

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

SPECIAL FULL COUNCIL MEETING

AGENDA

March 2, 2022

*Immediately following the Special Establishment and Project Review Committee Meeting
(EPRC scheduled to begin at 10:15 a.m.)*

Empire State Plaza, Concourse Level, Meeting Rooms 2-4, Albany

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

**B. APPLICATIONS FOR ESTABLISHMENT AND
CONSTRUCTION OF HEALTH CARE FACILITIES**

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	202054 E	Forest View Center for Rehabilitation & Nursing (Queens County)	Approval
2.	211233 E	Glen Island Center for Nursing and Rehabilitation (Westchester County)	Approval
3.	211276 E	J&H Operations, LLC d/b/a Swan Lake Nursing & Rehabilitation (Suffolk County)	Contingent Approval

- | | | | |
|----|----------|--|---------------------|
| 4. | 202203 E | Kingsway Arms Nursing Center,
Inc.
(Schenectady County) | Contingent Approval |
| 5. | 202084 E | Lawrence Nursing Care Center,
Inc.
(Queens County) | Contingent Approval |
| 6. | 202066 E | New Vanderbilt Rehabilitation and
Care Center, Inc.
(Richmond County) | Approval |
| 7. | 201024 E | Optima Care Brentwood, LLC
d/b/a Maria Regina Rehabilitation
and Nursing
(Suffolk County) | Contingent Approval |
| 8. | 192228 E | Betsy Ross Operations, LLC d/b/a
Betsy Ross Rehabilitation and
Nursing
(Oneida County) | Contingent Approval |

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

III. NEXT MEETING

March 24, 2022, Albany

Tuesday, April 5, 2022, Albany

IV. ADJOURNMENT



**Project # 202054-E
Forest View Center for Rehabilitation & Nursing**

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: September 1, 2020

Executive Summary

Description

Forest View Center for Rehabilitation and Nursing, Inc., an existing 160-bed residential health care facility located at 71-20 110th Street, Forest Hills (Queens County), requests approval to transfer 12.5% ownership interest from one withdrawing shareholder to a new shareholder.

Elizabeth Goldblum is proposing to transfer her 12.5% interest (25 shares) to her son, Saul Elliot Goldbaum, pursuant to a Deed of Gift dated February 12, 2020.

The current and proposed ownership of Forest View Center for Rehabilitation and Nursing, Inc. is as follows:

Shareholders	Current	Proposed
Elizabeth Goldbaum	12.5%	0%
Esther Friedman	12.5%	12.5%
Esther Solomon	12.5%	12.5%
Gloria Lieberman	12.5%	12.5%
Jack Deutsch	50.0%	50.0%
Saul Elliott Goldbaum	0%	12.5%
Total	100%	100%

**OPCHSM Recommendation
Approval**

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

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

Financial Summary
There are no project costs or budgets associated with this transfer.

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Council Action Date
March 2, 2022

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Forest View Center for Rehabilitation & Nursing	Same
Address	71-20 110 th Street Forest Hills, NY 11375 (Queens County)	Same
RHCF Capacity	160-bed	Same
ADHCP Capacity	N/A	Same
Type of Operator	Business Corporation	Same
Class of Operator	Proprietary	Same
Operator	Forest View Nursing Home Inc	Forest View Nursing Home Inc
	Current Shareholders	Proposed Shareholders
	Elizabeth Goldbaum 12.5%	Saul E. Goldbaum 12.5%
	Esther Friedman 12.5%	Esther Friedman 12.5%
	Esther Solomon 12.5%	Esther Solomon 12.5%
	Gloria Lieberman 12.5%	Gloria Lieberman 12.5%
	Jack Deutsch 50%	Jack Deutsch 50%

The applicant proposes to transfer the stock of Elizabeth Goldbaum (12.5%) to her son, Saul Goldbaum pursuant to a Deed of Gift and Acceptance dated February 12, 2020. No changes in the beds, services, program, or physical environment as a result of this application, and the applicant has indicated there will be no administrative services or consulting agreements.

Character and Competence

Saul Elliot Goldbaum is currently employed as President at FHS Consultants, LLC, an accounting and software health care consulting business, since 1992, Cliffside Nursing Home as Controller since 1991, and Woodcrest Nursing Home as Controller since 1987. Saul Goldbaum holds a high school diploma from Ohr Hameir Theological Seminary and holds a professional license as an insurance broker in good standing. Saul Goldbaum discloses interest in the following managed long term care plan:

Centers Plan for Healthy Living, LLC (7.8%)

08/2017- Current

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Forest View Center for Rehabilitation & Nursing	Subject Facility	****	****	****	***

Data date: 01/2022

Enforcement History

There are no enforcements for Centers Plan for Healthy Living, LLC during the period when Saul Goldbaum has been a member.

Conclusion

There will be no changes in beds, programs, or physical plant as a result of this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Financial Summary

The transfer of stock will be made via an executed Deed of Gift and Acceptance, dated February 12, 2020, that states that Elizabeth Goldbaums' 25 shares (12.5% ownership) will be assigned to Saul Elliot Goldbaum. The facility and the applicant will not incur any cash outlay for the stock transfer. There are no project costs or budgets associated with this application.

Capability and Feasibility

There is no purchase price for the transfer of the stock. BFA Attachment A is the 2020 Certified Financial Statements, and the September 30, 2021, Internal Financial Statements of Forest View Center for Rehabilitation & Nursing. As shown, the entity had a positive working capital position and a positive net asset position for the period shown. The entity also achieved a net income for these periods.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	2020 Certified Financial Statements and September 30, 2021, Internal Financial Statements of Forest View Center for Rehabilitation & Nursing

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of March 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 12.5% ownership interest from one (1) withdrawing stockholder to one (1) new stockholder, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

202054 E Forest View Center for Rehabilitation & Nursing

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]



**Project # 211233-E
Glen Island Center for Nursing and Rehabilitation**

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: June 11, 2021

Executive Summary

Description

Ralex Services, Inc. d/b/a Glen Island Center for Nursing and Rehabilitation, an existing 182-bed residential health care facility at 450 Pelham Road, New Rochelle, requests approval for one existing shareholder to transfer her entire 90.01% shareholder interest to the other existing shareholder. The current ownership of Ralex Services, Inc. is Leah Friedman (90.01%) and Maury Flax (9.99%). On April 21, 2021, Leah Friedman gifted her 90.01% shareholder interest to her son, Maury Flax.

The existing Lease Agreement between Ralex Services, Inc. (as tenant) and Will Maur Associates, LLC (as landlord) will not change as a result of this application. There is common ownership between Ralex Services, Inc. and Will Maur Associates, LLC in that Maury Flax also owns an 8.33% membership interest in Will Maur Associates, LLC.

**OPCHSM Recommendation
Approval**

Need Summary

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

Program Summary

No negative information has been received concerning the character and competence of the proposed applicant. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

The transfer of shares is being done through a gift. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$19,574,648	\$19,860,377
Expenses	<u>19,564,429</u>	<u>19,760,076</u>
Net Income	\$10,219	\$100,301

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by **one year from the date of this 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 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]

Council Action Date
March 2, 2022

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Glen Island Center for Nursing and Rehabilitation	Same
Address	490 Pelham Road, New Rochelle NY 10805	Same
RHCF Capacity	182	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Business Corporation	Same
Class of Operator	Proprietary	Same
Operator	Ralex Services, Inc.	Ralex Services, Inc.
	<u>Members</u> Leah Friedman 90.01% Maury Flax 9.99%	<u>Member</u> Maury Flax 100%

Project Review

This application proposes to transfer 90.01 percent interest from one withdrawing shareholder to the remaining shareholder. The ownership percentage for Maury Flax will increase from 9.9% to 100%. No changes in the beds, program, or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements

Character and Competence

Maury Flax has been employed as the Executive Director of Glen Island Center for Nursing and Rehabilitation since January 2014. Prior to becoming the Executive Director, Mr. Flax was employed as the Purchasing Director at Glen Island Center for Nursing and Rehabilitation from January 2009. Mr. Flax holds a bachelor's degree in Business Management from Long Island University Post-Brookville. The applicant discloses ownership interests in the following health care facility:

Glen Island Center for Nursing and Rehabilitation (9.99%) 12/2020 to present

Quality Review

The applicant owns one New York facility, the subject facility. The subject facility has a below-average CMS overall quality rating.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Glen Island Center for Nursing and Rehabilitation (Subject Facility)	Current	**	**	****	**
	01/2021	**	**	****	**

Data date: 01/2022

Enforcement History

Glen Island Center for Nursing and Rehabilitation

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-027 issued on January 28, 2021, for failure to submit a staff testing and compliance survey due on 12/10/2020. Deficiencies were found under 10 NYCRR 415.19(d) maintaining records.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicant. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

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

	<u>Current Year (2020)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per PD</u>	<u>Total</u>	<u>Per PD</u>	<u>Total</u>	<u>Per PD</u>	<u>Total</u>
<u>Revenues</u>						
Medicare FFS	\$625.14	\$3,750,868	\$625.14	\$4,063,440	\$625.14	\$4,125,955
Medicare MC	\$494.45	\$2,391,648	\$494.45	\$2,595,855	\$494.45	\$2,645,300
Medicaid FFS	\$254.07	\$8,726,626	\$248.18	\$9,306,750	\$248.18	\$9,430,840
Medicaid MC	\$263.30	\$2,726,226	\$235.77	\$2,652,424	\$235.77	\$2,687,789
Private Pay	\$572.56	<u>\$872,012</u>	\$572.56	<u>\$956,179</u>	\$572.56	<u>\$970,493</u>
Operating Rev		\$18,467,380		\$19,574,648		\$19,860,377
Non-Operating Rev		<u>3,359,706</u>		<u>10,000</u>		10,000
Total Revenues		\$21,827,086		\$19,584,648		\$19,870,377
<u>Expenses</u>						
Operating	\$313.09	\$17,865,275	\$280.19	\$17,419,681	\$279.30	\$17,608,399
Capital	<u>\$37.53</u>	<u>\$2,141,335</u>	<u>\$34.50</u>	<u>\$2,144,748</u>	<u>\$34.13</u>	<u>\$2,151,677</u>
Total Expenses	\$350.61	\$20,006,610	\$314.69	\$19,564,429	\$313.43	\$19,760,076
Net Income		<u>\$1,820,476</u>		<u>\$20,219</u>		<u>\$110,301</u>

The following is noted with respect to the operating budget:

- Revenue assumptions are based upon the following: Medicaid Fee for Service rate is based on the Facility’s 2021 Medicaid Rate sheet; Medicaid Managed Care rate is based on an assumed 95% of the Medicaid Fee for Services rate and the Medicare rate is based on the facility’s 2020 Medicare rates.
- Year 1 and Year 3 operating expenses are based on 2019 operating expenses, decreased, where appropriate, to account for the planning reduction in operating expenses based on operating efficiency.
- Non-Operating Revenues in the current year consist of the following: Loan forgiveness from the CARES Act Payroll Protection Program of \$2,072,000, HHS Stimulus Revenue from the Provider Relief Fund of \$1,264,000 (\$1,214,070 received in 2020), Investment Income of \$14,094 and Miscellaneous Income \$9,542. These additional revenues allowed the facility to generate a positive net income in 2020.
- Utilization is currently 95% occupancy and has largely recovered from the negative impact of the COVID-19 pandemic and is approaching the pre-pandemic rate of 97% occupancy in 2019.

Utilization, broken down by payor source, during the current year and the first and third year is:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	10.51%	10.46%	10.47%
Medicare MC	8.48%	8.44%	8.49%
Medicaid FFS	60.19%	60.31%	60.27%
Medicaid MC	18.14%	18.10%	18.08%
Private Pay	2.68%	2.69%	2.69%

Capability and Feasibility

The transfer of the 90.01% shareholder interest will be done via a gift from Leah Friedman to her son, Maury Flax. Working capital requirements are estimated at \$3,246,561, which is equivalent to two months of first-year expenses. The applicant will meet the working capital requirement via operations and from the personal net worth statements of Maury Flax. BFA Attachment A, the personal net worth statement of Maury Flax and BFA Attachment B, the financial summary of Glen Island Center for Nursing and Rehabilitation from 2019 through 2020, indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of \$10,219 and \$100,301 during the first and third years after the transfer of stock ownership, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

As shown in Attachment B, the entity had an average positive working capital position and an average positive net asset position from 2019 through 2020. The entity achieved an average net income of \$755,372 from 2019 through 2020.

BFA Attachment C is the June 30, 2021, internal financial statements of Glen Island Center for Nursing and Rehabilitation. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2021. The entity achieved a net income of \$140,259 through June 30, 2021.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Statement
BFA Attachment B	Financial Summary- Glen Island Center for Nursing and Rehabilitation
BFA Attachment C	June 30, 2021, Internal Financial statements of Glen Island Center for Rehabilitation

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of March 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 90.01 percent interest from one withdrawing shareholder to the remaining shareholder, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

211233 E Glen Island Center for Nursing and Rehabilitation

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of this 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 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]



Project # 211276-E
J&H Operations, LLC d/b/a
Swan Lake Nursing & Rehabilitation

Program: Residential Health Care Facility
Purpose: Establishment
County: Suffolk
Acknowledged: July 12, 2021

Executive Summary

Description

J&H Operations, LLC d/b/a Swan Lake Nursing & Rehabilitation, an existing New York limited liability company, requests approval to be established as the new operator of Suffolk Center for Rehabilitation and Nursing, a 120-bed, Article 28 Residential Health Care Facility (RHCF) located at 25 Schoenfeld, Blvd, Patchogue (Suffolk County). The current operator of the RHCF is Suffolk Center Receiver, LLC. Upon approval by the Public Health and Health Planning Council (PHHPC), the facility will be named Swan Lake Nursing & Rehabilitation Center. A&S Acquisitions, LLC will hold the realty interest via a Real Estate Purchase & Sales Agreement. There will be no change in beds or services provided.

This application includes two transactions, one for the transfer of operations and another for the real property. On March 26, 2021, Suffolk Center Receiver, LLC (current operator), and J &H Operations, LLC (proposed operator), entered into an Asset Purchase Agreement (APA) whereby J&H Operations, LLC will purchase the operations of the RHCF for \$16,008,000 via an Asset Purchase Agreement transaction. Concurrently, on March 26, 2021, A&S Acquisitions, LLC, agreed to purchase the real estate associated with the facility from Suffolk Land, LLC via a purchase and sale agreement for \$7,400,000. After approval, A&S Acquisitions, LLC will lease the RHCF premises to J&H Operations, LLC for a ten-year term with two five-year renewal options. The lease transaction is arm's-length because there is no

common ownership between A&S Acquisitions, LLC and J&H Operations, LLC.

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

Table with 2 columns: Member, Percentage. Title: Current Operator. Content: Suffolk Center Receiver, LLC; Herbert Paul Konstam (95%); Devorah Konstam (5%).

Table with 2 columns: Member, Percentage. Title: Proposed Operator. Content: J&H Operations, LLC; Jacob Hager (100%).

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this project.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs associated with this application. The purchase price for the RHCF operations is \$16,008,000; \$14,407,000 will be paid by a loan at a rate of 6% for a term of 5 years, and the balance of \$1,601,000 will be paid with member equity. A&S Acquisitions, LLC, an unrelated third party will purchase the realty interest for \$7,400,000. The proposed realty member submitted an executed purchase and sale agreement whereby the purchaser shall pay \$320,000 to be held by the seller's attorney as escrow agent and a letter of interest from Greystone Funding Corporation for a loan of approximately \$9,400,000 for a 10-year term at an interest rate of approximately 6.5%.

<u>Budget</u>	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Revenues	\$20,030,700	\$20,578,500
Expenses	<u>\$20,014,578</u>	<u>\$19,964,562</u>
Net Income	\$16,122	\$613,938

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval (See LTCOP Attachment A).

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR).
2. Submission of executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. (BFA)
3. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. (BFA)
4. Submission of an executed working capital loan acceptable to the Department of Health. (BFA)
5. Submission of an executed Administrative Service Agreement acceptable to the Department of Health. (BFA)
6. Submission of an executed Lease Agreement acceptable to the Department of Health. (BFA)
7. Submission of a photocopy of an executed Amended and Restated Articles of Organization of J&H Operations, acceptable to the Department. (CSL)
8. Submission of a photocopy of an executed and amended Operating Agreement of J&H Operations, LLC, acceptable to the Department. (CSL)
9. Submission of a photocopy of an executed Attestation for Service Agreements, acceptable to the Department. (CSL)
10. Submission of a photocopy of an executed Lease Agreement between J&H Operations, LLC and A&S Acquisitions, LLC, acceptable to the Department. (CSL)
11. Submission of photocopy an executed Consulting Agreement between J&H Operations, LLC and Blue Sapphire Consulting Company, LLC, acceptable to the Department. (CSL)

Approval conditional upon:

1. This project must be completed by **one year from the date of this 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 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]

Council Action Date

March 2, 2022

Need and Program Analysis

Facility Information

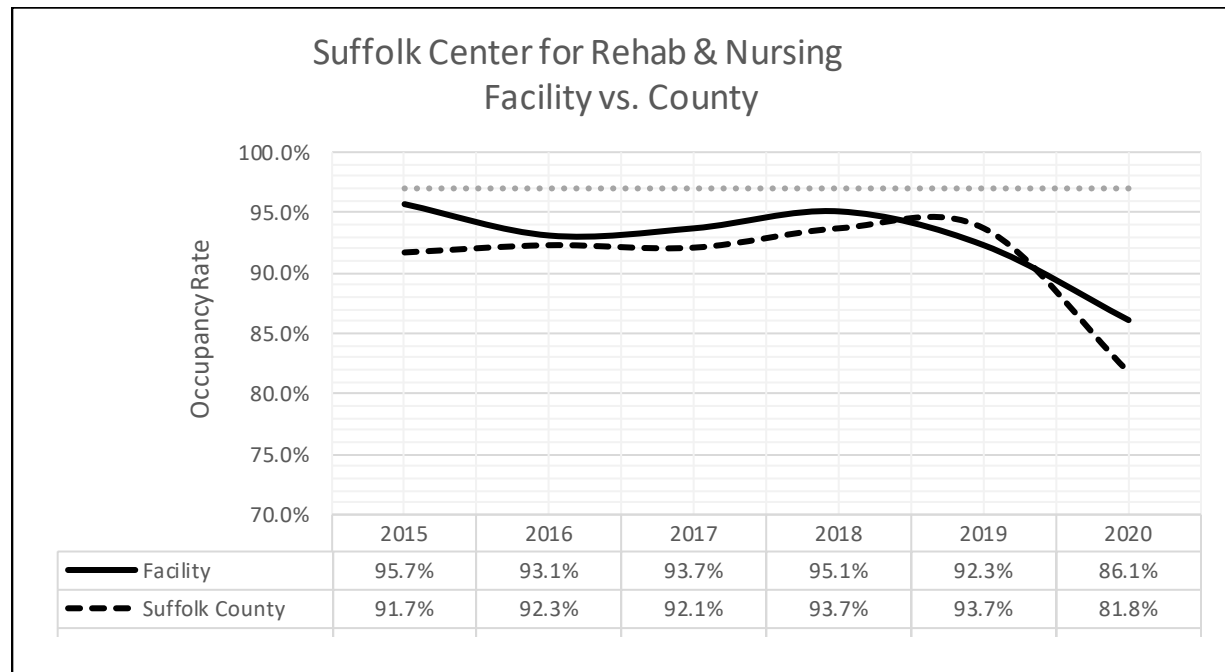
	Existing	Proposed
Facility Name	Suffolk Center for Rehabilitation and Nursing	Swan Lake Nursing & Rehabilitation
Address	25 Schoenfeld Blvd Patchogue, NY 11772	Same
RHCF Capacity	120	Same
ADHC Program Capacity	0	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Suffolk Center Receiver LLC <u>Members</u> Herbert Paul Konstam 95% Devorah Konstam 5%	J&H Operations, LLC <u>Member</u> Jacob Hager 100%

Program Review

This application proposes to establish J&H Operations, LLC d/b/a Swan Lake Nursing & Rehabilitation as operator of Suffolk Center for Rehabilitation and Nursing an existing 120-bed residential health care facility located at 25 Schoenfeld Boulevard Patchogue. J&H Operations, LLC's sole member and manager is Jacob Hager. No changes in the beds, program, or physical environment are proposed in this application.

The applicant has entered into a consulting and administrative services contract with Blue Sapphire Consulting Company, LLC (Allen Stein manager). There is no relationship besides contractual between Blue Sapphire Consulting Company, LLC and the member of J&H Operations, LLC. Blue Sapphire Consulting Company, LLC and A&S Acquisitions, LLC, the proposed realty owner, are both owned and managed by Allen Stein.

Utilization



The facility generally had occupancies in the mid-90s since 2015. 2020 occupancy was significantly impacted, most likely by the COVID-19 pandemic. Based upon weekly census data, current occupancy, as of November 24, 2021, was 88.3% for the facility and 82.3% for Suffolk County.

The primary service area is Suffolk County. The population of Suffolk County in 2010 was 1,493,350 with 93,810 individuals (6.3%) who are 75 and older, which is the primary population group who utilize RHCs. Per PAD projection data this population group (75 and older) is estimated to grow to 146,626 by 2025 and represent 9.8% of the projected population of 1,494,626 for Suffolk County.

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR Section 670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75 percent of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

Suffolk Center for Rehabilitation and Nursing's Medicaid admissions rate has exceeded the threshold of 75% of the Suffolk County rate, as demonstrated in the table below.

Medicaid % of Total Admissions	2018	2019	2020
Suffolk County Total	24.9%	19.9%	20.6%
75% of County Percentage	18.7%	15.0%	15.4%
Suffolk Center for Rehab	30.2%	32.6%	32.5%

Character and Competence

Jacob Hager is currently employed at Luxor Care Center as the Vice President since 2018. Jacob Hager holds a Rabbinical Degree from Yeshiva Viznitz and discloses the following health facility interests:

Luxor Nursing and Rehab at Sayville (25%)	4/2018- present
Luxor Nursing and Rehab at Mills Pond (25%)	4/2018- present

Quality Review

The proposed owners' portfolio includes ownership in two New York nursing homes. All the nursing homes have a CMS overall quality rating of average or above.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Suffolk Center for Rehabilitation and Nursing	Subject Facility	***	**	*****	**
Luxor Nursing and Rehab at Sayville	Current	***	***	*****	*
	04/2018	***	**	*****	N/A
Luxor Nursing and Rehab at Mills Pond	Current	****	****	*****	*
	04/2018	**	**	****	N/A

Data date: 1/2022

Enforcement History

Luxor Nursing and Rehabilitation at Sayville

- The facility was fined \$8,000 pursuant to Stipulation and Order NH-21-077 issued on April 28, 2021, for surveillance findings on November 9, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1-3) and 415.19(b)(1), infection control isolation and proper PPE.

Conclusion

There will be no changes to beds or services as a result of this project. No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

The applicant has provided an operating budget, in 2022 dollars, for the first and third years subsequent to the change of ownership. The budget is summarized below:

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per</u>	<u>Total</u>	<u>Per</u>	<u>Total</u>	<u>Per</u>	<u>Total</u>
	<u>Diem</u>		<u>Diem</u>		<u>Diem</u>	
<u>Revenues</u>						
Commercial FFS		\$0	\$358.23	\$2,118,200	\$372.79	\$2204,300
Medicare FFS	\$770.56	3,717,964	\$844.97	10,794,500	\$879.10	11,230,500
Medicaid FFS	\$276.22	8,766,728	299.59	6,093,100	\$299.59	6,093,100
Private Pay	\$198.25	244,250	\$598.22	235,700	\$622.34	245,200
Medicare Part B		751,412		779,600		795,100
Other		<u>2,423,624</u>		<u>9,600</u>		<u>10,300</u>
Total Revenues		\$15,903,978		\$20,030,700		\$20,578,500
<u>Expenses</u>						
Operating	\$328.40	\$12,412,073	\$367.61	\$14,491,108	\$367.85	\$14,500,708
Capital	<u>50.77</u>	<u>1,918,818</u>	<u>\$140.11</u>	<u>5,523,470</u>	<u>138.60</u>	<u>5,463,854</u>
Total Expenses	\$379.17	\$14,331,091	\$507.72	\$20,014,578	\$506.45	\$19,964,562
Net Income/(Loss)		<u>\$1,572,887</u>		<u>\$16,122</u>		<u>\$613,938</u>
Patient Days		37,795		39,420		39,420
Occupancy		86.3%		90.0%		90.0%

The following is noted with respect to the submitted budget:

- The proposed Commercial FFS utilization in Years 1 & 3 is based on this sole member's rehabilitation patient mix at his other two related facilities and established relationships with discharge planners as a referral source for commercially insured patients.
- The planned increase in rehabilitation patients from the Current Year to Years 1 & 3 reflects an increase in Medicare utilization, which may also be bolstered if the existing referral base of rehabilitation patients choose to use this facility in lieu of the member's other nursing homes if it is more convenient for them.
- The decline in net income from the Current Year to Year One is due to increased lease costs, increasing operating costs of payroll, benefits and supplies, and inflationary factors. Depreciation and rent in the Current Year are \$1,404,575. In Years 1 & 3, the depreciation and rent expense increases to \$4,760,992. Purchased services increase by \$959,253 and salary and benefits increase by \$818,339.

- The projected utilization of 90% is slightly higher than the 2020 occupancy rate but on par with the facility's current occupancy which was 90.8% as of February 9, 2022.
- Medicaid MC per diem is based on an estimated 95.0% of the Medicaid FFS rate.
- Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year 1</u>	<u>Year 3</u>
Commercial FFS		15.0%	15.0%
Medicare FFS	12.77%	32.41%	32.41%
Medicaid FFS	83.97%	51.59%	51.59%
Private Pay	<u>3.26%</u>	<u>1.00%</u>	<u>1.00%</u>
Total	100%	100%	100%

Agreements and Contracts

BFA Attachment B summarizes the following agreements and contracts:

- **Asset Purchase Agreement for the RHCF's operating interests:** The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.
- **Real Estate purchase agreement**
- **Draft lease agreement:** The applicant has submitted an affidavit stating that the lease agreement is an arm's length arrangement in that J&H Operations, LLC and A&S Acquisitions, LLC have no family or pre-existing relationship or common ownership in this facility.
- **Draft administrative service agreement:** J&H Operations, LLC will retain ultimate authority, responsibility, and control in all final decisions associated with the services provided. In accordance with the Department's Administrative Service Agreement (ASA) and contract standardization policy effective December 13, 2016, the terms of an executed ASA must acknowledge the reserve powers that must not be delegated, the conflict clause provisions to ensure that the licensed operator retains the ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes, and regulations. The applicant has submitted an executed attestation stating that if the applicant willfully engages in any illegal delegation, it is understood that the Department will hold the applicant accountable

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF's operations is \$16,008,000 to be paid with a \$14,407,000 loan at a rate of 6% for a term of 5 years and \$1,601,000 from Member equity. A letter of interest from Greystone Funding Corporation was received for the loan. BFA Attachment A shows the proposed member's net worth statement. A&S Acquisitions, LLC, an unrelated third party, will purchase the realty interest for \$7,400,000 from Suffolk Center Receiver, LLC. The proposed realty member submitted an executed Purchase and Sale Agreement whereby the purchaser shall pay \$320,000 to be held by the seller's attorney as escrow agent and a letter of interest from Greystone Funding Corporation for approximately \$9,400,000 for a term of ten years at approximately a 6.5% interest rate. The applicant stated that the balance for realty interest will be borrowed.

The working capital requirement is \$3,335,763 based on two months of first-year expenses. Working capital will be satisfied with \$1,775,763 equity from the proposed member's equity and the remaining \$1,560,000 will be financed through a bank loan for five years at a rate of 6%. BFA Attachment C is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$5,235,800.

The submitted budget indicates a net income of \$16,122 and \$613,938 for the first and third year, respectively, and appears reasonable.

BFA Attachment D is a financial summary of Suffolk Center Receiver, LLC d/b/a Suffolk Center for Rehabilitation and Nursing, indicating the facility experienced negative working capital, positive members equity position, and maintained a net income of \$309,475 and \$3,823,074 for years 2019 and 2020 respectively. The facility submitted internal financial statements from January 1, 2021, thru June 30, 2021. During this period, the facility experienced a negative working capital position and a positive member equity position and achieved a net income of \$276,940. It should be noted that the facility during 2020 received liquidity to address pandemic-related events including a paycheck protection program loan that was forgiven in the amount of \$1,240,502 and Federal Stimulus dollars through the CARES Act in the amount of \$837,599.

A financial summary of the proposed member's affiliated RHCFs shows in 2019 both facilities maintained a positive net operating income, a positive working capital position, and member equity position (BFA Attachment E). During 2020 both facilities maintained a positive working capital position and member equity position. In 2020, Luxor Nursing and Rehabilitation at Mills Pond had a positive net income, and Luxor Nursing and Rehabilitation at Sayville had an operating loss of \$505,426 due to higher costs during the pandemic compared with the prior year.

Conclusion

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Statements (Operations and Realty)
BFA Attachment B	Agreements and Contracts
BFA Attachment C	Pro Forma Balance Sheet for J&H Operations, LLC d/b/a Swan Lake Nursing
BFA Attachment D	Suffolk Center Receiver, LLC – Internal balance sheet for December 31, 2019, December 31, 2020, and Income statement as of June 2021.
BFA Attachment E	Affiliated Residential Health Care Facility

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of March 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish J&H Operations, LLC d/b/a Swan Lake Nursing & Rehabilitation as the new operator of Suffolk Center for Rehabilitation and Nursing an existing 120-bed residential health care facility at 25 Schoenfeld Boulevard Patchogue, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

211276 E J&H Operations, LLC
 d/b/a Swan Lake Nursing & Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR).
2. Submission of executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. (BFA)
3. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. (BFA)
4. Submission of and executed working capital loan acceptable to the Department of Health. (BFA)
5. Submission of an executed Administrative Service Agreement acceptable to the Department of Health. (BFA)
6. Submission of an executed Lease Agreement acceptable to the Department of Health. (BFA)
7. Submission of a photocopy of an executed Amended and Restated Articles of Organization of J&H Operations, acceptable to the Department. (CSL)
8. Submission of a photocopy of an executed and amended Operating Agreement of J&H Operations, LLC, acceptable to the Department. (CSL)
9. Submission of a photocopy of an executed Attestation for Service Agreements, acceptable to the Department. (CSL)
10. Submission of a photocopy of an executed Lease Agreement between J&H Operations, LLC and A&S Acquisitions, LLC, acceptable to the Department. (CSL)
11. Submission of photocopy an executed Consulting Agreement between J&H Operations, LLC and Blue Sapphire Consulting Company, LLC, acceptable to the Department. (CSL)

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of this 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 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 202203-E
Kingsway Arms Nursing Center, Inc.**

Program: Residential Health Care Facility
Purpose: Establishment

County: Schenectady
Acknowledged: November 18, 2020

Executive Summary

Description

Kingsway Arms Nursing Center, Inc., an existing 160-bed residential health care facility (RCHF) at 323 Kings Road, Schenectady (Schenectady County), requests approval to transfer 19.0826% ownership interest (20.8 shares) from one deceased shareholder to one existing shareholder.

James Peter McParlton, Jr. died in 2020 and as part of his Last Will and Testament, he bequeathed all of his ownership to his wife, Christina M. McParlton, a current shareholder.

The current and proposed ownership of Kingsway Arms Nursing Center are as follows:

Shareholders	Current	Proposed
Michael C. McParlton	70.8257%	70.8257%
Christina M. McParlton	0.9174%	20.0000%
Annemarie Gleason	9.1743%	9.1743%
James P. McParlton, Jr.	19.0826%	0
Total	100%	100%

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

There is no purchase price for the transfer of the stock or any budget associated with the transfer.

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Kingsway Arms Nursing Center Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed Amended and Restated Bylaws of Kingsway Arms Nursing Center, Inc. [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
March 2, 2022

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Kingsway Arms Nursing Center Inc	Same
Address	323 Kings Road Schenectady NY 12304 (Schenectady County)	Same
RHCF Capacity	160-bed	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Business Corporation	Same
Class of Operator	Proprietary	Same
Operator	Kingsway Arms Nursing Center, Inc Shareholders Michael C. McParlton 70.8257% Christina M. McParlton 0.9174% Annemarie Gleason 9.1743% James Peter McParlton 19.0826%	Kingsway Arms Nursing Center, Inc Shareholders Michael C. McParlton 70.8257% Christina M. McParlton 20.00% Annemarie Gleason 9.1743%

This application proposes to transfer a 19.0826% ownership interest in Kingsway Arms Nursing Center, Inc. to an existing shareholder. No changes in the beds, program, or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements.

Character and Competence

Christina M. McParlton discloses current employment as a homemaker, and prior to that for Williams and Lombardi, CPAs, P.C. from 1982 until 1987. Christina McParlton holds a Bachelor's Degree in accounting from Siena College and discloses the following health facility interests:

Kingsway Arms Nursing Center (<i>subject facility</i>) (1%)	01/2011 to present
Kingsway Manor Assisted Living (20%)	07/2020 to Present
Mohawk Ambulance Service (Director) (30%)	07/2015 to Present

Quality Review

The receiving shareholder's portfolio includes ownership in the subject facility. The CMS overall quality rating is above average as shown below.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Kingsway Arms Nursing Center (Subject Facility)	Current	*****	****	*****	****
	01/2011	****	****	****	****

Data Date: 1/2022

Enforcement History

Kingsway Arms Nursing Center

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-17-007 issued on January 3, 2017, for surveillance findings on January 23, 2015. Deficiencies were found under 10 NYCRR 415.12, quality of care highest practicable potential.

- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-167 issued on January 4, 2021, for surveillance findings on September 24, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1), 415.19(a)(2), 415.19(c), infection control, PPE use, and hand hygiene.

Conclusion

There will be no changes in beds, programs, or physical plant as a result of this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Financial Summary

The stock will be transferred via the Last Will and Testament of James Peter McParlton, Jr. There are no budgets associated with this application due to the minimal transfer of stock ownership and because there will be no changes in beds or services.

The applicant states that the facility has not received any previous support from New York State and is not part of any New York State support program. In addition, the facility has never received any capital support that resulted in any debt relief from the State.

The facility received \$1,100,385 in HHS Cares Act Funding in three payments during 2020, as shown on the facility's 2020 income statement. The applicant states that all of the HHS Care Act Funding has been accounted for and was spent in accordance with HHS Care Act eligibility requirements during 2020. It is the applicant's understanding that none of these funds need to be returned to HHS.

Capability and Feasibility

There is no purchase price for the transfer of the stock or a budget associated with the transfer. BFA Attachment A is the 2019 certified financial statements, 2020 certified financial statements, and the June 30, 2021, internal financial statements of Kingsway Arms Nursing Center. As shown, the entity had a positive working capital position and a positive net asset position for the period shown. Also, the entity achieved a net income for these periods.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	2019 certified financial statements, 2020 certified financial statements, and the June 30, 2021, Internal financial statements of Kingsway Arms Nursing Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of March 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 19.0826 percent ownership to an existing member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

202203 E Kingsway Arms Nursing Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Kingsway Arms Nursing Center Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed Amended and Restated Bylaws of Kingsway Arms Nursing Center, Inc. [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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 202084-E
Lawrence Nursing Care Center, Inc.**

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: October 1, 2020

Executive Summary

Description

Lawrence Nursing Care Center, Inc., an existing 200-bed residential health care facility (RCHF) at 350 Beach 54th Street, Arverne (Queens County), requests approval to transfer 90.1% ownership interest (180.2 shares of stock) in Lawrence Nursing Care Center from four withdrawing shareholders to four other existing shareholders.

On April 17, 2019, Heidi Gelley, Rosemarie Weingarten, Matityahu Tenenbaum, and Judith Tenenbaum (as Sellers) entered into a Stock Purchase Agreement with Elias Maccovici, Ethan Maccovici, Esther Zeidman, and Rachel Lifshutz (as Purchaser), wherein the purchaser agreed to purchase a total of 100% of the stock in Lawrence Nursing Care Center. To date, 9.9% of the purchased shares have been transferred to the purchasers, and this application seeks approval to transfer the remaining 90.1% of shareholders' interest from the Sellers to the Buyers.

The current and proposed ownership of Lawrence Nursing Care Center is as follows:

Shareholders	Current	Proposed
Elias Maccovici	2.475%	25%
Ethan Maccovici	2.475%	25%
Esther Zeidman	2.475%	25%
Rachel Lifschultz	2.475%	25%
Heidi Gelley	22.525%	0%
Rosemarie Weingarten	22.525%	0%
Matityahu Tenenbaum	22.525%	0%
Judith Tetenbaum	22.525%	0%
Total	100%	100%

Upon approval of this transaction, Lawrence SNF Realty LLC will sell the real estate associated with the facility to Lawrence Nursing Realty LLC, which is owned by the proposed members of the applicant. Lawrence Nursing Realty, LLC will then lease the facility to Lawrence Nursing Care Center, Inc. for a term of 10 years with an option to renew for another 10-year term, nullifying the current lease in place. There is common ownership between Lawrence Nursing Realty, LLC and Lawrence Nursing Care Center, Inc. Heidi Gelley, Rosemarie Weingarten, Matityahu Tenenbaum, and Judith Tenenbaum, will have no stake in the realty or operations going forward.

OPCHSM Recommendation
Contingent Approval

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

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

Financial Summary

The total purchase price is \$3,800,000 for operating assets. The purchase price for the operating assets will be funded as follows: \$2,000,000 on the effective date to be held in escrow contributed by Fried 2012 Family Trust (\$1,000,000) and the Marcovici 2012 Family Trust (\$1,000,000) and \$1,800,000 by the proposed shareholders via equity personal resources. The projected budget after approval is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$20,662,133	\$20,662,133
Expenses	<u>19,690,406</u>	<u>20,065,018</u>
Net Income	\$971,727	\$597,115

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval (See LTCOP Attachment A).

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 (land) purchase agreement, acceptable to the Department. (BFA)
2. Submission of a final financing package for the real estate purchase, acceptable to the Department. (BFA)
3. Submission of an executed building lease, acceptable to the Department. (BFA)

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Council Action Date

March 2, 2022

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Lawrence Nursing Care Center, Inc	Same
Address	350 Beach 54 Street Arverne, NY 11692 (Queens County)	Same
RHCF Capacity	200 beds	Same
ADHCP Capacity	N/A	Same
Type of Operator	Business Corporation	Same
Class of Operator	Proprietary	Same
Operator	Lawrence Nursing Care Center, Inc. <u>Current Shareholders:</u> Heidi Gelley 22.525% Rosemarie Weingarten 22.525% Matityahu Tenenbaum 22.525% Judith Tenebaum 22.525% Elias Marcovici 2.475% Ethan Marcovici 2.475% Esther Zeidman 2.475% Rachael Lifschutz 2.475%	Lawrence Nursing Care Center, Inc. <u>Proposed Shareholders:</u> Elias Marcovici 25% Ethan Marcovici 25% Esther Zeidman 25% Rachael Lifschutz 25%

This application proposes to transfer 90.1% ownership interest in Lawrence Nursing Care Center, Inc. to four existing shareholders from four withdrawing shareholders. No changes in beds, services, program, or physical environment are proposed in this application. The applicant has indicated there will be an administrative services and consulting agreement with Alliance Seniorcare LLC. The sole member of Alliance Seniorcare LLC is Daniel Zeidman, husband of Esther Zeidman, one of the remaining shareholders.

Character and Competence

Elias Marcovici has been employed at Blake Partners LLC as a Managing Member since 2010. Elias Marcovici holds a bachelor's degree from Yeshiva University and a Juris Doctor degree from Fordham Law School. Mr. Marcovici discloses the following health facility interests:

Nursing Home

Lawrence Nursing Care Center, Inc.(2.475%) 11/2019 - present

Assisted Living

Brookhaven Care Center LLC (20%) 05/2020– present

Ethan Marcovici has been employed at Blake Partners LLC as Principal, General Counsel since 2014. Ethan Marcovici holds a bachelor's degree from Columbia University and a Juris Doctor degree from the University of Pennsylvania Law School. Ethan Marcovici holds professional licenses as an Attorney, Notary Public, and Real Estate Broker all of which are in good standing and discloses the following health facility interests:

Nursing Home

Lawrence Nursing Care Center, Inc.(2.475%) 11/2019 - present

Assisted Living

Brookhaven Care Center LLC (20%) 05/2019 - present

Esther Zeidman has been employed at Surfside Manor Home for Adults as Compliance Consultant since 2011, Compliance Officer at Mermaid Manor Home for Adults since 2009, and as the Operator at Brookhaven Care Center LLC since 2019. Esther Zeidman holds a bachelor's degree from Barnard

College, a Juris Doctor degree from Columbia University School of Law and discloses the following health facility interests:

Diagnostic and Treatment Center

Healthguard Diagnostic and Treatment Center (25%) 2001 - 2007

Nursing Home

Beacon Nursing and Rehabilitation Center (10%) 03/2006 - 07/2016
Lawrence Nursing Care Center, Inc. (2.475%) 11/2019 - present

Assisted Living

Brookhaven Care Center (20%) 05/2019 - present

Rachael Lifschutz has been employed at Brockhaven Care Center as an operator since 2019, at Kings Adult Care Center since 2016 as the assistant administrator, and at Surfside Manor for Adults as the compliance consultant since 2011. Rachael Lifschutz holds a bachelor's and master's degree from Queens College and discloses the following health facility interests:

Nursing Home

Lawrence Nursing Care Center, Inc. (2.475%) 11/2019 - present

Diagnostic and Treatment Center

Healthguard Diagnostic and Treatment Center (25%) 200 - 2007

Assisted Living

Brookhaven Care Center (20%) 05/2019 - present

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Lawrence Nursing Care Center, Inc (Subject Facility)	Current	****	****	*****	*
	11/2019	***	***	*****	*
Beacon Nursing and Rehabilitation Center	End Date: 2016	****	****	****	**
	Begin Date: 2006 (Data as of 1/2009)*	**	**	****	***

Data date: 12/2021

*Earliest Data Available

Enforcement History

Lawrence Nursing Care Center, Inc.

- The facility was assessed federal CMP's of the following amounts on the dates indicated for failure to report COVID data.
6/08/2020: \$650.00, 6/15/2020: \$975.00, 6/22/2020: \$1,300.00, 6/29/2020: \$1,625.00,
7/20/2020: \$2,600.00, 7/27/2020: \$2,925.00, 8/03/2020: \$3,250.00, 8/10/2020: \$3,575.00,
8/17/2020: \$3,900.00

Conclusion

There will be no changes in beds, programs, or physical plant as a result of this application. The individual background review indicates the applicants 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, in 2022 dollars, for the current year (2020), first-year and third-year after the ownership change, summarized below:

	<u>Current Year 2020</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per PD</u>	<u>Total</u>	<u>Per PD</u>	<u>Total</u>	<u>Per PD</u>	<u>Total</u>
<u>Revenues</u>						
Medicare FFS	\$694.36	\$5,568,768	\$694.39	\$5,680,143	\$694.39	\$5,680,143
Medicare MC	\$378.86	90,547	\$378.52	92,358	\$378.52	92,358
Medicaid FFS	\$249.88	9,683,050	\$249.88	9,876,711	\$249.88	\$,876,711
Medicaid MC	\$299.23	5,408,613	\$299.23	5,516,785	\$299.23	\$,516,785
Private Pay	\$300.00	45,300	\$300.00	46,206	\$300.00	\$6,206
Other Hospice	\$249.06	54,045	\$249.06	55,126	\$249.06	\$5,126
Less Bad Debt		<u>605,196</u>		<u>605,196</u>		<u>605,196</u>
Total Revenues		\$20,245,127		\$20,662,133		\$20,662,133
<u>Expenses</u>						
Operating	\$280.56	\$18,363,335	\$280.56	\$18,730,602	\$286.17	\$19,105,204
Capital	<u>\$14.66</u>	<u>959,804</u>	<u>\$14.38</u>	<u>959,804</u>	<u>\$14.38</u>	<u>959,814</u>
Total Expenses	\$295.22	\$19,323,139	\$294.93	\$19,690,406	\$300.55	\$20,065,018
Net Income		<u>\$921,988</u>		<u>\$971,727</u>		<u>\$597,115</u>
Utilization (Days)		65,453		66,762		66,762
Occupancy		89.66%		91.45%		91.45%

The following is noted concerning the submitted budget:

- The Medicare and Private Pay rates are projected upon the current market rates.
- The current year Medicaid rate is based on the facility's Medicaid rate per 2019 RHCF-4 cost report information.
- The increase in patient days from the current year is based on the facility's pre-COVID19 utilization levels during the first quarter of 2020. The improved utilization levels during the first quarter of 2020 were the result of a new admissions director being hired at the facility.
- The facility received CARES Act funding of \$1,269,140, of which the monies have been spent. The applicant did not receive any state support for debt relief.
- Net Income of \$921,988 for the current year is after the facility received CARES Act financial assistance.

Utilization by payor source for the current year, year one, and year three are as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	0.96%	0.96%	0.96%
Medicare MC	0.36%	0.36%	0.36%
Medicaid FFS	71.29%	71.29%	71.29%
Medicaid MC	26.42%	26.42%	26.42%
Private Pay	0.97%	0.97%	0.97%

Agreements and Contracts

BFA Attachment B summarizes:

- Administrative and consulting services agreement
- Stock purchase agreement
- Real Estate Purchase Agreement.
- Lease agreement: The applicant has indicated the landlord and the tenant have common ownership.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the stock acquisition is \$3,800,000 and will be paid as follows: \$2,000,000 on the Effective Date to be held in escrow contributed by Fried 2012 Family Trust (\$1,000,000) and the Marcovici 2012 Family Trust (\$1,000,000) and \$1,800,000 by the proposed shareholders via equity from personal resources. The applicant provided documentation in support of the Family Trust availability to provide the funds. The real estate purchase price of \$22,450,000 was financed via a loan at an interest rate of 4.5% for a ten-year term and a twenty-five-year amortization period. The applicant intends to refinance the real estate loan after ten years. If refinancing is not available, the applicant states that the Fried 2012 Family Trust and the Marcovici 2012 Family Trust will make the balloon payment of \$16,311,828. They have sufficient funds to pay off the balloon payment.

Working capital requirements are estimated at \$2,867,159, which is equivalent to two months of third-year expenses. The applicant will meet the working capital requirement via equity from the new shareholders' personal resources. The applicant provided an affidavit indicating that equity will be provided disproportionate to ownership interests. BFA Attachment A is the personal net worth statements of the new shareholders, which indicates sufficient funds to meet the stock purchase price and the working capital requirements. BFA Attachment C is the pro forma balance sheet as of the first day after the stock change, which indicates a positive net asset position of \$4,353,191.

The submitted budget indicates a net income of \$985,985 and \$952,170 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment D is the financial summary of Lawrence Nursing Center from 2018 through 2020. As shown, the entity had an average negative working capital position and an average negative net asset position from 2018 through 2020. Also, the entity incurred average losses of \$332,565 from 2018 through 2020. The applicant has indicated that the reason for the losses was the result of higher-than-expected non-medical supplies, purchased services, and other direct expenses.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Statement
BFA Attachment B	Agreements and Contracts
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary- Lawrence Nursing Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of March 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 90.1% ownership interest from four (4) withdrawing stockholders to four (4) remaining stockholders, each of whom will own 25% ownership interest, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

202084 E Lawrence Nursing Care Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed building (land) purchase agreement, acceptable to the Department. (BFA)
2. Submission of a final financing package for the real estate purchase, acceptable to the Department. (BFA)
3. Submission of an executed building lease, acceptable to the Department. (BFA)

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 202066-E
New Vanderbilt Rehabilitation and Care Center, Inc.**

Program: Residential Health Care Facility
Purpose: Establishment

County: Richmond
Acknowledged: October 13, 2020

Executive Summary

Description

New Vanderbilt Rehabilitation and Care Center, Inc., an existing 320-bed residential health care facility (RCHF) at 135 Vanderbilt Avenue, Staten Island, (Richmond County), requests approval to transfer 30.2% ownership from one deceased shareholder to three existing shareholders.

Clara Heisler, owner of 30.2% of the stock in New Vanderbilt, died in 2020, and prior to her death, she executed an assignment and assumption agreement to sell 5.1% interest to Anna Schon and 5.1% interest to Baron Schon. The remaining 20% will be transferred to Henry Schon via the estate of Clara Heisler.

The current and proposed ownership of New Vanderbilt Rehabilitation and Care Center, Inc. is as follows:

Shareholder	Current	Proposed
Henry Schon	50.0%	70%
Clara Heisler	30.2%	0%
Anna Schon	9.9%	15%
Baron Schon	9.9%	15%
Total	100%	100%

OPCHSM Recommendation

Approval

Need Summary

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

Program Summary

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

Financial Summary

There are no project costs or budgets associated with this application and no change in services since this transaction is limited in scope to shareholder changes.

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Council Action Date
March 2, 2022

Program Analysis

Project Description

	Existing	Proposed														
Facility Name	New Vanderbilt Rehabilitation and Care Center, Inc.	Same														
Address	135 Vanderbilt Ave. Staten Island, NY 10304 (Richmond)	Same														
RHCF Capacity	320	Same														
ADHCP Capacity	N/A	Same														
Type of Operator	Business Corporation	Same														
Class of Operator	Proprietary	Same														
Operator	New Vanderbilt Rehabilitation and Care Center, Inc.	New Vanderbilt Rehabilitation and Care Center, Inc.														
	<p>Current Shareholders</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Henry Schon</td> <td style="width: 30%; text-align: right;">50.0%</td> </tr> <tr> <td>Estate of Clara Heisler</td> <td style="text-align: right;">30.2%</td> </tr> <tr> <td>Anna Schon</td> <td style="text-align: right;">9.9%</td> </tr> <tr> <td>Baron Schon</td> <td style="text-align: right;">9.9%</td> </tr> </table>	Henry Schon	50.0%	Estate of Clara Heisler	30.2%	Anna Schon	9.9%	Baron Schon	9.9%	<p>Proposed Shareholders</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Henry Schon</td> <td style="width: 30%; text-align: right;">70%</td> </tr> <tr> <td>Anna Schon</td> <td style="text-align: right;">15%</td> </tr> <tr> <td>Baron Schon</td> <td style="text-align: right;">15%</td> </tr> </table>	Henry Schon	70%	Anna Schon	15%	Baron Schon	15%
Henry Schon	50.0%															
Estate of Clara Heisler	30.2%															
Anna Schon	9.9%															
Baron Schon	9.9%															
Henry Schon	70%															
Anna Schon	15%															
Baron Schon	15%															

This application proposes to transfer 30.2% ownership interest from the Estate of Clara Heisler to Anna Schon, Baron Schon, and Henry Schon. No changes in the beds, program, or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements

Character and Competence

Anna Schon was responsible for bookkeeping at New Vanderbilt Rehabilitation and Care Center from January 1991 until she retired in May 2019. Anna Schon holds a high school diploma from Beth Jacob High School and discloses the following health facility interests:

New Vanderbilt Rehabilitation and Care Center, Inc (9.9%) 12/2009 to present

Baron Schon lists employment as the Director of Finances at New Vanderbilt Rehabilitation and Care Center, Inc since 9/2013. Baron Schon holds a Rabbinical Degree from Rabbinical College of Beer Yaakov in Israel and discloses the following health facility interests:

New Vanderbilt Rehabilitation and Care Center, Inc (9.9%) 12/1999 to present

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
New Vanderbilt Rehabilitation and Care Center, Inc. (Subject Facility)	Current	***	****	***	*
	Begin Date: 12/1999 (Data as of 1/2009)*	****	****	****	**

Data as of: 01/2022

*Earliest Data Available

Enforcement History

A review of the operations of New Vanderbilt Rehabilitation and Care Center, Inc. for the period specified above indicates no enforcements.

Conclusion

There will be no changes in beds, programs, or physical plant as a result of this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Capability and Feasibility

The purchase price for the stock transfer to Anna Schon and Baron Schon is \$10,000 for 5.1% of additional stock for each. Both stockholders will pay for the additional stock via cash from their personal net worth, indicated in BFA Attachment A. No budgets are associated with this transaction since it is a less than 50% ownership transfer.

BFA Attachment C is the 2019 and 2020 certified financial statements, and the August 31, 2021, internal financial statements of New Vanderbilt Rehabilitation and Care Center, Inc. The entity had an average positive working capital position and a positive net asset position for these periods. The entity achieved a net income for these periods.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth of the two stockholders purchasing stock
BFA Attachment B	Assignment and Assumption Agreement Summary
BFA Attachment C	2019 certified financial statements, 2020 certified financial statements, and the August 31, 2021, Internal financial statements

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of March 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 30.2% interest from one withdrawing member to the three remaining members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

202066 E New Vanderbilt Rehabilitation and Care Center, Inc.

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]



Project # 201024-E
Optima Care Brentwood, LLC
d/b/a Maria Regina Rehabilitation and Nursing

Program: Residential Health Care Facility **County:** Suffolk
Purpose: Establishment **Acknowledged:** January 23, 2020

Executive Summary

Description

Optima Care Brentwood, LLC d/b/a Maria Regina Rehabilitation and Nursing, an existing New York limited liability company, requests approval to be established as the new operator of Maria Regina Residence Inc., a 188-bed, Article 28 Residential Health Care Facility (RHCF) at 1725 Brentwood, New York (Suffolk County). Maria Regina Residence Inc., a New York not-for-profit corporation, is the current operator.

On October 28, 2019, The Sisters of Saint Joseph, Inc., a New York not-for-profit corporation, and Maria Regina Residence, Inc. ("Collectively the "Seller") and Optima Care Brentwood, LLC and RM Holdings Brentwood, LLC, entered into an Asset Purchase Agreement (APA) whereby Optima Care Brentwood, LLC, will purchase the operations of Maria Regina Residence Inc and RM Holdings Brentwood, LLC will purchase the real estate associated with the facility from The Sisters of Saint Joseph, Inc. . RM Holdings Brentwood, LLC (Realty) and Optima Care Brentwood, LLC (Proposed Operator) have common ownership interests.

The proposed ownership is as follows:

Proposed Operator

Optima Care Brentwood, LLC

<u>Member</u>	<u>%</u>
Alexander Rovt	80%
Boris Mendel	10%
EMM Healthcare Group, LLC*	10%
Eric Mendel (100%)	

Eric Mendel, the sole member of EMM Healthcare Group, LLC, will be the initial managing member of the RHCF. EMM Healthcare Group, LLC will also provide administrative services to the facility.

**OPCHSM Recommendation
Contingent Approval**

Need Summary
There will be no changes to beds or services as a result of this project.

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

Financial Summary
There are no project costs associated with this application. The combined purchase price for the RHCF's operations and realty is \$36,000,000; allocated as follows: \$1,440,000 for the operations to be met with equity from the proposed members' equity, and \$34,560,000 for the realty which will be met with \$5,760,000 in member equity and a loan for \$28,800,000 in proposed financing for a 10-year term at an approximate rate of 6.25% with a balloon payout in ten years totaling \$24,260,461. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$22,054,620	\$22,054,620
Expenses	<u>\$21,811,922</u>	<u>\$21,918,710</u>
Net Income	\$242,698	\$135,910

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of an amended and executed Asset Purchase Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Council Action Date
March 2, 2022

Need and Program Analysis

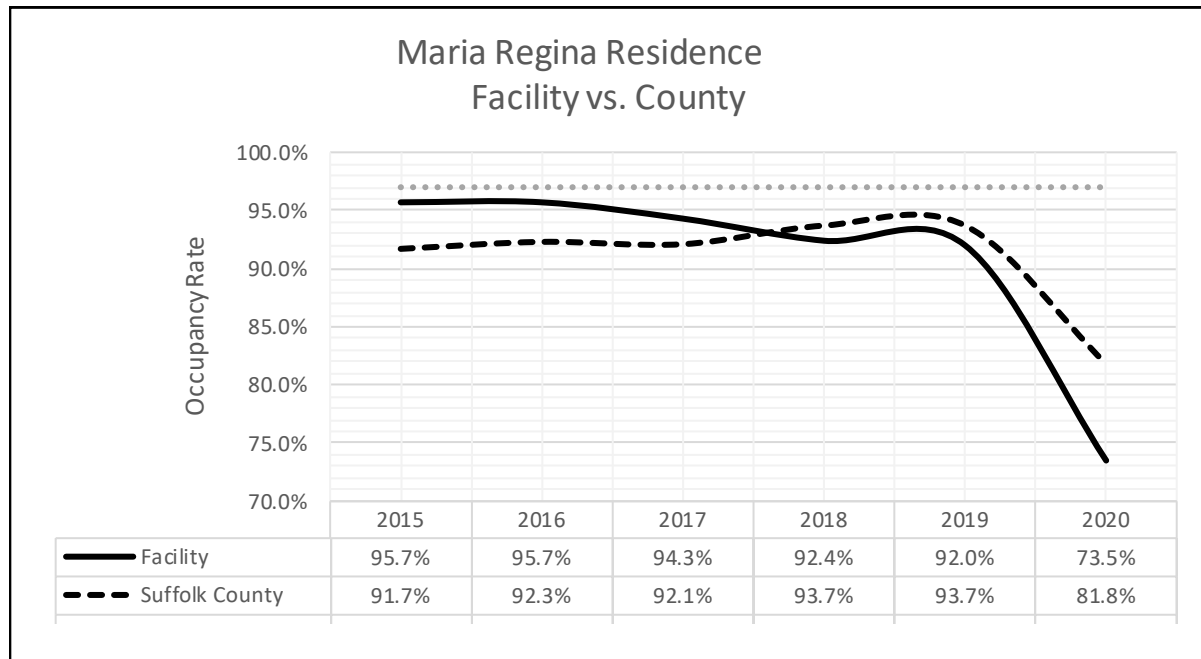
Program Description

	Existing	Proposed
Facility Name	Maria Regina Residence Inc.	Maria Regina Rehabilitation and Nursing
Address	1725 Brentwood Road, Bldg 1 Brentwood, NY 11717 (Suffolk County)	Same
RHCF Capacity	188 beds	Same
ADHCP Capacity	30 slots	Same
Type of Operator	Voluntary	Proprietary
Class of Operator	Not-for Profit Corporation	Limited Liability Company
Operator	Maria Regina Residence Inc.	Optima Care Brentwood, LLC Proposed Members Alexander Rovt 80% Boris Mendel 10% EMM Healthcare Group 10% <i>Eric Mendel* (100%)</i> *Manager

This application proposes to establish Optima Care Brentwood, LLC as the operator of the nursing home currently operated by Maria Regina Residence Inc, a not-for-profit entity. No changes in the beds, program, or physical environment are proposed in this application.

The applicant has entered into a consulting and administrative services contract (CASA) with EMM Healthcare Group, LLC, (EMM) which is also a member of the applicant LLC. EMM Healthcare Group, LLC is 100% owned by Eric Mendel. The applicant will also enter into a Business Associate Agreement with EMM. The applicant has described the purpose of the agreement as necessary to ensure EMM will not disclose residents' protected information other than as permitted or required by the CASA consistent with HIPAA regulations.

Utilization



From 2015 through 2019, occupancy was in the low to mid-90%. The facility's occupancy was negatively impacted by the COVID-10 pandemic in 2020

The primary service area is Suffolk County. The population of Suffolk County in 2010 was 1,493,350 with 93,810 individuals (6.3%) who are 75 and older, which is the primary population group who utilize RHCs. Per PAD projection data this population group (75 and older) is estimated to grow to 146,626 by 2025 and represent 9.8% of the projected population of 1,494,626 for Suffolk County.

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR Section 670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75 percent of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

Maria Regina Residence's Medicaid admissions rate has exceeded the threshold of 75% of the Suffolk County rate, as demonstrated in the table below.

Medicaid % of Total Admissions	2019	2020
Suffolk County	19.9%	20.6%
75% of county percentage	15.0%	15.4%
Maria Regina Residence	80.6%	72.9%

Character and Competence

Alexander Rovt is the President and owner of IBE Trade Corp., a real estate company, since 1989. He holds licenses in New York state as a Private Investigator and Armed Guard. He holds a Ph.D. in world economics from Kiev Academy of Science. Alexander Rovt discloses the following healthcare ownership interests and board memberships:

Nursing Homes

White Plains Center for Care (90%)	01/2018 to present
Little Neck Center for Nursing and Rehab (90%)	01/2018 to present
Brookside Multicare Nursing Center (90%)	01/2018 to present

Certified Home Health Agency

Prime Health Services, LLC (20%)	01/2007 to present
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Licensed Health Care Services Agency

Prime Health Choice, LLC d/b/a Prime Assisted Home Care (20%)	03/2015 to present
Aides at Home, Inc. (20%)	09/2019 to present

Managed Long Term Care Plan

Prime Health Choice, LLC (20%)	01/2007 to present
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Board Memberships

The Maimonides Medical Center (member)	04/2010 to present
One Brooklyn Health System Inc. (chairman)	07/2017 to present

The following facilities were reviewed due to his Board affiliations:

Brookdale Hospital Medical Center	07/2017 to present
The Maimonides Medical Center	04/2010 to present
Interfaith Medical Center	07/2017 to present
Kingsbrook Jewish Medical Center	07/2017 to present
Schulman and Schachne Institute for Nursing & Rehab	04/2018 to present
Rutland Nursing Home, Inc.	04/2018 to present

Boris Mendel is the administrator of Central Assisted Living, an assisted living program, since 1981. He holds a Master's Degree in engineering from Luov Polytechnic Institute. Boris Mendel discloses the following health care ownership interests:

Nursing Homes

White Plains Center for Care (5%)	01/2018 to present
Little Neck Center for Nursing and Rehab (5%)	01/2018 to present
Brookside Multicare Nursing Center (5%)	01/2018 to present

Assisted Living Program

Central Assisted Living LLC (49%)	02/1981 to present
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Certified Home Health Agency

Prime Home Health Services, LLC (30%)	09/2007 to present
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Managed Long Term Care Plan

Prime Health Choice, LLC (30%)	09/2007 to present
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Licensed Health Care Services Agency

Prime Assisted Home Care (30%)	03/2015 to present
Metrostar Home Care, LLC (85%)	06/2015 to present
Be Home Care, LLC (DBA Central Home Care) (49%)	11/2017 to present
Aides at Home, Inc (30%)	09/2019 to present

Eric Mendel is the operator of the following: Central Home Care since 2002, Prime Home Health and Prime Health Choice since 2007, Prime Assisted Home Care since 2015, Metrostar Home Care since 2015, Central Home Care since November 2017, Aides at Home since September 2019. He lists that he is the managing member of the skilled nursing facilities Brookside Multicare Nursing Center, Little Neck Care Center, and White Plains Center for Nursing Care. Eric Mendel is the sole member of EMM Healthcare Group, LLC, a provider of administrative services to nursing homes. He holds a Master's Degree in health systems administration from Rochester Institute of Technology and discloses the following health facility ownership interests:

Nursing Homes

White Plains Center for Care (5%)	01/2018 to present
Little Neck Center for Nursing and Rehab (5%)	01/2018 to present
Brookside Multicare Nursing Center (5%)	01/2018 to present

Assisted Living Program

Central Assisted Living LLC (51%)	06/2002 to present
Brookhaven Care Center, LLC (10%)	01/2020 to present

Certified Home Health Agency

Prime Home Health Services, LLC (6.25%)	09/2007 to present
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Managed Long Term Care Plan

Prime Health Choice, LLC (30%)	09/2007 to present
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Licensed Health Care Services Agency

Prime Assisted Home Care (6.25%)	03/2015 to present
Metrostar Home Care, LLC (15%)	06/2015 to present
Be Home Care, LLC (DBA Central Home Care) (51%)	11/2017 to present
Aides at Home, Inc (6.25%)	09/2019 to present
Brookhaven Home Care, LLC (10%)	01/2020 to present

Quality Review

The proposed owners' portfolios include ownership or board affiliation in five New York nursing homes. All of the nursing homes have a CMS overall quality rating of average or above, as shown below:

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Maria Regina	Subject Facility	*****	****	*****	****
Schulman & Schachne Institute for Nursing and Rehabilitation	Current	*****	*****	*****	***
	05/2018	*****	****	*****	****
Little Neck Care Center for Nursing and Rehab	Current	*****	****	*****	**
	01/2018	****	****	*****	*
Brookside Multicare Nursing Center	Current	***	***	*****	***
	01/2018	***	**	*****	***
White Plains Center For Nursing	Current	***	**	*****	***
	01/2018	****	***	*****	***
Rutland Nursing Home	Current	***	**	*****	***
	05/2018	**	**	****	N/A

Data date: 01/2022

The proposed owners' portfolios include board membership or affiliation for four New York hospitals. All of the hospitals have a CMS overall quality rating and patient survey ratings below average, as shown:

Facility	Rating Period	Overall Rating	Patient Survey Rating
Brookdale Hospital Medical Center	Current	*	*
Maimonides Medical Center	Current	**	*
Interfaith Medical Center	Current	*	*
Kingsbrook Jewish Medical Center	Current	*	*

Data date: 10/2021

Enforcement History

Nursing Homes

Rutland Nursing Home, Inc.

- The facility was fined \$8,000 pursuant to Stipulation and Order NH-20-042 issued on September 21, 2020, for surveillance findings on May 15, 2020. Deficiencies were found under 10 NYCRR 415.19(d) and 415.30, infection control reporting, and maintaining records.

White Plains Center for Nursing

- The facility was assessed a federal CMP of \$650 on February 15 2021 for failure to report COVID data.

Brookside Multicare Nursing Center

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-015 issued on April 9, 2019, for surveillance findings on January 24, 2018. Deficiencies were found under 10 NYCRR 415.12(h)(2) Free from Accidents/Supervision.
- A Federal CMP of \$6,893.25 was assessed for the January 24, 2018 survey findings.
- January 24, 2018, was the date that Mr. Alexander Rovt, Mr. Eric Mendel, and Mr. Boris Mendel took ownership of this facility.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-20-070 issued on November 13, 2020, for surveillance findings on June 15, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1), 415.19(a)(2), 415.19(b)(1) cohorting, infection control.
- The facility was fined \$14,000 pursuant to Stipulation and Order NH-21-216 issued on November 22, 2021, for surveillance findings on December 18, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1), 415.19(a)(2), 415.19(b)(4) infection control, droplet precaution, hand hygiene, and PPE.

Hospitals

Brookdale Hospital Center

- The facility was fined \$2,000 pursuant to Stipulation and Order BHS-19-002. The Statement of deficiencies dated May 2, 2019, indicates that the facility failed to ensure that staff used an independent means to test the dialysate conductivity and pH at each patient machine before starting patient treatment.

Kingsbrook Jewish Medical Center

- The facility was fined \$10,000 pursuant to Stipulation and Order BHS-17-008 for an allegation survey based on Patient Rights. The Statement of deficiencies dated July 5, 2017, indicates that an IJ was identified based on the facility's failure to have a written policy and procedure to guide staff on the management of patients with aggressive and violent behavior resulting in an aggressive patient being placed in seclusion with no physician order.

Conclusion

There will be no changes in beds, programs, or physical plant as a result of this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed Asset Purchase Agreement (APA) for the RHCf's operating and realty interests. The terms of the agreement are summarized in BFA Attachment B. The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of November 28, 2021, the facility has no outstanding Medicaid overpayment liabilities.

Administrative Service Agreement

The applicant has submitted an executed Administrative Service Agreement (ASA) for the RHCf with EMM Healthcare Group, LLC, a proposed member of the operator LLC. The terms of the agreement are summarized in BFA Attachment B. Optima Care Brentwood, LLC will retain ultimate authority, responsibility, and control in all final decisions associated with the services provided. In accordance with the Department's Administrative Service Agreement (ASA) and contract standardization policy effective December 13, 2016, the terms of an executed ASA must acknowledge the reserve powers that must not be delegated, the conflict clause provisions to ensure that the licensed operator retains the ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes, and regulations. The applicant has submitted an executed attestation stating that the applicant willfully engages in any illegal delegation and understands that the Department will hold the applicant accountable.

Lease Agreement

The applicant has submitted an executed Lease Agreement for the RHCf. The terms of the agreement are summarized in BFA Attachment B. The applicant has submitted an affidavit stating that the lease agreement is a non-arm's length arrangement and that there is common ownership between RM Holdings, LLC and Optima Care.

Operating Budget

The applicant has provided an operating budget, in 2022 dollars, for the first and third years after the change of ownership. The budget is summarized below:

	<u>Current Year 2020</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Inpatient Revenues</u>						
Medicare FFS	\$773.26	\$2,557,954	\$773.26	\$8,080,598	\$773.26	\$8,080,598
Medicare MC	\$460.41	\$584,720	\$460.41	\$891,353	\$460.41	\$891,353
Medicaid FFS	\$231.22	\$6,253,938	\$219.02	\$6,040,572	\$219.02	\$6,640,572
Medicaid MC	\$221.22	\$3,380,162	\$208.07	\$4,540,482	\$208.07	\$4,540,482
Private Pay	\$625.25	<u>\$2,322,174</u>	\$625.25	<u>\$2,329,052</u>	\$625.25	<u>\$2,329,052</u>
Total Inpt Revenue		\$15,098,948		\$21,882,056		\$21,882,057
<u>ADHCP Revenues</u>						
Medicaid FFS	\$160.08	\$163,758	\$160.08	\$163,758	\$160.08	\$163,758
Private Pay	\$155.00	<u>\$8,805</u>	\$155.00	<u>\$8,805</u>	\$155.00	<u>\$8,805</u>
Total ADHCP Rev		\$172,563		\$172,563		\$172,563
*Other Revenue		<u>\$1,857,899</u>		<u>\$0</u>		<u>\$0</u>
Total Revenue		\$17,129,410		\$22,054,619		\$22,054,620

	<u>Current Year 2020</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Expenses</u>						
Inpatient Operating	\$392.86	\$19,865,793	\$302.19	\$20,263,109	\$302.42	\$20,368,951
ADHCP Operating	\$491.55	\$522,029	\$123.78	\$532,470	\$123.78	\$533,416
Combined Capital	\$20.10	<u>\$1,016,343</u>	\$37.23	<u>\$1,016,343</u>	\$36.92	<u>\$1,016,343</u>
Total Expenses		\$21,404,165		\$21,811,922		\$21,918,710
Net Income/(Loss)		<u>(\$4,274,755)</u>		<u>\$242,698</u>		<u>\$135,910</u>
Total Patient Days		50,567		65,513		65,513
Total ADHCP Visits		1,062		1,062		1,062
Occupancy (RHCF)		73.69%		95.47%		95.47%

*Other revenue consists of: CARES Act funding (\$1,414,596); Contributions (\$366,459); and Donated Services (\$76,844).

The following is noted concerning the submitted budget:

- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.
- The Medicare and Private Pay rates are projected based upon 2020 current market rates.
- Years 1 and 3 are based on experience levels (pre-COVID-19) during 2022.
- Medicare utilization is expected to increase significantly in years one and three as the applicant plans to provide service to short term-term rehabilitation residents.
- The current year Medicaid rate is based on the facility's current Medicaid experience and using historical utilization for the base years 2020 and 2021 Medicaid FFS rate sheet.
- Year one and three Medicaid Managed Care rates are based on 95% Medicaid-FFS rates.
- The budget indicates a plan to increase occupancy by working with hospitals, community-based organizations and implementing a 24 hour-per-day admissions protocol to ensure easy access for discharge planners.
- Marketing initiatives, website outreach, and upgrading the cosmetics of the facility are also part of the enhancements.

Utilization by payor source for the ADHCP (current, and years one and three are identical) as follows:

<u>Payor</u>	<u>RHCF</u>		<u>ADHCP</u>
	<u>Current</u>	<u>Years 1 & 3</u>	<u>Current & Years 1&3</u>
Medicare FFS	6.54%	15.95%	0%
Medicare MC	2.51%	2.96%	0%
Medicaid FFS	53.49%	42.10%	0%
Medicaid MC	30.11%	33.31%	96.33%
Private Pay	<u>7.34%</u>	<u>5.69%</u>	<u>3.67%</u>
Total	100%	100%	100%

Capability and Feasibility

There are no project costs associated with this application. The purchase price of the operations is proposed to be satisfied as follows:

Equity (Optima Care Brentwood, LLC members) \$1,440,000

The purchase price of the real property is proposed to be satisfied as follows:

Loan (10 years, 30 years payout period, 6.25% interest)	\$28,800,000
Equity (RM Holdings Brentwood, LLC)	5,760,000
Total	\$34,560,000

BFA Attachment A is the net-worth summary for the proposed members of the operating and realty entities, which shows sufficient liquid assets overall to cover the equity requirements for the purchases. Greystone Funding Corporation has provided a letter of interest for the realty loan at the stated terms.

The working capital requirement is \$3,635,320 based on two months of the first year's expenses. Working capital will be satisfied with equity from proposed members. BFA Attachment A is the net worth of the proposed members of Optima Care Brentwood, LLC, which reveals enough resources for the stated levels of equity. BFA Attachment C is the Pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$5,327,446.

The submitted budget indicates a net income of \$242,698 and \$135,910 will be generated for the first and third year, respectively. The budget appears reasonable.

BFA Attachment D is a financial summary of Maria Regina Residence, Inc. The facility experienced a positive working capital position, positive equity position, and a net loss of (\$4,721,380) during 2020 for the period shown. The operating loss was due to lower-than-expected occupancy and revenues were impacted due to the COVID-19 pandemic. The facility's internal financials for the period of January 1, 2021 through June 30, 2021, showed a positive working capital, positive equity, and net operating income of \$963,417.

BFA Attachment E is a financial summary using certified financial statements to summarize the affiliated facilities' financial condition. Optima Care Smithtown, LLC d/b/a Brookside MultiCare Nursing Center, indicated a positive working capital position, net asset position, and operating loss due to pandemic. Also, the facility had higher levels of accounts payable which it's in the process of paying down and expects to be positive in the year 2021. Optima Care Little Neck, LLC d/b/a Little Neck Care Center had an operating loss due to lower occupancy but had a positive working capital position, net asset position and expects a positive income in the year 2021. Optima White plains, LLC d/b/a White Plains Center for Nursing Care had in 2020 a positive working capital and net asset position and a negative net income due to COVID-19 low occupancy. The occupancy is estimated to increase, and this will have a positive impact on income.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Statements
BFA Attachment B	Agreements and Contracts
BFA Attachment C	Pro Forma Balance Sheet for Optima Care Brentwood, LLC & RM Holdings Brentwood, LLC
BFA Attachment D	Maria Regina Residence, Inc. Financial Summary
BFA Attachment E	Affiliated Residential Health Care Facilities

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of March 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Optima Care Brentwood, LLC as the operator of the 188-bed residential health care facility located at 1725 Brentwood Road, Brentwood currently operated by Maria Regina Residence, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

201024 E Optima Care Brentwood, LLC
 d/b/a Maria Regina Rehabilitation and Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of an amended and executed Asset Purchase Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 192228-E
Betsy Ross Operations, LLC d/b/a
Betsy Ross Rehabilitation & Healthcare

Program: Residential Health Care Facility **County:** Oneida
Purpose: Establishment **Acknowledged:** November 8, 2019

Executive Summary

Description

Betsy Ross Operations LLC d/b/a Betsy Ross Rehabilitation and Nursing requests approval to be established as the operator of the Betsy Ross Rehabilitation Center, Inc. an existing, 120-bed residential health care facility (RHCF), located at 1 Elsie Street, Rome, (Oneida County).

On September 23, 2019, Betsy Ross Rehabilitation, Inc. entered into an Asset Purchase Agreement dated with Betsy Ross Operations LLC for the sale and acquisition of the operating interests only. The purchase price for the acquisition of the operating interests of Betsy Ross Rehabilitation, Inc. is \$7,900,000.00 via the Asset Purchase Agreement (APA). Betsy Ross Operations, LLC, as the tenant, will enter into an arm's length lease agreement for site control of the facility with the existing landlord, Betsy Ross Properties, LLC. There is no relationship between the parties. There will be no change in beds or services provided as a result of this application.

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

<u>Current Operator</u>	
Betsy Ross Rehabilitation, Inc.	
<u>Shareholders</u>	
Donald Altman	45.05%
Estate, Irene Kaye	45.05%
Joanne Chiaraulce	9.90%

<u>Proposed Members</u>	
Betsy Ross Operations, LLC	
<u>Members</u>	
Herbert (Lizer) Jozefovic	20%
Yosef Jozefovic	40%
Ari Kreismann	40%

Herbert (Lizer) Jozefovic will be the managing member.

OPCHSM Recommendation
Contingent Approval

Need and Program Summary
There will be no change to beds or services as a result of this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary
There are no project costs associated with this application. The purchase price for the operations is \$7,950,000, which will be funded via equity and a promissory note for \$7.8M at 1.51% interest for a 35-year term. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
	<u>2022</u>	<u>2024</u>
Revenues	\$9,815,100	\$9,849,600
Expenses	<u>\$8,695,613</u>	<u>\$8,736,053</u>
Net Income	\$1,119,487	\$1,113,547

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of an executed promissory note, acceptable to the Department of Health. (BFA)
3. Submission of a photocopy of an executed First Amendment to Extend the Lease Termination, acceptable to the Department. (CSL)
4. Submission of a photocopy of an executed Promissory Note between Betsy Ross Rehabilitation Center, Inc. and Betsy Ross Operations, LLC, acceptable to the Department. (CSL)
5. Submission of a photocopy of an executed and amended Operating Agreement of Betsy Ross Operations, LLC, acceptable to the Department. (CSL)
6. Submission of photocopy of an Attestation for Services Agreement, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed consulting/administrative services agreement with Strong as a Lion, LLC, acceptable to the Department. (CSL)
8. Submission of a photocopy of the Landlords Consent to the Lease Assignment between Betsy Ross Rehabilitation Center, Inc. and Betsy Ross Operations LLC, 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 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]

Council Action Date
March 2, 2022

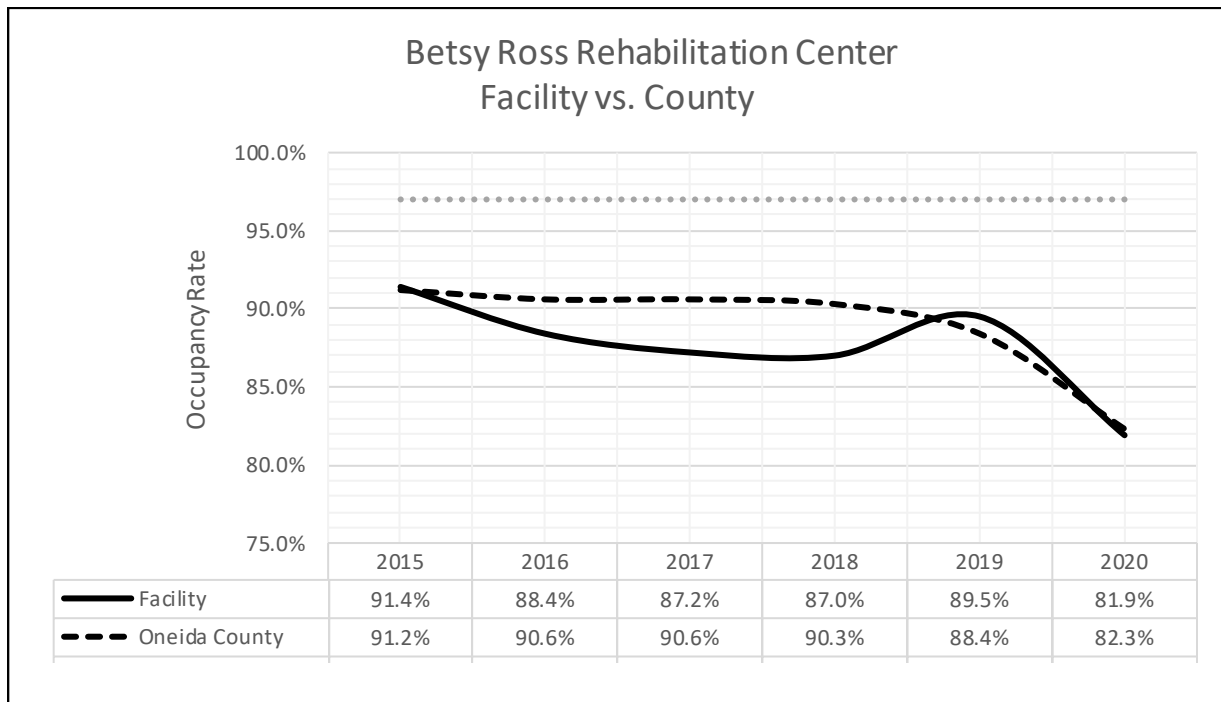
Need and Program Analysis

Program Description

	Existing	Proposed
Facility Name	Betsy Ross Rehabilitation Center, Inc.	Betsy Ross Rehabilitation and Nursing
Address	1 Elsie Street Rome, NY 13440	Same
RHCF Capacity	120	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Business Corporation	Limited Liability Corporation
Class of Operator	Proprietary	Proprietary
Operator	Betsy Ross Rehabilitation Center, Inc.	Betsy Ross Operations, LLC
	<u>Shareholders</u> Donald Altman 45% Estate, Irene Kaye 45% Joanne Chiaraulce 10%	<u>Members</u> Herbert (Lizer) Jozefovic* 20% Yosef Jozefovic 40% Ari Kreismann 40%
		*Managing Member

This application proposes to establish Betsy Ross Operations, LLC as the new operator of the 120-bed residential health care facility located at 1 Elsie Street, Rome. No changes in the beds, program, or physical environment are proposed in this application.

Utilization



2020 occupancy was significantly impacted by COVID 19.

Per the applicant, prior to 2016, one of the operators, Irene Kaya, was a hands-on operator and was the “go-to” person for day-to-day matters. In 2016, Ms. Kaya became ill and her attention to the day-to-day operations was minimized, and this had an impact on staffing and created uncertainty. In 2017, Ms. Kaya passed away and operations have continued to suffer. 2020 occupancy was impacted by COVID 19. The

new operators intend to improve occupancy by meeting with community leaders, local hospitals, and physicians to determine the needs of the community and what programs will meet those needs and then implement as many of these programs as possible.

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR Section 670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75 percent of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

Betsy Ross Rehabilitation Center's Medicaid admissions rate has exceeded the threshold of 75% of the Oneida County rate, as demonstrated in the table below.

Medicaid % of Total Admissions	2018	2019	2020
Oneida County	30.2%	30.0%	24.9%
75% of County Percentage	22.7%	22.5%	18.7%
Betsy Ross Rehab Center	25.0%	66.7%	64.9%

Character and Competence

Herbert (Lizer) Jozefovic discloses employment at Epic Healthcare Management LLC, as a managing partner since 2012. Lizer Jozefovic also lists concurrent employment at Sky View Rehabilitation and Health Care Center as a managing partner since 2003, and at Waters Edge Healthcare as a Director since 1999. Lizer Jozefovic holds a bachelor's degree from Yeshiva Gedola of Los Angeles and held licenses for nursing home administration in New York and New Jersey, which have expired. He discloses the following health care facility interests:

Epic Rehabilitation and Nursing at White Plains (50%)		11/2019 - present
Cedar Manor Nursing and Rehabilitation Center (16.66%)		04/2017 - present
Sky View Rehabilitation and Health Care (25.5%)		10/2003 - present
Putnam Rehabilitation and Care Center (42%)		07/2014 - present
Middletown Park Rehabilitation Center (29%)		03/2010 - present
Waterview Hills Rehabilitation and Health Care (70.1%)		10/2005 - present
Salem Hills Rehabilitation and Nursing Center (70.1%)		10/2005 - present

Out of State Interest

Lackawanna Health and Rehab Center (Aventura at Terrace View) (10%)	[PA]	07/2011 - present
Martin Nursing and Rehabilitation Center (15%)	[FL]	08/2018 - present
Bay View Nursing and Rehabilitation Center (15%)	[FL]	06/2015 - present
Krystal Bay Nursing and Rehabilitation (12.5%)	[FL]	05/2013 - present
West Broward Rehabilitation and Health Care (17.5%)	[FL]	06/2010 - present
Residence at Bayview – Assisted Living (15%)	[FL]	06/2015 - present

Yosef Jozefovic is a New York State licensed Nursing Home Administrator. He lists his employment as the Administrator of Waterview Hills Rehabilitation and Health Care located in Purdys, NY since March 2016. Prior to this, he was an Administrator in Training at Northern Manor Multicare Center located in Nanuet, NY. Yosef Jozefovic holds a bachelor's degree from Fairleigh Dickinson University and has taken online courses. He discloses no health facility interests.

Ari Kreismann lists employment since May of 2018 in corporate purchasing for Epic Senior, LLC which he indicates is a management company for skilled nursing facilities and is located in Croton-on-Hudson, NY. Prior to this, he worked in corporate purchasing at Epic Healthcare Management, LLC since March 2014. He indicates that both Epic Senior, LLC and Epic Healthcare Management, LLC are within the same organization. Ari Kreismann lists a high school diploma plus some additional studies beyond high school. He discloses no health facility interests.

Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. Lizer Jozefovic is the only proposed owner with an existing portfolio, his distribution of CMS star ratings for his facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYRRC 600.2(b)(5)(iv)					
		Duration of Ownership			
		48 Months or Longer		Less than 48 Months	
<u>Proposed Owner</u>	<u>Total Number of Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent with a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent with a Below Average Rating</u>
Jozefovic, Lizer	11	10	20.0%	1	100.0%
Kreismann, Ari	0				
Jozefovic, Yosef	0				

New York: The applicants own seven New York facilities. Epic Rehabilitation and Nursing at White Plains has recently opened and is too new to have a CMS quality rating. Five of the remaining facilities have above average CMS Overall ratings, Putnam Rehabilitation and Care Center has a 1-star overall and 2-star health inspection rating.

Pennsylvania: The applicants own one Pennsylvania facility. Lackawanna Health and Rehab Center (Aventura at Terrace View) was assessed a CMP of \$164,424 on 9/21/2018. The applicant states that the facility serves a medically complex patient profile, and they are committed to ongoing improvement. The facility has a much below-average 1 star staffing rating.

Florida: The applicants own four Florida facilities. For Martin Nursing and Rehabilitation Center, two of the three health inspection surveys which were used to calculate the health inspection rating occurred while the proposed owners had operational control. Martin Nursing and Rehabilitation Center has a 1-star overall rating. The other three Florida nursing homes have above average overall CMS star ratings. West Broward Rehabilitation and Health Care had an immediate jeopardy enforcement finding on 10/4/2018 and was assessed a CMP of \$116,652.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Betsy Ross	Subject Facility	***	**	*****	**
Waterview Hills Rehabilitation and Health Care	Current	*****	****	*****	**
	10/2005 *Data Date: 1/2009	***	***	**	***
Middletown Park Rehabilitation and Care Center	Current	*****	*****	*****	**
	03/2010	**	**	****	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Cedar Manor Nursing and Rehabilitation Center	Current	****	****	***	**
	04/2017	*****	****	*****	**
Sky View Rehabilitation and Health Care	Current	****	***	*****	**
	10/2013	*****	*****	*****	*
Salem Hills Rehabilitation and Nursing Center	Current	*****	****	****	*****
	10/2005 *Data Date: 1/2009	****	****	**	**
Putnam Rehabilitation and Care Center	Current	*	***	*	*
	07/2014	**	**	**	***
Epic Rehabilitation and Nursing at White Plains	Opened:11/2019	N/A	N/A	N/A	N/A

Pennsylvania

Aventura at Terrace View	Current	*	*	*	**
	07/2011	*	*	*	**

Florida

Martin Nursing and Rehabilitation Center	Current	*	*	***	***
	08/2018	****	***	****	****
Bay Vue Nursing and Rehabilitation Center	Current	****	**	*****	****
	06/2015	*****	****	****	*****
Krystal Bay Nursing and Rehabilitation	Current	*****	***	*****	*****
	05/2013	**	*	*****	**
West Broward Rehabilitation and Health Care	Current	****	***	****	****
	06/2010	*	*	**	**

Data date: 01/2022

*Earliest Data Available

Enforcement History

Cedar Manor Nursing and Rehabilitation Center

- A federal CMP in the amount of \$650 was assessed on 4/5/2021

Waterview Hills Rehabilitation and Health Care

- A federal CMP in the amount of \$650 was assessed on 8/9/2021

West Broward Rehabilitation and Health Care

- 11/9/2018: F835 Administration Deficiencies– Scope and Severity J.
- 11/9/2018: F689 Quality of Life and Care Deficiencies– Scope and Severity J.
- 11/9/2018: F657 Resident Assessment and Care Planning Deficiencies– Scope and Severity J
- 11/9/2018: F926 Environmental Deficiencies– Scope and Severity J.
- A federal CMP in the amount of \$116,652 was assessed on 10/4/2018
- A federal CMP in the amount of \$13,216 was assessed on 7/15/2020
- A federal CMP in the amount of \$9,750 was assessed on 8/21/2021
- Florida Actions:
 - \$30,000 for failure to maintain and implement smoking policies, assure adequate resident care plans for smoking residents, and assure each resident received adequate and appropriate health care and supportive services. April 11, 2019.
 - Florida imposed a six-month survey cycle for two years.
 - \$500 for failure to notify the criminal background screening clearinghouse in a timely manner. January 23, 2020.

Bay Vue Nursing and Rehabilitation Center

- 10/17/2019: F684 Quality of Life and Care Deficiencies– Scope and Severity G.
- A federal CMP in the amount of \$9,760 was assessed on 10/17/2019
- A federal CMP in the amount of \$14,508 was assessed on 1/21/2021
- Florida Actions:
 - \$500 for failure to notify the criminal background screening clearinghouse in a timely manner. September 1, 2021.
 - \$7,500 for failure to develop a viable emergency environmental control plan. October 19, 2021.
 - \$11,000 for failure to assure adequate and appropriate health care, and failure to follow the comprehensive care plan. June 17, 2021.
 - Florida imposed a six-month survey cycle for two years.
 - \$2,500 for failure to provide continuity of care. February 4, 2020.

Martin Nursing and Rehabilitation

- 2/26/2020: F678 Quality of Life and Care Deficiencies– Scope and Severity J.
- A \$2,000 fine was initiated on 10/31/2019
- A \$2,000 fine was initiated on 9/30/2019
- A federal CMP in the amount of \$3,318 was assessed on 8/8/2019
- A federal CMP in the amount of \$29,526 was assessed on 2/26/2020
- A federal CMP in the amount of \$16,465 was assessed on 4/29/2021
- A federal CMP in the amount of \$650 was assessed on 8/9/2021
- A federal CMP in the amount of \$42,328 was assessed on 8/11/2021
- Florida fines
 - \$4,000 for an uncorrected failure to provide minimum nursing staff, and failure to have an approved emergency management plan and disaster preparedness plan. December 18, 2019.
 - \$16,000 for failure to provide service, CPR February 26, 2020.
 - Florida imposed a six-month survey cycle for two years.
 - \$1,000 for uncorrected medication reconciliation deficient practice, September 2, 2021. Respondent failed to correct the deficiency within the time required.

Lackawanna Health and Rehab Center

- 9/29/2016: F323 The resident environment remains as free of accident hazards as is Possible – Scope and Severity G.
- 9/29/2016: F333 Residents are free of any significant medication errors – Scope and Severity G.
- A state civil penalty in the amount of \$15,000 was assessed on 1/12/2017
- 9/21/2018: F600 Freedom from Abuse, Neglect, and Exploitation Deficiencies– Scope and Severity G.
- A federal CMP in the amount of \$164,424 was assessed on 9/21/2018
- A state civil penalty in the amount of \$10,500 was assessed on 2/24/2019
- 7/31/2019: F689 Quality of Life and Care Deficiencies– Scope and Severity G.
- A state civil penalty in the amount of \$8,000 was assessed on 10/18/2019
- 10/8/2019: F686 Quality of Life and Care Deficiencies– Scope and Severity G.
- A federal CMP in the amount of \$34,197 was assessed on 7/2/2020

Krystal Bay Nursing and Rehabilitation

- A federal CMP in the amount of \$34,094 was assessed on 7/14/2016.
- A federal CMP in the amount of \$5,850 was assessed on 1/24/2019.
- A federal CMP in the amount of \$650 was assessed on 8/16/2021.
- A federal CMP in the amount of \$9,750 was assessed on 8/27/2021.
- Florida fines
 - \$500.00 criminal background screening violation. November 18, 2021
 - \$7,500, widespread deficient practice. Nursing home emergency power plan July 15, 2021
 - \$1,500.00 criminal background screening violation. June 6, 2018
 - \$1,500.00 criminal background screening violation. December 13, 2017
 - \$2,000 for uncorrected Life Safety deficiency. Respondent failed to correct the deficiency within the time required.

Conclusion

There will be no change to beds, programs, or physical plant as a result of this application. All affiliated health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Agreements and Contracts

BFA Attachment B contains the details of:

- Asset Purchase Agreement (executed): The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of the liability and responsibility.
- Lease Agreement

Operating Budget

The applicant has provided the current year 2020 results and first-and third-year operating budget after the change in ownership, in 2022 dollars, summarized as follows:

	<u>Current Year 2020</u>		<u>First Year 2022</u>		<u>Third Year 2024</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues						
Commercial FFS	\$280.00	\$7,840	\$305.95	\$1,145,800	\$309.03	\$1,157,300
Medicare FFS	\$773.08	\$1,337,435	\$593.20	\$1,328,759	\$597.67	\$1,338,770
Medicare-MC	\$607.43	\$408,802	\$459.05	\$308,941	\$463.64	\$312,030
Medicaid-FFS	\$187.30	\$3,962,282	\$190.72	\$4,134,926	\$190.72	\$4,134,926
Medicaid-MC	\$187.30	\$1,940,063	\$190.71	\$1,975,374	\$190.71	\$1,975,374
Private Pay	\$324.47	\$658,024	\$306.04	\$891,500	\$309.17	\$900,600
Other Revenue*		<u>\$713,901</u>		<u>\$29,800</u>		<u>\$30,600</u>
Total Revenue		\$9,028,337		\$9,815,100		\$9,849,600
Expenses						
Operating	\$392.86	\$8,301,520	\$309.30	\$7,834,600	\$310.91	\$7,836,500
Capital	\$20.10	<u>\$329,270</u>	\$15.51	<u>\$861,013</u>	\$15.51	<u>\$899,553.00</u>
Total Expense		\$8,630,790		\$8,695,613		\$8,736,053
Net Income/Loss		<u>\$397,557</u>		<u>\$1,119,487</u>		<u>\$1,113,547</u>
Patient Days		35,972		41,610		41,610
Occupancy		82.12%		95%		95%

*Other Revenue in the current year is based on the CARES act funding received. Other Revenue in years one and three is income from quality incentive payments such as infection control from Provider Relief Funds and other ancillary items.

The following is noted with respect to the submitted budget:

- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenue per patient day in years one and three. This rate reduction has been reflected within the budgets.
- The Medicare and Private Pay rates are projected based on current market rates, historical experience, and projections based on post-COVID-19 occupancy increase.
- The current year Medicaid rate is based on the facility's Medicaid rate per the current RHCf rates received and 2019 cost report information.
- As of December 20, 2021, there are no outstanding Medicaid liabilities or assessments.
- Revenues assume current payment rates for the respective payors.
- Medicaid MC per diems is based on an estimated 95% of the Medicaid FFS rate.
- Medicaid and Medicare are both appear to be stable, and commercial volume is increasing in years one and three per the utilization projections and appear to be reasonable.

Utilization by payor source is as follows:

<u>Pavor</u>	<u>Years</u>	
	<u>Current</u>	<u>1 & 3</u>
Commercial - FFS	0.08%	9.0%
Medicare - FFS	4.81%	5.38%
Medicare - MC	1.87%	1.62%
Medicaid - FFS	58.81%	52.11%
Medicaid - MC	28.79%	24.89%
Private Pay	<u>5.64%</u>	<u>7.0%</u>
Total	100.0%	100.0%

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the acquisition of the operating interests is \$7,950,000. The purchase price will be met via a draft promissory in the amount of \$7,800,000 at a rate of 1.51% for a 35-year term. A \$100,000 down payment is held in escrow currently till closing. The working capital requirement is estimated at \$1,449,269 based on two months of the first year's expenses. Working capital will be funded via members' equity of \$724,635. A letter of interest has been submitted by CNH Bank indicating interest in funding up to \$725,000 for a term of 5 years at a rate of 6% for working capital. Lizer Jozefovic (proposed member) submitted a disproportionate share affidavit indicating if any other resources are needed, he will provide them. BFA Attachment A shows he has the ability to provide additional resources if needed. BFA Attachment B presents the pro forma balance sheet of Betsy Ross Rehabilitation, LLC as of the first day of operations, which indicates a positive equity position of \$825,000.

The submitted budget indicates that net income of \$1,119,487 and \$1,113,547 will be generated for the first and third years, respectively. The budget appears reasonable.

BFA Attachment D is the 2020 and 2019 certified financial statement for Betsy Ross Rehabilitation, Inc. The facility had a positive Stockholders' equity position and a negative working capital position for both years shown. Also, the facility had a net income of \$396,476 and \$308,286 during both years respectively. BFA Attachment D is the June 30, 2021, internal financial statement showing a negative working capital position, a positive Stockholders' equity position, and net income of \$361,326 for the period shown.

BFA Attachment E is the financial summaries of the proposed members' affiliated facilities using 2018 thru 2020 certified financial statements.

Conclusion

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Members Net Worth Statement
BFA Attachment B	Legal Agreements
BFA Attachment C	Pro Forma Balance Sheet (Betsy Ross)
BFA Attachment D	Betsy Ross 2020-2019 Certified Financials and June 30, 2021, Internal Financial Statements
BFA Attachment E	Financial Summary – Affiliated RHCfs

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of March 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Betsy Ross Operations, LLC as the new operator of the 120-bed residential health care facility located at 1 Elsie Street, Rome, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER: FACILITY/APPLICANT:

192228 E Betsy Ross Operations, LLC
 d/b/a Betsy Ross Rehabilitation and Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of an executed promissory note, acceptable to the Department of Health. (BFA)
3. Submission of a photocopy of an executed First Amendment to Extend the Lease Termination, acceptable to the Department. (CSL)
4. Submission of a photocopy of an executed Promissory Note between Betsy Ross Rehabilitation Center, Inc. and Betsy Ross Operations, LLC, acceptable to the Department. (CSL)
5. Submission of a photocopy of an executed and amended Operating Agreement of Betsy Ross Operations, LLC, acceptable to the Department. (CSL)
6. Submission of photocopy of an Attestation for Services Agreement, acceptable to the Department. (CSL)
7. Submission of a photocopy of an amended and executed consulting/administrative services agreement with Strong as a Lion, LLC, acceptable to the Department. (CSL)
8. Submission of a photocopy of the Landlords Consent to the Lease Assignment between Betsy Ross Rehabilitation Center, Inc. and Betsy Ross Operations LLC, 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 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.