years.

The Sands at South Beach Center

- On February 7, 2019, the facility was surveyed and cited in Infection Control for failing to ensure an appropriate assessment and documentation was completed for a resident requiring the Influenza vaccination. The facility was fined \$11,025.00 dated 2/7/19.

Pascale Debenedictis and Alex Solvey disclosed ownership interest in the following **out of state facilities** that have recent enforcement actions imposed:

Cassena Care at Stamford

- On August 16, 2018, the facility was fined \$3,060 based on deficiencies found during a survey for Quality of Care. Specifically, the facility failed to turn and position a patient and the resident developed a Stage 3 pressure ulcer. The resident was observed in the same position for four hours.
- On August 23, 2018, the facility was fined \$11,000 for deficiencies related to Resident Behavior and Facility Practices. Specifically, the facility failed to protect the resident from the wrongful use of the resident's belongings or money. The resident gave money to two staff members.

Cassena Care at Norwalk

- On April 9, 2018, the facility was fined \$13,003 for deficiencies related to Quality of Care-Free of Accident Hazards/Supervision/Devices. Specifically, the facility failed to ensure that the resident was supervised appropriately and failed to ensure that the resident did not exit the facility. The resident eloped from the facility and was found wandering and brought to the hospital. The elopement risk assessment conducted identified the resident as high risk.
- On July 13, 2017, the facility was fined \$24,780 for deficiencies related to Quality of Care-Free of Accident Hazards/Supervision/Devices. Specifically, the facility failed to initiate interventions and increased supervision for confused residents with repeated falls and failed to ensure staff handled the transfer of residents appropriately using a mechanical lift.
- On September 15, 2016, the facility was fined \$2,316 for deficiencies related to Quality of Care-Residents Free from Significant Med Errors. Specifically, the facility failed to ensure that medications were administered in accordance with the physician's orders. A resident medication was not given for a total of two months. The resident was supposed to receive the medications in the morning and evening. The medication was documented as given. The resident was sent to an acute care facility for an evaluation and a blood test revealed that there was an undetectable level in the blood.

Cassena Care at New Britain

- On August 16, 2018, the facility was fined \$21,060 for deficiencies related to Quality of Care-Provide Care/Highest Well Being. Specifically, the facility failed to ensure vital signs and/or an abdominal assessment were conducted when the resident was identified with a change in status. The patient had critical labs. There was no RN assessment of the resident. The resident was transferred to the hospital where he expired.
- On September 15, 2016, the facility was fined \$17,821 for Quality of Care-Provide Care/Highest Well Being and Quality of Care-Free of Accident Hazards/Supervision/Devices. Specifically, the facility

failed to document vital signs and ensure medications were ordered in a timely manner after an allergic reaction and failed to ensure that another resident received the appropriate care and supervision. The resident ate a peanut butter sandwich and began exhibiting signs of an anaphylactic reaction. The resident has a peanut allergy. The facility did use an epi-pen and the patient was transferred to the hospital. The second resident eloped from the facility through an emergency exit door and was found outside the facility.

Conclusion

Approval for this project will provide for improved access to a variety of medical services for residents within the area of Rockaway and Broad channel, as well as the surrounding communities of Queens County. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Total Project Costs and Financing

The project costs for renovation and movable equipment are estimated at \$1,276,882.

Renovation & Demolition	\$798,170
Design Contingency	\$75,000
Construction Contingency	\$75,000
Architect/Engineering Fees	\$77,826
Other Fees	\$75,000
Moveable Equipment	\$166,913
Application Fee	\$2,000
Processing Fee	<u>\$6,973</u>
Total Project Cost	\$1,276,882

Cardiff Bay Center, LLC (sublandlord) will fund the leasehold improvements via \$1,276,882 cash. BFA Attachments B and C are, respectively, the 2019-2020 certified financial statements and the internal financial statement for Cardiff Bay Center, LLC as of July 31, 2021, which indicated liquid resources may not be sufficient to fund the leasehold improvements. Proposed member Pasquale DeBenedictis, who is also a member of the landlord and sublandlord entities, has submitted an affidavit confirming he will personally fund any capital requirements to meet project costs if additional resources are needed. BFA Attachment A shows the ability of this member to meet project costs.

Operating Budget

The applicant has submitted the year one and year three operating budget, in 2022 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$164.95	\$239,501	\$164.99	\$474,012
Medicare FFS	\$135.10	\$34,992	\$135.00	\$69,255
Medicare MC	\$107.98	\$111,974	\$108.00	\$221,616
Medicaid FFS	\$167.46	\$86,306	\$167.33	\$170,813
Medicaid MC	\$125.50	\$164,287	\$125.50	\$325,152
Private Pay	\$189.82	<u>\$88,646</u>	\$190.08	<u>\$175,446</u>
Total Revenue		\$725,706		\$1,436,294

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Expenses</u>				
Operating	\$108.53	\$562,612	\$93.33	\$957,530
Capital	<u>\$40.62</u>	<u>\$210,585</u>	<u>\$21.55</u>	<u>\$221,133</u>
Total Expenses	\$149.15	\$773,197	\$114.88	\$1,178,663
Gain/(Loss)		<u>(\$47,491)</u>		<u>\$257,631</u>
Visits		5,185		10,260

The following is noted with respect to the submitted budget:

- Medicaid revenue projections are based on the Medicaid Freestanding APG Base Rates using Full APG Investment as obtained from the Department's website for freestanding clinics downstate, excluding the capital component to be conservative in the projections.
- For other payors, the applicant identified the most prevalent HCPCS codes used for their Medicare recipients based on the operators' experience.
- The Medicare Part B fee schedule was used to determine the calculation for the Medicare composite rate.
- Expenses are based on the salaries and employee benefits expenses for 7.94 FTE staff in Year One and 13.13 FTE staff in Year Three, plus medical supplies and capital costs related to depreciation and rent. By Year Three, direct care staff will include 1.13 FTE Physicians, 1.0 FTE RN, 0.5 FTE Physicians' Assistant, 0.5 FTE Nurse Practitioner, and 1.03 FTE Physical Therapists.

Utilization by payor source for outpatient visits is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	28%	28%
Medicare FFS	5%	5%
Medicare MC	20%	20%
Medicaid FFS	10%	10%
Medicaid MC	25%	25%
Private Pay	9%	9%
Charity Care	<u>3%</u>	<u>3%</u>
Total	100%	100%

Agreements

BFA Attachment D details:

- The submitted executed amended and restated master lease for the building. The master lease agreement is a non-arm's length arrangement as the landlord and tenant entities have related members. Specifically, the members of Beach 50th Street LLC and Cardiff Bay Center, LLC are as follows: Pasquale DeBenedictis (25.05%), Alex Solovey (25.05%), Leopold Friedman (24.90%), Michael Melnicke (25%).
- The draft license agreement for the proposed D&TC space, including the terms, rate, and provisions of the submitted documentation. The license agreement is a non-arm's length agreement, as there are common members between the sublessor and licensee. The applicant has submitted rent reasonableness letters from two New York licensed realtors attesting to the rental rate being of fair market value and that the leased space reflects current rates for a property similar to this location and size.

Capability and Feasibility

The total project cost of \$1,276,882 will be funded via equity from Cardiff Bay Center, LLC for the fit-out of existing space. BFA Attachment B, the 2019-2020 certified financial statements of Cardiff Bay Center, LLC, indicates enough funds to meet the equity requirement; however, BFA Attachment C, the entity's internal financial statements as of September 30, 2021, indicates a negative working capital position, a positive member equity position and net loss of \$673,766. Pasquale DeBenedictis submitted an affidavit confirming he will personally fund capital requirements if additional equity is needed for the construction

and equipment costs. Review of BFA Attachment A, the proposed members' net worth summaries, reveals sufficient equity to meet project costs.

The working capital requirement is estimated at \$196,444, based on two months of third-year expenses. Working capital will be funded via members' equity in proportion to their ownership. BFA Attachment A is the members' net-worth statement, which indicates enough resources to provide funding. BFA Attachment E is the pro forma balance sheet of Beach Channel Diagnostic and Treatment Center as of the first day of operations, which indicates a positive equity position of \$196,444.

The submitted budget reflects a net operating loss of \$47,491 and a net income of \$257,631 in Years One and Three, respectively. The first-year loss will be offset by operations represented in BFA Attachment E. Revenues are based on the current reimbursement methodologies for Primary Care and Medical Services – Other Medical Specialties. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Members Net-worth Statement
BFA Attachment B	Cardiff Bay Center, LLC Certified (2019-2020) Financial Statement
BFA Attachment C	Cardiff Bay Center, LLC Internal September 30, 2021 Financial Statement.
BFA Attachment D	Master Lease and License Agreements
BFA Attachment E	Pro Forma (Beach Channel D&TC)



Project # 211085-B
KD Hudson Ventures, LLC d/b/a Avalon Medical Group

Program: Diagnostic and Treatment Center County: Orange
Purpose: Establishment and Construction Acknowledged: April 14, 2021

Executive Summary

Description

KD Hudson Ventures, LLC d/b/a Avalon Medical Group, an existing New York State limited liability company, requests approval to establish and construct a diagnostic and treatment center at 121 Executive Drive, New Windsor, New York.

The Center will operate in leased space providing primary medical care, specialty medical services, physical therapy, and occupational therapy services. The specialty medical services will include cardiology, dermatology, orthopedic, pain management, neurology, neurosurgery, physical medicine and rehabilitation, and allergy testing. Yelena Shubina, MD. will be Medical Director of the Center.

Through this project, several private practices currently located at 244 Broadway, Newburgh, New York will be relocated and consolidated into the proposed Article 28 D&TC. The applicant indicates operations will expand beyond that of the private practices to accommodate additional visits through an increase in staff and a broader range of services to include orthopedic, physical medicine and rehabilitation, therapy services.

The members of KD Hudson Ventures, LLC are:

Table with 2 columns: Member, Interest. Rows: Arthur Kostanian (50%), Sergey Denevich (50%).

OPCHSM Recommendation

Contingent Approval

Need Summary

The center will offer primary care and other medical specialty services in a Health Professional Shortage Area for Primary Care Services. The applicant projects 34,335 visits in Year One and 37,771 in Year Three with Medicaid utilization of 35% and Charity Care of 2%.

Program Summary

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

Financial Summary

Project costs of \$2,361,979 will be met as follows: Equity of \$236,198 via the proposed members and a bank loan of \$2,185,781 at an interest rate of 5.25% for a five-year term. The projected budget is:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$3,290,669 vs \$3,672,697), Expenses (3,250,883 vs 3,442,672), Net Income (\$39,786 vs \$230,025).

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 working capital loan that is acceptable to the Department of Health. (BFA)
3. Submission of a bank loan that is acceptable to the Department of Health. (BFA)
4. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. (AER)
6. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. (AER)

Approval conditional upon:

1. This project must be completed by **May 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 1, 2022**, and construction must be completed by **February 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 10, 2022

Need and Program Analysis

Description

Proposed Operator	KD Hudson Ventures, LLC
To Be Known As	Avalon Medical Group
Site Address	121 Executive Drive New Windsor, New York 12553 (Orange County)
Specialties	Medical Services – Primary Care Medical Services-Other Medical Specialties Radiology Services (x-ray) Cardiology Dermatology Orthopedics Pain Management Neurology Neurosurgery (medical visits only) Allergy/Allergy Testing Physiatry Physical Therapy Occupational Therapy
Hours of Operation	Sunday through Thursday 9:00 am to 6:00 pm Friday 9:00 am to 1:00 pm
Staffing (1st Year / 3rd Year)	20.4 FTEs / 21.8 FTEs
Medical Director(s)	Yelena Shubina, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Garnet Health Medical Center 22.6 miles / 29 minutes away

Background and Analysis

The primary service area is Orange County. The population of Orange County in 2010 was 378,813 and is estimated to grow to 391,144 by 2025, an increase of 3.3%. Orange County is designated as a Health Professional Shortage Area for Primary Care services for Medicaid eligible. According to Data USA, in 2019, 92.3% of the population of Orange County has health coverage as follows:

Employer Plans	50.7%
Medicaid	17.3%
Medicare	11.0%
Non-Group Plans	12.9%
Military or VA	0.5%

The applicant projects 34,335 visits in Year One and 37,771 in Year Three with Medicaid utilization of 35% and Charity Care of 2%. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The members of KD Hudson Ventures LLC are:

Name	Interest
Arthur Kostonian	50.00%
Sergey Denevich	50.00%
Total	100.00%

Arthur Kostanian is the Chief Executive Officer of Kostanian Consulting and Associates. He provides general administrative, marketing, and consulting services to health care providers. He was an owner of Montvale Surgical Center for over three years and was responsible for developing, monitoring, and controlling the staffing needs, operations, budget, and purchasing plan as well as continuous monitoring of operations to ensure compliance with goals and budgets. He also reviewed and approved the hiring and disciplinary actions and/or discharge of employees. He was previously a Paralegal at the Law Offices of Matthew Abramowitz.

Sergey Denevich is the Chief Executive Officer of Diamond Health Associates. He is responsible for overseeing provider staffing and management in healthcare facilities. He is a Trustee of Milenia Health Benefit Trust and is responsible for overseeing the payments of health and insurance benefits for employees and their dependents of various participant facilities. He is also the Chief Executive Officer of Eagle Risk Services LLC. He is a licensed insurance broker for property and casualty, providing risk management services and loss control safeguards against damage for clients. He is the Chief Executive Officer of All State Administrators LLC and provides risk management assessments and administrative management to many types of corporations with a focus on the health care industry.

Dr. Yelena Shubina, the proposed Medical Director, is a Hospitalist at Staten Island University Hospital. She was previously a Hospitalist at Nazareth Hospital in Pennsylvania. She received her medical degree from Ross University School of Medicine in the West Indies. She is board certified in Internal Medicine.

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.

Sergey Denevich was arrested for Assault in the 2nd Degree and Operating a Motor Vehicle under the Influence of Drugs or Alcohol on October 11, 2004. The charges were filed on March 31, 2006 and Sergey Denevich pled guilty on June 27, 2006. He was sentenced to 364 days imprisonment for each charge, the sentences ran concurrently.

Sergey Denevich was named in a civil suit by GEICO under the federal RICO act for Racketeering and Corrupt Organization on November 22, 2010. Sergey Denevich was employed as an Administrator at City Medical Diagnostics, an imaging facility, and was individually named, along with his employer in a suit alleging non-physician operation and control over physician professional practices. The charges were dismissed, without prejudice, against Sergey Denevich on August 15, 2011.

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovation and the acquisition of moveable equipment, is estimated at \$2,361,979, further broken down as follows:

Renovation and Demolition	\$1,485,247
Site Development	5,146
Design Contingency	148,525
Construction Contingency	148,525
Planning Consultant Fees	15,439
Architect Engineering Fees	119,396
Other Fees (Consultant)	61,757
Moveable Equipment	246,117
Financing Costs	42,516
Interim interest Expense	74,402
CON Fee	2,000
Additional Processing Fee	<u>12,909</u>
Total Project Cost	\$2,361,979

The applicant's financing plan appears as follows:

Equity	\$236,198
Bank Loan (5.25% interest rate for a five-year term)	<u>\$2,125,781</u>
Total	\$2,361,979

Operating Budget

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

	<u>Year One</u>	<u>Total</u>	<u>Year Three</u>	<u>Total</u>
	<u>Per Visit</u>		<u>Per Visit</u>	
Revenues				
Commercial FFS	\$100.12	\$378,168	\$98.33	\$408,552
Commercial MC	\$85.10	\$905,806	\$83.56	\$978,451
Medicare FFS	\$83.45	\$458,480	\$81.92	\$495,020
Medicare MC	\$70.92	\$73,050	\$69.64	\$78,898
Medicaid MC	\$121.81	\$1,463,715	\$128.54	\$1,699,407
Private Pay	\$16.67	<u>\$11,450</u>	\$16.38	<u>\$12,369</u>
Total Revenues		\$3,290,669		\$3,672,697
Operating	\$84.27	\$2,893,264	\$82.77	\$3,126,388
Capital	<u>\$10.41</u>	<u>\$357,619</u>	<u>\$8.37</u>	<u>\$316,284</u>
Total Expenses	\$94.67	\$3,250,883	\$91.15	\$3,442,672
Net Income		\$39,786		\$230,025
Utilization (Visits)		34,335		37,771

The following is noted with respect to the submitted budget:

- Revenues are based on current reimbursement rates for the type of services they are providing.
- The applicant has indicated that the increase in visits from the first year to the third year is because primary medical care services are projected to grow at the highest level. These are relatively new services at the current private practice site, so the growth rate will be higher, relative to the existing practices.
- The applicant will enter into a lease with annual lease rental payments of \$90,000. The applicant has indicated that the lease agreement will be an arm's length lease arrangement and the applicant has provided two real estate letters attesting to the reasonableness of the per square foot rental.

Utilization broken down by payor source during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	11.00%	11.00%
Commercial MC	31.00%	31.00%
Medicare FFS	16.00%	16.00%
Medicare MC	3.00%	3.00%
Medicaid MC	35.00%	35.00%
Private Pay	2.00%	2.00%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Capability and Feasibility

Total project costs of \$2,361,979 will be met as follows: Equity of \$236,198 via the proposed members and a bank loan of \$2,185,781 at an interest rate of 5.25% for a five-year term. The applicant provided a bank letter of interest in support of the financing.

Working capital requirements are estimated at \$573,778, which is equivalent to two months of third year expenses. The applicant will finance \$286,839 at an interest rate of 5.25% for a five-year term. The applicant provided a bank letter of interest in support of the financing. BFA Attachment A is the net worth statements of the proposed members, which indicates the availability of sufficient funds for the equity contribution. The applicant provided an affidavit indicating that equity will be provided disproportionate to ownership interests. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$523,087.

The submitted budget indicates a net income of \$39,786 and \$230,025 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for the type of services they are providing. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Lease Agreement



Project # 211151-B
W Medical, LLC d/b/a W Health Center

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: April 30, 2021

Executive Summary

Description

W Medical, LLC d/b/a W Health Center, a New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 70 Lee Avenue, Brooklyn, New York (Kings County). The D&TC will be certified for Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Physical Therapy. More specifically, the D&TC will focus on Pediatrics, Infectious Diseases, Pulmonology, Orthopedics, Endocrinology, Cardiology and Physical Therapy. The primary service area is the Williamsburg section of Brooklyn with services available to all residents in Kings County.

The sole member of W Medical, LLC is Pinchas Halperin. The proposed Medical Director is Binyomin Nemon, DO, who is board-certified in Family Medicine. W Medical, LLC will be entering into a Transfer and Affiliation Agreement with Wyckoff Heights Medical Center, which is 1.1 miles away from the proposed center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The D&TC will be in the Williamsburg area of Brooklyn, a designated Health Professional Shortage Area for primary care services. The applicant projects 7,540 visits in the first year and 9,553 in the third year with Medicaid at 68% and charity care at 2%.

Program Summary

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

Financial Summary

Total project costs of \$558,082 will be met via the proposed owner's equity. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$1,187,750 vs \$1,504,483), Expenses (\$1,115,257 vs \$1,365,227), Net Income (\$72,493 vs \$139,256).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. This project must be completed by **May 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. Construction must start on or before **August 1, 2022**, and construction must be completed by **February 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 20, 2022

Need and Program Analysis

Project Description

Proposed Operator	W Medical, LLC
To Be Known As	W Health Center
Site Address	70 Lee Avenue Brooklyn, New York 11211 (Kings County)
Services	Medical Services – Primary Care Medical Services-Other Medical Specialties Infectious Disease Pulmonology Orthopedics Endocrinology Cardiology Physical Therapy O/P
Hours of Operation	Monday through Friday 8:00 AM to 6:00 PM Sunday 8:30 AM to 6:00 PM as need dictates
Staffing (1st Year / 3rd Year)	7.25 FTEs / 9.05 FTEs
Medical Director(s)	Binyomin Nemon, D.O.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Wykoff Medical Center 1.1 miles / 7 minutes away

Background

The primary service area is the Williamsburg section of Brooklyn. The population of Kings County in 2010 was 2,504,700 and is estimated to grow to 2,810,876 by 2025, an increase of 12.2%. The U.S. Health Resources & Services Administration (HRSA) has designated Kings County as a Medically Underserved Area/Population and the Williamsburg section as a Health Professional Shortage Area for Primary Care services for Medicaid eligible. According to Data USA, in 2019, 93.7% of the population of Kings County has health coverage as follows:

Employer Plans	41.7%
Medicaid	33.2%
Medicare	8.0%
Non-Group Plans	10.5%
Military or VA	0.2%

The number of projected visits is 7,540 in Year One and 9,553 in Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment and is projecting Medicaid utilization of 68% and charity care of 2%. The applicant intends to hire multicultural and bilingual staff to help meet the needs of the community.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for Kings County is lower than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs

2017 PQI Rates	Kings County	New York State
All PQIs	1,358	1,431

Character and Competence

The sole member of W Medical, LLC is Pinchas “David” Halpern.

Pinchas “David” Halperin describes himself as an Investor, Capitalist, Developer, and Philanthropist. He is the Director of Operations of Ahava Medical and Rehabilitation Center LLC and is an Investor in Diners NY LLC, a commercial bakery. He is an Investor in Divine Health LLC, a web-based store selling over-the-counter pharmacy products. He was the Founder and Principal of Certified Developers, a construction and real estate development company that specialized in consumer construction projects. He is the Owner of Home Meds Rx, a Residential and Long Term Care Pharmacy, and Rafieh Pharmacy. He is also the Owner and Operator of HPIM LLC, a commercial and residential real estate and investment company.

Dr. Binyomin Nemon is the proposed Medical Director. He is currently a Locum Tenens at various facilities in the Greater NYC area. Previously, he was the Primary Care/Adult Medicine Physician at the Damian Family Care Center, the Primary Care/Family Medicine Physician at Adaptation Medical, the Medical and Laboratory Director of Community Urgent Care, the Primary Care/Family Medicine Physician of Physician Medical Group, the Medical Director of Express Medical, the Medical Director of Bath Medical, the part-time Primary Care and Osteopathic Manipulative Treatment Physician at Care for You Medical P.C., a Family Practice and Urgent Care Physician at a private practice, a Medical Evaluator of Accident Victims for Enta Medical, an ER physician and the night coverage for the Michigan Department of Corrections for Emergency Medicine Consultants. He received his Doctor of Osteopathic Medicine degree from New York College of Osteopathic Medicine in New York and completed his residency in Family Practice at Mercy Hospital/University of Pittsburgh Medical Center and Family Practice Rural Track at Colorado Springs Osteopathic Foundation/Western University of Health Sciences. He is board-certified in Family Medicine.

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

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

Pinchas Halperin disclosed a trademark infringement lawsuit filed November 16, 2020, which alleged acts of trademark infringement, passing off, violations of General Business Law, injury to business reputation, common law unfair competition, misappropriation, and unjust enrichment. The plaintiff alleged that his brand was used by several urgent care centers throughout NYC and specifically, Williamsburg, Brooklyn. Pinchas Halperin operated a new urgent care at the same location without changing the signage, making use of the Plaintiff’s name, brand, and trademark. Mr. Halperin generated substantial revenue from the unauthorized use and infringing use of the name and trademark. Moreover, it is alleged, the business was run poorly, injuring the Plaintiff’s brand. Kamin Health, a/k/a Williamsburg Urgent Care, was operated as a PC and managed under an MSO arrangement. A Stipulation of Settlement was filed on June 2, 2021.

Dr. Binyomin Nemon disclosed a complaint was filed in the Supreme Court in the State of New York County of Kings on April 9, 2010 against him and multiple other defendants. The allegation states the physicians were negligent in their treatment and diagnosis of the patient and prescribing and monitoring of the medication Ritalin. The patient alleges he was overprescribed the medication and the negligence caused his dependence on the medication. The case is ongoing but is in settlement negotiations.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval for this project will provide for access to a variety of medical services for residents in the Williamsburg section, and the surrounding communities, of Kings County.

Financial Analysis

Operating Budget

The applicant submitted an operating budget, in 2021 dollars, for the first and third years of operation, summarized below:

	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
<u>Revenues</u>				
Medicare FFS	\$174.94	\$92,369	\$174.89	\$117,001
Medicare MC	\$160.04	\$156,839	\$159.95	\$198,662
Medicaid FFS	\$169.03	\$229,376	\$169.02	\$290,543
Medicaid MC	\$152.11	\$573,441	\$152.09	\$726,358
Private Pay	\$200.01	\$75,402	\$199.81	\$95,510
Commercial MC	\$160.01	<u>\$60,323</u>	\$159.85	<u>\$76,409</u>
Total Revenues		\$1,187,750		\$1,504,483
<u>Expenses</u>				
Operating	\$122.15	\$921,036	\$121.95	\$1,165,006
Capital	<u>\$25.76</u>	<u>\$194,221</u>	<u>\$20.96</u>	<u>\$200,221</u>
Total Expenses	\$147.91	\$1,115,257	\$421.91	\$1,365,227
Net Income/(Loss)		<u>\$72,493</u>		<u>\$139,256</u>
Utilization: (Visits)		7,540		9,553

The following is noted concerning the submitted budget:

- Revenues are based on current reimbursement methodologies for D&TCs.
- The Medicare Fee for Service rate was calculated based on 103% of the Medicaid FFS rate.
- The Medicaid Managed Care rate is calculated as 90% of the Medicaid FFS rate.
- Expenses are based on the historical experience of other comparable Article 28 D&TCs in the same geographic area.
- The proposed operators conservatively estimate an increase in the volume of visits from its inception through year three. Utilization assumptions are based on an initial 47.13% capacity for year one, with year three increasing to 59.70% of total capacity.

Utilization broken down by payor source during the first and third years is as follows:

<u>Payor</u>	<u>Years One & Three</u>
Medicare FFS	7.00%
Medicare MC	13.00%
Medicaid FFS	18.00%
Medicaid MC	50.00%
Private Pay	5.00%
Commercial FFS	5.00%
Charity Care	<u>2.00%</u>
Total	100.00%

Total Project Cost and Financing

Total project cost of \$558,082 is distributed as follows:

Renovation and Demolition	\$327,746
Design Contingency	\$16,387
Construction Contingency	\$16,387
Architect/Engineering Fees	\$31,000
Other Fees	\$65,000
Moveable Equipment	\$96,520
CON Fee	\$2,000
Additional Processing Fee	<u>\$3,042</u>
Total Project Cost	\$558,082

The proposed project will be funded via owners' equity.

Lease Rental Agreement

The applicant submitted a draft lease rental agreement for the site that is summarized in BFA Attachment B. The applicant submitted an affidavit indicating that the lease is a non-arm's length lease arrangement, as there is a common interest between the two parties. Letters from two New York licensed realtors have been provided attesting that the lease cost per square foot is at fair market value.

Capability and Feasibility

The total project cost of \$558,082 will be met via the proposed owner's equity. Working capital requirements are estimated at \$227,538, based on two months of third-year expenses. The proposed member will provide equity from their personal resources to meet the working capital requirements. BFA Attachment A is the personal net worth statement of the proposed owner of W Medical, LLC, which indicates the availability of sufficient funds for the project cost and working capital equity contributions. BFA Attachment C is the pro forma balance sheet of W Medical, LLC, which indicates a positive members equity position of \$783,620 as of the first day of operation.

The submitted budget indicates net incomes of \$72,493 and \$139,256 for the first and third years, respectively. Revenues are based on current reimbursement methodologies for D&TCs. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment A	Map
BFA Attachment A	Personal Net Worth Statements of the sole owner of W Medical, LLC
BFA Attachment B	Lease Agreement Summary
BFA Attachment C	Pro Forma Balance Sheet of W Medical, LLC



Project # 211226-E
Perry Avenue Family Medical, Inc.

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment **Acknowledged:** June 7, 2021

Executive Summary

Description

Perry Avenue Family Medical, Inc. d/b/a Perry Avenue Medical Center (Perry Avenue) an existing Article 28 Diagnostic and Treatment Center (D&TC) at 3071 Perry Avenue, Bronx (Bronx County), requests approval to transfer 100% ownership interest from four existing shareholders to two new shareholders.

The current and proposed ownership is as follows:

<u>Current Shareholders</u>	<u>%</u>
Kishore Ahuja MD	45.05%
Rita Ahuja, MD	45.05%
Kavita Ahuja	4.95%
Ashish Ahuja	<u>4.95%</u>
Total	100%

<u>Proposed Shareholders</u>	<u>%</u>
Aleksandr Babakhanov	85%
Gitel Stiel	<u>15%</u>
Total	100%

Kishore Ahuja, M.D. will continue to serve as the Medical Director, a position he has held for more than a decade. All other facets of existing services and operations will remain in place including the Transfer and Affiliation Agreement with Montefiore – Moses Division.

OPCHSM Recommendation

Contingent Approval

Need Summary

There are no changes to services as a result of this application. Perry Avenue is in a HRSA-designated Medically Underserved and a Primary Care Health Professional Shortage area.

The applicant projects 37,905 visits in the first year and 39,421 in the third year after the completion of the transfer, with Medicaid utilization of 71%.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The total acquisition cost for 100% of the shares of Perry Avenue is \$5,500,000. Aleksandr Babakhanov provided a deposit for \$550,000, which is being held in escrow per an executed escrow agreement by Raymond Iryami Law Firm P.C. A letter of interest has been submitted by Flushing Bank for \$4,400,000 for a term of ten years and rate of 4.5%. The remaining \$550,000 will be paid via shareholders equity. The submitted budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,696,983	\$4,884,863
Expenses	<u>\$4,597,565</u>	<u>\$4,711,462</u>
Gain/(Loss)	\$99,418	\$173,401

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed bank loan commitment, acceptable to the Department of Health. (BFA)
2. Submission of a photocopy of an amended and executed Certificate of Amendment of the Certificate of Incorporation of Perry Avenue Family Medical, Inc., acceptable to the Department of Health (Department). [CSL]
3. Submission of a photocopy of an amended and executed Lease Agreement between Perry Avenue Family Medical, Inc. and Cora Realty Co. LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the consent of Cora Realty Co. LLC to the assignment of the Lease Agreement, acceptable to the Department. [CSL]
5. Submission of amended and executed stock transfer affidavits from each seller, acceptable to the Department. [CSL]
6. Submission of an executed stock transfer affidavit from Gitel Stiel, acceptable to the Department. [CSL]
7. Submission of an amended stock certificate, 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 the expiration of the approval. [PMU]

Council Action Date

February 10, 2022

Need and Program Analysis

Program Description

Perry Avenue began operations in November 2002 and provides a variety of medical services to the residents in Bronx County, including primary care, podiatry, optometry, physical therapy, and cardiology. The applicant indicates there will be no change in services as a result of this request. The applicant projects 37,905 visits in the first year and 39,421 in the third year after the completion of the transfer, with Medicaid utilization of 71%. The applicant states they are committed to serving all persons in need without regard to ability to pay or source of payment.

Background

The primary service area is the neighborhood of Williamsbridge in northern Bronx County. HRSA has designated Fordham a Health Professional Shortage Area (HPSA) for Medicaid eligible Primary Care Services and Bedford Park a Medically Underserved Area/Population.

According to Data USA, in 2019, 92.1% of the population of Bronx County had health coverage, broken down as follows:

Employee Plans	31.3%
Medicaid	42.3%
Medicare	6.97%
Non-group Plans	11%
Military or VA Plans	0.405%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the 2017 PQI rates for the overall PQI condition and shows that the PQI rate for Bronx County is significantly higher than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs

2017 PQI Rates	Bronx County	New York State
All PQIs	2,191	1,431

Character and Competence

The table below details the proposed change in ownership:

Name	Current	Proposed
Kishore Ahuja MD	45.05%	0%
Rita Ahuja, MD	45.05%	0%
Kavita Ahuja	4.95%	0%
Ashish Ahuja	4.95%	0%
Alexsandr Babakhanov*	0.00%	85%
Gitel Stiel*	0.00%	15%
Total	100%	100%

**Subject to Character and Competence*

Alexsandr Babakhanov is a licensed pharmacist and has been employed at Mediserv Pharmacy for over five years, currently as the Staff Supervising Pharmacist. In this role, he is responsible for overseeing inventory, technicians, and the compounding pharmacists. He has also been employed as the Supervising Pharmacist of Orthoserve, Inc for over four years where he is responsible for managing the pharmaceutical team. He was previously employed at ProHealth Pharmacy, as a freelance Pharmacist, performing the duties of a pharmacist at sites to cover staffing as needed, and at Prime Made Pharmacy. He received his pharmacy degree from Long Island University Brooklyn Campus.

Gitel Stiel has been an Administrator at Ahava Medical and Rehabilitation Center for over 13 years where her responsibilities include hiring and scheduling for the facility of approximately 250 employees; preparation and submission of application and supporting documents for new facility licenses and license renewals; staff training and review on regulatory compliance, improved patient care, and compliance with company policy and procedure; developing and updating the policy and procedure manual for the divisions of the company; and decisions regarding equipment and supply purchases, including implementing cost-saving measures.

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

Alexsandr Babakhanov disclosed being charged with Criminal Possession of a Controlled Substance in the Seventh Degree, a Class A misdemeanor. On May 28, 2014, he was in the possession of the controlled substances Codeine, Fentanyl, Oxycodone, and Oxymorphone. On June 2, 2015, he was convicted and entered a plea of guilty to the crime. The State Education Department Office of Professional Discipline stayed a two-year suspension on his license. He was placed on probation for a period from July 31, 2018 to July 30, 2020.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). There will be no changes in services as a result of this application.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for the current year (2019), and the first- and third-year after the change in ownership interest, summarized as follows:

	<u>Current Year (2019)</u>		<u>Year One (2022)</u>		<u>Year Three (2024)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>						
Commercial FFS	\$124.99	\$1,124,298	\$124.99	\$1,169,297	\$124.99	\$4,589,322
Medicare FFS	76.63	120,083	76.63	124,886	70.63	129,882
Medicaid FFS	164.16	153,161	164.16	159,287	164.16	165,659
Medicaid MC	<u>124.99</u>	<u>3,118,788</u>	<u>124.99</u>	<u>3,243,512</u>	<u>124.99</u>	<u>3,373,234</u>
Total Revenue		\$4,516,330		\$4,696,983		\$4,884,863
<u>Expenses</u>						
Operating	\$116.76	\$4,255,387	\$86.70	\$3,286,499	\$85.98	\$3,389,806
Capital	<u>5.61</u>	<u>204,637</u>	<u>34.59</u>	<u>1,311,066</u>	<u>33.52</u>	<u>1,321,656</u>
Total Expenses	\$122.37	\$4,460,024	\$121.29	\$4,597,565	\$119.50	\$4,711,462
Net Income/(Loss)		<u>\$56,306</u>		<u>\$99,418</u>		<u>\$173,401</u>
Visits		36,447		37,905		39,421
Cost Per Visit		\$122.37		\$121.29		\$119.50

Utilization by payor for the current year and after the change in shareholders is as follows:

Payer	Current Year (2019)		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Commercial MC	8995	24.68%	9,355	24.68%	9,729	24.68%
Medicare FFS	1,567	4.3%	1,630	4.3%	1,695	4.3%
Medicaid FFS	933	2.6%	970	2.6%	1,009	2.6%
Medicaid MC	<u>24,952</u>	<u>68.46%</u>	<u>25,950</u>	<u>68.46%</u>	<u>26,988</u>	<u>68.46%</u>
Total	36,447	100%	37,905	100%	39,421	100%

The following is noted concerning the submitted budget:

- Revenues, expenses, and utilization assumptions are based on current reimbursement rates and historical experience of the D&TC.
- The practice had positive net income in 2018 and 2019. The company recorded a net loss of \$156,438 in 2020 due to a 25% decline in utilization resulting from the COVID-19 pandemic.
- Capital expense increases in years One and Three are due to interest payments on the loan payment according to the submitted budgets.

Agreements and Contracts

BFA Attachment B contains summaries of the following agreements:

- An executed Stock Purchase Agreement to acquire the operations of Perry Avenue Medical, Inc., to be effectuated upon PHHPC approval.
- An executed existing building lease. The agreement is a non-arm's length arrangement, as the landlord and tenant do not have any relationship.

Capability and Feasibility

The total purchase price for the 100% transfer of the 200 shares is \$5,500,000, which is to be funded via equity and a loan upon PHHPC approval, as follows:

Escrow Deposit	\$550,000
Bank Loan	\$4,400,000
Members Equity	<u>\$550,000</u>
Total	\$5,500,000

Alexsandr Babakhanov and Gitel Stiel are purchasing 85% and 15% shareholders' interest respectively, to be funded by a loan of \$4,400,000 and equity of \$1,100,000; \$935,000 from Alexsandr Babakhanov via the \$550,000 deposited in escrow held by Raymond Iryami Law Firm P.C. and \$385,000 in equity at the time of closing and \$165,000 from Gitel Stiel at the time of closing. A letter of interest from Flushing Bank has been submitted for \$4,400,000 for ten years at a 4.5% interest rate for a ten-year term. BFA Attachment A is the net-worth statement for the two proposed shareholders, which show sufficient equity to fund the equity portion acquisition.

The working capital requirement is estimated at \$766,261, based on two months of projected first-year expenses, and will be paid out of existing operations. BFA Attachment C is the Perry Avenue Family Medical Center's internal financial statements as of July 31, 2021, and demonstrates that there are sufficient resources for the equity requirement.

The submitted budget projects a net income of \$99,418 and \$173,401 during the first and third years, respectively. Revenues are based on current reimbursement rates; Medicare and Medicaid reflect prevailing reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment C is the internal financial statements from January 1, 2021 through July 31, 2021. As shown, the facility had positive working capital and positive net asset positions and achieved a net ordinary income before other expenses and officer's and relative salary of \$1,335,982.

BFA Attachment D is the D&TC's certified 2020 financial statement. As shown, the facility had a negative working capital position and positive net asset position. The facility incurred a net loss of \$156,438, for

which the applicant states the reason was as a result of decreased utilization caused by the COVID-19 pandemic. With reduced staffing and precautionary safety measures taken, the facility was not equipped to resume the pre-pandemic level of utilization.

BFA Attachment E is the D&TC's certified 2019 financial statement. As shown, the facility had a positive working capital position and a positive stockholder's equity position and achieved a net profit of \$56,371.

Conclusion

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

Attachments

- | | |
|------------------|--|
| BFA Attachment A | Shareholders' Net Worth Statement |
| BFA Attachment B | Agreements and Contracts |
| BFA Attachment C | Perry Avenue Family Medical Center - Internal Financial Statement 1/1/2021 through 7/31/2021 |
| BFA Attachment D | Perry Avenue Family Medical Center - Certified Financial Statement, 12/31/2020 |
| BFA Attachment E | Perry Avenue Family Medical Center – Certified Financial Statement, 12/31/2019 |



Project # 211201-E
MVNY Partners I, LLC d/b/a
U.S. Renal Care Faxton Dialysis

Program: Diagnostic and Treatment Center **County:** Oneida
Purpose: Establishment **Acknowledged:** July 21, 2021

Executive Summary

Description

U.S. Renal Care, Inc., through a subsidiary and in partnership with two local physicians, seeks approval to acquire seven dialysis centers currently operated by Faxton-St. Luke's Healthcare. Each location will be owned and operated by a separate limited liability corporation, MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC.

CON	Proposed Operator	Facility (proposed d/b/a)	Stations
211201	MVNY Partners I, LLC	U.S. Renal Care Faxton Dialysis 1676 Sunset Ave, Utica	36
211202	MVNY Partners II, LLC	U.S. Renal Care St. Luke's Home Dialysis 1650 Champlin Ave, Utica	8
211203	MVNY Partners III, LLC	U.S. Renal Care Masonic Care Community Dialysis 2150 Bleeker St, Utica	20
211204	MVNY Partners IV, LLC	U.S. Renal Care Rome Dialysis 91 Perimeter Rd, Rome	16
211205	MVNY Partners V, LLC	U.S. Renal Care Herkimer Dialysis 201 E. State St, Herkimer	8
211206	MVNY Partners VI, LLC	U.S. Renal Care Hamilton Dialysis 10 Easton St, Hamilton	8
211207	MVNY Partners VII, LLC	U.S. Renal Care Oneida Dialysis 131 Main St, Oneida	8

All seven operators are identical in structure, as indicated in the following chart:

Member	%
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC (90%) (U.S. Renal Care, Inc. subsidiary)	
AICA Holdings, LLC (10%)	
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc. All the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc. AICA Holdings, LLC is comprised of two local nephrologists. As of December 31, 2020, U.S. Renal Care, Inc. (USRC) operated 332 outpatient End-Stage Renal Disease (ESRD) centers located in 32 states.

On March 1, 2021, Faxton-St. Luke's Healthcare entered into an Operating Asset Transfer Agreement (OATA) with MVNY Partners, LLC, the sole member of all seven proposed operators, for the sale and acquisition of the dialysis centers for \$3,000,000. Faxton-St. Luke's Healthcare also sold non-Article 28 assets to MVNY Partners LLC for \$7,000,000 which are not part of this CON application.

In the proposed transactions, MVNY Partners, LLC will convey its interest in each of the seven locations to the respective proposed operator LLCs for the allocated amounts indicated in the table, per the Bill of Sale, Assignment and Assumption Agreement (BSAAA). The applicant states the members will pay it from equity. The OATA and BSAAA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC).

Purchase Price Allocation by CON	
CON 211201	\$1,297,059
CON 211202	\$255,882
CON 211203	\$529,412
CON 211204	\$264,706
CON 211205	\$264,706
CON 211206	\$158,824
CON 211207	\$229,412

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of stations. After approval, all seven sites will provide Home Training and Support services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc., and \$300,000 from AICA Holdings, LLC's members. BFA Attachments A and E are the net worth summary of AICA Holdings, LLC members and the Financial Statement of U.S. Renal Care, Inc., respectively. Both statements demonstrate sufficient resources to meet the equity requirements. The projected budget for the subject site is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year three</u>
Revenues	\$6,704,022	\$7,604,386
Expenses	<u>\$6,050,514</u>	<u>\$6,750,622</u>
Net Income	\$653,508	\$853,764

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. (BFA)
3. Submission of an executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (BFA)
4. Submission of an executed Assignment of Lease, acceptable to the Department. (BFA)
5. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. (CSL)
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Assignment of Lease Agreement, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed General Assignment, Assumption, Conveyance and Bill of Sale Agreement, acceptable to the Department. (CSL)
12. Submission of a photocopy of an amended and executed Articles of Organization for AICA Holdings, LLC, acceptable to the Department. (CSL)
13. Submission of a photocopy of an amended and executed Operating Agreement for AICA Holdings, LLC, acceptable to the Department. (CSL)
14. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners, LLC, acceptable to the Department. (CSL)
15. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners, LLC, acceptable to the Department. (CSL)
16. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
17. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
18. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Newco, LLC, acceptable to the Department. (CSL)
19. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Newco, LLC, acceptable to the Department. (CSL)
20. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
21. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
22. Submission of a photocopy of the Certificate of Authority for U.S. Renal Care, Inc., acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **one year from the date of the Public Health and Health Planning Council Recommendation Letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date
February 10, 2022

Need Analysis

Proposal

Upon approval of the CONs below, all seven of Faxton- St. Luke's Healthcare outpatient dialysis centers will be acquired by USRC and two local nephrologists. There will be no changes to the number of stations at the sites located in Oneida, Herkimer, and Madison counties. Six of the sites will add Home Hemodialysis and Home Peritoneal Dialysis Training and Support services (one site already provides the service) in keeping with the CMS and New York State goal of increasing the availability and use of these modalities.

CON	Facility	Stations	County	New Services	Proposed Medical Director
211201	USRC Faxton 1676 Sunset Ave, Utica	36	Oneida	None	Ahmad Mian
211202	USRC St. Luke's 1650 Champlin Ave, Utica	8	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211203	USRC Masonic 2150 Bleeker St, Utica	20	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211204	USRC Rome 91 Perimeter Rd, Rome	16	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211205	USRC Herkimer 201 E. State St, Herkimer	8	Herkimer	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211206	USRC Hamilton 10 Easton St, Hamilton	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211207	USRC Oneida 131 Main St, Oneida	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge

Analysis

The primary service areas of the facilities are their respective counties. The use of dialysis is most prevalent in those aged 65+ and in nonwhite populations. Comparisons between the counties and New York State for these groups are shown below.

	Oneida County	Herkimer County	Madison County	New York State
Population (2019)	228,671	61,319	70,941	19,453,561
Ages 65 and Over	19.2%	21.2%	18.9%	16.9%
Nonwhite	14.0%	4.0%	5.4%	30.4%

Source: U.S. Census 2019

Conclusion

There will be no change in the number of stations at any of the sites. After approval, all sites will offer Home Hemodialysis and Home Peritoneal Dialysis Training and Support services to further the goal of reducing in-center dialysis where possible.

Program Analysis

Character and Competence

The proposed membership of MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC are identical, as indicated in the chart below.

<u>Member</u>	<u>Interest</u>
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC	(90%)
<u>Managers</u>	
Mark Caputo	
Mary Dittrich, MD	
Lynelle McLain	
Steve Nottingham	
James Shelton	
Thomas Weinburg	
AICA Holdings, LLC	(10%)
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	
Total	100%

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc., and all of the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc.

Ahmad Mian, MD is a practicing Nephrologist and currently the Medical Director of MVHS Regional Dialysis Program. He is a partner at Mohawk Valley Nephrology Associates and the current Treasurer of MVHS Medical Staff. He received his medical degree from Ross University School of Medicine in Dominica and completed his residency in Internal Medicine and Nephrology fellowship at Drexel University College of Medicine. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Mian will be the Medical Director for three of the seven locations.

Charles Eldredge, MD is a practicing Nephrologist. He has owned multiple private practices in Nephrology and Internal Medicine, and is a founding partner of Mohawk Valley Nephrology Associates. He is the Medical Director of Faxton-St. Luke's Health Care Dialysis Unit, and is the Treasurer of the Executive Committee and Chairman of the Nurse-Physician Liaison Committee. He received his medical degree from Stony Brook College of Medicine and completed his Internal Medicine residency and Nephrology fellowship at the University of Michigan. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Eldredge will be the Medical Director for four of the seven locations.

Mark Caputo is the Chief Executive Officer and President of U.S. Renal Care, Inc. where he develops and executes strategic plans; drives operational effectiveness; meets company clinical, operational, and financial goals, and represents the company with the press, public, and professional organizations. He was previously employed as the Managing Partner for Joint Ventures at Fresenius Medical Care. He served as Chairman of the Board of Sound Physicians and was previously employed as CEO of Liberty Dialysis.

Mary Dittrich, MD is the Chief Medical Officer of U.S. Renal Care, Inc. She is the current President of Liberty Administrative Services, and is a Consultant for Remedy Partner after previously being their Senior Medical Director. She is the Chief Medical Officer for Glacier Administrative Services and Liberty Health Partners. She was the Medical Director of Liberty Dialysis in Anchorage and Boise. She received her medical degree from the University of Colorado Health Sciences Center and completed her residency in Internal Medicine and Nephrology Fellowship at the University of Washington. She is board certified with a sub-certification in Nephrology.

Lynelle McLain is the Chief Accounting Officer of U.S. Renal Care, Inc. where she manages the Corporate Controller and team, Facility Level Controller and team, Treasury Department, Financial Reporting Team, and Accounts Payable. She reviews and publishes financial statements in accordance with GAAP; reviews and publishes the quarterly lender compliance certificates; reviews and publishes quarterly distribution calculations; and participates and assists with the category management projects. She oversees the monthly financial close process and distribution of financial statements, the annual financial audit and audited financial statements, the quarterly lender financial reporting, and the accuracy of work produced by the accounting department personnel; and oversees and manages the cash position of the company.

Steven Nottingham is the Senior Vice President of Strategic Partnerships of U.S. Renal Care, Inc. where he is responsible for driving profitable growth in 380 dialysis clinics. He is responsible for organizational design and structure for home dialysis and accelerating growth and home penetration, strategizing with the Manage Care and Value Base Teams for solutions to enhance relationships, and creating narrow network. Previously, he was the President of the East Division, the General Manager of the Western Group at Fresenius Kidney Care, the Executive Vice President of Emerging Business and Customer Experience at Iron Mountain Corporation, the Executive Vice President of Product Management, the Senior Vice President of Western US, Senior Vice President of Midwest US, Vice President of Los Angeles and Southwest Territory, and the General Manager of Los Angeles.

James Shelton is the Executive Vice President and Chief Financial Officer of U.S. Renal Care, Inc., where he is responsible for directing the fiscal functions of the corporation and providing strategic leadership for the company by working with the Executive Management Team to establish long-range goals, strategies, plans, and policies, as well as for the overall direction, coordination, and evaluation of the Accounting and Financial Department. He enhances and/or develops, implements, and enforces policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation.

Thomas Weinberg is the Executive Vice President, General Counsel, and Secretary of U.S. Renal Care, Inc., where his responsibilities include the representation and protection of the Company in all legal matters and challenges. He heads the law and risk management functions of the Company, serves as Corporate Secretary for the parent company, and coordinates all representation by others. He assists the CEO, parent board, and other subsidiary boards with governance, corporate compliance, and tax-exempt status and in the planning and strategic development process for all aspects of the organization.

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

Mary Dittrich, Steven Nottingham, James Shelton, and Thomas Weinberg, disclosed U.S. Renal Care, Inc (USRC) acquired Dialysis Corporation of America (DCA), a Florida corporation (nka Dialysis Company of America, LLC), in June 2010. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation related to alleged improper Medicare and Medicaid billing at certain DCA clinics. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigation and litigation. DCA fully cooperated with the inquiry. The investigation related to two qui tam suits with the Department of Justice and private litigants.

United States ex. rel. Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md); and United States ex. rel. Harris, et al. v. DCA, Case No. 1:09-cv-02457-JKB (D. Md). USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S government and the private litigants. The Davis case was settled on May 17, 2013, and the Harris case was settled September 12, 2014. Both suits have been dismissed.

Dr. Eldredge disclosed involvement in two malpractice lawsuits. On October 22, 2018, a malpractice suit was filed against Mohawk Valley Nephrology Associates, the hospital, Mohawk Valley Health System, and other physicians by the patient's son. He alleges her cause of death was due to a medication she received erroneously. She received 10 doses of methadone 10 mg. The methadone was erroneously copied from another patient's medication list by a nurse on the admission previous to her final admission and ordered by the physician on her final admission. The patient had been admitted on her final admission and had refused all treatment. The case is in the discovery phase.

The second malpractice suit was filed on July 23, 2019 by the administrator of the estate, the other individuals. They allege the patient was a college student brought in by her roommate because of confusion and was admitted on April 8, 2019. She had bilateral frontal cerebral contusions and hemorrhages and a bruised left orbit. She was seen by neurology and neurosurgery that day. She quickly deteriorated on April 9th and was taken to the OR for an intercranial drain. On April 10th, 2019 Dr. Eldredge was consulted for polyuria and hyponatremia, felt to be central diabetes insipidus. She was medically managed. She remained on life support for several days. Dr. Eldredge was never served for this case. He was notified on October 3rd, 2019 when asked to sign an affidavit for change of venue to Utica. The case is in the discovery phase.

Additionally, the staff from the DHDC 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 Department took the following enforcement action against U.S. Renal Care, Inc affiliated facilities:

- On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to construction prior to Department of Health approval.

Star Ratings - Dialysis Facility Compare (DFC)

U.S. Renal Care, Inc operates over 300 dialysis centers, nine of which are located in New York. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The below chart lists the Star Ratings for all dialysis centers that USRC operates or is affiliated within NYS.

Facility	Address	STAR Rating
U.S. Renal Care Tonawanda	3161 Eggert Road Tonawanda, NY 14150	***
U.S. Renal Care Amherst Dialysis	2880 Sheridan Avenue Tonawanda, NY 14150	**
U.S. Renal West Cheektowaga Dialysis	2681 Harlem Road Cheektowaga, NY 14225	****
U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14221	**
DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550	***
U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite C/D Cheektowaga, NY 14225	**
U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Bronx, NY 10461	***
U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365	*****

Conclusion

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

Financial Analysis

The applicant has submitted an operating budget for the subject site for the first and third years, in 2022 dollars, which is summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treat</u>	<u>Total</u>	<u>Per Treat</u>	<u>Total</u>
Medicaid-FFS	\$219.88	\$96,307	\$220.15	\$103,910
Medicaid-MC	\$239.97	234,689	\$240.02	253,217
Medicare-FFS	\$260.01	3,016,166	\$260.00	1,903,450
Medicare-MC	\$319.99	1,891,123	\$319.93	3,551,845
Commercial-FFS	\$699.81	1,119,703	\$660.15	1,357,278
Commercial-MC	\$499.66	342,766	\$500.20	440,675
Private Pay	\$256.86	56,252	\$257.17	60,693
All Other	\$260.21	118,914	\$260.25	128,302
Bad Debt		<u>-171,898</u>		<u>-194,984</u>
Total		\$6,704,022		\$7,604,386
<u>Expenses</u>				
Operating	\$251.34	\$5,501,353	\$262.59	\$6,201,338
Capital	<u>\$25.09</u>	<u>549,161</u>	<u>\$23.26</u>	<u>549,284</u>
Total	\$276.43	\$6,050,514	\$285.85	\$6,750,622
Net Income		\$653,508		\$853,764
Total Treatments		21,888		23,616
Cost per Treatment		\$276.43		\$285.85

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid-FFS	438	2.00%	472	2.00%
Medicaid-MC	978	4.47%	1,055	4.47%
Medicare-FFS	11,600	53.00%	7,321	31.00%
Medicare-MC	5,910	27.00%	11,102	47.00%
Commercial-FFS	1,600	7.31%	2,056	8.71%
Commercial-MC	686	3.13%	881	3.73%
Private Pay	219	1.00%	236	1.00%
All Other	<u>457</u>	<u>2.09%</u>	<u>493</u>	<u>2.09%</u>
Total	21,888	100%	23,616	100%

The following is noted with respect to all seven submitted budgets:

- The current operator, Faxton-St. Luke's Healthcare, indicated they did not receive any CARES Act funding for their seven dialysis clinics. The current operator has also not received previous State support for these programs.
- Medicaid and Medicare revenues are based upon the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's service area.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment, and professional fees.
- Utilization is based upon the service area experience and industry trends.
- The submitted budgets are reasonable

In BFA Attachment G, the following are provided:

- The terms of the executed Operating Asset Transfer Agreement (OATA) for the seven dialysis centers that will be effectuated upon PHHPC approval of the CONs.
- The terms of the draft Bill of Sale, Assignment and Assumption Agreement (BSAAA) that will be effectuated upon PHHPC approval of this application. The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.
- The terms of the executed lease and draft lease assignments for each site. The applicant has submitted affidavits stating the leases are arm's length arrangements and have provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rates.
- The terms of the draft Administrative Services Agreements (ASA). Each site will enter into an administrative services agreement with Dialysis Newco, LLC, which is an upstream parent of the MVNY Partners Holding, LLC. However, each 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, the post-closing organization chart, BFA Attachment D. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Faxton-St. Lukes's Healthcare and U.S. Renal Care, Inc. ("USRC"), entered into an Administrative Services Agreement as of March 1, 2021. USRC will assist the hospital in the continued operation of the dialysis business by providing certain non-clinical business and administrative services until the earlier of the dialysis business transfer date or termination of the Administrative Services Agreement. The current monthly fee is \$80,000 for all seven locations, per the applicant.

Capability and Feasibility

The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc. and \$300,000 from AICA Holdings, LLC's members. There are no project costs associated with this application.

Working capital is estimated based on two months of first-year expenses. U.S. Renal Care and AICA Holding's members will contribute the working capital in proportion to their membership interest. BFA Attachment H is the pro forma balance sheets for each facility.

The submitted budgets are reasonable. The individual members' net worth statements (BFA Attachment A) show sufficient liquid resources to meet their portion of the project's equity requirements.

BFA Attachment D is the U.S. Renal Care, Inc.'s NYS-affiliated dialysis centers and their income statement for 2020 and June 30, 2021, which shows positive net income. BFA Attachment F is USRC and Subsidiaries' 2019-2020 certified financial statements and their internal quarterly report as of May 31, 2021. These financial reports reflect both the predecessor and successor organizations for the company that entered into a merger agreement with several sponsors including Bain Capital, Summit Partners, and Revelstoke Capital to acquire approximately 95% of the outstanding equity interest in the company. This acquisition closed on June 28, 2019 and total consideration paid for the Company was \$801.0 million.

The financial statements and quarterly reports indicate the entity maintained positive working capital and net asset positions for the relevant time periods. The net profit was \$28,618,000 after taxes in 2019, including a one-time transaction and legal cost of \$96.8 million. In 2020 they had a net loss after taxes of \$29,898,000, and as of May 31, 2021, the loss increased to \$36,070,607. The applicant indicated that in addition to higher general and administrative expenses for investments in quality and growth, the COVID-19 pandemic increased the mortality rates among dialysis patients resulting in approximately \$33 million reduction in revenue in 2020 and \$30 million through May 2021. USRC also had over \$9 million of unreimbursed pandemic expenses in 2020 and \$15.2 million through May 2021. With the recovery from

COVID-19 underway, USRC projects a profit of \$21,626,251 in 2022 and \$52,864,304 in 2023, as shown on BFA Attachment I. USRC has sufficient liquid resources available to cover its portion of equity requirements.

Conclusion

The applicants have demonstrated the capability to proceed in a financially feasible manner

Attachments

BFA Attachment A	Net Worth Statements for the members of AICA Holdings, LLC
BFA Attachment B	Allocation of Combined Purchase Price by Clinic
BFA Attachment C	Affiliated USRC New York State Dialysis Centers and the New York State Consolidated Financial Statement for 2020 and June 30, 2021
BFA Attachment D	Post-Closing Organizational Chart
BFA Attachment E	Financial Summary of USRC and Subsidiaries Certified 2019-2020 and Unaudited Internal Quarterly Report as of May 31, 2021.
BFA Attachment F	Agreements and Contracts
BFA Attachment G	Pro-Forma Balance Sheets
BFA Attachment H	USRC & Subsidiaries Projected Internal Income Statement for 2022 and 2023



Project # 211202-B
MVNY Partners II, LLC d/b/a
U.S. Renal Care St. Luke's Home Dialysis

Program: Diagnostic and Treatment Center **County:** Oneida
Purpose: Establishment and Construction **Acknowledged:** May 24, 2021

Executive Summary

Description

U.S. Renal Care, Inc., through a subsidiary and in partnership with two local physicians, seeks approval to acquire seven dialysis centers currently operated by Faxton-St. Luke's Healthcare. Each location will be owned and operated by a separate limited liability corporation, MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC.

CON	Proposed Operator	Facility (proposed d/b/a)	Stations
211201	MVNY Partners I, LLC	U.S. Renal Care Faxton Dialysis 1676 Sunset Ave, Utica	36
211202	MVNY Partners II, LLC	U.S. Renal Care St. Luke's Home Dialysis 1650 Champlin Ave, Utica	8
211203	MVNY Partners III, LLC	U.S. Renal Care Masonic Care Community Dialysis 2150 Bleeker St, Utica	20
211204	MVNY Partners IV, LLC	U.S. Renal Care Rome Dialysis 91 Perimeter Rd, Rome	16
211205	MVNY Partners V, LLC	U.S. Renal Care Herkimer Dialysis 201 E. State St, Herkimer	8
211206	MVNY Partners VI, LLC	U.S. Renal Care Hamilton Dialysis 10 Easton St, Hamilton	8
211207	MVNY Partners VII, LLC	U.S. Renal Care Oneida Dialysis 131 Main St, Oneida	8

All seven operators are identical in structure, as indicated in the following chart:

Member	%
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC (90%) (U.S. Renal Care, Inc. subsidiary)	
AICA Holdings, LLC (10%)	
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc. All the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc. AICA Holdings, LLC is comprised of two local nephrologists. As of December 31, 2020, U.S. Renal Care, Inc. (USRC) operated 332 outpatient End-Stage Renal Disease (ESRD) centers located in 32 states.

On March 1, 2021, Faxton-St. Luke's Healthcare entered into an Operating Asset Transfer Agreement (OATA) with MVNY Partners, LLC, the sole member of all seven proposed operators, for the sale and acquisition of the dialysis centers for \$3,000,000. Faxton-St. Luke's Healthcare also sold non-Article 28 assets to MVNY Partners LLC for \$7,000,000, which are not part of this CON application.

In the proposed transactions, MVNY Partners, LLC will convey its interest in each of the seven locations to the respective proposed operator LLCs for the allocated amounts indicated in the table, per the Bill of Sale, Assignment and Assumption Agreement (BSAAA). The applicant states the members will pay it from equity. The OATA and BSAAA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC).

Purchase Price Allocation by CON	
CON 211201	\$1,297,059
CON 211202	\$255,882
CON 211203	\$529,412
CON 211204	\$264,706
CON 211205	\$264,706
CON 211206	\$158,824
CON 211207	\$229,412

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of stations. After approval, all seven sites will provide Home Training and Support services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc., and \$300,000 from AICA Holdings, LLC's members. BFA Attachments A and E are the net worth summary of AICA Holdings, LLC, members and the Financial Statement of U.S. Renal Care, Inc., respectively. Both statements demonstrate sufficient resources to meet the equity requirements. The projected budget for the subject site is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year three</u>
Revenues	\$1,367,372	\$1,530,262
Expenses	\$1,297,918	\$1,418,673
Net Income	\$69,454	\$111,589

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. (BFA)
3. Submission of an executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (BFA)
4. Submission of an executed Assignment of Lease, acceptable to the Department. (BFA)
5. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. (CSL)
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Assignment of Lease Agreement, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed General Assignment, Assumption, Conveyance and Bill of Sale Agreement, acceptable to the Department. (CSL)
12. Submission of a photocopy of an amended and executed Articles of Organization for AICA Holdings, LLC, acceptable to the Department. (CSL)
13. Submission of a photocopy of an amended and executed Operating Agreement for AICA Holdings, LLC, acceptable to the Department. (CSL)
14. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners, LLC, acceptable to the Department. (CSL)
15. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners, LLC, acceptable to the Department. (CSL)
16. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
17. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
18. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Newco, LLC, acceptable to the Department. (CSL)
19. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Newco, LLC, acceptable to the Department. (CSL)
20. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
21. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
22. Submission of a photocopy of the Certificate of Authority for U.S. Renal Care, Inc., acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **one year from the date of the Public Health and Health Planning Council Recommendation Letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 10, 2022

Need Analysis

Proposal

Upon approval of the CONs below, all seven of Faxton- St. Luke's Healthcare outpatient dialysis centers will be acquired by USRC and two local nephrologists. There will be no changes to the number of stations at the sites, located in Oneida, Herkimer, and Madison counties. Six of the sites will add Home Hemodialysis and Home Peritoneal Dialysis Training and Support services (one site already provides the service) in keeping with the CMS and New York State goal of increasing the availability and use of these modalities.

CON	Facility	Stations	County	New Services	Proposed Medical Director
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211202	USRC St. Luke's 1650 Champlin Ave, Utica	8	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211203	USRC Masonic 2150 Bleeker St, Utica	20	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211204	USRC Rome 91 Perimeter Rd, Rome	16	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211205	USRC Herkimer 201 E. State St, Herkimer	8	Herkimer	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211206	USRC Hamilton 10 Easton St, Hamilton	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211207	USRC Oneida 131 Main St, Oneida	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge

Analysis

The primary service areas of the facilities are their respective counties. The use of dialysis is most prevalent in those aged 65+ and in nonwhite populations. Comparisons between the counties and New York State for these groups are shown below.

	Oneida County	Herkimer County	Madison County	New York State
Population (2019)	228,671	61,319	70,941	19,453,561
Ages 65 and Over	19.2%	21.2%	18.9%	16.9%
Nonwhite	14.0%	4.0%	5.4%	30.4%

Source: U.S. Census 2019

Conclusion

There will be no change in the number of stations at any of the sites. After approval, all sites will offer Home Hemodialysis and Home Peritoneal Dialysis Training and Support services to further the goal of reducing in-center dialysis where possible.

Program Analysis

Character and Competence

The proposed membership of MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC are identical, as indicated in the chart below.

<u>Member</u>	<u>Interest</u>
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC	(90%)
<u>Managers</u>	
Mark Caputo	
Mary Dittrich, MD	
Lynelle McLain	
Steve Nottingham	
James Shelton	
Thomas Weinburg	
AICA Holdings, LLC	(10%)
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	
Total	100%

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc., and all of the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc.

Ahmad Mian, MD is a practicing Nephrologist and currently the Medical Director of MVHS Regional Dialysis Program. He is a partner at Mohawk Valley Nephrology Associates and the current Treasurer of MVHS Medical Staff. He received his medical degree from Ross University School of Medicine in Dominica and completed his residency in Internal Medicine and Nephrology fellowship at Drexel University College of Medicine. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Mian will be the Medical Director for three of the seven locations.

Charles Eldredge, MD is a practicing Nephrologist. He has owned multiple private practices in Nephrology and Internal Medicine and is a founding partner of Mohawk Valley Nephrology Associates. He is the Medical Director of Faxton-St. Luke's Health Care Dialysis Unit, and is the Treasurer of the Executive Committee and Chairman of the Nurse-Physician Liaison Committee. He received his medical degree from Stony Brook College of Medicine and completed his Internal Medicine residency and Nephrology fellowship at the University of Michigan. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Eldredge will be the Medical Director for four of the seven locations.

Mark Caputo is the Chief Executive Officer and President of U.S. Renal Care, Inc. where he develops and executes strategic plans; drives operational effectiveness; meets company clinical, operational, and financial goals, and represents the company with the press, public, and professional organizations. He was previously employed as the Managing Partner for Joint Ventures at Fresenius Medical Care. He served as Chairman of the Board of Sound Physicians and was previously employed as CEO of Liberty Dialysis.

Mary Dittrich, MD is the Chief Medical Officer of U.S. Renal Care, Inc. She is the current President of Liberty Administrative Services and is a Consultant for Remedy Partner after previously being their Senior Medical Director. She is the Chief Medical Officer for Glacier Administrative Services and Liberty Health Partners. She was the Medical Director of Liberty Dialysis in Anchorage and Boise. She received her medical degree from the University of Colorado Health Sciences Center and completed her residency in Internal Medicine and Nephrology Fellowship at the University of Washington. She is board certified with a sub-certification in Nephrology.

Lynelle McLain is the Chief Accounting Officer of U.S. Renal Care, Inc. where she manages the Corporate Controller and team, Facility Level Controller and team, Treasury Department, Financial Reporting Team, and Accounts Payable. She reviews and publishes financial statements in accordance with GAAP; reviews and publishes the quarterly lender compliance certificates; reviews and publishes quarterly distribution calculations; and participates and assists with the category management projects. She oversees the monthly financial close process and distribution of financial statements, the annual financial audit and audited financial statements, the quarterly lender financial reporting, and the accuracy of work produced by the accounting department personnel; and oversees and manages the cash position of the company.

Steven Nottingham is the Senior Vice President of Strategic Partnerships of U.S. Renal Care, Inc. where he is responsible for driving profitable growth in 380 dialysis clinics. He is responsible for organizational design and structure for home dialysis and accelerating growth and home penetration, strategizing with the Manage Care and Value Base Teams for solutions to enhance relationships, and creating narrow network. Previously, he was the President of the East Division, the General Manager of the Western Group at Fresenius Kidney Care, the Executive Vice President of Emerging Business and Customer Experience at Iron Mountain Corporation, the Executive Vice President of Product Management, the Senior Vice President of Western US, Senior Vice President of Midwest US, Vice President of Los Angeles and Southwest Territory, and the General Manager of Los Angeles.

James Shelton is the Executive Vice President and Chief Financial Officer of U.S. Renal Care, Inc., where he is responsible for directing the fiscal functions of the corporation and providing strategic leadership for the company by working with the Executive Management Team to establish long-range goals, strategies, plans, and policies, as well as for the overall direction, coordination, and evaluation of the Accounting and Financial Department. He enhances and/or develops, implements, and enforces policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation.

Thomas Weinberg is the Executive Vice President, General Counsel, and Secretary of U.S. Renal Care, Inc., where his responsibilities include the representation and protection of the Company in all legal matters and challenges. He heads the law and risk management functions of the Company, serves as Corporate Secretary for the parent company, and coordinates all representation by others. He assists the CEO, parent board, and other subsidiary boards with governance, corporate compliance, and tax-exempt status and in the planning and strategic development process for all aspects of the organization.

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

Mary Dittrich, Steven Nottingham, James Shelton, and Thomas Weinberg, disclosed U.S. Renal Care, Inc (USRC) acquired Dialysis Corporation of America (DCA), a Florida corporation (nka Dialysis Company of America, LLC), in June 2010. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation related to alleged improper Medicare and Medicaid billing at certain DCA clinics. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigation and litigation. DCA fully cooperated with the inquiry. The investigation related to two qui tam suits with the Department of Justice and private litigants.

United States ex. rel. Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md); and United States ex. rel. Harris, et al. v. DCA, Case No. 1:09-cv-02457-JKB (D. Md). USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S government and the private litigants. The Davis case was settled on May 17, 2013, and the Harris case was settled September 12, 2014. Both suits have been dismissed.

Dr. Eldredge disclosed involvement in two malpractice lawsuits. On October 22, 2018, a malpractice suit was filed against Mohawk Valley Nephrology Associates, the hospital, Mohawk Valley Health System, and other physicians by the patient's son. He alleges her cause of death was due to a medication she received erroneously. She received 10 doses of methadone 10 mg. The methadone was erroneously copied from another patient's medication list by a nurse on the admission previous to her final admission and ordered by the physician on her final admission. The patient had been admitted on her final admission and had refused all treatment. The case is in the discovery phase.

The second malpractice suit was filed on July 23, 2019 by the administrator of the estate, the other individuals. They allege the patient was a college student brought in by her roommate because of confusion and was admitted on April 8, 2019. She had bilateral frontal cerebral contusions and hemorrhages and a bruised left orbit. She was seen by neurology and neurosurgery that day. She quickly deteriorated on April 9th and was taken to the OR for an intercranial drain. On April 10th, 2019 Dr. Eldredge was consulted for polyuria and hyponatremia, felt to be central diabetes insipidus. She was medically managed. She remained on life support for several days. Dr. Eldredge was never served for this case. He was notified on October 3rd, 2019 when asked to sign an affidavit for change of venue to Utica. The case is in the discovery phase.

Additionally, the staff from the DHDC 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 Department took the following enforcement action against U.S. Renal Care, Inc affiliated facilities:

- On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to construction prior to Department of Health approval.

Star Ratings - Dialysis Facility Compare (DFC)

U.S. Renal Care, Inc operates over 300 dialysis centers, nine of which are located in New York. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The below chart lists the Star Ratings for all dialysis centers that USRC operates or is affiliated within NYS.

Facility	Address	STAR Rating
U.S. Renal Care Tonawanda	3161 Eggert Road Tonawanda, NY 14150	***
U.S. Renal Care Amherst Dialysis	2880 Sheridan Avenue Tonawanda, NY 14150	**
U.S. Renal West Cheektowaga Dialysis	2681 Harlem Road Cheektowaga, NY 14225	****
U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14221	**
DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550	***
U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite C/D Cheektowaga, NY 14225	**
U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Bronx, NY 10461	***
U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365	*****

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted an operating budget for the subject site for the first and third years, in 2022 dollars, which is summarized below:

<u>Revenues</u>	Year One		Year Three	
	Per Treat	Total	Per Treat	Total
Medicaid-FFS	\$220.70	\$19,642	\$220.09	\$20,909
Medicaid-MC	\$239.86	47,971	\$239.75	51,066
Medicare-FFS	\$259.99	615,139	\$260.02	383,011
Medicare-MC	\$320.07	385,690	\$320.06	714,701
Commercial-FFS	\$700.49	228,360	\$659.69	273,111
Commercial-MC	\$499.33	69,906	\$500.97	88,672
Private Pay	\$254.93	11,472	\$254.44	12,213
All Other	\$260.77	24,252	\$260.78	25,817
Bad Debt		<u>-35,060</u>		<u>-39,238</u>
Total		\$1,367,372		\$1,530,262
<u>Expenses</u>				
Operating	\$258.99	\$1,156,144	\$268.33	\$1,275,118
Capital	<u>\$31.76</u>	<u>141,774</u>	<u>\$30.21</u>	<u>143,555</u>
Total	\$290.75	\$1,297,918	\$298.54	\$1,418,673
Net Income		<u>\$69,454</u>		<u>\$111,589</u>
Total Treatments		4,464		4,752
Cost per Treatment		\$290.75		\$298.54

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor</u>	Year One		Year Three	
	Treatments	%	Treatments	%
Medicaid-FFS	89	1.99%	95	2.00%
Medicaid-MC	200	4.48%	213	4.48%
Medicare-FFS	2,366	53.01%	1,473	31.01%
Medicare-MC	1,205	26.99%	2,233	46.99%
Commercial-FFS	326	7.30%	414	8.71%
Commercial-MC	140	3.14%	177	3.72%
Private Pay	45	1.01%	48	1.01%
All Other	<u>93</u>	<u>2.08%</u>	<u>99</u>	<u>2.08%</u>
Total	4,464	100%	4,752	100%

The following is noted with respect to all seven submitted budgets:

- The current operator, Faxton-St. Luke's Healthcare, indicated they did not receive any CARES Act funding for their seven dialysis clinics. The current operator has also not received previous State support for these programs.
- Medicaid and Medicare revenues are based upon the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's service area.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment, and professional fees.
- Utilization is based upon the service area experience and industry trends.
- The submitted budgets are reasonable

In BFA Attachment G, the following are provided:

- The terms of the executed Operating Asset Transfer Agreement (OATA) for the seven dialysis centers that will be effectuated upon PHHPC approval of the CONs.
- The terms of the draft Bill of Sale, Assignment, and Assumption Agreement (BSAAA) that will be effectuated upon PHHPC approval of this application. The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.
- The terms of the executed lease and draft lease assignments for each site. The applicant has submitted affidavits stating the leases are arm's length arrangements and have provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rates.
- The terms of the draft Administrative Services Agreements (ASA). Each site will enter into an administrative services agreement with Dialysis Newco, LLC, which is an upstream parent of the MVNY Partners Holding, LLC. However, each 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, the post-closing organization chart, BFA Attachment D. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Faxton-St. Lukes's Healthcare and U.S. Renal Care, Inc. ("USRC"), entered into an Administrative Services Agreement as of March 1, 2021. USRC will assist the hospital in the continued operation of the dialysis business by providing certain non-clinical business and administrative services until the earlier of the dialysis business transfer date or termination of the Administrative Services Agreement. The current monthly fee is \$80,000 for all seven locations, per the applicant.

Capability and Feasibility

The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc. and \$300,000 from AICA Holdings, LLC's members. There are no project costs associated with this application.

Working capital is estimated based on two months of first-year expenses. U.S. Renal Care and AICA Holding's members will contribute the working capital in proportion to their membership interest. BFA Attachment H is the pro forma balance sheets for each facility.

The submitted budgets are reasonable. The individual members' net worth statements (BFA Attachment A) show sufficient liquid resources to meet their portion of the project's equity requirements.

BFA Attachment D is the U.S. Renal Care, Inc.'s NYS-affiliated dialysis centers and their income statement for 2020 and June 30, 2021, which shows positive net income. BFA Attachment F is USRC and Subsidiaries' 2019-2020 certified financial statements and their internal quarterly report as of May 31, 2021. These financial reports reflect both the predecessor and successor organizations for the company that entered into a merger agreement with several sponsors including Bain Capital, Summit Partners, and Revelstoke Capital to acquire approximately 95% of the outstanding equity interest in the company. This acquisition closed on June 28, 2019 and total consideration paid for the Company was \$801.0 million.

The financial statements and quarterly reports indicate the entity maintained positive working capital and net asset positions for the relevant time periods. The net profit was \$28,618,000 after taxes in 2019 including a one-time transaction and legal cost of \$96.8 million. In 2020 they had a net loss after taxes of \$29,898,000, and as of May 31, 2021 the loss increased to \$36,070,607. The applicant indicated that in addition to higher general and administrative expenses for investments in quality and growth, the COVID-19 pandemic increased the mortality rates among dialysis patients resulting in approximately \$33 million reduction in revenue in 2020 and \$30 million through May 2021. USRC also had over \$9 million of unreimbursed pandemic expenses in 2020 and \$15.2 million through May 2021. With the recovery from

COVID-19 underway, USRC projects a profit of \$21,626,251 in 2022 and \$52,864,304 in 2023, as shown on BFA Attachment I. USRC has sufficient liquid resources available to cover its portion of equity requirements.

Conclusion

The applicants have demonstrated the capability to proceed in a financially feasible manner

Attachments

BFA Attachment A	Net Worth Statements for the members of AICA Holdings, LLC
BFA Attachment B	Allocation of Combined Purchase Price by Clinic
BFA Attachment C	Affiliated USRC New York State Dialysis Centers and the New York State Consolidated Financial Statement for 2020 and June 30, 2021
BFA Attachment D	Post-Closing Organizational Chart
BFA Attachment E	Financial Summary of USRC and Subsidiaries Certified 2019-2020 and Unaudited Internal Quarterly Report as of May 31, 2021.
BFA Attachment F	Agreements and Contracts
BFA Attachment G	Pro-Forma Balance Sheets
BFA Attachment H	USRC & Subsidiaries Projected Internal Income Statement for 2022 and 2023



Project # 211203-B
MVNY Partners III, LLC d/b/a
U.S. Renal Care Masonic Care Community Dialysis

Program: Diagnostic and Treatment Center **County:** Oneida
Purpose: Establishment and Construction **Acknowledged:** May 27, 2021

Executive Summary

Description

U.S. Renal Care, Inc., through a subsidiary and in partnership with two local physicians, seeks approval to acquire seven dialysis centers currently operated by Faxton-St. Luke's Healthcare. Each location will be owned and operated by a separate limited liability corporation, MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC.

CON	Proposed Operator	Facility (proposed d/b/a)	Stations
211201	MVNY Partners I, LLC	U.S. Renal Care Faxton Dialysis 1676 Sunset Ave, Utica	36
211202	MVNY Partners II, LLC	U.S. Renal Care St. Luke's Home Dialysis 1650 Champlin Ave, Utica	8
211203	MVNY Partners III, LLC	U.S. Renal Care Masonic Care Community Dialysis 2150 Bleeker St, Utica	20
211204	MVNY Partners IV, LLC	U.S. Renal Care Rome Dialysis 91 Perimeter Rd, Rome	16
211205	MVNY Partners V, LLC	U.S. Renal Care Herkimer Dialysis 201 E. State St, Herkimer	8
211206	MVNY Partners VI, LLC	U.S. Renal Care Hamilton Dialysis 10 Easton St, Hamilton	8
211207	MVNY Partners VII, LLC	U.S. Renal Care Oneida Dialysis 131 Main St, Oneida	8

All seven operators are identical in structure, as indicated in the following chart:

Member	%
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC (90%) (U.S. Renal Care, Inc. subsidiary)	
AICA Holdings, LLC (10%)	
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc. All the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc. AICA Holdings, LLC is comprised of two local nephrologists. As of December 31, 2020, U.S. Renal Care, Inc. (USRC) operated 332 outpatient End-Stage Renal Disease (ESRD) centers located in 32 states.

On March 1, 2021, Faxton-St. Luke's Healthcare entered into an Operating Asset Transfer Agreement (OATA) with MVNY Partners, LLC, the sole member of all seven proposed operators, for the sale and acquisition of the dialysis centers for \$3,000,000. Faxton-St. Luke's Healthcare also sold non-Article 28 assets to MVNY Partners LLC for \$7,000,000, which are not part of this CON application.

In the proposed transactions, MVNY Partners, LLC will convey its interest in each of the seven locations to the respective proposed operator LLCs for the allocated amounts indicated in the table, per the Bill of Sale, Assignment and Assumption Agreement (BSAAA). The applicant states the members will pay it from equity. The OATA and BSAAA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC).

Purchase Price Allocation by CON	
CON 211201	\$1,297,059
CON 211202	\$255,882
CON 211203	\$529,412
CON 211204	\$264,706
CON 211205	\$264,706
CON 211206	\$158,824
CON 211207	\$229,412

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of stations. After approval, all seven sites will provide Home Training and Support services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc., and \$300,000 from AICA Holdings, LLC's members. BFA Attachments A and E are the net worth summary of AICA Holdings, LLC, members and the Financial Statement of U.S. Renal Care, Inc., respectively. Both statements demonstrate sufficient resources to meet the equity requirements. The projected budget for the subject site is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,425,982	\$2,643,180
Expenses	<u>\$2,310,335</u>	<u>\$2,477,503</u>
Net Income	\$115,647	\$165,677

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. (BFA)
3. Submission of an executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (BFA)
4. Submission of an executed Assignment of Lease, acceptable to the Department. (BFA)
5. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. (CSL)
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Assignment of Lease Agreement, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed Assignment and Assumption of Lease and Landlord Consent, acceptable to the Department. (CSL)
12. Submission of a photocopy of an amended and executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (CSL)
13. Submission of a photocopy of an amended and executed General Assignment, Assumption, Conveyance and Bill of Sale Agreement, acceptable to the Department. (CSL)
14. Submission of a photocopy of an amended and executed Articles of Organization for AICA Holdings, LLC, acceptable to the Department. (CSL)
15. Submission of a photocopy of an amended and executed Operating Agreement for AICA Holdings, LLC, acceptable to the Department. (CSL)
16. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners, LLC, acceptable to the Department. (CSL)
17. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners, LLC, acceptable to the Department. (CSL)
18. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
19. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
20. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Newco, LLC, acceptable to the Department. (CSL)
21. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Newco, LLC, acceptable to the Department. (CSL)
22. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
23. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
24. Submission of a photocopy of the Certificate of Authority for U.S. Renal Care, Inc., acceptable to the Department. (CSL)
25. Submission of a photocopy of an amended and executed Leaseback Agreement, acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **one year from the date of the Public Health and Health Planning Council Recommendation Letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 10, 2022

Need Analysis

Proposal

Upon approval of the CONs below, all seven of Faxton- St. Luke's Healthcare outpatient dialysis centers will be acquired by USRC and two local nephrologists. There will be no changes to the number of stations at the sites, located in Oneida, Herkimer, and Madison counties. Six of the sites will add Home Hemodialysis and Home Peritoneal Dialysis Training and Support services (one site already provides the service) in keeping with the CMS and New York State goal of increasing the availability and use of these modalities.

CON	Facility	Stations	County	New Services	Proposed Medical Director
211201	USRC Faxton 1676 Sunset Ave, Utica	36	Oneida	None	Ahmad Mian
211202	USRC St. Luke's 1650 Champlin Ave, Utica	8	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211203	USRC Masonic 2150 Bleeker St, Utica	20	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211204	USRC Rome 91 Perimeter Rd, Rome	16	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211205	USRC Herkimer 201 E. State St, Herkimer	8	Herkimer	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211206	USRC Hamilton 10 Easton St, Hamilton	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211207	USRC Oneida 131 Main St, Oneida	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge

Analysis

The primary service areas of the facilities are their respective counties. The use of dialysis is most prevalent in those aged 65+ and in nonwhite populations. Comparisons between the counties and New York State for these groups are shown below.

	Oneida County	Herkimer County	Madison County	New York State
Population (2019)	228,671	61,319	70,941	19,453,561
Ages 65 and Over	19.2%	21.2%	18.9%	16.9%
Nonwhite	14.0%	4.0%	5.4%	30.4%

Source: U.S. Census 2019

Conclusion

There will be no change in the number of stations at any of the sites. After approval, all sites will offer Home Hemodialysis and Home Peritoneal Dialysis Training and Support services to further the goal of reducing in-center dialysis where possible.

Program Analysis

Character and Competence

The proposed membership of MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC are identical, as indicated in the chart below.

<u>Member</u>	<u>Interest</u>
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC	(90%)
<u>Managers</u>	
Mark Caputo	
Mary Dittrich, MD	
Lynelle McLain	
Steve Nottingham	
James Shelton	
Thomas Weinburg	
AICA Holdings, LLC	(10%)
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	
Total	100%

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc., and all of the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc.

Ahmad Mian, MD is a practicing Nephrologist and currently the Medical Director of MVHS Regional Dialysis Program. He is a partner at Mohawk Valley Nephrology Associates and the current Treasurer of MVHS Medical Staff. He received his medical degree from Ross University School of Medicine in Dominica and completed his residency in Internal Medicine and Nephrology fellowship at Drexel University College of Medicine. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Mian will be the Medical Director for three of the seven locations.

Charles Eldredge, MD is a practicing Nephrologist. He has owned multiple private practices in Nephrology and Internal Medicine and is a founding partner of Mohawk Valley Nephrology Associates. He is the Medical Director of Faxton-St. Luke's Health Care Dialysis Unit, and is the Treasurer of the Executive Committee and Chairman of the Nurse-Physician Liaison Committee. He received his medical degree from Stony Brook College of Medicine and completed his Internal Medicine residency and Nephrology fellowship at the University of Michigan. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Eldredge will be the Medical Director for four of the seven locations.

Mark Caputo is the Chief Executive Officer and President of U.S. Renal Care, Inc. where he develops and executes strategic plans; drives operational effectiveness; meets company clinical, operational, and financial goals, and represents the company with the press, public, and professional organizations. He was previously employed as the Managing Partner for Joint Ventures at Fresenius Medical Care. He served as Chairman of the Board of Sound Physicians and was previously employed as CEO of Liberty Dialysis.

Mary Dittrich, MD is the Chief Medical Officer of U.S. Renal Care, Inc. She is the current President of Liberty Administrative Services and is a Consultant for Remedy Partner after previously being their Senior Medical Director. She is the Chief Medical Officer for Glacier Administrative Services and Liberty Health Partners. She was the Medical Director of Liberty Dialysis in Anchorage and Boise. She received her medical degree from the University of Colorado Health Sciences Center and completed her residency in Internal Medicine and Nephrology Fellowship at the University of Washington. She is board certified with a sub-certification in Nephrology.

Lynelle McLain is the Chief Accounting Officer of U.S. Renal Care, Inc. where she manages the Corporate Controller and team, Facility Level Controller and team, Treasury Department, Financial Reporting Team, and Accounts Payable. She reviews and publishes financial statements in accordance with GAAP; reviews and publishes the quarterly lender compliance certificates; reviews and publishes quarterly distribution calculations; and participates and assists with the category management projects. She oversees the monthly financial close process and distribution of financial statements, the annual financial audit and audited financial statements, the quarterly lender financial reporting, and the accuracy of work produced by the accounting department personnel; and oversees and manages the cash position of the company.

Steven Nottingham is the Senior Vice President of Strategic Partnerships of U.S. Renal Care, Inc. where he is responsible for driving profitable growth in 380 dialysis clinics. He is responsible for organizational design and structure for home dialysis and accelerating growth and home penetration, strategizing with the Manage Care and Value Base Teams for solutions to enhance relationships, and creating narrow network. Previously, he was the President of the East Division, the General Manager of the Western Group at Fresenius Kidney Care, the Executive Vice President of Emerging Business and Customer Experience at Iron Mountain Corporation, the Executive Vice President of Product Management, the Senior Vice President of Western US, Senior Vice President of Midwest US, Vice President of Los Angeles and Southwest Territory, and the General Manager of Los Angeles.

James Shelton is the Executive Vice President and Chief Financial Officer of U.S. Renal Care, Inc., where he is responsible for directing the fiscal functions of the corporation and providing strategic leadership for the company by working with the Executive Management Team to establish long-range goals, strategies, plans, and policies, as well as for the overall direction, coordination, and evaluation of the Accounting and Financial Department. He enhances and/or develops, implements, and enforces policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation.

Thomas Weinberg is the Executive Vice President, General Counsel, and Secretary of U.S. Renal Care, Inc., where his responsibilities include the representation and protection of the Company in all legal matters and challenges. He heads the law and risk management functions of the Company, serves as Corporate Secretary for the parent company, and coordinates all representation by others. He assists the CEO, parent board, and other subsidiary boards with governance, corporate compliance, and tax-exempt status and in the planning and strategic development process for all aspects of the organization.

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

Mary Dittrich, Steven Nottingham, James Shelton, and Thomas Weinberg, disclosed U.S. Renal Care, Inc (USRC) acquired Dialysis Corporation of America (DCA), a Florida corporation (nka Dialysis Company of America, LLC), in June 2010. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation related to alleged improper Medicare and Medicaid billing at certain DCA clinics. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigation and litigation. DCA fully cooperated with the inquiry. The investigation related to two qui tam suits with the Department of Justice and private litigants.

United States ex. rel. Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md); and United States ex. rel. Harris, et al. v. DCA, Case No. 1:09-cv-02457-JKB (D. Md). USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S government and the private litigants. The Davis case was settled on May 17, 2013, and the Harris case was settled September 12, 2014. Both suits have been dismissed.

Dr. Eldredge disclosed involvement in two malpractice lawsuits. On October 22, 2018, a malpractice suit was filed against Mohawk Valley Nephrology Associates, the hospital, Mohawk Valley Health System, and other physicians by the patient's son. He alleges her cause of death was due to a medication she received erroneously. She received 10 doses of methadone 10 mg. The methadone was erroneously copied from another patient's medication list by a nurse on the admission previous to her final admission and ordered by the physician on her final admission. The patient had been admitted on her final admission and had refused all treatment. The case is in the discovery phase.

The second malpractice suit was filed on July 23, 2019 by the administrator of the estate, the other individuals. They allege the patient was a college student brought in by her roommate because of confusion and was admitted on April 8, 2019. She had bilateral frontal cerebral contusions and hemorrhages and a bruised left orbit. She was seen by neurology and neurosurgery that day. She quickly deteriorated on April 9th and was taken to the OR for an intercranial drain. On April 10th, 2019 Dr. Eldredge was consulted for polyuria and hyponatremia, felt to be central diabetes insipidus. She was medically managed. She remained on life support for several days. Dr. Eldredge was never served for this case. He was notified on October 3rd, 2019 when asked to sign an affidavit for change of venue to Utica. The case is in the discovery phase.

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

The Department took the following enforcement action against U.S. Renal Care, Inc affiliated facilities:

- On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to construction prior to Department of Health approval.

Star Ratings - Dialysis Facility Compare (DFC)

U.S. Renal Care, Inc operates over 300 dialysis centers, nine of which are located in New York. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The below chart lists the Star Ratings for all dialysis centers that USRC operates or is affiliated within NYS.

Facility	Address	STAR Rating
U.S. Renal Care Tonawanda	3161 Eggert Road Tonawanda, NY 14150	***
U.S. Renal Care Amherst Dialysis	2880 Sheridan Avenue Tonawanda, NY 14150	**
U.S. Renal West Cheektowaga Dialysis	2681 Harlem Road Cheektowaga, NY 14225	****
U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14221	**
DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550	***
U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite C/D Cheektowaga, NY 14225	**
U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Bronx, NY 10461	***
U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365	*****

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted an operating budget for the subject site for the first and third years, in 2022 dollars, which is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treat</u>	<u>Total</u>	<u>Per Treat</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$220.56	\$34,848	\$220.21	\$36,115
Medicaid MC	\$239.75	85,110	\$239.69	88,205
Medicare FFS	\$259.98	1,091,376	\$260.05	661,565
Medicare MC	\$320.06	684,288	\$319.98	1,234,483
Commercial FFS	\$699.75	405,156	\$659.77	471,737
Commercial MC	\$500.11	124,027	\$500.53	153,161
Private Pay	\$257.65	20,354	\$257.26	21,095
Other	\$260.78	43,028	\$259.26	44,593
Bad Debt		<u>(62,205)</u>		<u>(67,774)</u>
Total Revenues		2,425,982		\$2,643,180
<u>Expenses</u>				
Operating	\$257.02	\$2,035,635	\$267.97	\$2,199,751
Capital	<u>\$34.68</u>	<u>274,700</u>	<u>\$33.84</u>	<u>277,752</u>
Total Expenses	\$291.71	\$2,310,335	\$301.80	\$2,477,503
Net Income		<u>\$115,647</u>		<u>\$165,677</u>
Treatments		7,920		8,209
Cost per Treatment		\$291.71		\$301.80

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid FFS	158	1.99%	164	2.00%
Medicaid MC	355	4.48%	368	4.48%
Medicare FFS	4,198	53.01%	2,544	30.99%
Medicare MC	2,138	26.99%	3,858	47.00%
Commercial FFS	579	7.31%	715	8.71%
Commercial MC	248	3.31%	306	3.73%
Private Pay	79	1.00%	82	1.00%
All Other	<u>165</u>	<u>2.08%</u>	<u>172</u>	<u>2.10%</u>
Total	7,920	100%	8,209	100%

The following is noted with respect to all seven submitted budgets:

- The current operator, Faxton-St. Luke's Healthcare, indicated they did not receive any CARES Act funding for their seven dialysis clinics. The current operator has also not received previous State support for these programs.
- Medicaid and Medicare revenues are based upon the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's service area.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment, and professional fees.
- Utilization is based upon the service area experience and industry trends.
- The submitted budgets are reasonable

In BFA Attachment G, the following are provided:

- The terms of the executed Operating Asset Transfer Agreement (OATA) for the seven dialysis centers that will be effectuated upon PHHPC approval of the CONs.
- The terms of the draft Bill of Sale, Assignment and Assumption Agreement (BSAAA) that will be effectuated upon PHHPC approval of this application. The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.
- The terms of the executed lease and draft lease assignments for each site. The applicant has submitted affidavits stating the leases are arm's length arrangements and have provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rates.
- The terms of the draft Administrative Services Agreements (ASA). Each site will enter into an administrative services agreement with Dialysis Newco, LLC, which is an upstream parent of the MVNY Partners Holding, LLC. However, each 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, the post-closing organization chart, BFA Attachment D. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Faxton-St. Lukes's Healthcare and U.S. Renal Care, Inc. ("USRC"), entered into an Administrative Services Agreement as of March 1, 2021. USRC will assist the hospital in the continued operation of the dialysis business by providing certain non-clinical business and administrative services until the earlier of the dialysis business transfer date or termination of the Administrative Services Agreement. The current monthly fee is \$80,000 for all seven locations, per the applicant.

Capability and Feasibility

The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc. and \$300,000 from AICA Holdings, LLC's members. There are no project costs associated with this application.

Working capital is estimated based on two months of first-year expenses. U.S. Renal Care and AICA Holding's members will contribute the working capital in proportion to their membership interest. BFA Attachment H is the pro forma balance sheets for each facility.

The submitted budgets are reasonable. The individual members' net worth statements (BFA Attachment A) show sufficient liquid resources to meet their portion of the project's equity requirements.

BFA Attachment D is the U.S. Renal Care, Inc.'s NYS-affiliated dialysis centers and their income statement for 2020 and June 30, 2021, which shows positive net income. BFA Attachment F is USRC and Subsidiaries' 2019-2020 certified financial statements and their internal quarterly report as of May 31, 2021. These financial reports reflect both the predecessor and successor organizations for the company that entered into a merger agreement with several sponsors including Bain Capital, Summit Partners, and Revelstoke Capital to acquire approximately 95% of the outstanding equity interest in the company. This acquisition closed on June 28, 2019 and total consideration paid for the Company was \$801.0 million.

The financial statements and quarterly reports indicate the entity maintained positive working capital and net asset positions for the relevant time periods. The net profit was \$28,618,000 after taxes in 2019, including a one-time transaction and legal cost of \$96.8 million. In 2020 they had a net loss after taxes of \$29,898,000, and as of May 31, 2021, the loss increased to \$36,070,607. The applicant indicated that in addition to higher general and administrative expenses for investments in quality and growth, the COVID-19 pandemic increased the mortality rates among dialysis patients resulting in approximately \$33 million reduction in revenue in 2020 and \$30 million through May 2021. USRC also had over \$9 million of

unreimbursed pandemic expenses in 2020 and \$15.2 million through May 2021. With the recovery from COVID-19 underway, USRC projects a profit of \$21,626,251 in 2022 and \$52,864,304 in 2023, as shown on BFA Attachment I. USRC has sufficient liquid resources available to cover its portion of equity requirements.

Conclusion

The applicants have demonstrated the capability to proceed in a financially feasible manner

Attachments

BFA Attachment A	Net Worth Statements for the members of AICA Holdings, LLC
BFA Attachment B	Allocation of Combined Purchase Price by Clinic
BFA Attachment C	Affiliated USRC New York State Dialysis Centers and the New York State Consolidated Financial Statement for 2020 and June 30, 2021
BFA Attachment D	Post-Closing Organizational Chart
BFA Attachment E	Financial Summary of USRC and Subsidiaries Certified 2019-2020 and Unaudited Internal Quarterly Report as of May 31, 2021.
BFA Attachment F	Agreements and Contracts
BFA Attachment G	Pro-Forma Balance Sheets
BFA Attachment H	USRC & Subsidiaries Projected Internal Income Statement for 2022 and 2023



Project # 211204-B
MVNY Partners IV, LLC d/b/a
U.S. Renal Care Rome Dialysis

Program: Diagnostic and Treatment Center **County:** Oneida
Purpose: Establishment and Construction **Acknowledged:** May 21, 2021

Executive Summary

Description

U.S. Renal Care, Inc., through a subsidiary and in partnership with two local physicians, seeks approval to acquire seven dialysis centers currently operated by Faxton-St. Luke's Healthcare. Each location will be owned and operated by a separate limited liability corporation, MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC.

CON	Proposed Operator	Facility (proposed d/b/a)	Stations
211201	MVNY Partners I, LLC	U.S. Renal Care Faxton Dialysis 1676 Sunset Ave, Utica	36
211202	MVNY Partners II, LLC	U.S. Renal Care St. Luke's Home Dialysis 1650 Champlin Ave, Utica	8
211203	MVNY Partners III, LLC	U.S. Renal Care Masonic Care Community Dialysis 2150 Bleeker St, Utica	20
211204	MVNY Partners IV, LLC	U.S. Renal Care Rome Dialysis 91 Perimeter Rd, Rome	16
211205	MVNY Partners V, LLC	U.S. Renal Care Herkimer Dialysis 201 E. State St, Herkimer	8
211206	MVNY Partners VI, LLC	U.S. Renal Care Hamilton Dialysis 10 Easton St, Hamilton	8
211207	MVNY Partners VII, LLC	U.S. Renal Care Oneida Dialysis 131 Main St, Oneida	8

All seven operators are identical in structure, as indicated in the following chart:

Member	%
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC (90%) (U.S. Renal Care, Inc. subsidiary)	
AICA Holdings, LLC (10%)	
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc. All the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc. AICA Holdings, LLC is comprised of two local nephrologists. As of December 31, 2020, U.S. Renal Care, Inc. (USRC) operated 332 outpatient End-Stage Renal Disease (ESRD) centers located in 32 states.

On March 1, 2021, Faxton-St. Luke's Healthcare entered into an Operating Asset Transfer Agreement (OATA) with MVNY Partners, LLC, the sole member of all seven proposed operators, for the sale and acquisition of the dialysis centers for \$3,000,000. Faxton-St. Luke's Healthcare also sold non-Article 28 assets to MVNY Partners LLC for \$7,000,000, which are not part of this CON application.

In the proposed transactions, MVNY Partners, LLC will convey its interest in each of the seven locations to the respective proposed operator LLCs for the allocated amounts indicated in the table, per the Bill of Sale, Assignment and Assumption Agreement (BSAAA). The applicant states the members will pay it from equity. The OATA and BSAAA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC).

Purchase Price Allocation by CON	
CON 211201	\$1,297,059
CON 211202	\$255,882
CON 211203	\$529,412
CON 211204	\$264,706
CON 211205	\$264,706
CON 211206	\$158,824
CON 211207	\$229,412

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of stations. After approval, all seven sites will provide Home Training and Support services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc., and \$300,000 from AICA Holdings, LLC's members. BFA Attachments A and E are the net worth summary of AICA Holdings, LLC, members and the Financial Statement of U.S. Renal Care, Inc., respectively. Both statements demonstrate sufficient resources to meet the equity requirements. The projected budget for the subject site is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year three</u>
Revenues	\$1,632,025	\$1,854,863
Expenses	<u>\$1,512,828</u>	<u>\$1,699,003</u>
Net Income	\$119,197	\$155,860

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. (BFA)
3. Submission of an executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (BFA)
4. Submission of an executed Assignment of Lease, acceptable to the Department. (BFA)
5. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. (CSL)
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Assignment of Lease Agreement, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed Assignment and Assumption of Lease and Landlord Consent, acceptable to the Department. (CSL)
12. Submission of a photocopy of an amended and executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (CSL)
13. Submission of a photocopy of an amended and executed General Assignment, Assumption, Conveyance and Bill of Sale Agreement, acceptable to the Department. (CSL)
14. Submission of a photocopy of an amended and executed Articles of Organization for AICA Holdings, LLC, acceptable to the Department. (CSL)
15. Submission of a photocopy of an amended and executed Operating Agreement for AICA Holdings, LLC, acceptable to the Department. (CSL)
16. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners, LLC, acceptable to the Department. (CSL)
17. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners, LLC, acceptable to the Department. (CSL)
18. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
19. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
20. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Newco, LLC, acceptable to the Department. (CSL)
21. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Newco, LLC, acceptable to the Department. (CSL)
22. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
23. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
24. Submission of a photocopy of the Certificate of Authority for U.S. Renal Care, Inc., acceptable to the Department. (CSL)
25. Submission of a photocopy of an amended and executed Leaseback Agreement, acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **one year from the date of the Public Health and Health Planning Council Recommendation Letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 10, 2022

Need Analysis

Proposal

Upon approval of the CONs below, all seven of Faxton- St. Luke's Healthcare outpatient dialysis centers will be acquired by USRC and two local nephrologists. There will be no changes to the number of stations at the sites, located in Oneida, Herkimer, and Madison counties. Six of the sites will add Home Hemodialysis and Home Peritoneal Dialysis Training and Support services (one site already provides the service) in keeping with the CMS and New York State goal of increasing the availability and use of these modalities.

CON	Facility	Stations	County	New Services	Proposed Medical Director
211201	USRC Faxton 1676 Sunset Ave, Utica	36	Oneida	None	Ahmad Mian
211202	USRC St. Luke's 1650 Champlin Ave, Utica	8	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211203	USRC Masonic 2150 Bleeker St, Utica	20	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211204	USRC Rome 91 Perimeter Rd, Rome	16	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211205	USRC Herkimer 201 E. State St, Herkimer	8	Herkimer	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211206	USRC Hamilton 10 Easton St, Hamilton	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211207	USRC Oneida 131 Main St, Oneida	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge

Analysis

The primary service areas of the facilities are their respective counties. The use of dialysis is most prevalent in those aged 65+ and in nonwhite populations. Comparisons between the counties and New York State for these groups are shown below.

	Oneida County	Herkimer County	Madison County	New York State
Population (2019)	228,671	61,319	70,941	19,453,561
Ages 65 and Over	19.2%	21.2%	18.9%	16.9%
Nonwhite	14.0%	4.0%	5.4%	30.4%

Source: U.S. Census 2019

Conclusion

There will be no change in the number of stations at any of the sites. After approval, all sites will offer Home Hemodialysis and Home Peritoneal Dialysis Training and Support services to further the goal of reducing in-center dialysis where possible.

Program Analysis

Character and Competence

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Lynelle McLain is the Chief Accounting Officer of U.S. Renal Care, Inc. where she manages the Corporate Controller and team, Facility Level Controller and team, Treasury Department, Financial Reporting Team, and Accounts Payable. She reviews and publishes financial statements in accordance with GAAP; reviews and publishes the quarterly lender compliance certificates; reviews and publishes quarterly distribution calculations; and participates and assists with the category management projects. She oversees the monthly financial close process and distribution of financial statements, the annual financial audit and audited financial statements, the quarterly lender financial reporting, and the accuracy of work produced by the accounting department personnel; and oversees and manages the cash position of the company.

Steven Nottingham is the Senior Vice President of Strategic Partnerships of U.S. Renal Care, Inc. where he is responsible for driving profitable growth in 380 dialysis clinics. He is responsible for organizational design and structure for home dialysis and accelerating growth and home penetration, strategizing with the Manage Care and Value Base Teams for solutions to enhance relationships, and creating narrow network. Previously, he was the President of the East Division, the General Manager of the Western Group at Fresenius Kidney Care, the Executive Vice President of Emerging Business and Customer Experience at Iron Mountain Corporation, the Executive Vice President of Product Management, the Senior Vice President of Western US, Senior Vice President of Midwest US, Vice President of Los Angeles and Southwest Territory, and the General Manager of Los Angeles.

James Shelton is the Executive Vice President and Chief Financial Officer of U.S. Renal Care, Inc., where he is responsible for directing the fiscal functions of the corporation and providing strategic leadership for the company by working with the Executive Management Team to establish long-range goals, strategies, plans, and policies, as well as for the overall direction, coordination, and evaluation of the Accounting and Financial Department. He enhances and/or develops, implements, and enforces policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation.

Thomas Weinberg is the Executive Vice President, General Counsel, and Secretary of U.S. Renal Care, Inc., where his responsibilities include the representation and protection of the Company in all legal matters and challenges. He heads the law and risk management functions of the Company, serves as Corporate Secretary for the parent company, and coordinates all representation by others. He assists the CEO, parent board, and other subsidiary boards with governance, corporate compliance, and tax-exempt status and in the planning and strategic development process for all aspects of the organization.

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

Mary Dittrich, Steven Nottingham, James Shelton, and Thomas Weinberg, disclosed U.S. Renal Care, Inc (USRC) acquired Dialysis Corporation of America (DCA), a Florida corporation (nka Dialysis Company of America, LLC), in June 2010. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation related to alleged improper Medicare and Medicaid billing at certain DCA clinics. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigation and litigation. DCA fully cooperated with the inquiry. The investigation related to two qui tam suits with the Department of Justice and private litigants.

United States ex. rel. Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md); and United States ex. rel. Harris, et al. v. DCA, Case No. 1:09-cv-02457-JKB (D. Md). USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S government and the private litigants. The Davis case was settled on May 17, 2013, and the Harris case was settled September 12, 2014. Both suits have been dismissed.

Dr. Eldredge disclosed involvement in two malpractice lawsuits. On October 22, 2018, a malpractice suit was filed against Mohawk Valley Nephrology Associates, the hospital, Mohawk Valley Health System, and other physicians by the patient's son. He alleges her cause of death was due to a medication she received erroneously. She received 10 doses of methadone 10 mg. The methadone was erroneously copied from another patient's medication list by a nurse on the admission previous to her final admission and ordered by the physician on her final admission. The patient had been admitted on her final admission and had refused all treatment. The case is in the discovery phase.

The second malpractice suit was filed on July 23, 2019 by the administrator of the estate, the other individuals. They allege the patient was a college student brought in by her roommate because of confusion and was admitted on April 8, 2019. She had bilateral frontal cerebral contusions and hemorrhages and a bruised left orbit. She was seen by neurology and neurosurgery that day. She quickly deteriorated on April 9th and was taken to the OR for an intercranial drain. On April 10th, 2019 Dr. Eldredge was consulted for polyuria and hyponatremia, felt to be central diabetes insipidus. She was medically managed. She remained on life support for several days. Dr. Eldredge was never served for this case. He was notified on October 3rd, 2019 when asked to sign an affidavit for change of venue to Utica. The case is in the discovery phase.

Additionally, the staff from the DHDC 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 Department took the following enforcement action against U.S. Renal Care, Inc affiliated facilities:

- On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to construction prior to Department of Health approval.

Star Ratings - Dialysis Facility Compare (DFC)

U.S. Renal Care, Inc operates over 300 dialysis centers, nine of which are located in New York. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The below chart lists the Star Ratings for all dialysis centers that USRC operates or is affiliated within NYS.

Facility	Address	STAR Rating
U.S. Renal Care Tonawanda	3161 Eggert Road Tonawanda, NY 14150	***
U.S. Renal Care Amherst Dialysis	2880 Sheridan Avenue Tonawanda, NY 14150	**
U.S. Renal West Cheektowaga Dialysis	2681 Harlem Road Cheektowaga, NY 14225	****
U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14221	**
DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550	***
U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite C/D Cheektowaga, NY 14225	**
U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Bronx, NY 10461	***
U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365	*****

Conclusion

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

Financial Analysis

The applicant has submitted an operating budget for the subject site for the first and third years, in 2022 dollars, which is summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treat</u>	<u>Total</u>	<u>Per Treat</u>	<u>Total</u>
Medicaid-FFS	\$219.09	\$23,443	\$220.38	\$25,344
Medicaid-MC	\$239.56	57,256	\$239.92	61,899
Medicare-FFS	\$259.99	734,198	\$259.94	464,256
Medicare-MC	\$319.90	460,339	\$320.02	866,304
Commercial-FFS	\$700.67	272,559	\$659.45	331,043
Commercial-MC	\$499.62	83,436	\$499.92	107,482
Private Pay	\$258.36	13,693	\$255.22	14,803
All Other	\$263.15	28,946	\$262.97	31,293
Bad Debt		<u>-41,845</u>		<u>-47,561</u>
Total		\$1,632,025		\$1,854,863
 <u>Expenses</u>				
Operating	\$250.19	\$1,333,032	\$264.07	\$1,521,053
Capital	<u>\$33.75</u>	<u>179,796</u>	<u>\$30.89</u>	<u>177,950</u>
Total	\$283.94	\$1,512,828	\$294.96	\$1,699,003
 Net Income		 <u>\$119,197</u>		 <u>\$155,860</u>
 Total Treatments		 5,328		 5,760
Cost per Treatment		\$283.94		\$294.96

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid-FFS	107	2.01%	115	2.00%
Medicaid-MC	239	4.49%	258	4.48%
Medicare-FFS	2,824	53.01%	1,786	31.01%
Medicare-MC	1,439	27.01%	2,707	47.00%
Commercial-FFS	389	7.30%	502	8.70%
Commercial-MC	167	3.13%	215	3.73%
Private Pay	53	.99%	58	1.01%
All Other	<u>110</u>	<u>2.06%</u>	<u>119</u>	<u>2.07%</u>
Total	5,328	100%	5,760	100%

The following is noted with respect to all seven submitted budgets:

- The current operator, Faxton-St. Luke's Healthcare, indicated they did not receive any CARES Act funding for their seven dialysis clinics. The current operator has also not received previous State support for these programs.
- Medicaid and Medicare revenues are based upon the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's service area.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment, and professional fees.
- Utilization is based upon the service area experience and industry trends.
- The submitted budgets are reasonable

In BFA Attachment G, the following are provided:

- The terms of the executed Operating Asset Transfer Agreement (OATA) for the seven dialysis centers that will be effectuated upon PHHPC approval of the CONs.
- The terms of the draft Bill of Sale, Assignment and Assumption Agreement (BSAAA) that will be effectuated upon PHHPC approval of this application. The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.
- The terms of the executed lease and draft lease assignments for each site. The applicant has submitted affidavits stating the leases are arm's length arrangements and have provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rates.
- The terms of the draft Administrative Services Agreements (ASA). Each site will enter into an administrative services agreement with Dialysis Newco, LLC, which is an upstream parent of the MVNY Partners Holding, LLC. However, each 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, the post-closing organization chart, BFA Attachment D. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Faxton-St. Lukes's Healthcare and U.S. Renal Care, Inc. ("USRC"), entered into an Administrative Services Agreement as of March 1, 2021. USRC will assist the hospital in the continued operation of the dialysis business by providing certain non-clinical business and administrative services until the earlier of the dialysis business transfer date or termination of the Administrative Services Agreement. The current monthly fee is \$80,000 for all seven locations, per the applicant.

Capability and Feasibility

The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc. and \$300,000 from AICA Holdings, LLC's members. There are no project costs associated with this application.

Working capital is estimated based on two months of first-year expenses. U.S. Renal Care and AICA Holding's members will contribute the working capital in proportion to their membership interest. BFA Attachment H is the pro forma balance sheets for each facility.

The submitted budgets are reasonable. The individual members' net worth statements (BFA Attachment A) show sufficient liquid resources to meet their portion of the project's equity requirements.

BFA Attachment D is the U.S. Renal Care, Inc.'s NYS-affiliated dialysis centers and their income statement for 2020 and June 30, 2021, which shows positive net income. BFA Attachment F is USRC and Subsidiaries' 2019-2020 certified financial statements and their internal quarterly report as of May 31, 2021. These financial reports reflect both the predecessor and successor organizations for the company that entered into a merger agreement with several sponsors including Bain Capital, Summit Partners, and Revelstoke Capital to acquire approximately 95% of the outstanding equity interest in the company. This acquisition closed on June 28, 2019 and total consideration paid for the Company was \$801.0 million.

The financial statements and quarterly reports indicate the entity maintained positive working capital and net asset positions for the relevant time periods. The net profit was \$28,618,000 after taxes in 2019, including a one-time transaction and legal cost of \$96.8 million. In 2020 they had a net loss after taxes of \$29,898,000, and as of May 31, 2021, the loss increased to \$36,070,607. The applicant indicated that in addition to higher general and administrative expenses for investments in quality and growth, the COVID-19 pandemic increased the mortality rates among dialysis patients resulting in approximately \$33 million reduction in revenue in 2020 and \$30 million through May 2021. USRC also had over \$9 million of unreimbursed pandemic expenses in 2020 and \$15.2 million through May 2021. With the recovery from

COVID-19 underway, USRC projects a profit of \$21,626,251 in 2022 and \$52,864,304 in 2023, as shown on BFA Attachment I. USRC has sufficient liquid resources available to cover its portion of equity requirements.

Conclusion

The applicants have demonstrated the capability to proceed in a financially feasible manner

Attachments

BFA Attachment A	Net Worth Statements for the members of AICA Holdings, LLC
BFA Attachment B	Allocation of Combined Purchase Price by Clinic
BFA Attachment C	Affiliated USRC New York State Dialysis Centers and the New York State Consolidated Financial Statement for 2020 and June 30, 2021
BFA Attachment D	Post-Closing Organizational Chart
BFA Attachment E	Financial Summary of USRC and Subsidiaries Certified 2019-2020 and Unaudited Internal Quarterly Report as of May 31, 2021.
BFA Attachment F	Agreements and Contracts
BFA Attachment G	Pro-Forma Balance Sheets
BFA Attachment H	USRC & Subsidiaries Projected Internal Income Statement for 2022 and 2023



Project # 211205-B
MVNY Partners V, LLC d/b/a
U.S. Renal Care Herkimer Dialysis

Program: Diagnostic and Treatment Center **County:** Herkimer
Purpose: Establishment and Construction **Acknowledged:** May 21, 2021

Executive Summary

Description

U.S. Renal Care, Inc., through a subsidiary and in partnership with two local physicians, seeks approval to acquire seven dialysis centers currently operated by Faxton-St. Luke's Healthcare. Each location will be owned and operated by a separate limited liability corporation, MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC.

CON	Proposed Operator	Facility (proposed d/b/a)	Stations
211201	MVNY Partners I, LLC	U.S. Renal Care Faxton Dialysis 1676 Sunset Ave, Utica	36
211202	MVNY Partners II, LLC	U.S. Renal Care St. Luke's Home Dialysis 1650 Champlin Ave, Utica	8
211203	MVNY Partners III, LLC	U.S. Renal Care Masonic Care Community Dialysis 2150 Bleeker St, Utica	20
211204	MVNY Partners IV, LLC	U.S. Renal Care Rome Dialysis 91 Perimeter Rd, Rome	16
211205	MVNY Partners V, LLC	U.S. Renal Care Herkimer Dialysis 201 E. State St, Herkimer	8
211206	MVNY Partners VI, LLC	U.S. Renal Care Hamilton Dialysis 10 Easton St, Hamilton	8
211207	MVNY Partners VII, LLC	U.S. Renal Care Oneida Dialysis 131 Main St, Oneida	8

All seven operators are identical in structure, as indicated in the following chart:

Member	%
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC (90%) (U.S. Renal Care, Inc. subsidiary)	
AICA Holdings, LLC (10%)	
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc. All the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc. AICA Holdings, LLC is comprised of two local nephrologists. As of December 31, 2020, U.S. Renal Care, Inc. (USRC) operated 332 outpatient End-Stage Renal Disease (ESRD) centers located in 32 states.

On March 1, 2021, Faxton-St. Luke's Healthcare entered into an Operating Asset Transfer Agreement (OATA) with MVNY Partners, LLC, the sole member of all seven proposed operators, for the sale and acquisition of the dialysis centers for \$3,000,000. Faxton-St. Luke's Healthcare also sold non-Article 28 assets to MVNY Partners LLC for \$7,000,000, which are not part of this CON application.

In the proposed transactions, MVNY Partners, LLC will convey its interest in each of the seven locations to the respective proposed operator LLCs for the allocated amounts indicated in the table, per the Bill of Sale, Assignment and Assumption Agreement (BSAAA). The applicant states the members will pay it from equity. The OATA and BSAAA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC).

Purchase Price Allocation by CON	
CON 211201	\$1,297,059
CON 211202	\$255,882
CON 211203	\$529,412
CON 211204	\$264,706
CON 211205	\$264,706
CON 211206	\$158,824
CON 211207	\$229,412

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of stations. After approval, all seven sites will provide Home Training and Support services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc., and \$300,000 from AICA Holdings, LLC's members. BFA Attachments A and E are the net worth summary of AICA Holdings, LLC, members and the Financial Statement of U.S. Renal Care, Inc., respectively. Both statements demonstrate sufficient resources to meet the equity requirements. The projected budget for the subject site is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year three</u>
Revenues	\$1,367,372	\$1,530,262
Expenses	<u>\$1,297,266</u>	<u>\$1,411,897</u>
Net Income	\$70,106	\$118,365

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. (BFA)
3. Submission of an executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (BFA)
4. Submission of an executed Assignment of Lease, acceptable to the Department. (BFA)
5. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. (CSL)
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Assignment of Lease Agreement, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed General Assignment, Assumption, Conveyance and Bill of Sale Agreement, acceptable to the Department. (CSL)
12. Submission of a photocopy of an amended and executed Articles of Organization for AICA Holdings, LLC, acceptable to the Department. (CSL)
13. Submission of a photocopy of an amended and executed Operating Agreement for AICA Holdings, LLC, acceptable to the Department. (CSL)
14. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners, LLC, acceptable to the Department. (CSL)
15. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners, LLC, acceptable to the Department. (CSL)
16. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
17. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
18. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Newco, LLC, acceptable to the Department. (CSL)
19. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Newco, LLC, acceptable to the Department. (CSL)
20. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
21. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
22. Submission of a photocopy of the Certificate of Authority for U.S. Renal Care, Inc., acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **one year from the date of the Public Health and Health Planning Council Recommendation Letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 10, 2020

Proposal

Upon approval of the CONs below, all seven Faxton- St. Luke's Healthcare outpatient dialysis centers will be acquired by USRC and two local nephrologists. There will be no changes to the number of stations at the sites, located in Oneida, Herkimer, and Madison counties. Six of the sites will add Home Hemodialysis and Home Peritoneal Dialysis Training and Support services (one site already provides the service) in keeping with the CMS and New York State goal of increasing the availability and use of these modalities.

CON	Facility	Stations	County	New Services	Proposed Medical Director
211201	USRC Faxton 1676 Sunset Ave, Utica	36	Oneida	None	Ahmad Mian
211202	USRC St. Luke's 1650 Champlin Ave, Utica	8	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211203	USRC Masonic 2150 Bleeker St, Utica	20	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211204	USRC Rome 91 Perimeter Rd, Rome	16	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211205	USRC Herkimer 201 E. State St, Herkimer	8	Herkimer	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211206	USRC Hamilton 10 Easton St, Hamilton	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211207	USRC Oneida 131 Main St, Oneida	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge

Analysis

The primary service areas of the facilities are their respective counties. The use of dialysis is most prevalent in those aged 65+ and in nonwhite populations. Comparisons between the counties and New York State for these groups are shown below.

	Oneida County	Herkimer County	Madison County	New York State
Population (2019)	228,671	61,319	70,941	19,453,561
Ages 65 and Over	19.2%	21.2%	18.9%	16.9%
Nonwhite	14.0%	4.0%	5.4%	30.4%

Source: U.S. Census 2019

Conclusion

There will be no change in the number of stations at any of the sites. After approval, all sites will offer Home Hemodialysis and Home Peritoneal Dialysis Training and Support services to further the goal of reducing in-center dialysis where possible.

Program Analysis

Character and Competence

The proposed membership of MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC are identical, as indicated in the chart below.

<u>Member</u>	<u>Interest</u>
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC	(90%)
<u>Managers</u>	
Mark Caputo	
Mary Dittrich, MD	
Lynelle McLain	
Steve Nottingham	
James Shelton	
Thomas Weinburg	
AICA Holdings, LLC	(10%)
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	
Total	100%

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc., and all of the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc.

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Lynelle McLain is the Chief Accounting Officer of U.S. Renal Care, Inc. where she manages the Corporate Controller and team, Facility Level Controller and team, Treasury Department, Financial Reporting Team, and Accounts Payable. She reviews and publishes financial statements in accordance with GAAP; reviews and publishes the quarterly lender compliance certificates; reviews and publishes quarterly distribution calculations; and participates and assists with the category management projects. She oversees the monthly financial close process and distribution of financial statements, the annual financial audit and audited financial statements, the quarterly lender financial reporting, and the accuracy of work produced by the accounting department personnel; and oversees and manages the cash position of the company.

Steven Nottingham is the Senior Vice President of Strategic Partnerships of U.S. Renal Care, Inc. where he is responsible for driving profitable growth in 380 dialysis clinics. He is responsible for organizational design and structure for home dialysis and accelerating growth and home penetration, strategizing with the Manage Care and Value Base Teams for solutions to enhance relationships, and creating narrow network. Previously, he was the President of the East Division, the General Manager of the Western Group at Fresenius Kidney Care, the Executive Vice President of Emerging Business and Customer Experience at Iron Mountain Corporation, the Executive Vice President of Product Management, the Senior Vice President of Western US, Senior Vice President of Midwest US, Vice President of Los Angeles and Southwest Territory, and the General Manager of Los Angeles.

James Shelton is the Executive Vice President and Chief Financial Officer of U.S. Renal Care, Inc., where he is responsible for directing the fiscal functions of the corporation and providing strategic leadership for the company by working with the Executive Management Team to establish long-range goals, strategies, plans, and policies, as well as for the overall direction, coordination, and evaluation of the Accounting and Financial Department. He enhances and/or develops, implements, and enforces policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation.

Thomas Weinberg is the Executive Vice President, General Counsel, and Secretary of U.S. Renal Care, Inc., where his responsibilities include the representation and protection of the Company in all legal matters and challenges. He heads the law and risk management functions of the Company, serves as Corporate Secretary for the parent company, and coordinates all representation by others. He assists the CEO, parent board, and other subsidiary boards with governance, corporate compliance, and tax-exempt status and in the planning and strategic development process for all aspects of the organization.

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

Mary Dittrich, Steven Nottingham, James Shelton, and Thomas Weinberg, disclosed U.S. Renal Care, Inc (USRC) acquired Dialysis Corporation of America (DCA), a Florida corporation (nka Dialysis Company of America, LLC), in June 2010. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation related to alleged improper Medicare and Medicaid billing at certain DCA clinics. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigation and litigation. DCA fully cooperated with the inquiry. The investigation related to two qui tam suits with the Department of Justice and private litigants.

United States ex. rel. Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md); and United States ex. rel. Harris, et al. v. DCA, Case No. 1:09-cv-02457-JKB (D. Md). USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S government and the private litigants. The Davis case was settled on May 17, 2013, and the Harris case was settled September 12, 2014. Both suits have been dismissed.

Dr. Eldredge disclosed involvement in two malpractice lawsuits. On October 22, 2018, a malpractice suit was filed against Mohawk Valley Nephrology Associates, the hospital, Mohawk Valley Health System, and other physicians by the patient's son. He alleges her cause of death was due to a medication she received erroneously. She received 10 doses of methadone 10 mg. The methadone was erroneously copied from another patient's medication list by a nurse on the admission previous to her final admission and ordered by the physician on her final admission. The patient had been admitted on her final admission and had refused all treatment. The case is in the discovery phase.

The second malpractice suit was filed on July 23, 2019 by the administrator of the estate, the other individuals. They allege the patient was a college student brought in by her roommate because of confusion and was admitted on April 8, 2019. She had bilateral frontal cerebral contusions and hemorrhages and a bruised left orbit. She was seen by neurology and neurosurgery that day. She quickly deteriorated on April 9th and was taken to the OR for an intercranial drain. On April 10th, 2019 Dr. Eldredge was consulted for polyuria and hyponatremia, felt to be central diabetes insipidus. She was medically managed. She remained on life support for several days. Dr. Eldredge was never served for this case. He was notified on October 3rd, 2019 when asked to sign an affidavit for change of venue to Utica. The case is in the discovery phase.

Additionally, the staff from the DHDC 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 Department took the following enforcement action against U.S. Renal Care, Inc affiliated facilities:

- On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to construction prior to Department of Health approval.

Star Ratings - Dialysis Facility Compare (DFC)

U.S. Renal Care, Inc operates over 300 dialysis centers, nine of which are located in New York. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The below chart lists the Star Ratings for all dialysis centers that USRC operates or is affiliated within NYS.

Facility	Address	STAR Rating
U.S. Renal Care Tonawanda	3161 Eggert Road Tonawanda, NY 14150	***
U.S. Renal Care Amherst Dialysis	2880 Sheridan Avenue Tonawanda, NY 14150	**
U.S. Renal West Cheektowaga Dialysis	2681 Harlem Road Cheektowaga, NY 14225	****
U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14221	**
DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550	***
U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite C/D Cheektowaga, NY 14225	**
U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Bronx, NY 10461	***
U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365	*****

Conclusion

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

Financial Analysis

The applicant has submitted an operating budget for the subject site for the first and third years, in 2022 dollars, which is summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treat</u>	<u>Total</u>	<u>Per Treat</u>	<u>Total</u>
Medicaid-FFS	\$220.70	\$19,642	\$220.09	\$20,909
Medicaid-MC	\$239.86	47,971	\$239.75	51,066
Medicare-FFS	\$259.99	615,139	\$260.02	383,011
Medicare-MC	\$320.07	385,690	\$320.06	714,701
Commercial-FFS	\$700.49	228,360	\$659.69	273,111
Commercial-MC	\$499.33	69,906	\$500.97	88,672
Private Pay	\$254.93	11,472	\$254.44	12,213
All Other	\$260.77	24,252	\$260.78	25,817
Bad Debt		<u>-35,060</u>		<u>-39,238</u>
Total		\$1,367,372		\$1,530,262
 <u>Expenses</u>				
Operating	\$262.28	\$1,170,805	\$270.48	\$1,285,331
Capital	<u>\$28.33</u>	<u>126,461</u>	<u>\$26.63</u>	<u>126,566</u>
Total	\$290.61	\$1,297,266	\$297.11	\$1,411,897
 Net Income		 <u>\$70,106</u>		 <u>\$118,365</u>
 Total Treatments		 4,464		 4,752
Cost per Treatment		\$290.61		\$297.11

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid-FFS	89	1.99%	95	2.00%
Medicaid-MC	200	4.48%	213	4.48%
Medicare-FFS	2,366	53.01%	1,473	31.01%
Medicare-MC	1,205	26.99%	2,233	46.99%
Commercial-FFS	326	7.30%	414	8.71%
Commercial-MC	140	3.14%	177	3.72%
Private Pay	45	1.01%	48	1.01%
All Other	<u>93</u>	<u>2.08%</u>	<u>99</u>	<u>2.08%</u>
Total	4,464	100%	4,752	100%

The following is noted with respect to all seven submitted budgets:

- The current operator, Faxton-St. Luke's Healthcare, indicated they did not receive any CARES Act funding for their seven dialysis clinics. The current operator has also not received previous State support for these programs.
- Medicaid and Medicare revenues are based upon the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's service area.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment, and professional fees.
- Utilization is based upon the service area experience and industry trends.
- The submitted budgets are reasonable

In BFA Attachment G, the following are provided:

- The terms of the executed Operating Asset Transfer Agreement (OATA) for the seven dialysis centers that will be effectuated upon PHHPC approval of the CONs.
- The terms of the draft Bill of Sale, Assignment, and Assumption Agreement (BSAAA) that will be effectuated upon PHHPC approval of this application. The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.
- The terms of the executed lease and draft lease assignments for each site. The applicant has submitted affidavits stating the leases are arm's length arrangements and have provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rates.
- The terms of the draft Administrative Services Agreements (ASA). Each site will enter into an administrative services agreement with Dialysis Newco, LLC, which is an upstream parent of the MVNY Partners Holding, LLC. However, each 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, the post-closing organization chart, BFA Attachment D. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Faxton-St. Lukes's Healthcare and U.S. Renal Care, Inc. ("USRC"), entered into an Administrative Services Agreement as of March 1, 2021. USRC will assist the hospital in the continued operation of the dialysis business by providing certain non-clinical business and administrative services until the earlier of the dialysis business transfer date or termination of the Administrative Services Agreement. The current monthly fee is \$80,000 for all seven locations, per the applicant.

Capability and Feasibility

The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc. and \$300,000 from AICA Holdings, LLC's members. There are no project costs associated with this application.

Working capital is estimated based on two months of first-year expenses. U.S. Renal Care and AICA Holding's members will contribute the working capital in proportion to their membership interest. BFA Attachment H is the pro forma balance sheets for each facility.

The submitted budgets are reasonable. The individual members' net worth statements (BFA Attachment A) show sufficient liquid resources to meet their portion of the project's equity requirements.

BFA Attachment D is the U.S. Renal Care, Inc.'s NYS-affiliated dialysis centers and their income statement for 2020 and June 30, 2021, which shows positive net income. BFA Attachment F is USRC and Subsidiaries' 2019-2020 certified financial statements and their internal quarterly report as of May 31, 2021. These financial reports reflect both the predecessor and successor organizations for the company that entered into a merger agreement with several sponsors including Bain Capital, Summit Partners, and Revelstoke Capital to acquire approximately 95% of the outstanding equity interest in the company. This acquisition closed on June 28, 2019 and total consideration paid for the Company was \$801.0 million.

The financial statements and quarterly reports indicate the entity maintained positive working capital and net asset positions for the relevant time periods. The net profit was \$28,618,000 after taxes in 2019, including a one-time transaction and legal cost of \$96.8 million. In 2020 they had a net loss after taxes of \$29,898,000, and as of May 31, 2021, the loss increased to \$36,070,607. The applicant indicated that in addition to higher general and administrative expenses for investments in quality and growth, the COVID-19 pandemic increased the mortality rates among dialysis patients resulting in approximately \$33 million reduction in revenue in 2020 and \$30 million through May 2021. USRC also had over \$9 million of unreimbursed pandemic expenses in 2020 and \$15.2 million through May 2021. With the recovery from

COVID-19 underway, USRC projects a profit of \$21,626,251 in 2022 and \$52,864,304 in 2023 as shown on BFA Attachment I. USRC has sufficient liquid resources available to cover its portion of equity requirements.

Conclusion

The applicants have demonstrated the capability to proceed in a financially feasible manner

Attachments

BFA Attachment A	Net Worth Statements for the members of AICA Holdings, LLC
BFA Attachment B	Allocation of Combined Purchase Price by Clinic
BFA Attachment C	Affiliated USRC New York State Dialysis Centers and the New York State Consolidated Financial Statement for 2020 and June 30, 2021
BFA Attachment D	Post-Closing Organizational Chart
BFA Attachment E	Financial Summary of USRC and Subsidiaries Certified 2019-2020 and Unaudited Internal Quarterly Report as of May 31, 2021.
BFA Attachment F	Agreements and Contracts
BFA Attachment G	Pro-Forma Balance Sheets
BFA Attachment H	USRC & Subsidiaries Projected Internal Income Statement for 2022 and 2023



Project # 211206-B
MVNY Partners VI, LLC d/b/a
U.S. Renal Care Hamilton Dialysis

Program: Diagnostic and Treatment Center **County:** Madison
Purpose: Establishment and Construction **Acknowledged:** May 21, 2021

Executive Summary

Description

U.S. Renal Care, Inc., through a subsidiary and in partnership with two local physicians, seeks approval to acquire seven dialysis centers currently operated by Faxton-St. Luke's Healthcare. Each location will be owned and operated by a separate limited liability corporation, MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC.

CON	Proposed Operator	Facility (proposed d/b/a)	Stations
211201	MVNY Partners I, LLC	U.S. Renal Care Faxton Dialysis 1676 Sunset Ave, Utica	36
211202	MVNY Partners II, LLC	U.S. Renal Care St. Luke's Home Dialysis 1650 Champlin Ave, Utica	8
211203	MVNY Partners III, LLC	U.S. Renal Care Masonic Care Community Dialysis 2150 Bleeker St, Utica	20
211204	MVNY Partners IV, LLC	U.S. Renal Care Rome Dialysis 91 Perimeter Rd, Rome	16
211205	MVNY Partners V, LLC	U.S. Renal Care Herkimer Dialysis 201 E. State St, Herkimer	8
211206	MVNY Partners VI, LLC	U.S. Renal Care Hamilton Dialysis 10 Easton St, Hamilton	8
211207	MVNY Partners VII, LLC	U.S. Renal Care Oneida Dialysis 131 Main St, Oneida	8

All seven operators are identical in structure, as indicated in the following chart:

Member	%
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC (90%) (U.S. Renal Care, Inc. subsidiary)	
AICA Holdings, LLC (10%)	
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc. All the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc. AICA Holdings, LLC is comprised of two local nephrologists. As of December 31, 2020, U.S. Renal Care, Inc. (USRC) operated 332 outpatient End-Stage Renal Disease (ESRD) centers located in 32 states.

On March 1, 2021, Faxton-St. Luke's Healthcare entered into an Operating Asset Transfer Agreement (OATA) with MVNY Partners, LLC, the sole member of all seven proposed operators, for the sale and acquisition of the dialysis centers for \$3,000,000. Faxton-St. Luke's Healthcare also sold non-Article 28 assets to MVNY Partners LLC for \$7,000,000, which are not part of this CON application.

In the proposed transactions, MVNY Partners, LLC will convey its interest in each of the seven locations to the respective proposed operator LLCs for the allocated amounts indicated in the table, per the Bill of Sale, Assignment and Assumption Agreement (BSAAA). The applicant states the members will pay it from equity. The OATA and BSAAA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC).

Purchase Price Allocation by CON	
CON 211201	\$1,297,059
CON 211202	\$255,882
CON 211203	\$529,412
CON 211204	\$264,706
CON 211205	\$264,706
CON 211206	\$158,824
CON 211207	\$229,412

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of stations. After approval, all seven sites will provide Home Training and Support services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc., and \$300,000 from AICA Holdings, LLC's members. BFA Attachments A and E are the net worth summary of AICA Holdings, LLC, members and the Financial Statement of U.S. Renal Care, Inc., respectively, and both statements demonstrate sufficient resources to meet the equity requirements. The projected budget for the subject site is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,040,960	\$1,186,607
Expenses	\$992,128	\$1,111,920
Net Income/Loss	\$48,832	\$74,687

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. (BFA)
3. Submission of an executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (BFA)
4. Submission of an executed Assignment of Lease, acceptable to the Department. (BFA)
5. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. (CSL)
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Assignment of Lease Agreement, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed Assignment and Assumption of Lease and Landlord Consent, acceptable to the Department. (CSL)
12. Submission of a photocopy of an amended and executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (CSL)
13. Submission of a photocopy of an amended and executed General Assignment, Assumption, Conveyance and Bill of Sale Agreement, acceptable to the Department. (CSL)
14. Submission of a photocopy of an amended and executed Articles of Organization for AICA Holdings, LLC, acceptable to the Department. (CSL)
15. Submission of a photocopy of an amended and executed Operating Agreement for AICA Holdings, LLC, acceptable to the Department. (CSL)
16. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners, LLC, acceptable to the Department. (CSL)
17. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners, LLC, acceptable to the Department. (CSL)
18. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
19. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
20. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Newco, LLC, acceptable to the Department. (CSL)
21. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Newco, LLC, acceptable to the Department. (CSL)
22. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
23. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
24. Submission of a photocopy of the Certificate of Authority for U.S. Renal Care, Inc., acceptable to the Department. (CSL)
25. Submission of a photocopy of an amended and executed Leaseback Agreement, acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **one year from the date of the Public Health and Health Planning Council Recommendation Letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 10, 2022

Need Analysis

Proposal

Upon approval of the CONs below, all seven of Faxton- St. Luke's Healthcare outpatient dialysis centers will be acquired by USRC and two local nephrologists. There will be no changes to the number of stations at the sites, located in Oneida, Herkimer, and Madison counties. Six of the sites will add Home Hemodialysis and Home Peritoneal Dialysis Training and Support services (one site already provides the service) in keeping with the CMS and New York State goal of increasing the availability and use of these modalities.

CON	Facility	Stations	County	New Services	Proposed Medical Director
211201	USRC Faxton 1676 Sunset Ave, Utica	36	Oneida	None	Ahmad Mian
211202	USRC St. Luke's 1650 Champlin Ave, Utica	8	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211203	USRC Masonic 2150 Bleeker St, Utica	20	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211204	USRC Rome 91 Perimeter Rd, Rome	16	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211205	USRC Herkimer 201 E. State St, Herkimer	8	Herkimer	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211206	USRC Hamilton 10 Easton St, Hamilton	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211207	USRC Oneida 131 Main St, Oneida	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge

Analysis

The primary service areas of the facilities are their respective counties. The use of dialysis is most prevalent in those aged 65+ and in nonwhite populations. Comparisons between the counties and New York State for these groups are shown below.

	Oneida County	Herkimer County	Madison County	New York State
Population (2019)	228,671	61,319	70,941	19,453,561
Ages 65 and Over	19.2%	21.2%	18.9%	16.9%
Nonwhite	14.0%	4.0%	5.4%	30.4%

Source: U.S. Census 2019

Conclusion

There will be no change in the number of stations at any of the sites. After approval, all sites will offer Home Hemodialysis and Home Peritoneal Dialysis Training and Support services to further the goal of reducing in-center dialysis where possible.

Program Analysis

Character and Competence

The proposed membership of MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC are identical, as indicated in the chart below.

<u>Member</u>	<u>Interest</u>
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC	(90%)
<u>Managers</u>	
Mark Caputo	
Mary Dittrich, MD	
Lynelle McLain	
Steve Nottingham	
James Shelton	
Thomas Weinburg	
AICA Holdings, LLC	(10%)
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	
Total	100%

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc., and all of the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc.

Ahmad Mian, MD is a practicing Nephrologist and currently the Medical Director of MVHS Regional Dialysis Program. He is a partner at Mohawk Valley Nephrology Associates and the current Treasurer of MVHS Medical Staff. He received his medical degree from Ross University School of Medicine in Dominica and completed his residency in Internal Medicine and Nephrology fellowship at Drexel University College of Medicine. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Mian will be the Medical Director for three of the seven locations.

Charles Eldredge, MD is a practicing Nephrologist. He has owned multiple private practices in Nephrology and Internal Medicine and is a founding partner of Mohawk Valley Nephrology Associates. He is the Medical Director of Faxton-St. Luke's Health Care Dialysis Unit, and is the Treasurer of the Executive Committee and Chairman of the Nurse-Physician Liaison Committee. He received his medical degree from Stony Brook College of Medicine and completed his Internal Medicine residency and Nephrology fellowship at the University of Michigan. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Eldredge will be the Medical Director for four of the seven locations.

Mark Caputo is the Chief Executive Officer and President of U.S. Renal Care, Inc. where he develops and executes strategic plans; drives operational effectiveness; meets company clinical, operational, and financial goals, and represents the company with the press, public, and professional organizations. He was previously employed as the Managing Partner for Joint Ventures at Fresenius Medical Care. He served as Chairman of the Board of Sound Physicians and was previously employed as CEO of Liberty Dialysis.

Mary Dittrich, MD is the Chief Medical Officer of U.S. Renal Care, Inc. She is the current President of Liberty Administrative Services and is a Consultant for Remedy Partner after previously being their Senior Medical Director. She is the Chief Medical Officer for Glacier Administrative Services and Liberty Health Partners. She was the Medical Director of Liberty Dialysis in Anchorage and Boise. She received her medical degree from the University of Colorado Health Sciences Center and completed her residency in Internal Medicine and Nephrology Fellowship at the University of Washington. She is board certified with a sub-certification in Nephrology.

Lynelle McLain is the Chief Accounting Officer of U.S. Renal Care, Inc. where she manages the Corporate Controller and team, Facility Level Controller and team, Treasury Department, Financial Reporting Team, and Accounts Payable. She reviews and publishes financial statements in accordance with GAAP; reviews and publishes the quarterly lender compliance certificates; reviews and publishes quarterly distribution calculations; and participates and assists with the category management projects. She oversees the monthly financial close process and distribution of financial statements, the annual financial audit and audited financial statements, the quarterly lender financial reporting, and the accuracy of work produced by the accounting department personnel; and oversees and manages the cash position of the company.

Steven Nottingham is the Senior Vice President of Strategic Partnerships of U.S. Renal Care, Inc. where he is responsible for driving profitable growth in 380 dialysis clinics. He is responsible for organizational design and structure for home dialysis and accelerating growth and home penetration, strategizing with the Manage Care and Value Base Teams for solutions to enhance relationships, and creating narrow network. Previously, he was the President of the East Division, the General Manager of the Western Group at Fresenius Kidney Care, the Executive Vice President of Emerging Business and Customer Experience at Iron Mountain Corporation, the Executive Vice President of Product Management, the Senior Vice President of Western US, Senior Vice President of Midwest US, Vice President of Los Angeles and Southwest Territory, and the General Manager of Los Angeles.

James Shelton is the Executive Vice President and Chief Financial Officer of U.S. Renal Care, Inc., where he is responsible for directing the fiscal functions of the corporation and providing strategic leadership for the company by working with the Executive Management Team to establish long-range goals, strategies, plans, and policies, as well as for the overall direction, coordination, and evaluation of the Accounting and Financial Department. He enhances and/or develops, implements, and enforces policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation.

Thomas Weinberg is the Executive Vice President, General Counsel, and Secretary of U.S. Renal Care, Inc., where his responsibilities include the representation and protection of the Company in all legal matters and challenges. He heads the law and risk management functions of the Company, serves as Corporate Secretary for the parent company, and coordinates all representation by others. He assists the CEO, parent board, and other subsidiary boards with governance, corporate compliance, and tax-exempt status and in the planning and strategic development process for all aspects of the organization.

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

Mary Dittrich, Steven Nottingham, James Shelton, and Thomas Weinberg, disclosed U.S. Renal Care, Inc (USRC) acquired Dialysis Corporation of America (DCA), a Florida corporation (nka Dialysis Company of America, LLC), in June 2010. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation related to alleged improper Medicare and Medicaid billing at certain DCA clinics. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigation and litigation. DCA fully cooperated with the inquiry. The investigation related to two qui tam suits with the Department of Justice and private litigants.

United States ex. rel. Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md); and United States ex. rel. Harris, et al. v. DCA, Case No. 1:09-cv-02457-JKB (D. Md). USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S government and the private litigants. The Davis case was settled on May 17, 2013, and the Harris case was settled September 12, 2014. Both suits have been dismissed.

Dr. Eldredge disclosed involvement in two malpractice lawsuits. On October 22, 2018, a malpractice suit was filed against Mohawk Valley Nephrology Associates, the hospital, Mohawk Valley Health System, and other physicians by the patient's son. He alleges her cause of death was due to a medication she received erroneously. She received 10 doses of methadone 10 mg. The methadone was erroneously copied from another patient's medication list by a nurse on the admission previous to her final admission and ordered by the physician on her final admission. The patient had been admitted on her final admission and had refused all treatment. The case is in the discovery phase.

The second malpractice suit was filed on July 23, 2019 by the administrator of the estate, the other individuals. They allege the patient was a college student brought in by her roommate because of confusion and was admitted on April 8, 2019. She had bilateral frontal cerebral contusions and hemorrhages and a bruised left orbit. She was seen by neurology and neurosurgery that day. She quickly deteriorated on April 9th and was taken to the OR for an intercranial drain. On April 10th, 2019 Dr. Eldredge was consulted for polyuria and hyponatremia, felt to be central diabetes insipidus. She was medically managed. She remained on life support for several days. Dr. Eldredge was never served for this case. He was notified on October 3rd, 2019 when asked to sign an affidavit for change of venue to Utica. The case is in the discovery phase.

Additionally, the staff from the DHDC 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 Department took the following enforcement action against U.S. Renal Care, Inc affiliated facilities:

- On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to construction prior to Department of Health approval.

Star Ratings - Dialysis Facility Compare (DFC)

U.S. Renal Care, Inc operates over 300 dialysis centers, nine of which are located in New York. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The below chart lists the Star Ratings for all dialysis centers that USRC operates or is affiliated within NYS.

Facility	Address	STAR Rating
U.S. Renal Care Tonawanda	3161 Eggert Road Tonawanda, NY 14150	***
U.S. Renal Care Amherst Dialysis	2880 Sheridan Avenue Tonawanda, NY 14150	**
U.S. Renal West Cheektowaga Dialysis	2681 Harlem Road Cheektowaga, NY 14225	****
U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14221	**
DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550	***
U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite C/D Cheektowaga, NY 14225	**
U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Bronx, NY 10461	***
U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365	*****

Conclusion

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

Financial Analysis

The applicant has submitted an operating budget for the subject site for the first and third years, in 2022 dollars, which is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treat</u>	<u>Total</u>	<u>Per Treat</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$220.80	\$14,573	\$220.00	\$15,840
Medicaid MC	\$240.49	35,592	\$240.29	38,687
Medicare FFS	\$259.98	421,949	\$260.00	252,720
Medicare MC	\$320.16	307,354	\$320.00	564,480
Commercial FFS	\$700.57	195,460	\$659.83	233,580
Commercial MC	\$501.64	66,217	\$499.49	82,916
Private Pay	\$257.94	8,512	\$257.00	9,252
Other	\$260.78	17,994	\$260.77	19,558
Bad Debt		<u>(26,691)</u>		<u>(30,426)</u>
Total Revenues		1,040,960		\$1,186,607
 <u>Expenses</u>				
Operating	\$252.37	\$835,350	\$265.46	\$955,660
Capital	<u>\$47.36</u>	<u>156,778</u>	<u>\$43.41</u>	<u>156,260</u>
Total Expenses	\$299.74	\$992,128	\$308.87	\$1,111,920
 Net Income				
		<u>\$48,832</u>		<u>\$74,687</u>
 Treatments				
		3,310		3,600
Cost per Treatment		\$299.74		\$308.87

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid FFS	66	1.99%	72	2.00%
Medicaid MC	148	4.47%	161	4.47%
Medicare FFS	1,623	49.03%	972	27.00%
Medicare MC	960	29.00%	1,764	49.00%
Commercial FFS	279	8.43%	354	9.83%
Commercial MC	132	3.99%	166	4.61%
Private Pay	33	1.00%	36	1.00%
All Other	<u>69</u>	<u>2.08%</u>	<u>75</u>	<u>2.08%</u>
Total	3,310	100.00%	3,600	100.00%

The following is noted with respect to all seven submitted budgets:

- The current operator, Faxton-St. Luke's Healthcare, indicated they did not receive any CARES Act funding for their seven dialysis clinics. The current operator has also not received previous State support for these programs.
- Medicaid and Medicare revenues are based upon the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's service area.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment, and professional fees.
- Utilization is based upon the service area experience and industry trends.
- The submitted budgets are reasonable

In BFA Attachment G, the following are provided:

- The terms of the executed Operating Asset Transfer Agreement (OATA) for the seven dialysis centers that will be effectuated upon PHHPC approval of the CONs.
- The terms of the draft Bill of Sale, Assignment and Assumption Agreement (BSAAA) that will be effectuated upon PHHPC approval of this application. The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.
- The terms of the executed lease and draft lease assignments for each site. The applicant has submitted affidavits stating the leases are arm's length arrangements and have provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rates.
- The terms of the draft Administrative Services Agreements (ASA). Each site will enter into an administrative services agreement with Dialysis Newco, LLC, which is an upstream parent of the MVNY Partners Holding, LLC. However, each 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, the post-closing organization chart, BFA Attachment D. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Faxton-St. Luke's Healthcare and U.S. Renal Care, Inc. ("USRC"), entered into an Administrative Services Agreement as of March 1, 2021. USRC will assist the hospital in the continued operation of the dialysis business by providing certain non-clinical business and administrative services until the earlier of the dialysis business transfer date or termination of the Administrative Services Agreement. The current monthly fee is \$80,000 for all seven locations, per the applicant.

Capability and Feasibility

The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc. and \$300,000 from AICA Holdings, LLC's members. There are no project costs associated with this application.

Working capital is estimated based on two months of first-year expenses. U.S. Renal Care and AICA Holding's members will contribute the working capital in proportion to their membership interest. BFA Attachment H is the pro forma balance sheets for each facility.

The submitted budgets are reasonable. The individual members' net worth statements (BFA Attachment A) show sufficient liquid resources to meet their portion of the project's equity requirements.

BFA Attachment D is the U.S. Renal Care, Inc.'s NYS-affiliated dialysis centers and their income statement for 2020 and June 30, 2021, which shows positive net income. BFA Attachment F is USRC and Subsidiaries' 2019-2020 certified financial statements and their internal quarterly report as of May 31, 2021. These financial reports reflect both the predecessor and successor organizations for the company that entered into a merger agreement with several sponsors including Bain Capital, Summit Partners, and Revelstoke Capital to acquire approximately 95% of the outstanding equity interest in the company. This acquisition closed on June 28, 2019 and total consideration paid for the Company was \$801.0 million.

The financial statements and quarterly reports indicate the entity maintained positive working capital and net asset positions for the relevant time periods. The net profit was \$28,618,000 after taxes in 2019, including a one-time transaction and legal cost of \$96.8 million. In 2020 they had a net loss after taxes of \$29,898,000, and as of May 31, 2021, the loss increased to \$36,070,607. The applicant indicated that in addition to higher general and administrative expenses for investments in quality and growth, the COVID-19 pandemic increased the mortality rates among dialysis patients resulting in approximately \$33 million reduction in revenue in 2020 and \$30 million through May 2021. USRC also had over \$9 million of

unreimbursed pandemic expenses in 2020 and \$15.2 million through May 2021. With the recovery from COVID-19 underway, USRC projects a profit of \$21,626,251 in 2022 and \$52,864,304 in 2023, as shown on BFA Attachment I. USRC has sufficient liquid resources available to cover its portion of equity requirements.

Conclusion

The applicants have demonstrated the capability to proceed in a financially feasible manner

Attachments

BFA Attachment A	Net Worth Statements for the members of AICA Holdings, LLC
BFA Attachment B	Allocation of Combined Purchase Price by Clinic
BFA Attachment C	Affiliated USRC New York State Dialysis Centers and the New York State Consolidated Financial Statement for 2020 and June 30, 2021
BFA Attachment D	Post-Closing Organizational Chart
BFA Attachment E	Financial Summary of USRC and Subsidiaries Certified 2019-2020 and Unaudited Internal Quarterly Report as of May 31, 2021.
BFA Attachment F	Agreements and Contracts
BFA Attachment G	Pro-Forma Balance Sheets
BFA Attachment H	USRC & Subsidiaries Projected Internal Income Statement for 2022 and 2023



Project # 211207-B
MVNY Partners VII, LLC d/b/a
U.S. Renal Care Oneida Dialysis

Program: Diagnostic and Treatment Center **County:** Madison
Purpose: Establishment and Construction **Acknowledged:** May 26, 2021

Executive Summary

Description

U.S. Renal Care, Inc., through a subsidiary and in partnership with two local physicians, seeks approval to acquire seven dialysis centers currently operated by Faxton-St. Luke's Healthcare. Each location will be owned and operated by a separate limited liability corporation, MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC.

CON	Proposed Operator	Facility (proposed d/b/a)	Stations
211201	MVNY Partners I, LLC	U.S. Renal Care Faxton Dialysis 1676 Sunset Ave, Utica	36
211202	MVNY Partners II, LLC	U.S. Renal Care St. Luke's Home Dialysis 1650 Champlin Ave, Utica	8
211203	MVNY Partners III, LLC	U.S. Renal Care Masonic Care Community Dialysis 2150 Bleeker St, Utica	20
211204	MVNY Partners IV, LLC	U.S. Renal Care Rome Dialysis 91 Perimeter Rd, Rome	16
211205	MVNY Partners V, LLC	U.S. Renal Care Herkimer Dialysis 201 E. State St, Herkimer	8
211206	MVNY Partners VI, LLC	U.S. Renal Care Hamilton Dialysis 10 Easton St, Hamilton	8
211207	MVNY Partners VII, LLC	U.S. Renal Care Oneida Dialysis 131 Main St, Oneida	8

All seven operators are identical in structure, as indicated in the following chart:

Member	%
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC (90%) (U.S. Renal Care, Inc. subsidiary)	
AICA Holdings, LLC (10%)	
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc. All the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc. AICA Holdings, LLC is comprised of two local nephrologists. As of December 31, 2020, U.S. Renal Care, Inc. (USRC) operated 332 outpatient End-Stage Renal Disease (ESRD) centers located in 32 states.

On March 1, 2021, Faxton-St. Luke's Healthcare entered into an Operating Asset Transfer Agreement (OATA) with MVNY Partners, LLC, the sole member of all seven proposed operators, for the sale and acquisition of the dialysis centers for \$3,000,000. Faxton-St. Luke's Healthcare also sold non-Article 28 assets to MVNY Partners LLC for \$7,000,000, which are not part of this CON application.

In the proposed transactions, MVNY Partners, LLC will convey its interest in each of the seven locations to the respective proposed operator LLCs for the allocated amounts indicated in the table, per the Bill of Sale, Assignment and Assumption Agreement (BSAAA). The applicant states the members will pay it from equity. The OATA and BSAAA will be effectuated upon approval by the Public Health and Health Planning Council (PHHPC).

Purchase Price Allocation by CON	
CON 211201	\$1,297,059
CON 211202	\$255,882
CON 211203	\$529,412
CON 211204	\$264,706
CON 211205	\$264,706
CON 211206	\$158,824
CON 211207	\$229,412

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of stations. After approval, all seven sites will provide Home Training and Support services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc., and \$300,000 from AICA Holdings, LLC's members. BFA Attachments A and E are the net worth summary of AICA Holdings, LLC, members and the Financial Statement of U.S. Renal Care, Inc., respectively. Both statements demonstrate sufficient resources to meet the equity requirements. The projected budget for the subject site is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,312,511	\$1,471,392
Expenses	<u>\$1,260,843</u>	<u>\$1,385,912</u>
Net Income/Loss	\$51,668	\$85,480

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. (BFA)
3. Submission of an executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (BFA)
4. Submission of an executed Assignment of Lease, acceptable to the Department. (BFA)
5. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. (CSL)
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Assignment of Lease Agreement, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed Assignment and Assumption of Lease and Landlord Consent, acceptable to the Department. (CSL)
12. Submission of a photocopy of an amended and executed Bill of Sale, Assignment and Assumption Agreement, acceptable to the Department. (CSL)
13. Submission of a photocopy of an amended and executed General Assignment, Assumption, Conveyance and Bill of Sale Agreement, acceptable to the Department. (CSL)
14. Submission of a photocopy of an amended and executed Articles of Organization for AICA Holdings, LLC, acceptable to the Department. (CSL)
15. Submission of a photocopy of an amended and executed Operating Agreement for AICA Holdings, LLC, acceptable to the Department. (CSL)
16. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners, LLC, acceptable to the Department. (CSL)
17. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners, LLC, acceptable to the Department. (CSL)
18. Submission of a photocopy of an amended and executed Certificate of Authority for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
19. Submission of a photocopy of an amended and executed Company Agreement for MVNY Partners Holdings, LLC, acceptable to the Department. (CSL)
20. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Newco, LLC, acceptable to the Department. (CSL)
21. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Newco, LLC, acceptable to the Department. (CSL)
22. Submission of a photocopy of an amended and executed Certificate of Authority for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
23. Submission of a photocopy of an amended and executed Company Agreement for Dialysis Holdco, LLC, acceptable to the Department. (CSL)
24. Submission of a photocopy of the Certificate of Authority for U.S. Renal Care, Inc., acceptable to the Department. (CSL)
25. Submission of a photocopy of an amended and executed Leaseback Agreement, acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **one year from the date of the Public Health and Health Planning Council Recommendation Letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 10, 2022

Need Analysis

Proposal

Upon approval of the CONs below, all seven of Faxton- St. Luke's Healthcare outpatient dialysis centers will be acquired by USRC and two local nephrologists. There will be no changes to the number of stations at the sites, located in Oneida, Herkimer, and Madison counties. Six of the sites will add Home Hemodialysis and Home Peritoneal Dialysis Training and Support services (one site already provides the service) in keeping with the CMS and New York State goal of increasing the availability and use of these modalities..

CON	Facility	Stations	County	New Services	Proposed Medical Director
211201	USRC Faxton 1676 Sunset Ave, Utica	36	Oneida	None	Ahmad Mian
211202	USRC St. Luke's 1650 Champlin Ave, Utica	8	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211203	USRC Masonic 2150 Bleeker St, Utica	20	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211204	USRC Rome 91 Perimeter Rd, Rome	16	Oneida	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211205	USRC Herkimer 201 E. State St, Herkimer	8	Herkimer	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Ahmad Mian
211206	USRC Hamilton 10 Easton St, Hamilton	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge
211207	USRC Oneida 131 Main St, Oneida	8	Madison	Home Hemodialysis and Home Peritoneal Dialysis Training and Support	Charles Eldredge

Analysis

The primary service areas of the facilities are their respective counties. The use of dialysis is most prevalent in those aged 65+ and in nonwhite populations. Comparisons between the counties and New York State for these groups are shown below.

	Oneida County	Herkimer County	Madison County	New York State
Population (2019)	228,671	61,319	70,941	19,453,561
Ages 65 and Over	19.2%	21.2%	18.9%	16.9%
Nonwhite	14.0%	4.0%	5.4%	30.4%

Source: U.S. Census 2019

Conclusion

There will be no change in the number of stations at any of the sites. After approval, all sites will offer Home Hemodialysis and Home Peritoneal Dialysis Training and Support services to further the goal of reducing in-center dialysis where possible.

Program Analysis

Character and Competence

The proposed membership of MVNY Partners I, LLC, MVNY Partners II, LLC, MVNY Partners III, LLC, MVNY Partners IV, LLC, MVNY Partners V, LLC, MVNY Partners VI, LLC, and MVNY Partners VII, LLC are identical, as indicated in the chart below.

<u>Member</u>	<u>Interest</u>
MVNY Partners, LLC	100%
MVNY Partners Holdings, LLC	(90%)
<u>Managers</u>	
Mark Caputo	
Mary Dittrich, MD	
Lynelle McLain	
Steve Nottingham	
James Shelton	
Thomas Weinburg	
AICA Holdings, LLC	(10%)
Charles Eldredge, MD (50%)	
Ahmad Mian, MD (50%)	
Total	100%

MVNY Partners Holdings, LLC is a subsidiary of U.S. Renal Care, Inc., and all of the managers of MVNY Partners Holdings, LLC are employed by U.S. Renal Care, Inc.

Ahmad Mian, MD is a practicing Nephrologist and currently the Medical Director of MVHS Regional Dialysis Program. He is a partner at Mohawk Valley Nephrology Associates and the current Treasurer of MVHS Medical Staff. He received his medical degree from Ross University School of Medicine in Dominica and completed his residency in Internal Medicine and Nephrology fellowship at Drexel University College of Medicine. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Mian will be the Medical Director for three of the seven locations.

Charles Eldredge, MD is a practicing Nephrologist. He has owned multiple private practices in Nephrology and Internal Medicine and is a founding partner of Mohawk Valley Nephrology Associates. He is the Medical Director of Faxton-St. Luke's Health Care Dialysis Unit, and is the Treasurer of the Executive Committee and Chairman of the Nurse-Physician Liaison Committee. He received his medical degree from Stony Brook College of Medicine and completed his Internal Medicine residency and Nephrology fellowship at the University of Michigan. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Eldredge will be the Medical Director for four of the seven locations.

Mark Caputo is the Chief Executive Officer and President of U.S. Renal Care, Inc. where he develops and executes strategic plans; drives operational effectiveness; meets company clinical, operational, and financial goals, and represents the company with the press, public, and professional organizations. He was previously employed as the Managing Partner for Joint Ventures at Fresenius Medical Care. He served as Chairman of the Board of Sound Physicians and was previously employed as CEO of Liberty Dialysis.

Mary Dittrich, MD is the Chief Medical Officer of U.S. Renal Care, Inc. She is the current President of Liberty Administrative Services and is a Consultant for Remedy Partner after previously being their Senior Medical Director. She is the Chief Medical Officer for Glacier Administrative Services and Liberty Health Partners. She was the Medical Director of Liberty Dialysis in Anchorage and Boise. She received her medical degree from the University of Colorado Health Sciences Center and completed her residency in Internal Medicine and Nephrology Fellowship at the University of Washington. She is board certified with a sub-certification in Nephrology.

Lynelle McLain is the Chief Accounting Officer of U.S. Renal Care, Inc. where she manages the Corporate Controller and team, Facility Level Controller and team, Treasury Department, Financial Reporting Team, and Accounts Payable. She reviews and publishes financial statements in accordance with GAAP; reviews and publishes the quarterly lender compliance certificates; reviews and publishes quarterly distribution calculations; and participates and assists with the category management projects. She oversees the monthly financial close process and distribution of financial statements, the annual financial audit and audited financial statements, the quarterly lender financial reporting, and the accuracy of work produced by the accounting department personnel; and oversees and manages the cash position of the company.

Steven Nottingham is the Senior Vice President of Strategic Partnerships of U.S. Renal Care, Inc. where he is responsible for driving profitable growth in 380 dialysis clinics. He is responsible for organizational design and structure for home dialysis and accelerating growth and home penetration, strategizing with the Manage Care and Value Base Teams for solutions to enhance relationships, and creating narrow network. Previously, he was the President of the East Division, the General Manager of the Western Group at Fresenius Kidney Care, the Executive Vice President of Emerging Business and Customer Experience at Iron Mountain Corporation, the Executive Vice President of Product Management, the Senior Vice President of Western US, Senior Vice President of Midwest US, Vice President of Los Angeles and Southwest Territory, and the General Manager of Los Angeles.

James Shelton is the Executive Vice President and Chief Financial Officer of U.S. Renal Care, Inc., where he is responsible for directing the fiscal functions of the corporation and providing strategic leadership for the company by working with the Executive Management Team to establish long-range goals, strategies, plans, and policies, as well as for the overall direction, coordination, and evaluation of the Accounting and Financial Department. He enhances and/or develops, implements, and enforces policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation.

Thomas Weinberg is the Executive Vice President, General Counsel, and Secretary of U.S. Renal Care, Inc., where his responsibilities include the representation and protection of the Company in all legal matters and challenges. He heads the law and risk management functions of the Company, serves as Corporate Secretary for the parent company, and coordinates all representation by others. He assists the CEO, parent board, and other subsidiary boards with governance, corporate compliance, and tax-exempt status and in the planning and strategic development process for all aspects of the organization.

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

Mary Dittrich, Steven Nottingham, James Shelton, and Thomas Weinberg, disclosed U.S. Renal Care, Inc (USRC) acquired Dialysis Corporation of America (DCA), a Florida corporation (nka Dialysis Company of America, LLC), in June 2010. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation related to alleged improper Medicare and Medicaid billing at certain DCA clinics. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigation and litigation. DCA fully cooperated with the inquiry. The investigation related to two qui tam suits with the Department of Justice and private litigants.

United States ex. rel. Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md); and United States ex. rel. Harris, et al. v. DCA, Case No. 1:09-cv-02457-JKB (D. Md). USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S government and the private litigants. The Davis case was settled on May 17, 2013, and the Harris case was settled September 12, 2014. Both suits have been dismissed.

Dr. Eldredge disclosed involvement in two malpractice lawsuits. On October 22, 2018, a malpractice suit was filed against Mohawk Valley Nephrology Associates, the hospital, Mohawk Valley Health System, and other physicians by the patient's son. He alleges her cause of death was due to a medication she received erroneously. She received 10 doses of methadone 10 mg. The methadone was erroneously copied from another patient's medication list by a nurse on the admission previous to her final admission and ordered by the physician on her final admission. The patient had been admitted on her final admission and had refused all treatment. The case is in the discovery phase.

The second malpractice suit was filed on July 23, 2019 by the administrator of the estate, the other individuals. They allege the patient was a college student brought in by her roommate because of confusion and was admitted on April 8, 2019. She had bilateral frontal cerebral contusions and hemorrhages and a bruised left orbit. She was seen by neurology and neurosurgery that day. She quickly deteriorated on April 9th and was taken to the OR for an intercranial drain. On April 10th, 2019 Dr. Eldredge was consulted for polyuria and hyponatremia, felt to be central diabetes insipidus. She was medically managed. She remained on life support for several days. Dr. Eldredge was never served for this case. He was notified on October 3rd, 2019 when asked to sign an affidavit for change of venue to Utica. The case is in the discovery phase.

Additionally, the staff from the DHDC 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 Department took the following enforcement action against U.S. Renal Care, Inc affiliated facilities:

- On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to construction prior to Department of Health approval.

Star Ratings - Dialysis Facility Compare (DFC)

U.S. Renal Care, Inc operates over 300 dialysis centers, nine of which are located in New York. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The below chart lists the Star Ratings for all dialysis centers that USRC operates or is affiliated within NYS.

Facility	Address	STAR Rating
U.S. Renal Care Tonawanda	3161 Eggert Road Tonawanda, NY 14150	***
U.S. Renal Care Amherst Dialysis	2880 Sheridan Avenue Tonawanda, NY 14150	**
U.S. Renal West Cheektowaga Dialysis	2681 Harlem Road Cheektowaga, NY 14225	****
U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14221	**
DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550	***
U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite C/D Cheektowaga, NY 14225	**
U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Bronx, NY 10461	***
U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365	*****

Conclusion

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

Financial Analysis

The applicant has submitted an operating budget for the subject site for the first and third years, in 2022 dollars, which is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treat</u>	<u>Total</u>	<u>Per Treat</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$218.74	\$18,374	\$220.70	\$19,642
Medicaid MC	\$239.98	44,876	\$239.86	47,971
Medicare FFS	\$260.03	532,022	\$260.06	313,373
Medicare MC	\$320.01	387,533	\$320.05	699,955
Commercial FFS	\$700.14	246,449	\$659.77	289,639
Commercial MC	\$499.95	83,491	\$499.11	102,816
Private Pay	\$255.52	10,732	\$254.93	11,472
Other	\$260.78	22,688	\$260.77	24,252
Bad Debt		<u>(33,654)</u>		<u>(37,728)</u>
Total Revenues		1,312,511		\$1,471,392
<u>Expenses</u>				
Operating	\$247.65	\$1,034,177	\$259.25	\$1,157,310
Capital	<u>\$54.28</u>	<u>226,666</u>	<u>\$51.21</u>	<u>228,602</u>
Total Expenses	\$301.93	\$1,260,843	\$310.46	\$1,385,912
Net Income		<u>\$51,668</u>		<u>\$85,480</u>
Treatments		4,176		4,464
Cost per Treatment		\$301.93		\$310.46

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid FFS	84	2.01%	89	1.99%
Medicaid MC	187	4.48%	200	4.48%
Medicare FFS	2,046	48.99%	1,205	26.99%
Medicare MC	1,211	29.00%	2,187	48.99%
Commercial FFS	352	8.43%	439	9.83%
Commercial MC	167	4.00%	206	4.61%
Private Pay	42	1.01%	45	1.01%
All Other	<u>87</u>	<u>2.08%</u>	<u>93</u>	<u>2.08%</u>
Total	4,176	100.00%	4,464	100.00%

The following is noted with respect to all seven submitted budgets:

- The current operator, Faxton-St. Luke's Healthcare, indicated they did not receive any CARES Act funding for their seven dialysis clinics. The current operator has also not received previous State support for these programs.
- Medicaid and Medicare revenues are based upon the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's service area.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment, and professional fees.
- Utilization is based upon the service area experience and industry trends.
- The submitted budgets are reasonable

In BFA Attachment G, the following are provided:

- The terms of the executed Operating Asset Transfer Agreement (OATA) for the seven dialysis centers that will be effectuated upon PHHPC approval of the CONs.
- The terms of the draft Bill of Sale, Assignment and Assumption Agreement (BSAAA) that will be effectuated upon PHHPC approval of this application. The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.
- The terms of the executed lease and draft lease assignments for each site. The applicant has submitted affidavits stating the leases are arm's length arrangements and have provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rates.
- The terms of the draft Administrative Services Agreements (ASA). Each site will enter into an administrative services agreement with Dialysis Newco, LLC, which is an upstream parent of the MVNY Partners Holding, LLC. However, each 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, the post-closing organization chart, BFA Attachment D. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Faxton-St. Luke's Healthcare and U.S. Renal Care, Inc. ("USRC"), entered into an Administrative Services Agreement as of March 1, 2021. USRC will assist the hospital in the continued operation of the dialysis business by providing certain non-clinical business and administrative services until the earlier of the dialysis business transfer date or termination of the Administrative Services Agreement. The current monthly fee is \$80,000 for all seven locations, per the applicant.

Capability and Feasibility

The \$3,000,000 purchase price for the seven dialysis centers will be funded via equity, \$2,700,000 from U.S. Renal Care, Inc. and \$300,000 from AICA Holdings, LLC's members. There are no project costs associated with this application.

Working capital is estimated based on two months of first-year expenses. U.S. Renal Care and AICA Holding's members will contribute the working capital in proportion to their membership interest. BFA Attachment H is the pro forma balance sheets for each facility.

The submitted budgets are reasonable. The individual members' net worth statements (BFA Attachment A) show sufficient liquid resources to meet their portion of the project's equity requirements.

BFA Attachment D is the U.S. Renal Care, Inc.'s NYS-affiliated dialysis centers and their income statement for 2020 and June 30, 2021, which shows positive net income. BFA Attachment F is USRC and Subsidiaries' 2019-2020 certified financial statements and their internal quarterly report as of May 31, 2021. These financial reports reflect both the predecessor and successor organizations for the company that entered into a merger agreement with several sponsors including Bain Capital, Summit Partners, and Revelstoke Capital to acquire approximately 95% of the outstanding equity interest in the company. This acquisition closed on June 28, 2019 and total consideration paid for the Company was \$801.0 million.

The financial statements and quarterly reports indicate the entity maintained positive working capital and net asset positions for the relevant time periods. The net profit was \$28,618,000 after taxes in 2019, including a one-time transaction and legal cost of \$96.8 million. In 2020 they had a net loss after taxes of \$29,898,000, and as of May 31, 2021, the loss increased to \$36,070,607. The applicant indicated that in addition to higher general and administrative expenses for investments in quality and growth, the COVID-19 pandemic increased the mortality rates among dialysis patients resulting in approximately \$33 million reduction in revenue in 2020 and \$30 million through May 2021. USRC also had over \$9 million of

unreimbursed pandemic expenses in 2020 and \$15.2 million through May 2021. With the recovery from COVID-19 underway, USRC projects a profit of \$21,626,251 in 2022 and \$52,864,304 in 2023, as shown on BFA Attachment I. USRC has sufficient liquid resources available to cover its portion of equity requirements.

Conclusion

The applicants have demonstrated the capability to proceed in a financially feasible manner

Attachments

BFA Attachment A	Net Worth Statements for the members of AICA Holdings, LLC
BFA Attachment B	Allocation of Combined Purchase Price by Clinic
BFA Attachment C	Affiliated USRC New York State Dialysis Centers and the New York State Consolidated Financial Statement for 2020 and June 30, 2021
BFA Attachment D	Post-Closing Organizational Chart
BFA Attachment E	Financial Summary of USRC and Subsidiaries Certified 2019-2020 and Unaudited Internal Quarterly Report as of May 31, 2021.
BFA Attachment F	Agreements and Contracts
BFA Attachment G	Pro-Forma Balance Sheets
BFA Attachment H	USRC & Subsidiaries Projected Internal Income Statement for 2022 and 2023



Project # 202185-E Wellbound II LLC

Program: Certified Home Health Agency Purpose: Establishment

County: Westchester Acknowledged: November 5, 2020

Executive Summary

Description

Wellbound II LLC requests approval to be established as the new operator of Bethel Nursing Home Company Certified Home Health Agency (CHHA) located at 2042 Albany Post Road, Suite 2, Croton-on-Hudson (Westchester County). The CHHA is certified to serve Bronx, New York, Putnam, Queens, and Westchester counties and is licensed to provide the following services: Home Health Aide, Medical Social Services, Medical Supplies, Equipment and Appliances, Nursing, Nutrition Personal Care, Occupational Therapy, Physical Therapy, Respiratory Therapy, and Speech-Language Pathology Therapy. After Public Health and Health Planning Council (PHHPC) approval, the CHHA will be located at 485 Kings Highway, Brooklyn (Kings County).

On August 13, 2020, Bethel Nursing Home Company, Inc., the current owner and operator of the CHHA, and Amber Court of Home, LLC entered into an Asset Purchase Agreement (APA), whereby Amber Court at Home, LLC agreed to purchase the operations and certain assets of the CHHA. Amber Court at Home, LLC will assign its interest under the APA to Wellbound II LLC. 485 Kings Corp. (Landlord) will enter into a Lease Agreement with Wellbound II LLC (as tenant). 485 Kings Corp., is unrelated to Wellbound II LLC.

Ownership of the CHHA after the requested change is as follows:

Table with 2 columns: Members, Percent. Rows: Robert Snyder (50%), Raphael Weiss (50%).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in services or counties served as a result of this application.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

There are no project costs associated with this proposal. The purchase price for the CHHA assets is \$1,000,000, of which \$100,000 was already paid as a down payment. The remaining \$900,000 balance will be met via equity from the proposed members. The proposed budget is as follows:

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

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 building lease, acceptable to the Department of Health (Department). [BFA]
2. Submission of a photocopy of amended and executed Lease Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Council Action Date

February 10, 2022

Need and Program Analysis

Program Description

Bethel Nursing Home Company Certified Home Health Agency is an existing CHHA that has established relationships with hospitals and other health providers in its service area and has an existing patient base. The CHHA serves the following counties: Bronx, New York, Putnam, Queens, and Westchester. The services currently offered are Home Health Aide, Medical Social Services, Medical Supplies, Equipment and Appliances, Nursing, Nutrition Personal Care, Occupational Therapy, Physical Therapy, Respiratory Therapy, and Speech-Language Pathology Therapy. There will be no changes in services or counties served as a result of this application. Upon approval of this project, the agency will be located at 485 Kings Highway, Brooklyn, 11223 in Kings County.

Character and Competence Review

The membership of Wellbound II LLC is as follows:

Robert Snyder (50%)

COO, Aljud Management Corp

Affiliations

- Amber Court at Home, LLC d/b/a Wellbound (CHHA) (2014 – Present)
- Arista Home Care, LLC (LHCSA) (2017 – Present)
- Amber Court of Smithtown (ALP) (February 2018 – Present)
- Amber Court @ Suffolk County LLC (LHCSA) (February 2018 – Present)
- Amber Court of Westbury (ALP) (2015 – Present)
- Amber Court of Elizabeth (NJ) (ALR) (2008 – Present)
- Visiting Services, LLC d/b/a Visiting Docs (D&TC) (January 2020 – Present)

Raphael Weiss (50%)

CFO, Aljud Management Corp

Affiliations

- Amber Court at Home, LLC d/b/a Wellbound (CHHA) (2014 – Present)
- Arista Home Care, LLC (LHCSA) (2017 – Present)
- Amber Court of Smithtown (ALP) (February 2018 – Present)
- Amber Court @ Suffolk County LLC (LHCSA) (February 2018 – Present)
- Amber Court of Westbury (ALP) (2015 – Present)
- Amber Court of Elizabeth (NJ) (ALR) (2008 – Present)
- Visiting Services, LLC d/b/a Visiting Docs (D&TC) (January 2020 – Present)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General Exclusion List.

Facility Compliance/Enforcement

The compliance history for the above-noted affiliations is as follows:

- Amber Court at Smithtown was fined \$5,000.00 pursuant to a Stipulation and Order for surveillance findings on December 17, 2018, and August 19, 2019. The inspections found violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.7(f)(5).
- Amber Court of Westbury was fined \$50.00 pursuant to a Stipulation and Order for surveillance findings on December 30, 2020. The inspection found violations of 18 NYCRR Part 485.11(b).

The State of New Jersey did not respond to the out-of-state compliance request. The applicant submitted affidavits attesting to the compliance history of Amber Court of Elizabeth, which states that there have been no enforcement actions taken against them.

Quality Measures

CHHA Quality of Patient Care Star Ratings*	
CHHA Name	Quality of Care Rating
<u>Subject Facility</u> Bethel Nursing Home Company, Inc. d/b/a Bethel Nursing Home Company CHHA	4 out of 5 stars
<u>Currently Operated by Applicants</u> Amber Court at Home, LLC d/b/a Wellbound	1.5 out of 5 stars

*CMS data as of July 21, 2021

The CHHA currently owned by the applicant members, Amber Court at Home, LLC d/b/a Wellbound, resides at 2004 Mcdonald Avenue, Suite 2-a Brooklyn, NY 11223 and is certified to provide the following services in Bronx, Kings, Nassau, New York, Queens, Richmond, and Suffolk counties:

- Home Health Aide
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Personal Care
- Therapy - Occupational
- Therapy - Physical
- Therapy - Speech Language Pathology

The CHHA has a star rating of 1.5 out of 5 stars as of July 21, 2021. The applicant stated that the star rating does not necessarily reflect the agency's quality of care and that the CHHA has met or exceeded the state and/or national averages in seven of the fourteen quality measures relating to preventing patient harm, preventing unplanned hospitalizations and patients remaining in the community after discharge.

The applicant states that Amber Court at Home, LLC d/b/a Wellbound primarily serves patients that reside in assisted living facilities. Wellbound's quality rating is below the national average for four outcomes of care measures for improvement in managing daily activities. The applicant cites inaccurate OASIS documentation that does not accurately identify the needs of patients upon initial assessment resulting in outcomes showing little to no improvement upon discharge from home care services. To improve these measures, the agency has established and implemented a plan to educate and train its clinicians on proper OASIS documentation leading to improved scores in this area which will improve the overall CMS Five-Star rating.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2). The change in operator will result in no changes to the service area or the services being provided by the CHHA.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for the current year, and first and third years, which is summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Commercial MC	\$20,567	\$311,351	\$347,630
Medicare FFS	502,293	1,415,100	1,716,352
Medicaid FFS	5,666	0	0
Medicaid MC	87,377	783,468	871,299
Private Pay	<u>125</u>	<u>0</u>	<u>0</u>
Total Revenues	\$616,028	\$2,509,919	\$2,935,281
<u>Expenses</u>			
Operating	\$967,018	\$2,410,514	\$2,523,078
Capital	<u>31,758</u>	<u>14,400</u>	<u>14,400</u>
Total Expenses	\$998,776	\$2,424,914	\$2,537,478
Net Income (Loss)	(\$382,748)	\$85,005	\$397,803
Utilization (Visits)	5,015	11,969	14,125
Utilization (Hours)	1,873	27,000	33,000

The following is noted regarding the submitted budget:

- Wellbound II LLC is projecting a substantial increase in utilization in years one and three, primarily from projected incremental visits from Medicaid Managed Care and Commercial Managed Care patients, based on the current and projected population characteristics of the service area, including relevant health status indicators and socio-economic status of the service area population.
- The applicant expects to increase utilization of the CHHA by enrolling new patients from the community through community outreach; advertising; reaching out to new health care entities to create a stronger referral system and utilizing the applicant's members' affiliated entities for referrals to the CHHA.
- The projected Commercial and Medicare rate assumptions are based on Bethel's 2018 cost report (i.e., Commercial FFS-\$198.28 per visit; and Medicare FFS-\$201.54 per visit), increased based on 2020 rates and the applicant's member's experience.
- The projected Medicaid rate is based on the applicant's members successfully operating other financially feasible facilities and agencies, including Amber Court at Home CHHA.
- The current operator of the CHHA has confirmed that the CHHA did not receive any CARES Act funding.

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	8.81%	10.46%	10.72%
Medicare FFS	58.04%	55.77%	57.32%
Medicaid FFS	1.66%	0.00%	0.00%
Medicaid MC	31.45%	31.77%	29.96%
Private Pay	0.04%	0.00%	0.00%
Charity Care	<u>0.00%</u>	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%	100.00%

The applicant states their policy is to assess individuals based on income to determine eligibility for reduced fees and/or charity care, including providing uncompensated services to patients lacking the financial resources to pay.

Lease Rental and Asset Purchase Agreements

BFA Attachment B details:

- The Lease Rental Agreement: The applicant has attested that the lease is an arm's length arrangement, as the landlord and tenant have no relationship. The applicant has also submitted letters from two New York realtors attesting to the rent reasonableness.
- The Asset Purchase Agreement: 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 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of December 18, 2020, the facility had no outstanding Medicaid liabilities.

Capability and Feasibility

Wellbound II LLC will acquire the CHHA's operations for a total purchase price of \$1,000,000. A down payment of \$100,000 has already been paid and the balance of \$900,000 will be met via equity from the proposed members. The working capital requirement is estimated at \$422,913, based on two months of third-year expenses, and will be funded from the proposed members' equity. BFA Attachment A, the members' net worth statements, reveals sufficient resources to meet the equity and working capital needs.

The submitted budget projects a net income of \$85,005 and \$397,803 in the first and third years, respectively. The budget appears reasonable.

BFA Attachment D is the 2020 certified financial summary and the June 30, 2021 internal financial statements for Bethel Nursing Home Company, Inc., which shows that the CHHA had an operating loss of \$858,739 in 2020 and a loss of \$25,551 through June 30, 2021. The applicant has indicated that the CHHA's financial performance in 2020 was primarily due to the current operator's focus on selling and ceasing the operations of the CHHA. The applicant expects to increase utilization of the CHHA by enrolling new patients from the community through community outreach; advertising; reaching out to new health care entities to create a stronger referral system, and utilizing the applicant's members' affiliated entities for referrals to the CHHA.

BFA Attachment C is the pro forma balance sheet, which shows the entity will start with a positive net asset position of \$1,422,913.

Conclusion

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

Attachments

BFA Attachment A	Personal Net Worth Statement- Proposed Members of Wellbound II LLC
BFA Attachment B	Agreements
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summaries for Bethel Nursing Home Company