

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

**COMMITTEE DAY**

**AGENDA**

**March 24, 2022**  
**10:15 a.m.**

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

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

Peter Robinson, Chair

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

**Acute Care Services- Construction**

**Exhibit # 1**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	212223 C	New York-Presbyterian Hospital - New York Weill Cornell Center (New York County)
2.	212259 C	Sisters of Charity Hospital - St. Joseph Campus (Erie County)

**Ambulatory Surgery Centers - Construction**

**Exhibit # 2**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	212177 C	Buffalo Surgery Center, LLC (Erie County)

**Hospice Services – Construction**

**Exhibit # 3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	212251 C	Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore (Nassau County)

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

**Ambulatory Surgery Centers- Establish and Construct**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 212079 E	Ambulatory Surgery Center of Western New York LLC (Erie County)

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

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 212057 B	NY Med South Bronx, LLC (Bronx County)
2. 212176 B	Columbia/NewYork-Presbyterian Advanced Imaging, Inc. (New York County)
3. 212182 E	Main Street Radiology at Bayside LLC (Queens County)
4. 212208 B	World Health Clinicians, Inc. d/b/a Circle Care Center – Westchester (Westchester County)
5. 212213 B	East 180 Operating, LLC d/b/a East 180th Street Health and Treatment Center (Bronx County)
6. 212219 B	Bronx Community Health Network, Inc. (Bronx County)
7. 212242 B	NY PACE Care Facility, LLC (Kings County)

**D. Certificates**

**Exhibit # 6**

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

Applicant

NYP Community Programs, Inc.

**Restated Certificate of Incorporation**

Applicant

The Northeast Health Foundation, Inc.



Project # 212223-C
New York-Presbyterian Hospital

Program: Hospital
Purpose: Construction

County: New York
Acknowledged: December 22, 2021

Executive Summary

Description

The New York and Presbyterian Hospital d/b/a New York-Presbyterian Hospital (NYPH), a voluntary not-for-profit corporation that currently operates seven hospital divisions, requests approval to certify NewYork-Presbyterian/Brooklyn Methodist d/b/a NewYork-Presbyterian Brooklyn Methodist Hospital (NYP-BMH) as a new division of NYPH via a merger. As a result of this project, NYP-BMH (including four extension clinics) will be merged with and into NYPH, with NYPH being the surviving corporation.

NYP-BMH is a 591-bed voluntary not-for-profit Article 28 hospital at 506 Sixth Street, Brooklyn (Kings County), with four extension clinics. Currently, NYP Community Programs, Inc. (NYPCP) is the active parent and co-operator of NYP-BMH and NYPH is the sole member and passive parent of NYPCP. After the completion of this transaction, NYP-BMH will no longer be part of NYPCP and instead, all five sites will be owned and operated by NYPH. There will be no change in beds or services as a result of this application. There will also be no change to the board of trustees of NYPH.

The applicant reports that the purpose of the transaction is to further create an academically based integrated healthcare system to further a

high-quality system of care, increasing access, and lowering the costs of health care in the communities served by both NYPH and NYP-BMH.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change to beds or services as a result of this merger.

Program Summary

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

Financial Summary

There are no project costs associated with this application. NYP-BMH is merging into NYPH and becoming a division of NYPH. This will not have an impact on NYPH consolidated financial statements as NYP-BMH is already included.

Table with 3 columns: Budget, First Year, Third Year. Rows: Revenues (\$1,243,145,000 vs \$1,391,974,000), Expenses (1,229,625,000 vs \$1,315,235,000), Gain/(Loss) (\$13,520,000 vs \$76,739,000)

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Primary Care and Health Systems Management**

#### **Approval contingent upon:**

1. Submission of a photocopy of an executed Plan of Merger between The New York and Presbyterian Hospital and New York-Presbyterian/Brooklyn Methodist, acceptable to the Department of Health (Department). [CSL]
2. Submission of a photocopy of an executed Certificate of Merger of New York-Presbyterian/Brooklyn Methodist into The New York and Presbyterian Hospital, 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 any extensions to the project approval expiration date. [PMU]

### **Council Action Date**

**April 5, 2022**



## Need and Program Analysis

### Program Description

NYPH seeks approval to certify NYP-BMH as a new division of NYPH via a plan of merger. Upon completion of the merger, NYPH will have eight divisions as follows:

<b>Columbia Presbyterian Center</b> 622 West 168th Street New York, NY 10032	<b>Allen Hospital</b> 5141 Broadway, New York, NY 10034
<b>New York Weill Cornell Center</b> 525 East 68th Street New York, NY 10021	<b>Lower Manhattan Hospital</b> 170 William Street New York, NY 10038
<b>Westchester Division</b> 21 Bloomingdale Road White Plains, NY 10605	<b>Lawrence Hospital</b> 55 Palmer Avenue Bronxville, NY 10708
<b>David H. Koch Center</b> 1283 York Avenue, New York, NY 10065	<b><u>To be added:</u></b> <b>Brooklyn Methodist Hospital</b> 506 Sixth Street Brooklyn, NY 11215

### Analysis

There will be no changes in beds, services, or locations as a result of this application.

Beds	Count
Coronary Care	10
Intensive Care	28
Maternity	50
Medical / Surgical	385
Neonatal Intensive Care	18
Neonatal Intermediate Care	6
Pediatric	15
Pediatric ICU	4
Physical Medicine and Rehabilitation	25
Psychiatric	50

Services
Ambulatory Surgery - Multi Specialty
Audiology O/P
Cardiac Catheterization - Adult Diagnostic
Cardiac Catheterization - Electrophysiology (EP)
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)
Cardiac Surgery - Adult
Clinical Laboratory Service

Services
Dental O/P
Level III Perinatal Care
Linear Accelerator
Lithotripsy
Medical Services - Other Medical Specialties
Medical Services - Primary Care
Medical Social Services
Nuclear Medicine - Diagnostic

Services
Nuclear Medicine - Therapeutic
Primary Stroke Center
Radiology - Diagnostic
Radiology-Therapeutic
Renal Dialysis - Acute
Respiratory Care
Therapy - Occupational O/P
Therapy - Physical O/P
Therapy - Speech Language Pathology

NYP-BMH's extension clinics will also become extension clinics of NYPH.

<b>Extension Clinics</b>
Center for Community Health 515 6th Street, Brooklyn, New York 11215
NY-Presbyterian Brooklyn Methodist Hospital Cardio-Vascular Services 8721 5th Avenue, Brooklyn, New York 11209
NY-Presbyterian Brooklyn Methodist Hospital Infusion Services 343 4th Ave, Brooklyn, New York 11215
NY-Presbyterian Brooklyn Methodist Hospital, Rehab Center, and Women & Children's Clinics 263 7th Avenue, 2nd & 3rd Floors, Brooklyn, New York 11215

The primary service area is Kings County. According to DataUSA, in 2019 93.7% of the population in Kings County has health coverage as follows.

Employer Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-Group Plans	10.5%
Military or VA	0.222%

### **Prevention Agenda**

NYP Hospital - New York Weill Cornell Center is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

#### Prevent Chronic Diseases

- Choosing healthy & active lifestyles for kids (CHALK)
- Transitions of Care Model

#### Promote Healthy Women, Infants, and Children

- Develop a postpartum home visit program to partner with parents in order to improve health outcomes for parents and baby

#### Promote Well-Being & Prevent Mental & Substance Use Disorders

- Implement the Mental Health First Aid program for providers and community-based partners

#### Prevent Communicable Diseases

- ETE initiative to create an HIV and HCV elimination strategy
- Utilized existing multi-campus dashboards

The application states that NYP Hospital - New York Weill Cornell Center engaged with the New York City Department of Health and Mental Hygiene, Citizens Committee for Children, Columbia University Irving Medical Center, Weill Cornell Medical College, Greater New York Hospital Association, local community-based organizations, and the New York Academy of Medicine in data collection and analysis efforts. NYP Hospital - New York Weill Cornell Center cites data sources (including NYS BRFSS, NYC Open Data, and NYC Health Atlas) that it uses to measure progress toward achieving local Prevention Agenda goals. The indicators tracked are not specified.

In 2019 the applicant spent \$ 19,845,445 on community health improvement services, representing 0.31% of total operating expenses.

### **Conclusion**

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. Through the proposed merger, New York-Presbyterian Brooklyn Methodist Hospital will become fully integrated into the New York and Presbyterian Hospital health system.

## Financial Analysis

### Operating Budget

The applicant has submitted the current year (2020) operating budget in 2022 dollars, and Years One and Three for NYP-BMH, in thousands:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Per Disch/ Visit</u>	<u>Total</u>	<u>Per Disch/ Visit</u>	<u>Total</u>	<u>Per Disch/ Visit</u>	<u>Total</u>
<b>Revenues</b>						
Inpatient	\$18,852	\$570,518	\$23,078	\$767,854	\$25,866	\$877,946
Outpatient	\$248	283,590	\$294	407,864	\$314	443,300
Other Operating*		145,967		37,460		38,973
Non-Operating**		<u>75,526</u>		<u>29,967</u>		<u>31,755</u>
<b>Total Revenues</b>		<b>\$1,075,601</b>		<b>\$1,243,145</b>		<b>\$1,391,974</b>
<b>Expenses</b>						
Operating		\$1,029,813		\$1,150,635		\$1,234,178
Capital		<u>41,055</u>		<u>78,990</u>		<u>81,057</u>
<b>Total Expenses</b>		<b>\$1,070,868</b>		<b>\$1,229,625</b>		<b>\$1,315,235</b>
<b>Net Income</b>		<b>\$4,733</b>		<b>\$13,520</b>		<b>\$76,739</b>
Inpatient Visits	30,262		33,272		33,941	
Outpatient Visits	1,143,180		1,383,605		1,411,416	

\*Includes grants & contracts, HHS Provider Relief Fund, FEMA Disaster Relief Fund, cafeteria and vending, net assets released from restriction, professional fees, specialty pharmacy, and others.

\*\* Investment return, less \$1,010,000 adjustment for voluntary retirement program costs and periodic pension and postretirement costs.

The following is noted regarding the submitted budget:

- Current year revenues and expenses are based on the NYPH 2020 certified financial statements, which include NYP-BMH 2020 financial results.
- In 2019, prior to COVID-19 pandemic, NYP-BMH had 36,932 inpatient discharges that declined 18% to 30,262 in 2020. First and third-year projected discharges are conservatively estimated to be 9.9% and 8.1% lower than 2019, respectively.
- Outpatient visits are projected to increase at an average annual rate of 4.7% from 1,143,426 in 2020 to 1,411,416 in Year 3 (2025).
  - The projected increase in outpatient activity is due to recent and planned outpatient facility expansion, including a \$500 million, 396,000 square foot Center for Community Health (CCH) located across the street from NYP-BMH that opened in 2021 and investments in ambulatory care services in the Flatlands and Midwood areas.
- NYP-BMH costs have increased from 2017 due to:
  - Investments in nursing, quality, and patient safety.
  - Investment in New York-Presbyterian Medical Group Brooklyn.
  - Continued integration and alignment with Weill Cornell Medicine.
  - Continued integration of corporate and technology services including Epic Systems.
  - Investment in capital and infrastructure, including the CCH.
  - Disruption in inpatient volumes and shifts from inpatient to ambulatory services.

Utilization by payor for the NYP-BMH is as follows:

<u>Inpatient</u> <u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>
Medicaid FFS	1,474	4.87%	1,621	4.87%	1,653	4.87%
Medicaid MC	8,074	26.68%	8,876	26.68%	9,056	26.68%
Medicare FFS	6,132	20.26%	6,742	20.26%	6,877	20.26%
Medicare MC	5,250	17.35%	5,772	17.35%	5,888	17.35%
Commercial FFS	3,718	12.29%	4,088	12.29%	4,170	12.29%
Commercial MC	5,214	17.23%	5,733	17.23%	5,848	17.23%
All Other	<u>400</u>	<u>1.32%</u>	<u>440</u>	<u>1.32%</u>	<u>449</u>	<u>1.32%</u>
Total by Payor	30,262	100%	33,272	100%	33,941	100%

<u>Outpatient</u> <u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	69,564	6.09%	78,159	5.65%	79,730	5.65%
Medicaid MC	212,452	18.58%	278,044	20.10%	283,632	20.10%
Medicare FFS	214,701	18.78%	251,052	18.14%	256,098	18.14%
Medicare MC	191,984	16.79%	233,120	16.85%	237,806	16.85%
Commercial FFS	407,521	35.65%	486,836	35.18%	496,622	35.18%
All Other	<u>46,958</u>	<u>4.11%</u>	<u>56,394</u>	<u>4.08%</u>	<u>57,528</u>	<u>4.08%</u>
Total by Payor	1,143,180	100%	1,383,605	100%	1,411,416	100%

### Plan of Merger Agreement

The applicant has submitted a draft Plan of Merger Agreement between NYPH and NYP-BMH.

Merging Entities:	NYPH and NYP-BMH
Board of Directors:	The Boards of each entity has adopted and approved this Plan of Merger
Surviving Entity:	The New York and Presbyterian Hospital (NYPH)
Terms and Conditions of the Merger:	NY-BMH shall be merged with and into NYPH, with NYPH being the Surviving Corporation. The Certificate of Merger shall be filed with the New York Department of State immediately following receipt of all necessary regulatory consents and approvals in connection with the Merger, including, without limitation, Public Health and Health Planning Council approval in accordance with Sections 909 and 404(t) of the NPCL and approval of the New York State Attorney General in accordance with Section 907 of the NPCL so as to cause the effective date of the Merger to be the date of filing of the Certificate of Merger by the Department of State or such subsequent date, not to exceed thirty days, as shall be set forth in the Certificate of Merger (the "Effective Date"). Upon the Effective Date, the Members of NYPH shall continue to serve as the Members of NYPH as the Surviving Corporation unless otherwise terminated in accordance with the Bylaws of the Surviving Corporation. Upon the Effective Date, the membership interest of NYPCP as the sole Member of NYP-BMH shall be extinguished, and the powers, duties, and responsibilities of NYPCP as the sole Member of NYP-BMH shall be terminated.
Purchase Price:	There will be no cash, or any other consideration paid or delivered in exchange for the Merger.

### Capability and Feasibility

There are no project costs associated with this application. The merger of NYP-BMH into NYPH to become a division of NYPH will not have an impact on NYPH's consolidated financial statements as NYP-BMH is already included in the NYPH consolidated financial statements. Working capital for this project will be funded using existing cash equity from ongoing NYPH operations. The submitted budget indicates an incremental net income of \$13,520,000 and \$76,739,000 in years one and three, respectively. The budget appears reasonable.

Review of BFA Attachment A, NYPH certified consolidating statement of financial position for 2019 and 2020, shows the organization (including NYP-BMH) maintained positive working capital and positive net assets for both years. In 2019, NYPH had \$905.6M in excess revenues over expenses of which \$99M came from NYP-BMH. In 2020, NYPH had a deficiency or excess expenses over revenue of \$187.4M. NYP-BMH generated a positive \$4.7M, which helped to reduce NYPH over loss in 2020. Review of BFA Attachment B, NYP-BMH 2020 consolidating statement of financial positions shows the hospital had positive results of \$82.9M offset by a \$78.2M loss from its professional corporation. Review of BFA Attachment C, NYPH internal consolidating statement financial position, shows the organization (including NYP-BMH) maintains positive working capital and positive net assets. By August 31, 2021, NYPH overall returned to a profitability of \$751.7M, while NYP-BMH incurred a loss of \$4.7M. NYPH had 335 days of cash on hand as of August 31, 2021.

NYP-BMH's rating is 'A3' with a rating outlook of stable, and NYPH has a fitch rating of 'AA' as of August 2, 2021, with a rating outlook of stable. Their rating reflects NYPH's market position as a major regional academic medical health system in the highly competitive greater New York Metro region. The rating also reflects expectations that NYPH's performance will return to levels consistent with a strong operating risk assessment after 2022, following a lower coronavirus-related performance in 2020 and 2021.

### **Conclusion**

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

## **Attachments**

- |                  |   |
|------------------|---|
| BFA Attachment A | The New York and Presbyterian Hospital (NYPH) 2019 and 2020 Consolidated Financial Statements               |
| BFA Attachment B | NewYork-Presbyterian/Brooklyn Methodist (NYP-BMH) Consolidating Statement of Financial Positions            |
| BFA Attachment C | The New York and Presbyterian Hospital (NYPH) August 31, 2021, Consolidated Statement of Financial Position |
| BFA Attachment D | NewYork-Presbyterian Enterprise and NYP-BMH Key Utilization Statistics for August 31, 2021                  |



Project # 212259-C
Sisters of Charity Hospital - St. Joseph Campus

Program: Hospital
Purpose: Construction

County: Erie
Acknowledged: December 17, 2021

Executive Summary

Description

Sisters of Charity Hospital - St. Joseph Campus, a 103-bed division of Sisters of Charity Hospital, a not-for-profit hospital that is part of the Catholic Health System, Inc., is seeking to convert 40 of 89 medical/surgical beds to chemical dependence rehabilitation beds and perform renovations to create the new unit on the 5th floor.

The applicant states that demand for inpatient treatment beds consistently exceeds available beds and that there was an increase in opioid doses and deaths during the COVID-19 pandemic. The request for 40 beds at the St. Joseph campus will address the anticipated closure of 30 beds through an approved CON 211234 to replace the Eastern Niagara Hospital (Lockport), as well as, the pervasive higher-than-optimum utilization of beds in the region

OPCHSM Recommendation

Contingent Approval

Need Summary

This project will address the increased need for chemical dependence beds in the region.

Program Summary

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

Financial Summary

Total project costs of \$7,885,120, will be met via equity from hospital operations. The projected budget is as follows:

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

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

#### Approval conditional upon:

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

### Council Action Date

April 5, 2022

## Need and Program Analysis

### Background

The applicant reports that opioid addiction has tripled since 2010 and the current demand for inpatient beds consistently exceeds the beds available. Since the start of the COVID-19 pandemic, there has been a dramatic increase in the number of opioid overdoses and deaths. In the eight Western New York counties from which the hospital draws patients, there are currently 132 chemical dependence - rehabilitation beds. Of the 132 beds, 30 are slated to close through an approved CON 211234 to replace the Eastern Niagara Hospital (Lockport).

### Analysis

There will be no change to the total number of certified beds at the St. Joseph Campus, but staffing is expected to increase by 25.6 FTEs after the completion of the project.

Beds	Current	Request	Proposed
Medical/Surgical	103	-40	63
Chemical Dependence - Rehab	0	40	40
Total	103	0	103

Beds	#	Occupancy		
		2019	2020	2021*
Med/Surg - Current	103	37.4%	35.6%	22.0%
Med/Surg – at Reduced Capacity	63	61.1%	58.3%	36.0%

\*Annualized based on partial year data

### Chemical Dependence - Rehabilitation Bed Occupancy in the Western Region

Name	County	Beds	2015	2016	2017	2018	2019	2020	% Change 2015 to 2019
Eastern Niagara Hospital - Lockport Division	Niagara	30*	60.00%	56.67%	63.33%	66.67%	73.33%	53.33%	22.22%
UPMC Chautauqua at WCA	Chautauqua	15	66.67%	106.67%	126.67%	126.67%	106.67%	86.67%	60.00%
United Memorial Medical Center Bank Street Campus	Genesee	22	77.27%	77.27%	86.36%	86.36%	86.36%	59.09%	11.76%
Erie County Medical Center	Erie	20	73.08%	76.92%	67.31%	90.38%	101.92%	94.23%	39.47%
Mount St. Mary's Hospital and Health Center	Niagara	45**	37.78%	44.44%	46.67%	75.56%	91.11%	77.78%	141.18%
Total		132	84.03%	92.44%	94.96%	116.81%	126.89%	105.88%	51.00%

\*Slated to close through CON 211234

\*\*24 additional beds were approved in 2021

Chemical dependence bed occupancy in the Western Region as a whole increased 51% from 2015 to 2019. Occupancy exceeded 100% for the region for the same period. Some facilities saw a marked decrease during the pandemic, but with COVID-19 receding we expect the return to pre-2020 levels.



40 Beds	Projected Utilization Year One (2023) & Year 3 (2025)		
	Discharges	Patient Days	Occupancy
Chemical Dependence - Rehab	563	11,707	80.18%

Source: applicant

The primary service area is Erie County. According to Data USA, in 2019 97.4% of the population in Erie County has health coverage as follows.

Employer Plans	51.2%
Medicaid	19.2%
Medicare	13.4%
Non-Group Plans	12.3%
Military or VA	1.21%

### Prevention Agenda

In their work plan submitted in 2019, the hospital identified they were working on increasing access to healthy foods and increasing nutrition, using evidence-based care and self-management practices as part of their Prevent Chronic Disease focus. They also identified working on addressing maternal mortality in the Health Women Infants and Children priority, decreasing the transmission of sexually transmitted infections in the Prevent Communicable Disease priority, preventing opioid overdose deaths, and reducing depressive disorders in the Promote Well-Being and Prevent Mental and Substance Use Disorders priority.

The applicant reports that they are implementing interventions to support at least six goals of the 2019-2024 New York State Prevention Agenda. Among these are:

- Reducing depressive disorders
- Reducing opioid overdose deaths using Medication-Assisted Treatment

The application states that Sisters of Charity Hospital - St. Joseph Campus engaged Erie Region with the University of Buffalo, D'Youville College, Daëmon College, City of Buffalo, Erie County Department of Health and the opioid task force, and a dozen of local businesses and community organizations in their Prevention Agenda efforts. The hospital cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Learning sessions being offered and participation by physicians on alternatives to opioids for pain management.
- Prenatal screening and ensure they are included in the patient's record.

In 2019 the applicant spent \$344,833,426 on community health improvement services, representing 15.23% of total operating expenses.

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

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

### Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. Between the continued growth in need and the anticipated reduction of beds in the service area, the addition of 40 chemical dependence beds appears warranted.

## Financial Analysis

### Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$7,885,120 as follows:

Renovation and Demolition	\$5,000,000
Asbestos Abatement or Removal	600,000
Design Contingency	500,000
Construction Contingency	500,000
Fixed Equipment	350,000
Planning Consultant Fees	40,000
Architect/Engineering Fees	501,000
Moveable Equipment	238,000
Telecommunications	111,000
CON Fee	2,000
Additional Processing Fee	<u>43,120</u>
Total Project Cost	\$7,885,120

The applicant will provide cash from hospital operations to meet the total project cost.

### Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$1,015	\$380,451	\$1,119	\$419,447
Commercial MC	\$1,058	\$444,389	\$1,113	\$467,303
Medicare FFS	\$9,384	\$300,303	\$9,764	\$312,435
Medicare MC	\$1,015	\$380,510	\$1,056	\$395,883
Medicaid FFS	\$360	\$591,656	\$360	\$591,656
Medicaid MCE	\$745	\$6,084,738	\$745	\$6,084,738
Other	\$809	<u>\$50,158</u>	\$809	<u>\$50,158</u>
Total Revenues		\$8,232,205		\$8,321,620
<u>Expenses</u>				
Operating	\$8,504	\$4,787,807	\$8,807	4,958,166
Capital	<u>\$978</u>	<u>550,733</u>	<u>\$978</u>	<u>550,733</u>
Total Expenses	\$9,482	\$5,338,540	\$8,807	5,508,899
Excess Revenues		\$2,893,665		\$2,812,721
Utilization (Discharges)		563		563

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	3.20%	3.20%
Commercial MC	3.59%	3.59%
Medicare FFS	5.69%	5.69%
Medicare MC	3.20%	3.20%
Medicaid FFS	14.03%	14.03%
Medicaid MC	69.76%	69.76%
Other	<u>0.53%</u>	<u>0.53%</u>
Total	100.00%	100.00%

Expense and utilization assumptions are based on the historical experience of the facility.

### **Capability and Feasibility**

The total project cost of \$7,885,120 will be met via accumulated funds from the hospital. BFA Attachment A is the 2020 Certified Financial Statements, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of \$2,893,665 and \$2,812,721 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for chemical-dependence rehabilitation beds. The submitted budget appears reasonable.

As shown in BFA Attachment A, the applicant had a negative working capital position and a positive net asset position in 2020. The reason for the negative working capital position is intercompany payables. As the hospital is part of the Catholic Health System, management can apply cash and investments across entities to support cash flow needs as they arise. Sisters of Charity Care Hospital incurred a loss of \$26,296,000 in 2020; the loss was due to the COVID-19 pandemic, however, the facility received CARES Act Funding of \$39,756,000 in 2020 to mitigate losses.

### **Conclusion**

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

## **Attachments**

BFA Attachment A Sisters of Charity Hospital - 2020 Certified Financial Statements.



Project # 212177-C Buffalo Surgery Center, LLC

Program: Diagnostic and Treatment Center County: Erie
Purpose: Construction Acknowledged: November 19, 2021

Executive Summary

Description

Buffalo Surgery Center (BSC), an existing Article 28 single-specialty freestanding ambulatory surgery center (FASC), at 3921 Sheridan Drive, Amherst (Erie County) seeks approval to relocate their existing gastrointestinal (GI) suite to an adjacent building on the same campus and renovate the vacated space to add two Class C operating rooms, two procedure rooms, and a new Central Supply Room. BSC is currently certified as a single-specialty for gastroenterology, orthopedics, and ophthalmology. As part of this project, BSC plans to add general colorectal and pain management and is requesting to be certified as a multi-specialty ambulatory surgery center (ASC). The applicant's practicing physicians have provided letters of interest demonstrating their commitment to performing the additional surgical procedures.

After this project, this location will have six Class C operating rooms and two minor procedure rooms plus requisite support space. The landlord of the adjacent building will fund the 12,275 square foot GI suite renovation. And the landlord of the current building will fund that 12,980 square feet renovation. There is a relationship between the landlords and the operator.

James J. Kelly Jr., D.O., who is board-certified in Orthopedic Surgery, will remain BSC's Medical Director. The applicant has transfer agreements for backup and emergency services with Kaleida Health System and Catholic Health System's affiliated hospitals.

OPCHSM Recommendation
Contingent Approval

Need Summary

Approval of this project will enhance access to multi-specialty surgery services for the residents of Erie County.

Program Summary

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

Financial Summary

Total project costs of \$6,243,756 for renovation and movable equipment at both locations will be funded by the applicant and the two landlords. The applicant's total project cost contribution of \$2,219,142 for movable equipment and fees will be funded via \$222,000 in equity and a five-year loan for \$1,997,142 at 3.75% interest. The remaining project costs of \$4,024,614 will be funded as follows: Snyder Real Property Holdings LLC via a \$1,832,752 seven-year loan with a 30-year amortization period and 7-year Federal Home Loan Bank (FHLB) rate plus 200 basis points (BP), estimated at 4.04% as of February 16, 2022. Preferred Equity Partners II, LLC via a \$2,191,862 seven-year loan with a 30-year amortization period, 7-year FHLB plus 200 BP, estimated at 4.04% as of February 16, 2022. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues, Expenses, Gain/(Loss).

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (Department). Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment to Buffalo Surgery Center, LLC., acceptable to the Department. [BFA]
3. Submission of an executed loan commitment to Snyder Real property Holdings LLC., acceptable to the Department. [BFA]
4. Submission of an executed loan commitment to Preferred Equity Partners II, LLC., acceptable to the Department. [BFA]
5. Submission of an executed building lease, acceptable to the Department. [BFA]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
7. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

#### Approval conditional upon:

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

### Council Action Date

April 5, 2022

## Need and Program Analysis

### Program Description

Buffalo Surgery Center (BSC), an existing freestanding single-specialty ambulatory surgery center, seeks approval to relocate the GI suite to a building directly adjacent to the current operating facility, repurpose and renovate the space previously utilized by the GI service to add two Class C operating rooms and two minor procedure rooms, construct a new Central Supply Room to accommodate the increase in volume and convert to a multi-specialty ambulatory surgery center.

### Analysis

BSC currently has 28 credentialed orthopedic surgeons and is unable to meet block time demands where an ASC is the most appropriate setting. The current OR block time is at 97% and BSC is unable to accommodate existing patient and physician demands, which results in increased wait times for surgeries. The center reports over 16,000 orthopedic and GI procedures are being performed annually resulting in both case volume and attending physicians being nearly at capacity.

Gastroenterology cases have grown 22% annually since 2016 at BSC with additional colorectal and gastroenterologists credentialed. The physicians of BSC are performing over 2,000 procedures per GI room annually.

The addition of new operating rooms, procedure rooms, and the designation as a multi-specialty ASC will increase access to ambulatory services for the patients in the community, particularly the fast-growing aging population.

The service area is Erie County. According to Data USA, 97.4% of the population of Erie County has health coverage as follows:

Employer Plans	51.2%
Medicaid	19.2%
Medicare	13.4%
Non-Group Plans	12.3%
Military or VA	1.2%

The center is current with its SPARCS reporting. The following table shows the center's utilization for Medicaid and total visits for the last three years.

	2018	2019	2020
Visits	15,236	16,199	13,338
Medicaid	10.1%	9.1%	9.3%

The applicant projects 21,367 procedures in Year One and 22,618 in Year Three. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	18	0.1%	19	0.1%
Medicaid MC	2,082	9.7%	2,205	9.7%
Medicare FFS	1,596	7.5%	1,692	7.5%
Medicare MC	4,252	19.9%	4,508	19.9%
Comm Ins FFS	3,062	14.3%	3,270	14.5%
Comm Ins MC	9,874	46.2%	10,379	45.9%
Private Pay	12	0.1%	15	0.1%
Charity Care	471	2.2%	530	2.3%
Total	21,367	100.0%	22,618	100.0%

The center has Medicaid-managed care contacts with the following: Molina, Fidelis, Univera, BCBS Amerigroup, UHC, Wellcare, IHA, and MVP/Cigna. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

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

Staffing will increase by 31.3 FTEs in the first year, and an additional 8.5 FTEs by the third year after completion of the CON. The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

### Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. This project will enhance access to multi-specialty surgery services for the residents of Erie County.

## Financial Analysis

### Operating Budget

The applicant has submitted the current year (2020), first and third years projected operating budgets, in 2022 dollars, as summarized below:

Revenues	Current Year		Year One		Year Three	
	Per Proc	Total	Per Proc.	Total	Per Proc.	Total
Medicaid FFS	\$1,163	\$13,959	\$1,205	\$21,690	\$1,205	\$22,895
Medicaid MC	\$1,197	1,657,632	\$1,205	2,508,810	\$1,205	2,657,025
Medicare FFS	\$918	966,738	\$935	1,492,260	\$935	1,582,020
Medicare MC	\$1,122	3,256,851	\$1,135	4,826,020	\$1,140	5,139,120
Commercial FFS	\$1,143	2,263,012	\$1,195	3,659,090	\$1,205	3,940,350
Commercial MC	\$1,602	9,817,868	\$1,838	18,152,682	\$1,849	19,192,847
Private Pay	\$1,165	9,324	\$1,180	14,160	\$1,180	17,700
Charity		-351,963		-600,202		-636,240
Bad Debt		<u>-35,296</u>		<u>-64,400</u>		<u>-105,000</u>
Total Revenues*		\$17,598,125		\$30,010,110		\$31,810,717
<b>Expenses</b>						
Operating	\$974	\$13,440,256	\$954	\$20,382,247	\$975	\$22,048,100
Capital	<u>\$135</u>	<u>1,870,225</u>	<u>\$125</u>	<u>2,664,042</u>	<u>\$117</u>	<u>2,642,567</u>
Total Expenses:	\$1,109	\$15,310,481	\$1,079	\$23,046,289	\$1,092	\$24,690,667
Net Income (Loss)		<u>\$2,287,644</u>		<u>\$6,963,821</u>		<u>\$7,120,050</u>
Procedures		13,800		21,367		22,618
Cost Per Procedure		\$1,109		\$1,079		\$1,092

\*The revenues for the above current year do not include "Other Income" totaling \$2,728,567 as reflected in the audited 2020 financial statements. (\$1,476,700 Paycheck Protection Program, \$1,125,507 Health and Human Services stimulus funds, \$120,000 rebates, and \$6,360 miscellaneous)

Utilization by payor source for the current year and years one and three are summarized below:

Payor	Current Year		Year One		Year Three	
	Procedures	%	Procedures	%	Procedures	%
Medicaid FFS	12	0.09%	18	0.08%	19	0.08%
Medicaid MC	1,385	10.04%	2,082	9.74%	2,205	9.75%
Medicare FFS	1,053	7.63%	1,596	7.47%	1,692	7.48%
Medicare MC	2,903	21.04%	4,252	19.90%	4,508	19.93%
Commercial FFS	1,980	14.35%	3,062	14.33%	3,270	14.46%
Commercial MC	6,129	44.40%	9,874	46.21%	10,379	45.89%
Private Pay.	8	0.06%	12	0.06%	15	0.07%
Charity Care	305	2.21%	425	1.99%	455	2.01%
Bad Debt	<u>25</u>	<u>0.18%</u>	<u>46</u>	<u>0.22%</u>	<u>75</u>	<u>0.33%</u>
Total	13,800	100%	21,367	100%	22,618	100%

The following is noted concerning the submitted FASC budget:

- The 2021 budgeted volume is the baseline for the first- and third-year budget projections. The applicant tested this by reviewing the trailing twelve months of activity through August 31, 2021, to ensure overall revenue by payor and revenue per procedure by payor was consistent with the 2021 budget.
- Managed care rates are based on previous experience and ongoing conversations with managed care organizations. Medicare fee-for-service rates are based on Ambulatory Patient Group reimbursements rates for the mix of procedures to be performed at the center.
- Staffing and related expenses for safe staffing in an ambulatory surgery environment were developed through standards from the following organizations: The Association of Peri-Operative Register Nurses (AORN), the American Society of Peri-Anesthesia Nurses (ASPAN), and the Society of Gastroenterology Nurses and Associates (SGNA). Surgical and procedural case volumes were taken into consideration to ensure that staffing was on par with anticipated patient acuity and related needs. Ancillary, office, and technical support staffing ratios are based on BSC's historical operating needs.
- Rent expense was based on a proposed lease to include the additional square footage in a second building. Depreciation expense was based on current reports plus anticipated capital expenditures for moveable equipment. Other expenses, such as medical and surgical supplies, were based on historical percentages of revenue.
- Utilization assumptions are supported by letters from the thirty-nine physicians based on their current experience. The current operating room block time utilization is 97%.
- Breakeven is approximately 16,409 procedures in Year One.

### **Total Project Cost and Financing**

Total project costs for renovations and acquisition of movable equipment are estimated at \$6,243,756 broken down as follows:

Renovation & Demolition	\$3,074,825
Site Development	61,500
Construction Contingency	164,336
Architect/Engineering Fees	297,468
Construction Manager Fees	376,085
Other Fees	50,400
Movable Equipment	2,183,000
CON Application Fee	2,000
CON Processing Fee	<u>34,142</u>
Total Project Cost	\$6,243,756



The applicant's financing plan appears as follows:

Applicant - Cash Equity	\$222,000
Applicant - Loan (3.75% interest, 5-year term) *	1,997,142
Snyder Real Property Holdings LLC - Bank Loan (7-year FHLB +200 or 4.04%, 7-year term, 30-year amortization)**	1,832,752
Preferred Equity Partners II, LLC - Bank Loan (7-year FHLB + 200 BP or 4.04%, 7-year term, 30-year amortization) **	2,191,862
Total	\$6,243,756

\* M&T Bank has provided a letter of interest for the applicant's loan.

\*\*Northwest Bank has provided letters of interest for the landlords' loans, which are interest-only during construction.

BFA Attachment A is Buffalo Surgery Center, LLC's 2019 and 2020 certified financial statements and August 31, 2021, internal statements, which show sufficient resources to meet the equity requirement.

### Lease Agreement

The applicant submitted a draft non-arm's length lease agreement for the two properties located at 3921 and 3915 Sheridan Drive. The applicant has provided an affidavit stating the lease is a non-arms-length agreement and two letters from two NYS licensed realtors attesting to the rental rate being of fair market value.

Premise - A:	27,175 sq. ft. building at 3921 Sheridan Drive, Amherst, NY 14226
Landlord - A:	Preferred Equity Partners II, LLC.
Lessee - A:	Buffalo Surgery Center, LLC.
Term - A:	10-years and two (2) 10-year options to renew
Payment - A:	\$1,050,042 (\$38.64 per sq ft) _ monthly \$87,503.50
Provisions - A:	Triple Net
Premise - B:	12,275 sq ft. building at 3915 Sheridan Drive, Amherst, NY 14226
Landlord - B:	Snyder Real Property Holdings, LLC.
Lessee - B:	Buffalo Surgery Center, LLC.
Term - B	10-years and two (2) 10-year options to renew
Payment - B	\$474,306 (\$38.64 per sq ft) _ monthly \$39,525.50
Provisions - B:	Triple Net

### Capability and Feasibility

Total project costs of \$6,243,756 will be funded by the applicant and the two landlords. The applicant's portion, \$2,219,142 for moving equipment and fees, will be funded via \$222,000 in equity and a five-year loan for \$1,997,142 at stated terms. The \$4,024,614 balance will be funded as follows; Snyder Real Property Holdings LLC via a \$1,832,752 seven-year loan and Preferred Equity Partners II, LLC via a \$2,191,862 seven-year loan at stated terms. During the construction period, the landlords' repayment terms are interest only. M&T Bank has provided a letter of interest for the BSC loan and Northwest Bank has provided a letter of interest for both landlords' loans. BSC will repay the costs of funding the renovation through its leases with the landlords.

The working capital requirement is estimated at \$4,115,111 based on two months of third-year expenses. BFA Attachment B is BSC's cash flow analysis demonstrating the adequacy of existing operating cash flow to provide working capital. Buffalo Surgery Center, LLC., projects a net operating income of \$6,963,821 and \$7,120,050 in the first and third years of operation, respectively. The budget appears reasonable.

Review of BFA Attachment A, Buffalo Surgery Center, LLC's 2019 and 2020 certified financial statements and the August 31, 2021, internal financial statements, shows positive working capital, positive net assets, and positive net income.

**Conclusion**

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

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**Attachments**

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- BFA Attachment A Buffalo Surgery Center, LLC. 2019 - 2020 Certified Financial Statement and August 31, 2021, Internal Financial Statement
- BFA Attachment B Buffalo Surgery Center, LLC. Cash Flow Analysis



Project # 212251-C
Hospice Care Network d/b/a
Hospice Care of Long Island, Queens South Shore

Program: Hospice
Purpose: Construction

County: Nassau
Acknowledged: December 20, 2021

Executive Summary

Description

Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore (HCN), a not-for-profit Article 40 Hospice in Nassau County, requests approval to acquire the assets of Hospice Care in Westchester and Putnam, Inc., (HWP), a not-for-profit Article 40 Hospice at 540 White Plains Road, Tarrytown (Westchester County).

HCN is currently authorized to provide hospice services in Nassau, Queens, and Suffolk counties, and HWP is authorized to provide hospice services in Westchester and Putnam counties. Upon approval by the Public Health and Health Planning Council (PHHPC), HCN will add Westchester and Putnam counties to its service area and the HWP location to its operating certificate, and HWP will close. HCN will use the assumed name Hospice of Westchester and Putnam within Westchester and Putnam counties.

Both HCN and HWP are under the Northwell Health, Inc. umbrella. The objective of the purchase of HWP and its consolidation into HCN is to streamline the governance, back-room operations, and logistical functions while maintaining a high level of quality care.

OPCHSM Recommendation

Contingent Approval

Need Summary

After approval, Hospice Care Network will add Westchester and Putnam counties as service areas to their existing hospice program. There will be no change in services as a result of this application.

Program Summary

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

Financial Summary

There are no project costs or acquisition prices associated with this application. The proposed budget is as follows:

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues (\$60,908,928 vs \$63,734,915), Expenses (60,414,519 vs \$62,139,128), Net Income (\$494,409 vs \$1,595,787)

## Recommendations

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Primary Care and Health Systems Management**

#### **Approval contingent upon:**

1. Submission of an executed sublease agreement, acceptable to the Department of Health (Department). [BFA]
2. Submission of a photocopy of an amended and executed Sublease, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Overlease, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Asset Purchase 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 any extensions to the project approval expiration date. [PMU]

### **Council Action Date**

April 5, 2022

# Need and Program Analysis

## **Program Description**

At the close of this transaction, HCN will be the surviving entity providing services in Nassau, Suffolk, Queens, Westchester, and Putnam counties, and HWP will close. Additionally, HCN proposes to use the assumed name Hospice of Westchester and Putnam in Westchester and Putnam counties. HWP will stop admissions 60 days prior to closure/transition and existing patients will have the option to change hospice providers or transition to HCN.

HCN currently serves the residents of Nassau, Suffolk, and Queens from an office at 99 Sunnyside Boulevard, Woodbury. As a result of this merger, HCN's approved geographical service area will be expanded to include Putnam and Westchester counties. Additionally, the applicant intends to use HWP's current office at 540 White Plains Road, Suite 300, Tarrytown as a branch location after completion of the transaction.

Both hospice providers are operated under the Northwell Health, Inc. umbrella. The following is a complete listing of all healthcare facilities in the Northwell Health, Inc. network:

### Hospitals and Diagnostic & Treatment Centers (D&TCs)

- North Shore University Hospital
- Syosset Hospital
- Long Island Jewish Medical Center
- Long Island Jewish Forest Hills Hospital
- Long Island Jewish Valley Stream Hospital
- Glenn Cove Hospital
- Plainview Hospital
- Huntington Hospital
- South Shore University Hospital
- Lenox Hill Hospital
- Lenox Health Greenwich Village
- Staten Island University Hospital – South d/b/a Staten Island University Hospital Prince's Bay
- Staten Island University Hospital – North
- Northern Westchester Hospital
- Phelps Memorial Hospital Association d/b/a Phelps Hospital
- Central Suffolk Hospital d/b/a Peconic Bay Medical Center
- John T. Mather of Port Jefferson NY Inc. d/b/a John T. Mather Memorial Hospital of Port Jefferson New York Inc.
- Long Island Home d/b/a South Oaks Hospital (Article 31 & Article 32)
- Dolan Family Health Center d/b/a Northwell Family Health Center at Huntington

### Hospice

- Hospice Care Network d/b/a Hospice Care of Long Island, Hospice Care of Queens, Hospice Care of South Shore
- Hospice Care in Westchester & Putnam, Inc.
- Staten Island University Hospital d/b/a Staten Island University Hospital University Hospice

### Certified Home Health Agencies (CHHAs)

- Central Suffolk Hospital d/b/a Peconic Bay Home Health Services
- North Shore University Hospital, Inc. d/b/a North Shore Home Care

### Skilled Nursing Facilities (SNFs)

- Northwell Health Stern Family Center for Rehabilitation
- North Shore – LIJ Orzac Center for Rehabilitation
- Central Suffolk Hospital d/b/a Peconic Bay Skilled Nursing Facility

**Star Ratings**

CHHA Quality of Patient Care Star Ratings as of February 15, 2022	
CHHA Name	Quality of Care Rating
Central Suffolk Hospital d/b/a Peconic Bay Home Health Services	3.5 out of 5 stars
North Shore University Hospital, Inc. d/b/a North Shore Home Care	3 out of 5 stars

**Conclusion**

After approval, HCN will add Westchester and Putnam counties as service areas to their existing hospice program. Based on the results of this review, a favorable recommendation can be made regarding the applicant’s current compliance.

**Financial Analysis**

**Operating Budget**

The applicant has submitted the current year (2020), first and third year projected operating budget, in 2022 dollars, as summarized below:

	<u>Current Year</u> (2020)	<u>Year One</u> (2022)	<u>Year Three</u> (2024)
<u>Revenues</u>			
Medicare (General Inpt.)	\$8,574,051	\$8,551,638	\$9,043,675
Medicaid (General Inpt.)	510,399	569,200	589,250
Medicare (Home Care)	45,693,542	44,782,575	46,787,602
Medicaid (Home Care)	2,159,293	2,756,105	2,894,621
Commercial/Other (Inpt.)	1,232,821	1,155,693	1,178,710
Commercial/Other (Home Care)	<u>3,188,352</u>	<u>3,093,717</u>	<u>3,241,057</u>
Total Revenues	\$61,358,458	\$60,908,928	\$63,734,915
<u>Expenses</u>			
Inpatient	\$14,743,953	\$15,537,129	\$15,880,576
Home Care	<u>44,560,697</u>	<u>44,877,390</u>	<u>46,258,552</u>
Total Expenses	\$59,304,650	\$60,414,519	\$62,139,128
Net Income/(Loss)	<u>\$2,053,808</u>	<u>\$494,409</u>	<u>\$1,595,787</u>

Projected utilization by site of service for Years One and Three are as follows:

<u>Site of Service</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Inpatient Days	8,388	7,967	8,385
Home Care Visits	<u>236,417</u>	<u>222,963</u>	<u>233,280</u>
Total	244,805	230,930	241,665

Projected utilization by payor source for Years One and Three is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	92.9%	92.1%	92.1%
Medicaid FFS	1.0%	1.5%	1.6%
Medicaid MC	1.6%	2.3%	2.3%
Commercial MC	4.5%	4.0%	4.0%

Budget projections are based on the following:

- In the latter part of 2021, the applicant reports experiencing clinical staffing shortages, mostly Registered Nurses, as a result of the pandemic and the NYS imposed vaccine mandate for health care workers in September 2021. As a result, they were unable to admit as many patients as they had in 2020. They projected this into their budget for Year One, knowing the obstacles they would face to a) bring their staffing levels back up to pre-vaccine mandate and b) once they were adequately staffed, work to increase their patient census. The expectation is that by Year Three, the census will be more in line with historical volume.
- Revenue was calculated based on expected volume and per diem reimbursement from Medicaid, Commercial, and Medicare. Medicare revenues are net of 2% payment sequestration.
- Utilization and payor mix for inpatient and home care were calculated on historical trends.
- Staffing assumptions were developed by clinical and operational leadership using existing program models adjustment for volume.
- Direct patient care expenses and services for inpatient and home care, excluding staffing, were derived from historical cost per patient day.
- In Year Three, volume is expected to be at pre-COVID-19 levels.

### Bill of Sale Agreement

The applicant has submitted an executed Bill of Sale Agreement between HCN and HWP to be effectuated upon PHHPC approval of this application, as summarized below:

Date:	July 21, 2021
Buyer:	Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore, (HCN)
Seller:	Hospice Care in Westchester and Putnam, Inc. (HWP)
Assets Transferred:	All assets, inventory, supplies, and/or other personal property principally used in the operation of Seller's hospice. Copies of all records relating to and used in the operation of the hospice. All rights, title, and interest of Seller in Seller's leases. All of the goodwill in or arising from the hospice.
Purchase Price:	\$0

### Lease Agreement

The applicant has submitted a draft sublease for 540 White Plains Road, Tarrytown, which is the office that will continue to service the hospice patients in Westchester and Putnam counties. The terms are summarized below:

Premises:	Sublease 5,217 sq. ft on the third floor of building - 540 White Plains Road, Tarrytown
Landlord:	BASF Corporation
Tenant:	Visiting Nurse Association of Hudson Valley
Sublandlord :	Visiting Nurse Association of Hudson Valley
Subtenant:	Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore
Term:	Expire at noon on the expiration date of the Extended Term of Over lease.
Rent:	Rent equal 22% of all Base Rent and 20% of all Additional Rent payable by sublandlord.

The applicant has provided an affidavit attesting that the lease is a non-arms-length agreement, as there is a relationship between sublandlord and subtenant. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

### Capability and Feasibility

There are no project costs or acquisition prices associated with this application. The applicant states staff, contracts, policies, and procedures for the hospice program are already in place for the five counties served. The budget projects a net income of \$494,409 and \$1,595,787 in the first and third years, respectively. Working capital will be provided from operating cash.

BFA Attachment A is Hospice Care Network's internal financial statement for December 31, 2021, which shows positive working capital, positive net assets, and operating income of \$7,987,000. BFA Attachment B is Hospice Care in Westchester and Putnam's internal financial statement for December 31, 2021, which shows positive working capital, positive net assets, and operating income of \$1,958,000.

**Conclusion**

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

<b>Attachments</b>
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BFA Attachment A	Hospice Care Network internal financial statement for December 31, 2021.
BFA Attachment B	Hospice Care in Westchester and Putnam internal financial statement for December 31, 2021.





**Project # 212079-E**  
**Ambulatory Surgery Center of Western New York LLC**

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

**County:** Erie  
**Acknowledged:** September 28, 2021

**Executive Summary**

**Description**

Ambulatory Surgery Center of Western New York LLC (ASCWNY LLC), a limited liability corporation, Article 28 ambulatory surgery center (ASC) at 945 Sweet Home Road, Amherst (Erie County), requests approval to transfer 77% ownership interest in the ASC to CHE Emmaus, Inc. (CHE) a not-for-profit corporation. Catholic Health System, Inc (CHS) is the sole member and active parent of (CHE) and is a not-for-profit corporation providing integrated care through a network of acute care hospitals, long-term care facilities, home health agencies, and providing other healthcare and health-related services. The table below details the proposed change in ownership:

Members	Current	Proposed
David Rigan	4.55191%	1.04694%
Zvika Management, LLC Zvi Scharf (100%)	5.83073%	1.34107%
<b>CH Emmaus Inc</b> David Mancholz, <i>President</i> Mark Sullivan, <i>Treasurer</i> Leonardo Sette-Camara, <i>Secretary</i>	0.00000%	77.0000%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

The ASC is licensed to provide multi-specialty services including ophthalmology, otolaryngology, orthopedics, podiatry, and pain management procedures. The community served by ASCWNY closely mirrors the population served by CHS, enabling ASCWNY to expand outpatient services through referrals for patients needing surgical interventions from Catholic Health Medical Partners. There will be no change in services as a result of this application.

David Anthone, M.D., who is board-certified in Anesthesiology will serve as the Medical Director. ASCWNY, LLC has negotiated a transfer and affiliation agreement for emergency and backup services with Millard Fillmore Suburban Hospital located 4.5 miles (9 minutes travel time) from the center.

**OPCHSM Recommendation**

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

**Need Summary**

Approval of this project will allow for continued access to multi-specialty surgery services at this site to the residents of Erie County.

Members	Current	Proposed
Charles Niles	11.20585%	2.57735%
Philip Niswander	9.26311%	2.13052%
James Twist	10.28020%	2.36445%
Todd Koch	4.61129%	1.06060%
Stephen Pollack	4.82739%	1.12065%
Asha Kumar	1.77541%	0.40834%
Albert Schlisserman	3.63455%	0.83595%
Gregg Zimmer	1.14305%	0.26290%
James Chmiel	4.52358%	1.04042%
A. Marc Tetro	3.67414%	0.84505%
Kevin Lanighan	6.98100%	1.60563%
Ashvani Gulati	2.00249%	0.46057%
Michael Parentis	4.03161%	0.92727%
Keith Stube	4.76432%	1.09579%
Nicholas Stathopoulos	3.88591%	0.89376%
Frank Schlehr	2.58477%	0.59450%
Peter Hurley	2.93630%	0.67535%
Graham Huckell	0.63236%	0.14544%
Deepan Selvadurai	2.31500%	0.53245%
John Legarreta	2.25000%	0.51750%
Ellen Fitzgerald	2.25000%	0.51750%

**Program Summary**

The individual background review indicates the proposed board members of CHE Emmaus, Inc. and Catholic Health System, Inc. have met the standard for approval as set forth in Public Health Law §2801-a(3).

**Financial Summary**

There are no project costs for this application. The total purchase price for the 77% ownership interest is \$23,300,000. Catholic Health

System, Inc. will fund the purchase price of shares by CH Emmaus, Inc. from accumulated cash. The proposed budget, in thousands, is as follows:

<u>Budget</u>	<u>Current</u> <u>Year</u>	<u>Year</u> <u>One</u>	<u>Year</u> <u>Three</u>
Revenues	\$18,145	\$17,951	\$18,124
Expenses	<u>15,838</u>	<u>\$17,449</u>	<u>\$17,973</u>
Net Income	\$2,306	\$501	\$151

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### **Contingent approval with an expiration of the operating certificate three years from the date of its issuance:**

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department of Health (Department) to provide annual reports to the Department. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Reports should include:
  - a. Data displaying actual utilization including procedures.
  - b. Data displaying the breakdown of visits by payor source.
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery.
  - d. Data displaying the number of emergency transfers to a hospital.
  - e. Data displaying the percentage of charity care provided.
  - f. The number of healthcare-associated infections recorded during the year reported.
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of a photocopy of an executed amendment of the Operating Agreement of Zvika Management Services, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Zvika Management Services, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

### Council Action Date

April 5, 2022

## Need and Program Analysis

### Program Description

There are no programmatic or staffing changes as a result of this request. The primary service area is Erie County, with specific emphasis on zip codes 14226, 14223, 14261, 14221, and 14150. The population of Erie County was 954,236 in 2020 and is projected to decrease by 1% to 945,162 by 2025. According to Data USA, in 2019, 97.4% of the population of Erie County has health coverage as follows:

Employee plans	51.2%
Medicaid	19.2%
Medicare	13.4%
Non-group plans	12.3%
Military or VA plans	1.21%

The applicant estimates 22,404 procedures in the first year and 23,926 in the third year with Medicaid utilization at 5.2% and charity care at 6.2%. The site is current with SPARCS reporting for 2021. The facility states they will provide care regardless of their ability to pay or source of payment.

### Character and Competence

The table below details the proposed change in ownership:

Members	Current	Proposed
Charles Niles	11.20585%	2.57735%
Philip Niswander	9.26311%	2.13052%
James Twist	10.28020%	2.36445%
Todd Koch	4.61129%	1.06060%
Stephen Pollack	4.82739%	1.12065%
Asha Kumar	1.77541%	0.40834%
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Frank Schlehr	2.58477%	0.59450%
Peter Hurley	2.93630%	0.67535%
Graham Huckell***	0.63236%	0.14544%
Deepan Selvadurai***	2.31500%	0.53245%
John Legarreta***	2.25000%	0.51750%
Ellen Fitzgerald***	2.25000%	0.51750%
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<b>CH Emmaus Inc**</b> David Manholz, <i>President</i> Mark Sullivan, <i>Treasurer</i> Leonardo Sette-Camara, <i>Secretary</i>	0.00000%	77.00000%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

\*\*Individuals subject to Character and Competence as the board of the new member

\*\*\*Individuals who obtained membership through Transfer of Ownership Interest Notices and are now subject to a Character and Competence review per PHL §2801-a(4)(b)(i).

**David Macholz** is the Chief Financial Officer of Catholic Health System. He has held various roles in the organization. Previously, he served as the Vice President of Finance, the President Senior Director of Finance of Acute Care, the Director of Decision Support and Budget, the Director of Cost Accounting, and the Accounting Manager. He is responsible for the development of a system-wide plan and funding strategy to bring associates from multiple disciplines into the Catholic Health Administration and Regional Training Center saving Catholic Health \$1.6M annually. In addition to his roles at CHS, he was previously a Controller and Senior Accountant at BryLin Hospital.

**Mark Sullivan** is the President and CEO of the Catholic Health System where he is responsible for the health system with annual revenue of more than \$1.2 billion. He leads a team of more than 10,000 associates while working with Catholic Medical Partners and Trinity Medical WNY to help strengthen the system's relationship with its nearly 1,600 affiliated physicians. Previously, he was the Executive Vice President and Chief Operating Officer of CHS.

**Leonardo Sette-Camara** is the General Counsel for Catholic Health System where he provides legal counsel and services for the System and its corporate affiliates. In addition to advising the Board and Senior Executives, he is responsible for the Corporate Compliance, Institutional Review Board, Risk Management, Clinical Documentation Integrity, and Improvement departments division of legal services, the management of outside legal counsel, all insurance programs, and governance-related activity. Previously, he was the Chief Compliance Officer, the Deputy Counsel for Corporate Compliance and Privacy Officer, the Corporate Compliance and Privacy Officer, the Associate Counsel and Manager of Contracts. Leonardo Sette-Camara discloses the following healthcare affiliations:

*Catholic Health Ministry Services Board*

*2020-present*

**Deepan Selvadurai, MD** is an Ophthalmologist at Buffalo Ophthalmology. He received his medical degree from Rosalind Franklins University of Medicine and Science. He completed his residency at The Mayo Clinic and his fellowship at The University of Toronto. He is Board Certified in Ophthalmology.

**Graham Huckell, MD** is an Orthopedist at Pinnacle Orthopedics & Spine Specialists. He is also an Assistant Clinical Professor at the State University of New York at Buffalo. He is an Attending Physician at both Kaleida Health System and Catholic Health System. He received his medical degree from the University of Calgary. He completed his residency in Orthopedic Surgery at Western University and a fellowship in Adult Reconstructive Surgery and Total Joint Surgery at the University of Toronto. He is board-certified in Orthopedic Surgery.

**John Legarreta, MD** is an Ophthalmologist at Legarreta Eye Center. He is a Clinical Assistant Professor of Ophthalmology at the University of Buffalo School of Medicine giving lectures. He holds affiliations at Millard Fillmore Suburban Hospital, Sister's Hospital, and Lockport Hospital. He received his medical degree from State University of New York at Buffalo. He completed his residency in Internal Medicine at University at Buffalo School of Medicine and his residency in Ophthalmology at University of Miami School of Medicine and UPMC Medical Education. He is board-certified in Ophthalmology.

**Ellen Fitzgerald, MD** is an Ophthalmologist at Ambulatory Surgery Center of Western New York. She is also an Ophthalmologist at Visionary Ophthalmology and Cataract Care PLLC. She received her medical degree from University at Buffalo School of Medicine. She completed her residency in Internal Medicine at University at Buffalo School of Medicine and her residency in ophthalmology at Henry Ford Hospital. She is board certified in Ophthalmology.

**Catholic Health System, Inc.**

The sole member and active parent of CHE is Catholic Health System, Inc. (CHS). Therefore, CHS and their board is also subject to a character and competence review. **The board of CHS** is as follows:

<b>Member Name</b>	<b>Title</b>
Mark Sullivan	President and CEO
Maureen Athoe	Board Chair
Maureen Hurley	Vice Chair
Michael Keating	Vice Chair
Nancy Ware	Secretary
Lawrence Whistler	Treasurer
David Bauer	Member
John Duset	Member
Sister Marcia Fiutko FSSJ	Member
Carolyn "Carrie" Frank	Member
Johnathan Graves	Member
Alfred Hamilton	Member
Carol Heckman	Member
Kevin Keenan	Member
Hillary Lewis	Member
Teresa Majors	Member
Kristen Robillard	Member
David Rogers	Member
David Schmidt	Member
Paul Tokasz	Member
Rolanda Ward	Member
Monsignor Robert Zapfel	Member

**Mark Sullivan** – see above disclosure

**Maureen Athoe** has been the President of Moog, Inc for approximately seven years. She is responsible for the worldwide design, manufacturing, and integration of high-performance systems for a broad range of applications in aerospace and defense, industrial, and mechanical markets. She was the previous Vice President and Group General Manager for the Space and Defense Group and the previous Vice President of Finance of the Space and Defense Group. She is on the Catholic Health System Board of Directors for approximately four (4) years and had been the Board Chair for one (1) year. She was on the Mercy Hospital of Buffalo Foundation Board of Directors for seven years.

**Maureen Hurley** is retired from Rich Products Corp. where she served as the Executive Vice President for 14 years. She was responsible for reporting to the CEO, was a member of the Executive Leadership Team, and served as a key advisor to the Chair, Vice-Chair, and CEO.

**Michael Keating** has been the Senior Vice President of Wegmans Food Markets for 21 years. He is responsible for all operations within the company's Buffalo division, 11 stores in Western New York, and two in Erie, PA. He is responsible for over 6,000 full and part-time employees. He is a member of Business Leader's Task Force for Racial Equity Initiative of the Community Foundation of Greater Buffalo and The United Way Advisory Council. He serves on the board of The Buffalo Niagara Partnership.

**Nancy Ware** has been the Managing Partner and CEO of WPS MGMT Company for approximately two years. She is responsible for commercial property management for several businesses and properties in Western New York. She was the President of EduKids, Inc for 31 years. She created and established Western New York's largest privately-owned group of 16 childcare centers with a staff of over 450 employees, serving over 2,000 families. She was responsible for strategic planning, facility management, and operations.

**Lawrence Whistler** has been the President of Nottingham Advisors for over 15 years. He is responsible for leading the investment research and portfolio management process and managing the day-to-day activities of this Buffalo-based \$4.1B AUA registered investment advisory firm. He was an Adjunct Professor at Wehle School of Business for four where he taught fixed income securities.

**David Bauer** has been the President and CEO of National Fuel Gas Company for over two years. He previously held various executive positions with National Fuel Gas Supply Corporation. He is the Director and Chair of Finance for the YMCA Buffalo Niagara, the Chair of the Audit Committee of D'Youville College, an Investment Committee Member of the Diocese of Buffalo, a Member of Canisius College Business Advisory Council, the Director of Invest Buffalo Niagara, and the Director of American Gas Association.

**John Dusett** has been the President of Ingram Micro Corporation for approximately six years. He is responsible for complete strategic, P&L, and operational responsibility for the \$800M/year Microsoft Cloud and Software business in Ingram Micro's US operations. He was previously the Managing Director of The Aberdeen Group and the General Manager and Director of Operations of Xerox Corporation.

**Sister Marcia Fiutko** is a Franciscan Sister of St. Joseph. She is serving as a result of an election to FSSJ Leadership at the Franciscan Sisters of St. Joseph, Marycrest Manor Skilled Nursing Facility and Rehab Center, and Marycrest Heights.

**Carolyn Frank** has been a Consultant for Frank Executive Solutions LLC for approximately five years. She was previously the Vice President of Quality Informatics and Performance Improvement at Excellus Health Plan/Univera Healthcare, the Executive Vice President of Operations and the COO of Kaleida Health, and the Interim President and CEO, Executive Vice President and COO, and Vice president of Finance and CFO of The Buffalo General Health System.

**Johnathon Graves** has been a Mortgage Loan Officer at Northwest Bank for over two years. He is responsible for resident mortgage loans; developing and maintaining relationships with real estate agents, lawyers, and financial advisors; and creating and participating with local housing agencies and community groups. He was previously the Assistant Vice President of Five Star Bank, the Assistant Vice President of First Niagara Bank/Key Bank, and the Relationship Development Manager for Unyts.

**Alfred Hamilton** has been the President and CEO of Technology Solutions Consulting, LLC for over 12 years. He is responsible for developing strategic market guidance for public and private healthcare organizations; providing process improvements for the enhancements of internal and external operations; providing executive-level IT leadership training for public and private sector organizations; developing and implementing curriculum designs, facilitating recruitment and hiring, and quality assurance; and managing the accreditation process, and student recruitment and retention.

**Carol Heckman** has been a Partner at Lippes Mathias LLP for over five years. She is a litigation partner handling a broad range of commercial and business litigation and arbitration, including healthcare litigation and False claims Acts. She is a chair of Burchfield Penne Art Center, Hauptman Woodward Medical Research Institute, Children's Hospital, and Cradle Beach. She was also a federal court magistrate judge. She was previously a partner at Harter Secrest & Emery LLP.

**Kevin Keenan** is a Founding Partner of Keenan Communications Group. He is responsible for crisis communication, public relations, social media, and grassroots advocacy. He was previously the Director of the Office of Communication for the Diocese for 11 years. He was also the Editor in Chief of the Western New York Catholic.

**Hillary Lewis** has been the Vice President and Chief Information Security Officer of Mathematica Policy Research for over a year. She is responsible for working closely with the CIO to define a security and risk management culture for the enterprise and push out awareness and training to reinforce this culture. She is also employed as the Information Security Director of Cyber Capability and Maturity where she is responsible for leading annual programs to assess and define capability maturity targets for the following year; align annual capability targets with funded projects and report on progress; lead the team that supports risk remediation activities; supports the development of enterprise operation risk policies and

procedures; create, manage, and update security and privacy policies; lead privacy incident response efforts; and support litigation related to OIG InfoSec oversight /audit activities. She was an Adjunct Professor at George Washington University.

**Teresa Majors** is a Certified Public Accountant and has been employed at Dopkins for over 18 years. She works with public and private companies providing assistance with tax compliance, tax provision issues, Sarbanes-Oxley compliance, and FIN 48 implementation. She has extensive experience with multi-state corporations, consolidated return issues, mergers and acquisitions, and tax provision issues.

**Kristen Robillard, MD** is a Managing Partner at Lakeshore Primary Care Associates which has over 16,000 active patients, 13 providers, and 45 employees. She is the Medical Director of St. Joseph's Post-Acute COVID Center and the Interim President and CEO of Catholic Medical Partners. She received her medical degree from State University at Buffalo. She completed her residency in Family Medicine at University at Buffalo School of Medicine.

**David Rogers** is the Co-Founder and Member of the Board of Directors of Life Storage. He served as the CFO for 28 years and as the CEO for seven years. The company owns and operates over 1,100 storage facilities in over 35 states and employs over 2,000 people. Mr. Rogers also serves on the boards of the Old Niagara Association, the Life Storage, Foundation for Better WNY, Read to Succeed, the Buffalo, Niagara, Partnership, WNY Heritage Partnership, and the Brothers of Mercy Wellness Campus.

**David Schmidt** has been an Audit Partner at Ernst & Young LLP for 29 years. He serves a wide range of public, private, and venture-backed and family-owned entities in multiple industries including manufacturing, aerospace, and defense, healthcare and not-for-profit entities, and hospitality and gaming. He is on the Audit Committee and is a Financial and Accounting resource for 43North. He is a Board Treasurer and was on the Audit Committee and Executive Committee of the National Federation for Just Communities of WNY. He was a Council Chair, Executive Committee member, and Diversity Recruiting Committee Chair of Canisius Council on Accounting.

**Paul Tokasz** has been the Administrative Vice President of Government Relations of M&T Bank for over six years. He was the 143<sup>rd</sup> Assembly District Member for 18 years representing the residents of the towns and villages. He was the New York State Assembly Majority Leader for five years. He is involved in the Buffalo Philharmonic Stabilization Committee, Buffalo State College, Fireman's Association of New York State, and National Conference of State Legislatures.

**Rolanda Ward, PhD** is a macro trained social worker. She has been the lead investigator or research associate on numerous studies focusing on society's most vulnerable, underserved, and proven risk populations. Dr. Ward was an Associate Professor of Social Work at Niagara University in the Fall of 2015 and was Tenured in Spring of 2019. She was an Inaugural Endowed Faculty Director at Niagara University and reappointed in May 2020.

**Reverend Monsignor Robert Zapfel** is the Pastor at St. Leo the Great Church and St. Benedict Church. He is also a member of the Long Term Care Board, Home Care Board, Acute Care Board, Nominating and Governance Committee, Strategic Planning, Executive Compensation Committee, Finance and Operations Committee, Catholic Independent Physicians Associations Board, Our Lady of Victory Community Housing Development Organization, Mercy Housing Development Fund Corporation, and Our Lady of Victory renaissance Corporation.

Catholic Health System's affiliated healthcare facilities and agencies are as follows:

Kenmore Mercy Hospital	CHS Infusion Pharmacy
Mercy Hospital of Buffalo	Niagara Homemaker Services
Mount St. Mary's Hospital and Health Center	Mercy Home Care of Western NY
Sisters of Charity Hospital	McAuley-Seton Home Care
Father Baker Manor	St. Elizabeth's Home of Lancaster
McAuley Residence	St. Vincent's Home for the Aged
Mercy Hospital Skilled Nursing Facility	WNY Catholic Long-Term Care
St. Catherine Laboure Health Care Center	CHS PACE



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

*The filing of a Corporate Integrity Agreement on October 30, 2017, after a False Claims Act lawsuit was disclosed. A Whistleblower lawsuit was filed against Catholic Health System in May 2013 alleging the company submitted false Medicare claims for rehabilitation therapy services over a period of seven years between 2007 and 2014. The facilities involved in the agreement were Father Baker Manor and the McAuley Residence. The Corporate Integrity Agreement entered required monitoring of billing and therapy systems assessment in sub-acute rehabilitation facilities for five years. A settlement was reached for \$6 million.*

### Expiration of the Operating Certificate

By PHHPC Policy, because there is a greater than 50% change in the membership of the ASC, a new "limited life" is imposed on the facility to ensure appropriate outreach and care for the medically underserved and uninsured populations in the region. Since the ASC is open and operational, the operating certificate will have an expiration date imposed that is three years from the completion of the transaction, instead of five years for not-yet-operational ASCs.

### Conclusion

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

## Financial Analysis

### Operating Budget

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>						
Comm. FFS	\$1,025.55	\$3,305,350	\$1,025.46	\$3,404,511	\$1,025.64	\$3,635,885
Comm. MC	\$633.92	1,770,551	\$633.88	1,823,667	\$633.99	1,947,606
Medicare FFS	\$504.08	1,741,077	\$504.02	1,793,310	\$504.13	1,915,185
Medicare MC	\$834.00	5,913,032	\$833.96	6,090,423	\$834.00	6,504,335
Medicaid FFS	\$478.71	7,316	\$502.34	7,535	\$473.36	8,047
Medicaid MC	\$524.74	581,936	\$524.86	599,394	\$524.70	640,129
Private Pay	\$632.67	527,014	\$632.66	542,825	\$632.88	579,716
All Other <sup>1</sup>	\$1,322.41	2,484,800	\$1,322.66	2,559,344	\$1,322.34	2,733,280
Less: Bad Debt <sup>2</sup>		<u>145,524</u>		<u>148,890</u>		<u>160,077</u>
Total Pat. Rev.		\$16,476,601		\$16,970,899		\$18,124,262
Other Income <sup>3</sup>		<u>1,668,228</u>		<u>979,639</u>		<u>0</u>
Total Revenue		<u>\$18,144,829</u>		<u>\$17,950,539</u>		<u>\$18,124,262</u>
<u>Expenses</u>						
Operating	\$604.49	\$13,148,329	\$675.67	\$15,137,617	\$651.67	\$15,591,740
Capital	<u>123.68</u>	<u>2,690,091</u>	<u>103.19</u>	<u>2,311,871</u>	<u>99.52</u>	<u>2,381,225</u>
Total Expenses	<u>\$728.17</u>	<u>\$15,838,420</u>	<u>\$778.86</u>	<u>\$17,449,488</u>	<u>\$751.19</u>	<u>\$17,972,965</u>
Net Income/ (Loss)		\$2,306,409		\$501,051		\$151,297

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Procedures		21,751		22,404		23,926
Cost/Procedure		\$728.17		\$778.86		\$751.19

<sup>1</sup> All Other includes Workers Compensation and No-Fault.

<sup>2</sup> In the Current Year the applicant reported 221 procedures attributable to Bad Debt resulting in reductions to net patient service revenues of \$182,544, which was offset by charity care estimated at \$328,068.

<sup>3</sup> Other Income includes CARES Act programs ASCWNY participated in 2020 including Payroll Protection Program, Provider Relief Funds, and Employee Retention Credit.

The following is noted for the submitted budget:

- The current year reflects the facility's 2020 revenues and expenses.
- Staffing mix is determined by volume and specialties, training level, and ongoing operations.
- Medicare Managed Care revenues are based upon negotiated rates.
- Utilization and expense projections are based on the experience of ASCWNY LLC.
- Year One and Year Three procedure increases are based on current volume increase projections.
- Other income for Year Three is based on conservative expectations versus the current year and what was projected in Year One.
- Expenses in Years One and Three include labor costs, medical and surgical supplies, and utilities.
- Increase in cost per procedure in Year One is driven by increase in labor costs, medical and surgical supplies, and other direct expenses.

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	14.82%	14.82%	14.82%
Commercial MC	12.84%	12.86%	12.84%
Medicare FFS	15.88%	15.93%	15.88%
Medicare MC	32.60%	32.62%	32.60%
Medicaid FFS	0.07%	0.07%	0.07%
Medicaid MC	5.10%	5.10%	5.10%
Private Pay	3.83%	3.83%	3.83%
Charity Care	6.23%	6.23%	6.23%
All Other	8.64%	8.64%	8.64%
Total	100%	100%	100%

### **Executed Lease Agreement**

The applicant has submitted an executed lease agreement for the existing site:

Date:	August 1, 2017
Premises:	945 Sweet Home Road, Amherst, New York, 14226
Landlord:	Amherst Affiliates LLC
Tenant:	Ambulatory Surgery Center of Western New York, LLC
Term:	20 Years commencing on August 1, 2017.
Rent:	\$792,680 (\$66,056.67 per month)
Provisions:	Tenant is responsible for insurance, utilities, modifications and alteration, and property taxes.

The lease between the property owner and the lessee is a non-arm's length arrangement due to common ownership. Common ownership between lessor and lessee consists of the same individuals but different ownership percentages.

### Assignment of Lease and Additional Property

The applicant has submitted an assignment of the lease for the existing site between Amherst Affiliates LLC (Assignor) and MMAC HT II Amherst NY, LLC a Delaware limited liability company (Assignee):

Date:	November 11, 2021
Assignor:	Amherst Affiliates LLC
Assignee:	MMAC HT II Amherst NY, LLC
Price:	\$10
Consideration:	Assignor's rights, title, interests, duties, obligations, and liabilities under or with respect to those certain lease agreements and additional property.

The applicant has submitted an affidavit indicating that the lease assigned by Amherst Affiliates LLC to MMAC HT II Amherst NY, LLC remains in full force and effect.

### Executed First Amendment to Lease Agreement

The applicant has submitted an executed first amendment to the lease agreement for the existing site between MMAC HT II Amherst NY, LLC a Delaware limited liability company, and Ambulatory Surgery Center of Western New York, LLC:

Date:	December 21, 2021
Premises:	945 Sweet Home Road, Amherst, New York, 14226
Landlord:	MMAC HT II Amherst NY, LLC
Tenant:	Ambulatory Surgery Center of Western New York, LLC
Term:	20 Years,
Rent:	\$792,680 (\$66,056.67 per month)
Provisions:	Tenant is responsible for insurance, utilities, modifications and alteration, and property taxes.

The applicant has submitted an affidavit stating that the amended lease is an arm's length agreement. The applicant also indicated that 40% of the membership interest of MMAC HT II Amherst NY, LLC is owned by RI-1 LLC, which is owned by nine individuals that are also members of ASCWNY, LLC. RI-1 LLC is a passive investor in MMAC HT II and holds no authority to make decisions or act on behalf of MMAC HT II Amherst NY, LLC.

### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement (MIPA), effectuated on July 30, 2021, and summarized as follows:

Date:	July 30, 2021
Buyer:	CH Emmaus, Inc.
Seller/Company:	ASCWNY, LLC
Purchase:	Purchase 121.7662 units of ownership interest, constituting 77% ownership interest in ASCWNY, LLC.
Buyer Deliverables at Closing:	CHE shall make payments from the Base Purchase by wire transfer on behalf of ASCWNY to: 1. Payees of Company Transaction Expenses as directed by ASCWNY prior to the Closing; and 2. To each seller, his or her share of the estimated closing consideration.
Purchase Price:	\$23,300,000 subject to adjustments at closing

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without

releasing the transferor of its liability and responsibility. As of March 1, 2022, the facility had no outstanding Medicaid overpayment liabilities.

### **Capability and Feasibility**

There are no project costs associated with this application. The submitted budget indicates an excess of revenues over expenses of \$501,051 and \$151,297 during the first and third year of operations, respectively. The total purchase price for the 77% units of interest is \$23,300,000. Catholic Health System, Inc. will fund the purchase of shares by CH Emmaus, Inc. via accumulated cash. CHS's financial statements, BFA Attachments A and B, indicate sufficient equity to fund the total purchase price. CHS has maintained adequate liquidity and holds over 100 days of unrestricted cash and investments on hand as of September 30, 2021. CHS has been working to reduce operating losses largely driven by the COVID-19 pandemic that have required a drawdown of both Net Assets and Working Capital over the past two years.

A summary of the 2020 Certified Financial Statements for Catholic Health System, Inc., and Subsidiaries is in BFA Attachment A. For the year ending December 31, 2020, CHS reported positive working capital and positive net assets and an operating loss of \$73,853,000, which was offset by \$8,876,000 in non-operating revenues, resulting in a deficiency of revenues over expenses of \$64,977,000. The operating loss was driven by the COVID-19 pandemic and contributing factors, including a reduction in hospital volume stemming from isolation and social distancing measures, temporary pause to elective surgeries, certain one-time items related to the preparation of its facilities for COVID-19 patients, as well as, a general increase in costs attributable to wages, and supplies. The impact of the pandemic has been partially offset by CARES Act Provider Relief Fund, from which the System has received approximately \$87 million in 2020.

A summary of the Internal Financial Statements for Catholic Health System, Inc. and Subsidiaries for the period ending September 30, 2021, is in BFA Attachment B. These statements show a positive working capital position, a positive net asset position, and a negative operating income of \$74,144,000, which was offset by \$10,715,000 in non-operating revenues resulting in an excess of expenses over revenues of \$63,429,000. The loss is driven by the ongoing COVID-19 pandemic, including a temporary ban from performing elective surgical procedures, resulting in lost revenue of over \$50 million through the first nine months of 2021. Receipts from the CARES Act Provider Relief Fund of \$9 million partially offset the lost revenue in 2021. In response to the surge in COVID-19 cases in early 2021, CHS ramped up staffing to accommodate the patient census. Due to retirements, turnover, and an overall shortage in available nursing resources, CHS has had to rely on temporary agency staffing which is in short supply across the country, and as such, come at a significant premium hourly wage rates. Operating losses have caused a drawdown of both Net Assets and Working Capital over the past two years. However, CHS has maintained adequate liquidity and holds over 100 days of unrestricted cash and investments on hand as of September 30, 2021.

BFA Attachments C is a summary of the 2020 Certified Financial Statements for Ambulatory Surgery Center of Western New York, LLC which shows a negative working capital position, a negative net asset position, and a positive operating income of \$1,740,039. During 2020, ACSWNY's day-to-day operations were impacted by the COVID-19 pandemic, and, in particular, the temporary ban on elective surgeries. During 2020, ASCWNY received a total of \$1.6M in CARES Act Program funds, including \$817,997 in Payroll Protection Funds, \$380,532 in Provider Relief Funds, as well as, \$469,699 in Employee Retention Credits. The forgiveness of Payroll Protection Funds is subject to the approval of the U.S. Small Business Administration.

BFA Attachment D is a summary of the September 2021 Internal Financial Statements for Ambulatory Surgery Center of Western New York, LLC, which shows a negative working capital position, a negative net asset position, and an operating income of \$1,734,663.

### **Conclusion**

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

## **Attachments**

- BFA Attachment A 2020 Certified Financial Statements for Catholic Health System, Inc., and Subsidiaries
- BFA Attachment B September 2021 Internal Financial Statements for Catholic Health System, Inc., and Subsidiaries
- BFA Attachment C 2020 Certified Financial Statements for Ambulatory Surgery Center of Western New York, LLC
- BFA Attachment D September 2021 Internal Financial Statements for Ambulatory Surgery Center of Western New York, LLC
- BFA Attachment E Catholic Health System, Inc. Organizational Chart



Project # 212057-B
NY Med South Bronx, LLC

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: September 15, 2021

Executive Summary

Description

NY Med South Bronx LLC, an existing New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 2825 Third Avenue, Bronx (Bronx County). The building is owned by Elidex Realty Owner LLC, a non-related entity, which will lease the clinic space to NY Med South Bronx, LLC. The applicant requests certification for primary care, other medical specialties, Magnetic Resonance Imaging (MRI), and physical therapy.

The proposed ownership is as follows:

Table with 2 columns: Name, Interest. Rows include Sebastian Lattuga, M.D. (10.00%), Steven Soifer, D.C. (34.00%), Matthew B. Weiss, D.C. (34.00%), Russell Greenseid, D.C. (22.00%), and Total (100.00%).

Sebastian Lattuga, MD., one of the proposed members, who specializes in Orthopedic Surgery will serve as Medical Director. Lincoln Medical Center located 0.5 miles and five minutes travel time from the proposed D&TC is expected to serve as the backup hospital.

OPCHSM Recommendation

Contingent Approval

Need Summary

The proposed D&TC is located in an area designated as a Health Professional Shortage Area for Primary Care by the U.S. Health Resources & Services Administration (HRSA). The applicant projects 60,200 visits in Year One and 77,400 in Year Three with a Medicaid utilization at 40% and charity care at 2%.

Program Summary

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

Financial Summary

The project costs of \$1,576,267 will be met via the proposed members' equity of \$1,376,267 with the remaining \$200,000 financed via the landlord's contribution. The budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows include Revenues (\$7,634,812 vs \$10,128,018), Expenses (5,931,500 vs 7,139,185), and Net Profit (\$1,703,312 vs \$2,988,833).

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

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

#### Approval conditional upon:

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

### Council Action Date

April 5, 2022

## Need and Program Analysis

### Program Description

<b>Proposed Operator</b>	NY Med South Bronx, LLC
<b>To Be Known As</b>	NY Med South Bronx
<b>Site Address</b>	2825 Third Avenue Bronx, New York 10455 (Bronx County)
<b>Services</b>	Medical Services-Primary Care Internal Medicine Family Practice Pediatrics Medical Services-Other Medical Specialties Cardiology Diagnostic Radiology Physical Therapy Magnetic Resonance Imaging (MRI)
<b>Hours of Operation</b>	Monday through Friday 8:00 am to 6:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	33.75 FTEs / 42.75 FTEs
<b>Medical Director(s)</b>	Sebastian Lattuga, M.D.
<b>Emergency, In-Patient, and Backup Support Services Agreement, and Distance</b>	Expected to be provided by Lincoln Medical and Mental Health Center 0.5 miles / 5 minutes away

### Analysis

The primary service area is the neighborhood of Mott Haven/Melrose in Bronx County. The population of Bronx County was 1,385,108 in 2010 and is estimated to grow to 1,567,988 by 2025, an increase of 13.2%. According to Data USA, in 2019, 92.1% of the population of Bronx County has health coverage as follows:

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

The applicant projects 60,200 visits in Year One and 77,400 in Year Three with Medicaid utilization at 40% and charity care at 2%. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

The Highbridge area of Bronx County is a Health Professional Shortage Area for Primary Care for Medicaid eligible and the Morrisania area is a Medically Underserved Area (HRSA).

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

### Hospital Admissions per 100,000 Adults for Overall PQIs

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



## Character and Competence

The members of NY Med South Bronx, LLC are:

<u>Name</u>	<u>Interest</u>
Sebastian Lattuga, M.D.	10.00%
Steven Soifer, D.C.	34.00%
Matthew B. Weiss, D.C.	34.00%
Russell Greenseid, D.C.	22.00%
<b>Total</b>	<b>100.00%</b>

**Dr. Sebastian Lattuga** is an Orthopedic Spine Surgeon who is the Chief of Spine Surgery at New York Spinal Specialists, an Attending Surgeon at New York-Presbyterian Hospital, and an Assistant Clinical Professor in the Department of Orthopaedic Surgery at Weill Cornell Medical Center. He received his medical degree from Stony Brook University Health Sciences Center and completed his General Surgery residency at Mount Sinai, his Orthopedic Surgery residency at Stony Brook University Hospital, and his Orthopedic Spine Surgery residency at Jackson Health System in Miami. Dr. Lattuga is a board-certified Orthopedic Spine Surgeon. Dr. Lattuga is the proposed Medical Director for the facility.

**Dr. Russell Greenseid** is a Chiropractor that has worked at Finally Health Medical Services for approximately 22 years where he treats patients in a multidisciplinary setting. In addition, he is responsible for managing hiring, fiscal duties, enacting office protocol, and developing the office manual. He is also responsible for business development, marketing, and advertising campaigns. Dr. Greenseid discloses ownership in the following healthcare facilities:

<i>NY Med of Brooklyn, LLC (D&amp;TC)</i>	<i>12/2021-present</i>
<i>Healthquest Health Center, LLC d/b/a Metro Healthcare Partners (D&amp;TC)</i>	<i>06/2021-present</i>

**Dr. Steven Soifer** is a Chiropractor and the Owner and Operator of Queens Medical Pavilion, LLC d/b/a NY Med, an Article 28 D&TC, for over eight years, where he oversees the operations and management of the D&TC. Previously, he was the Healthcare Manager of Total Healthcare Management where he worked with other healthcare professionals to look for new ways to streamline care services. In addition, he hired staff, reviewed financial statements, read about new laws and regulations that could affect current operations, and implemented new technologies and procedures accordingly. Dr. Soifer discloses ownership in the following healthcare facility:

<i>Queens Medical Pavilion, LLC d/b/a NY Med (D&amp;TC)</i>	<i>03/2013-present</i>
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**Dr. Matthew Weiss** is a Chiropractor and the Owner and Operator of Queens Medical Pavilion, LLC d/b/a NY Med for the past eight years. In this role, he oversees the day-to-day operations of the facility. He was the previous Operator and Manager of Total Healthcare Management where he oversaw the business operations and day-to-day management of the facility. Dr. Weiss discloses ownership in the following healthcare facilities:

<i>Queens Medical Pavilion, LLC d/b/a NY Med (D&amp;TC)</i>	<i>03/2013-present</i>
<i>NY Med of Brooklyn, LLC (D&amp;TC)</i>	<i>12/2021-present</i>

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

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

Dr. Lattuga disclosed being named in multiple malpractice suits:

- A suit was filed on June 18, 2013, where the patient alleged improper surgery, treatment, and failure to perform the surgery properly. The case was settled for \$29,000.
- A suit was filed on June 17, 2016, where the patient alleged serious injury and pecuniary loss and failure to warn the patient of the nature, purpose, known perils, recognizable hazards, risk/possible complications of the medical diagnosis, treatment services, and advice rendered and/or advice as to alternative methods of treatments. The case remains open.
- A suit was filed on September 12, 2017, where the patient alleged improper surgery, treatment, and failure to perform surgery properly. The case is in the discovery phase.
- A suit was filed on December 20, 2018, where the patient alleged failing and neglecting to exercise a degree of care. There is a stipulation to dismiss that is not yet finalized.

### Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval for this project will provide for increased access to a variety of medical services for the underserved residents of the neighborhood of Mott Haven/Melrose and the surrounding communities in Bronx County.

## Financial Analysis

### Total Project Cost and Financing

The total project cost of \$1,576,267 for leasehold improvements, renovations, moveable equipment, and CON fees is distributed as follows:

Renovation & Demolition	\$840,000
Design Contingency	88,000
Construction Contingency	88,000
Architect /Engineering Fees	119,000
Other Fees	75,000
Moveable Equipment	355,656
CON Fee	2,000
Additional Processing Fee	<u>8,611</u>
Total Project Cost	<u>\$1,576,267</u>

The applicant's financing plan is as follows:

Equity	\$1,376,267
Other-Landlord Contribution	<u>200,000</u>
Total	<u>\$1,576,267</u>

### Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit.</u>	<u>Total</u>	<u>Per Visit.</u>	<u>Total</u>
<u>Revenues</u>				
Commercial-FFS	\$140	\$2,359,840	\$146	\$3,155,443
Medicare FFS	\$175	526,750	\$182	704,340
Medicare MC	\$140	1,685,600	\$146	2,253,888
Medicaid FFS	\$133	1,603,487	\$133	2,061,626
Medicaid MC	\$105	1,258,662	\$109	1,683,010
Private Pay	\$200	602,000	\$208	804,960
Charity Care	(\$200)	(240,800)	(\$208)	(321,984)
Bad Debt		<u>(160,727)</u>		<u>(213,265)</u>
Total Revenue		<u>\$7,634,812</u>		<u>\$10,128,018</u>

<u>Expenses</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit.</u>	<u>Total</u>	<u>Per Visit.</u>	<u>Total</u>
Operating	\$91	\$5,462,635	\$86	\$6,670,319
Capital	<u>8</u>	<u>468,865</u>	<u>6</u>	<u>468,866</u>
Total	\$99	\$5,931,500	\$92	\$7,139,185
Excess Revenues		<u>\$1,703,312</u>		<u>\$2,988,833</u>
Visits		60,200		77,400

Utilization by payor source is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	28.00%	28.00%
Medicare FFS	5.00%	5.00%
Medicare MC	20.00%	20.00%
Medicaid FFS	20.00%	20.00%
Medicaid MC	20.00%	20.00%
Private Pay	5.00%	5.00%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.0%	100.0%

The following is noted regarding the first- and third-year budgets:

- Year One projected volume reflects the facility ramp-up period. The applicant states that the projected marketing efforts and development of its referral network will allow the facility to achieve full utilization by Year Three.
- The Medicaid APG base rate was used as the rate for the Medicaid Fee-For-Service population in the budget projections. The proposed operators based their utilization and payer mix projections on prior experience in operating inpatient and outpatient programs.

### **Lease Agreement**

The terms of the executed lease agreement are summarized below.

Date:	March 22, 2021
Premises:	12,000 square feet of space at 2825 Third Avenue, Bronx, New York 11229
Landlord:	Elidex Realty Owner LLC
Tenant:	NY Med South Bronx, LLC
Term:	10 years
Rent:	Year 1 – Year 5 \$336,000 annually (\$28,000 per month) Year 5 – Year 10 \$369,600 annually (\$30,800 per month)
Provisions:	Tenant is responsible for insurance, maintenance, repairs, utilities, and property taxes.

The lease is an arm's length agreement as there is no relationship between the landlord and the tenant. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness, which were based on the total square footage and the completion of construction of the space.

### **Capability and Feasibility**

The total project costs of \$1,576,267 will be met via the proposed members' equity of \$1,376,267 and the remaining \$200,000 will be financed via the landlord's contribution. BFA Attachment A is the net worth statement of the proposed members, which reveals sufficient resources for the equity contribution.

The working capital requirement is estimated at \$1,189,864 based on two months of third-year expenses and will be funded via the proposed members' personal equity. BFA Attachment A reveals sufficient resources to meet all equity requirements. BFA Attachment B is NY Med South Bronx, LLC's Pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$2,755,520.

The submitted budget projects a net income of \$1,703,312 and \$2,988,833 for the first and third year respectively. Revenues are based on current reimbursement methodologies for primary care services. The submitted budget appears reasonable.

**Conclusion**

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

**Attachments**

- BHFP Attachment A Map
- BFA Attachment A Net Worth Statement of Proposed New Members
- BFA Attachment B Pro Forma Balance Sheet



Project # 212176-B
Columbia/NewYork-Presbyterian Advanced Imaging, Inc.

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: New York
Acknowledged: December 6, 2021

Executive Summary

Description

Columbia/NewYork-Presbyterian Advanced Imaging, Inc. (CNYPAI, the "Center"), an existing New York not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) and D&TC extension clinic specializing in radiology and imaging services.

The main site will be at 710 West 168th Street, New York (New York County). There are currently three Magnetic Resonance Imaging (MRI) machines at this site, and upon completion of this project, there will be six. The extension clinic will be at 722 West 168th Street, New York (New York County). The site currently has three Positron Emission Tomography – Computed Tomography (PET/CT) Scanners. Upon completion of this project, there will be four.

CNYPAI will have two co-operators/active parents: NYP Programs, Inc. and Columbia Radiology, Inc., existing New York not-for-profit corporations. NYP Programs, Inc.'s sole (passive) corporate member is New York-Presbyterian Foundation, Inc., (NYPF) a New York not-for-profit corporation. Columbia Radiology, Inc.'s sole (passive) corporate member is The Trustees of Columbia University in the City of New York, a New York educational corporation. See BFA Attachment A for the organizational chart.

Marc Brown, M.D., board-certified in Radiology, will serve as Medical Director. The applicant will have a transfer and affiliation agreement with New York-Presbyterian Hospital - Columbia Presbyterian Center which is 0.1 miles and 1 minute from the proposed sites.

OPCHSM Recommendation

Contingent Approval

Need Summary

The new clinic sites will provide MRI, PET/CT scans, and Other Medical Specialties services. The project is intended to reduce wait times for imaging services in the area.

Program Summary

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

Financial Summary

Total project costs are \$53,289,721 and working capital requirements are \$5,949,153. The combined project cost and working capital total of \$59,238,874 will be funded equally for \$29,619,437 each, through subvention subscription agreements, from New York-Presbyterian Fund, Inc., (NYPF) and The Trustees of Columbia University in the City of New York (Columbia University).

Table with 3 columns: Budget, First Year, Third Year. Rows: Revenues, Expenses, Gain/(Loss).

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Primary Care and Health Systems Management**

#### **Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (Department). Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed subvention subscription agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and New York-Presbyterian Fund Inc, acceptable to the Department. [BFA]
3. Submission of an executed subvention subscription agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, Inc., acceptable to the Department. [BFA]
4. Submission of an executed medical equipment sublease and lease agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, Inc., acceptable to the Department. [BFA]
5. Submission of an executed affiliated license agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The New York and Presbyterian Hospital, acceptable to the Department. [BFA]
6. Submission of an executed affiliated license agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, acceptable to the Department. [BFA]
7. Submission of an executed administrative service agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, acceptable to the Department. [BFA]
8. Submission of an executed administrative service agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The New York and Presbyterian Hospital, acceptable to the Department. [BFA]
9. Submission of a photocopy of an executed Certificate of Amendment of Columbia/New York-Presbyterian Advanced Imaging, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed Restated Bylaws of Columbia/New York-Presbyterian Advanced, Imaging, Inc., acceptable to the Department. [CSL]
11. Submission of photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of NYP Programs, Inc., acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Columbia Radiology, Inc., acceptable to the Department. [CSL]
13. Submission of an executed Administrative Services Agreement with The New York-Presbyterian Hospital, acceptable to the Department. [CSL]
14. Submission of an executed Attestation for Services Agreement for the Administrative Services Agreement with The New York-Presbyterian Hospital, acceptable to the Department. [CSL]
15. Submission of an executed Administrative Services Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
16. Submission of an executed Attestation for Services Agreement for the Administrative Services Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
17. Submission of an executed Medical Equipment Sublease and Lease with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
18. Submission of an executed Subvention Agreement with New York-Presbyterian Hospital, acceptable to the Department. [CSL]

19. Submission of an executed Subvention Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
20. Submission of an executed License Agreement with The New York and Presbyterian Hospital for the main site, acceptable to the Department. [CSL]
21. Submission of an executed License Agreement with the Trustees of Columbia University in the City of New York for the extension site, acceptable to the Department. [CSL]
22. Submission of an executed Medical Director Agreement, acceptable to the Department. [CSL]
23. Submission of an executed Employee Leasing Agreement, acceptable to the Department. [CSL]
24. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
25. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

**Approval conditional upon:**

1. This project must be completed by **January 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2022**, and construction must be completed by **October 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

**Council Action Date**

April 5, 2022

## Need and Program Analysis

### Program Description

<b>Proposed Operator</b>	Columbia/New York-Presbyterian Advanced Imaging, Inc.
<b>Site Addresses</b>	<p><b>Main Site:</b> 719 West 168<sup>th</sup> Street New York, New York 10032 (New York County)</p> <p><b>Extension Site:</b> 722 West 168<sup>th</sup> Street New York, New York 10032 (New York County)</p>
<b>Certified Services</b>	<p><b>Main Site:</b> Magnetic Resonance Imaging Medical Services: Other Medical Specialties</p> <p><b>Extension Site:</b> CT Scanner Medical Services: Other Medical Specialties</p>
<b>Hours of Operation</b>	Monday Through Friday 7:00 am to 8:00 pm Saturday 9:00 am to 5:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	104.59 FTEs / 104.76 FTEs
<b>Medical Director(s)</b>	Marc Brown, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by New York-Presbyterian Hospital - Columbia Presbyterian Center 0.1 miles / 1 minute away

### Analysis

According to the applicant, limited capacity forces patients to wait for imaging services. Expanding capacity and supporting same-day services will improve access and the patient experience. Upon completion of this project, the main site will have six MRIs, and the extension clinic will have four PET/CT Scanners. The applicant anticipates that the outpatient MRI and CT scan volume currently provided at New York-Presbyterian Hospital - Columbia Presbyterian Center will shift to the proposed Centers.

The primary service area is the neighborhoods of Washington Heights/ Inwood in northern New York County. The population of New York County was 1,694,251 in 2020 and is expected to grow to 1,709,958 by 2025. According to Data USA, in 2019 95.5% of the population in New York County has health coverage as follows.

Employer Plans	55.1%
Medicaid	18.1%
Medicare	10.1%
Non-Group Plans	11.9%
Military or VA	0.351%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the area where the centers are located (zip code 10032) is higher than the New York State rate.

2017 PQI Rates	Zip Code 10032	New York State
All PQIs	1,617	1,431

The applicant projects 48,168 visits in Year One and 48,726 in Year Three with a Medicaid utilization at 17%. The applicant states they are committed to serving all persons in need without



regard to the ability to pay or source of payment.

### **Character and Competence**

The boards of Columbia/New York Presbyterian Advanced Imaging, Inc., NYP Programs, Inc., and Columbia Radiology, Inc. are as follows:

#### **Columbia/New York-Presbyterian Advanced Imaging, Inc.**

<u>Name</u>	<u>Title</u>
Lawrence H. Schwartz, M.D.	President
S. Angela Gonzalez-Perez	Secretary
Paul Dunphey	Member
Anand Joshi, M.D.	Member
George Cioffi, M.D.	Member
Donna Lynne, DrPH	Member
William McKoy	Member
Anil Rustgi, M.D.	Member
Anne Sullivan	Member

#### **NYP Programs, Inc.**

<u>Name</u>	<u>Title</u>
Paul Dunphey	President
S. Angela Gonzalez-Perez	Secretary
Anand Joshi, M.D.	Treasurer

#### **Columbia Radiology, Inc.**

<u>Name</u>	<u>Title</u>
Donna Lynne, DrPH	President
William McKoy	Secretary
George Cioffi, M.D.	Member
Anil Rustgi, M.D.	Member
Anne Sullivan	Member

**Lawrence Schwartz, MD** has been a Diagnostic Radiologist in Chief at New York-Presbyterian for over 12 years. Previously, he was the Vice-Chairman in the Technology Department of Memorial Sloan Kettering, the Director of the Laboratory for Computational Image Analysis, an Associate Attending Radiologist for Memorial Hospital for Cancer and Allied Diseases, the Medical Director of Informatics and Picture Archiving and Communications Systems at Memorial Sloan Kettering, and the Director of MRI at Memorial Sloan Kettering. He received his medical degree from Boston University, completed his residency in Diagnostic Radiology from New York Hospital-Cornell University Medical Center, and his fellowship in Cross-Sectional Imaging at Brigham and Women's Hospital. He is board-certified in Diagnostic Radiology. Dr. Schwartz discloses an affiliation with the following healthcare facilities:

*ColumbiaDoctors/New York-Presbyterian Imaging* 2017-present

**Sagrario Angela Gonzalez-Perez** is the Vice President of Operations of New York-Presbyterian Valley Hospital where she leads the Clinical Operations and Support Services division, manages seven direct reports, oversees the annual Operations Divisions \$65M operating budget, and manages extensive capital improvements program, which includes \$3-5M annual for capital equipment replacement. Previously, she was the Director of Regulatory Planning at New York-Presbyterian where she led all regulatory compliance activity associated with multi-million dollar capital and clinical improvement projects for New York-Presbyterian and the NYP Regional Hospital Network. She spearheaded CON and program planning regulatory due diligence for high-priority projects. She was also the former Manager of Regulatory Planning where she was responsible for overseeing regulatory planning for the hospital's clinical and program expansion and CON program. Sagrario Gonzalez-Perez discloses an affiliation with the following healthcare facilities:

*ColumbiaDoctors/New York-Presbyterian Imaging* 2017-present

**Paul Dunphey** is the Senior Vice President and Chief Operating Officer at New York-Presbyterian Allen Hospital & Ambulatory Care Network. In his role, he is responsible for the overall direction, leadership, and operational management of Allen Hospital and Ambulatory Care Network. He is also responsible for the daily operations including cost, quality, delivery of service, fiscal management, and strategic initiatives. He has been employed by New York-Presbyterian for 31 years and has held various positions.

**Anand Joshi, MD** has been employed at New York-Presbyterian for over 17 years. He is currently the Vice President of Procurement and Strategic Solutions where he manages a team of approximately 400 individuals responsible for NYP's sourcing and contracting, supply chain, and equipment planning functions with increasing responsibility over these functions across the NYP Healthcare System. He also leads performance improvement efforts across the NYP Healthcare System to manage the System's \$2 billion-plus of non-labor expense. Previously, he was the Corporate Director of Strategic Sourcing of PSS Department, Director of Serious Adverse Event Reporting: Quality Division, Clinical Sourcing Director of the PSS Department, Engagement Manager at McKinney & Company. Dr. Joshi discloses an affiliation with the following healthcare facilities:

*ColumbiaDoctors/New York-Presbyterian Imaging* 2017-present

**George Cioffi, MD** has been a Chief Ophthalmologist and Chair of the Ophthalmology Department at New York-Presbyterian/Columbia University for over nine years. He was previously employed as the Chair of Ophthalmology at the Devers Eye Institute, the Chief Medical Officer, and the Senior Vice President of the Legacy Health System in Oregon. He received his medical degree from the University of South Carolina, completed his residency in Ophthalmology at the University of Maryland, and completed his fellowship at the Devers Eye Institute. He is board-certified in Ophthalmology. Dr. Cioffi discloses an affiliation with the following healthcare facilities:

*ColumbiaDoctors/New York-Presbyterian Imaging* 2017-present

**Donna Lynne, DrPH** is the Senior Vice President and Chief Operating Officer of Columbia University Medical Center where she manages the professional staff responsible for Facilities, Human Resources, Information Technology, External Relations and Communications, Public Safety, and other administrative functions. She manages the faculty practice of nearly 2000 physicians and over 5000 other staff who provide direct clinical care in over 300 offices and works in partnership with New York-Presbyterian Hospital leadership in setting a vision for healthcare that includes expanded reliance on technology and expansion of healthcare services. Previously, she was the Lieutenant Governor and Chief Operating Officer of the State of Colorado where she worked on policy, budget, and legislative matters with the Governor, and was responsible for healthcare reform and implementation. As the COO, she had accountability for government operations, performance, and accountability. She was also the previous Executive Vice President and Group President at Kaiser Permanente for approximately 11 years. She was responsible for leading transition efforts following Kaiser Permanente's acquisition of the \$3 billion Group Health Cooperative plan. Dr. Lynne discloses an affiliation with the following healthcare facilities:

*ColumbiaDoctors/New York-Presbyterian Imaging* 2017-present

**William McKoy** is the Senior Vice President and Chief Financial Officer of Columbia University Irving Medical Center where he reports to the Executive Vice President and Dean of the Faculties of Health Sciences and Medicine. He oversees all campus financial functions including compliance, accounting, budgeting, and planning across patient care, research, education, and administrative mission lines. Previously, he was the Vice President of Budget and Planning at Columbia University Irving Medical Center, as well as, the Assistant Vice President of Budget and Planning where he reported to the Chief Financial Officer of the Medical Center, oversaw annual operating and capital budgets, as well as, campus space planning and new business development. He also was the previous Interim Senior Associate Dean of Finance and Planning of Columbia's College of Dental Medicine. William McKoy discloses an affiliation with the following healthcare facilities:

*Columbia University Health Care Inc.* 2018-present

*ColumbiaDoctors/New York-Presbyterian Imaging* 2017-present

**Anil Rustgi, MD** is the Interim Vice President and Dean of the Faculties of Health Sciences and Medicine of Columbia University Medical Center and the Irving Professor of Medicine, Associate Dean of Oncology, and Director of Herbert Irving Comprehensive Cancer Center. Previously, he was the Professor of

Medicine and Chief of Gastroenterology at the University of Pennsylvania School of Medicine for over 21 years. He received his medical degree from Duke University

**Anne Sullivan** has been the Executive Vice President for Finance and Information Technology for over 14 years at Columbia University. She is responsible for overseeing the University's operating and capital budget, the Controller's office operations, Student Financial Services, the Office of the University Registrar, treasury operations, procurement, Internal Audit, and Information Technology.

**Marc Brown, MD** is the proposed Medical Director. He has been the Executive Vice Chairman of Clinical Operations at Columbia University Irving Medical Center for over 13 years, and the Medical Director of ColumbiaDoctors Radiology for over 21 years. He is also the Associate Professor of Clinical Radiology at Columbia University College of Physicians and Surgeons, and an Associate Attending at New York-Presbyterian. He received his medical degree from Columbia University College of Physicians and Surgeons and completed his Diagnostic Radiology residency and fellowship in Ultrasound and Breast Imaging at Columbia Presbyterian Medical Center. He is board-certified in Diagnostic Radiology.

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

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

*On November 6, 2017, the Department issued a Stipulation and Order and a \$2,000 fine against New York-Presbyterian Queens. This enforcement was based on a validation survey concluded on May 16, 2016, where deficient practice was cited in the area: Patient Rights. Specifically, the facility failed to have trained security staff.*

### **Conclusion**

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). The new clinic sites will provide MRI, CT scans, and Other Medical Specialties services which are intended to reduce wait times for imaging services in the area.

## Financial Analysis

### Total Project Cost and Financing

Total project costs for renovation and moveable equipment are estimated at \$53,289,721, broken down as follows:

Renovation & Demolition	\$17,309,277
Asbestos Abatement or Removal	502,520
Design Contingency	1,730,928
Construction Contingency	1,730,928
Architect/Engineering Fees	2,077,113
Construction Manager Fees	519,279
Other Fees	323,220
Movable Equipment	28,396,958
Telecommunications	406,019
Application Fee	2,000
Additional Fee for Projects	<u>291,479</u>
Total Project Cost with Fees	\$53,289,721

Project Costs broken out by site before fees are:

719 West 168 <sup>th</sup> Street	\$33,516,931
722 West 168 <sup>th</sup> Street	\$19,479,311

The applicant's financing plan is as follows:

Subvention subscription agreements: Medical Equipment Lease	\$18,805,237
Subvention subscription agreements	<u>34,484,484</u>
Total	\$53,289,721

### Operating Budget

The applicant has submitted an operating budget in 2022 dollars, for years one and three, as summarized below:

<u>Revenues</u>	<u>First Year</u>		<u>Third Year</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
Outpatient	\$924.63	\$44,537,286	\$920.17	\$44,835,978
 <u>Expenses</u>				
Operating	\$608.27	\$29,299,107	\$597.00	\$29,089,537
Capital	<u>139.86</u>	<u>6,736,622</u>	<u>\$135.56</u>	<u>6,605,383</u>
Total Expenses	\$748.13	\$36,035,729	\$732.56	\$35,694,920
Net Income		\$8,501,557	\$9,141,058	
Procedures		48,168	48,736	

The following is noted for the operating budget:

- Utilization projections were based on shifting existing volume at the two existing faculty practices and some MRI and CT outpatient volume from New York-Presbyterian Hospital.
- Staffing at the Center has been developed based on the experience of NYPH and of the existing ColumbiaDoctors faculty practice locations in delivering services at their respective existing sites.
- Revenue projections are based on actual revenues received by ColumbiaDoctors/NewYork-Presbyterian Imaging, an existing radiology D&TC that is also a joint venture of NYPH and Columbia University.

- Expense projections are based on the actual operating expenses for the existing faculty practice sites that will become the main site and extension clinic of the proposed new D&TC but have been increased based on the projected volume increase and anticipated incremental expenses.
- Breakeven in the first year is approximately 38,974 procedures.

Utilization by payor source is as follows:

Payor	Year One		Year Three	
	Procedures	%	Procedures	%
Commercial MC	22,027	45.73%	22,257	45.67%
Medicare FFS	8,940	18.56%	9,033	18.53%
Medicare MC	5,433	11.28%	5,490	11.26%
Medicaid FFS	531	1.10%	546	1.12%
Medicaid MC	7,663	15.91%	7,743	15.89%
All Other	<u>3,574</u>	<u>7.42%</u>	<u>3,667</u>	<u>7.52%</u>
Total	48,169	100%	48,736	100%

The applicant will fund the project costs equally through subvention subscription agreements. Review of BFA Attachment B, NYPF 2019 -2020 certified financial statements, December 31, 2021 internals, and Columbia University certified financial statements for June 30, 2020 and 2021, along with December 31, 2021 internals, shows the availability of sufficient resources to meet the subvention subscription agreements.

**Subvention Subscription Agreement #1**

The applicant submitted a draft subvention subscription agreement between New York-Presbyterian Fund Inc., and Columbia/New York-Presbyterian Advanced Imaging, Inc., for \$29,619,437 for financing the project cost and working capital.

Subvention Subscription Subscriber:	New York-Presbyterian Fund Inc. (NYPF)
Corporation:	Columbia/New York-Presbyterian Advanced Imaging, Inc (CNYPAI)
Total Subvention Amounts:	\$29,619,437 Broken out as follows: project cost \$26,644,860.50 & working capital \$2,974,576.50
Interest Charged:	0%

The Subscriber is not entitled to fixed or contingent periodic payments. These agreements have no interest associated with them and will only be paid back upon authorization by the Corporation’s Board of Directors, at its sole discretion.

**Subvention Subscription Agreement #2**

The applicant submitted a draft subvention subscription agreement between The Trustees of Columbia University in the City of New York, Inc., and Columbia/New York-Presbyterian Advanced Imaging, Inc., for \$29,619,437 for financing the project cost and working capital.

Subvention SubscriptionSubscriber:	The Trustees of Columbia University in the City of New York, Inc. (Columbia University)
Corporation:	Columbia/New York-Presbyterian Advanced Imaging, Inc (CNYPAI)
Total Subvention Amounts:	\$29,619,437 Broken out as follows: project cost \$26,644,860.50 & working capital \$2,974,576.50
Interest Charged:	0%

The Subscriber is not entitled to fixed or contingent periodic payments. These agreements have no interest associated with them and will only be paid back upon authorization by the Corporation’s Board of Directors, at its sole discretion

### Medical Equipment Sublease and Lease Agreement

The applicant submitted a memorandum of understanding for subleasing and leasing medical equipment from Columbia University.

Owner/Lessor:	The Trustees of Columbia University in the City of New York (Columbia University)
Lessee:	Columbia/New York-Presbyterian Advanced Imaging, Inc. (CNYPAI)
Rental Terms:	Equipment that Columbia University leases CNYPAI – will reimburse Columbia its monthly lease payments. Equipment owned by Columbia University CNYPAI – will pay a usepayment
Provisions:	Reimburse monthly costs of service agreements

### Affiliated License Agreement #1

The applicant submitted a draft affiliated license agreement to rent space at 710 West 168<sup>th</sup> Street, New York, NY for 10-years at \$908,634 plus 2.5% annual increases between The New York and Presbyterian Hospital and Columbia/New York-Presbyterian Advanced Imaging, Inc.

Premises:	Approximately 17,778 sq. ft. located at 710 West 168 <sup>th</sup> Street, New York, NY10032 a/k/a Neurological Institute Building
Licensor/Landlord:	The New York and Presbyterian Hospital (NYPH)
Licensee/Lessee:	Columbia/New York-Presbyterian Advanced Imaging, Inc., (CNYPAI)
Term:	10 years following rent commencement date, renewal (2) 5-year terms
Rental:	\$908,634 annually (\$51.11 per sq. ft.) increasing by 2.5% annually
Provisions:	Installing medical equipment, insurance, and maintenance

The lease is non-arm's length. NYPH states the base rent charged CNYPAI is the same base rent that NYPH charges The Trustees of Columbia University in the City of New York (Columbia University) for Columbia University's use and occupancy in the Neurological Institute Building.

### Affiliated License Agreement #2

The applicant submitted a draft affiliated license agreement to rent space at 722 West 168<sup>th</sup> Street, New York, NY for 10-years at \$398,300 plus 2.5% annual increases between The Trustees of Columbia University in the City of New York and Columbia/New York-Presbyterian Advanced Imaging, Inc.

Premises:	Approximately 7,793 sq. ft. located at 722 West 168 <sup>th</sup> Street, New York, NY10032 a/k/a Allan Rosenfield Building
Licensor/Landlord:	The Trustees of Columbia University in the City of New York (Columbia University)
Licensee/Lessee:	Columbia/New York-Presbyterian Advanced Imaging, Inc. (CNYPAI)
Term:	10 years following rent commencement date, renewal (2) 5-year terms
Rental:	\$398,300 annually (\$51.115 per sq. ft.) increasing by 2.5% annually
Provisions:	Installing medical equipment, insurance, and maintenance

The lease is non-arm's length. Columbia University states the base rent charged CNYPAI is the same base rent that Columbia University charges The New York and Presbyterian Hospital (NYPH) for NYPH's use and occupancy in the Allan Rosenfield Building.

## Administrative Services Agreement

The applicant has submitted a draft administrative service agreement between The Trustees of Columbia University in the City of New York (Columbia University) and CNYPAI for certain areas of CNYPAI's radiology outpatient services at 710 West 168<sup>th</sup> Street, New York and 722 West 168<sup>th</sup> Street, New York.

Client:	Columbia/New York-Presbyterian Advanced Imaging (CNYPAI)
Provider:	The Trustees of Columbia University in the City of New York, (Columbia University)
Services:	<p><u>Obligations of Columbia University</u></p> <ul style="list-style-type: none"> <li>• Government Filings. File with government agencies all documents deemed necessary or appropriate for the business operations.</li> <li>• Financial Services. Provide all general financial services including accounting, accounts payable, accounts receivable, payroll, tax, internal auditing, coordination of external auditing, financial statements, and cash flow statements.</li> <li>• Budgets. Assist with annual budgets, review of expenditures, and business planning support.</li> <li>• Treasury Functions. Assist with financial controls and vendor payments.</li> <li>• Managed Care Contracts; Credentialing. Assist with contractual arrangements, oversight, and credentialed in accordance with contracts and payors rules.</li> <li>• Billing and Billing Compliance Services. On behalf and for the benefit of CNYPAI shall bill for or arrange for third-party services. directly or indirectly, be responsible for all accounts receivable collection activities on such billing services and shall provide any necessary billing and coding compliance services to CNYPAI leased professional employees and leased employees. All billings for clinical services shall be submitted in the name, on behalf, and for the benefit of CNYPAI.</li> <li>• Advertising and Marketing Materials. In collaboration with New York-Presbyterian Hospital shall furnish advice and assistance with the development and implementation of marketing materials and programs.</li> <li>• Radiation Safety and Physics, Environmental Health and Safety and OSHA Compliance. Provide radiation safety and radiation physics services and provide OSHA compliance training.</li> <li>• Supplies. Provide or procure medical and other supplies.</li> <li>• Other Administrative Services. Provide other agreed-upon services, including procuring in the name of CNYPAI insurance, human resources administration, faculty affairs administration, purchasing, and general IT support.</li> <li>• Compliance with Applicable Laws. Provide the services at all times in material compliance with generally accepted industry standards and all applicable federal, state, and local laws. Rules, and regulations.</li> </ul> <p><u>Obligations of CNYPAI</u></p> <ul style="list-style-type: none"> <li>• Provision of Services. CNYPAI shall cooperate, and shall cause its employees, leased employees, leased professional employees, independent contractors, and agents to cooperate with Columbia in order for Columbia efficiently to perform the Services.</li> <li>• Professional Fees and Third-Party Payors. CNYPAI shall have responsibility for setting professional and technical services fees of Physicians who provide services through, and in the name of, CNYPAI. CNYPAI agrees to participate in any third-party payor plans in which Columbia is currently participating or that Columbia recommends and to cooperate with Columbia in its efforts to obtain Third Party Payor Contracts</li> <li>• Non-Discrimination. CNYPAI shall provide medical services to patients without discrimination.</li> <li>• Compliance with Applicable Laws. CNYPAI shall provide medical services at all</li> </ul>

	times in accordance with prevailing standards of care in the community and shall perform all obligations hereunder in material compliance with all applicable federal, state, and local laws, rules, and regulations, and such of Columbia's policies, rules, and regulations that are applicable to the Services and not inconsistent with CNYPAI's own policies, rules, and regulations.
Term	12 months with successive one-year renewal terms.
Fee	\$10,657,137 per year unless mutually changed

The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

### Administrative Services Agreement

The applicant has submitted a draft administrative service agreement between The New York and Presbyterian Hospital (NYP) and CNYPAI for certain areas of CNYPAI's outpatient radiology services at 710 West 168<sup>th</sup> Street, New York, and 722 West 168<sup>th</sup> Street, New York.

Client:	Columbia/New York-Presbyterian Advanced Imaging (CNYPAI)
Provider:	The New York and Presbyterian Hospital (NYPH)
Services:	<p><u>NYPH'S Obligations under the direction of the CNYPAI Board of Directors.</u></p> <ul style="list-style-type: none"> <li>• Use of PACS/RIS. CNYPAI shall be permitted to utilize NYP's picture archiving and communications system (PACS), radiology information system (RIS), and PowerScribe 360 systems, including software applications and interfaces ("Systems"), to provide, display, store, archive, and interpret images and to generate diagnostic reports at the Site.</li> <li>• Biomedical support.</li> <li>• Corporate Secretary support services.</li> <li>• In collaboration with Columbia, NYP shall provide marketing and external communications services, including regulatory planning oversight services, including consultation with respect to program changes, equipment purchases, and other Article 28 related requirements to CNYPAI.</li> <li>• Managed care contracting services. NYP shall assist CNYPAI with contractual arrangements with third-party payors as are reasonably necessary and appropriate for the business operation of CNYPAI.</li> <li>• Information technology system support, including installation (if required), ongoing maintenance, and support for hospital-based information technology systems, including RIS, PACS, and Powerscribe 360.</li> <li>• Reviewing public relations, marketing and advertising materials, and programs on behalf of CNYPAI prior to use or implementation. NYP shall also furnish advice and assistance in connection with the development and implementation of marketing materials and programs.</li> <li>• Other administrative and support services as the parties may agree, including but not limited to, strategy, finance, insurance placement services, external affairs, IT, general administration, and human resources; provided, that NYP shall not be required to furnish such additional services unless it has the capacity and expertise to do so; and provided further that NYP shall not be obligated to furnish such additional services (other than services reasonably incident to the above services) unless the parties agree to an appropriate adjustment to the compensation payable to NYP.</li> </ul> <p><u>CNYPAI's Obligations</u></p> <ul style="list-style-type: none"> <li>• Access to Books and Records/Personnel. CNYPAI shall provide NYP with access to the books, records, and personnel, of CNYPAI as needed to perform the duties.</li> </ul>
Term	12 months with successive one-year renewal terms.
Fee	\$1,846,013 per year unless mutually changed



The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

### **Capability and Feasibility**

Total project costs are \$53,289,721 and working capital is \$5,949,153 for a total of \$59,238,874. This combined amount will be equally funded at \$ 29,619,437 each through subvention subscription agreements from New York-Presbyterian Fund, Inc., (NYPF) and The Trustees of Columbia University in the City of New York (Columbia University). Draft subvention subscription agreements have been provided. Review of BFA Attachment B, NYPF 2019 -2020 certified financial statements, December 31, 2021 internals, and Columbia University certified financial statements for June 30, 2020 and 2021, along with December 31, 2021 internals, shows sufficient resources to meet the subvention subscription agreements.

The submitted incremental budget indicates a net income of \$8,501,557 in the first year and \$9,141,058 net income in the third year. NYPF's December 31, 2021, and Columbia University's December 31, 2021, financial statements show positive assets of \$3.674 billion and \$19.927 billion, respectively, per BFA Attachment B. BFA Attachment C is CNYPAI's pro forma balance sheet that shows assets will equal liabilities. The budget is reasonable.

### **Conclusion**

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

## **Attachments**

BHFP Attachment	Map
BFA Attachment A	Columbia/New York-Presbyterian Advanced Imaging, Inc., (CNYPAI) organizational chart
BFA Attachment B	New York-Presbyterian Fund, Inc 2019-2020 certified financial statements, December 31, 2021, internal financial statements, and The Trustees of Columbia University in the City of New York June 30, 2020 – 2021 Certified Financial Statements and December 31, 2021, internal financial statements
BFA Attachment C	Columbia/New York-Presbyterian Advanced Imaging, Inc., Pro Forma Balance Sheet



**Project # 212182-E**  
**Main Street Radiology at Bayside LLC**

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

**County:** Queens  
**Acknowledged:** November 19, 2021

**Executive Summary**

**Description**

Main Street Radiology at Bayside, LLC (MSRB or the Center), an existing Article 28 diagnostic and treatment center (D&TC) at 32-35 Francis Lewis Boulevard (Queens County) requests approval to transfer 25.04% ownership interest from 10 withdrawing members to 5 existing members and 7 new members in Main RADS, LLC. MSRB is a joint venture diagnostic and treatment center owned by New York-Presbyterian/Queens (50%) and Main RADS, LLC (50%).

A full certificate of need application is required to effectuate the transfers of interest under PHL Section 2801-a(4)(b)(ii)(D) because the total percentage of interest being transferred in the operator is greater than twenty-five percent.

The approved membership and the proposed membership of Main RADS LLC after approval of this application are shown below:

Members	As Approved	Proposed
Ken Min, MD	6.67%	0.00%
Robert Meisell, MD	6.67%	0.00%
Gregory Carsen, MD	6.67%	0.00%
Alexander Talis, MD	6.67%	0.00%
Lawrence Schechter, MD	6.67%	0.00%
William Wolff, MD	6.67%	0.00%
David Roger, MD	6.67%	0.00%
Anthony Italiano, MD	6.67%	0.00%
Lawrence Carl, MD	6.67%	0.00%
Lai Ming Yu, MD	6.67%	0.00%
Jeffrey Lee, MD	6.67%	8.33%
John DeRosa, MD	6.67%	8.33%

Members	As Approved	Proposed
Yong Hahn, MD	6.67%	8.33%
Han Kim, MD	6.67%	8.33%
Wales Shao, MD	6.67%	8.33%
Erik Rio, MD	0.00%	8.33%
Komylo Chomy, MD	0.00%	8.33%
John Iraj, MD	0.00%	8.33%
Maura Noordhoom, MD	0.00%	8.33%
Stanley Yang, MD	0.00%	8.33%
Ari Jonisch, MD	0.00%	8.33%
Bobbi Ring, MD	0.00%	8.33%
<b>Total</b>	<b>100%</b>	<b>100%</b>

**OPCHSM Recommendation**

Approval

**Need Summary**

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

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application. The purchase price associated with the 25.04% of ownership interest transfer in Main RADS, LLC is \$2,090,574.99 and will be or has been met via members' equity.

## Recommendations

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Primary Care and Health Systems Management**

#### **Approval conditional upon:**

1. 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 any extensions to the project approval expiration date. [PMU]

### **Council Action Date**

April 5, 2022

## Program Analysis

### Program Description

There are no programmatic changes as a result of this request.

### Character and Competence

The table below details the proposed changes in the membership of Main RADs, LLC, a 50% member of Main Street Radiology at Bayside, LLC:

Members	Currently Approved	Proposed
Ken Min, MD	6.67%	0.00%
Robert Meisell, MD	6.67%	0.00%
Gregory Carsen, MD	6.67%	0.00%
Alexander Talis, MD	6.67%	0.00%
Lawrence Schechter, MD	6.67%	0.00%
William Wolff, MD	6.67%	0.00%
David Roger, MD	6.67%	0.00%
Anthony Italiano, MD	6.67%	0.00%
Lawrence Carl, MD	6.67%	0.00%
Lai Ming Yu, MD	6.67%	0.00%
Jeffrey Lee, MD	6.67%	8.33%
John DeRosa, MD	6.67%	8.33%
Yong Hahn, MD	6.67%	8.33%
Han Kim, MD	6.67%	8.33%
Wales Shao, MD	6.67%	8.33%
Erik Rio, MD	0.00%	8.33%
Kornylo Chomy, MD**	0.00%	8.33%
John Iraj, MD**	0.00%	8.33%
Maura Noordhoom, MD**	0.00%	8.33%
Stanley Yang, MD**	0.00%	8.33%
Ari Jonisch, MD**	0.00%	8.33%
Bobbi Ring, MD**	0.00%	8.33%
<b>Total</b>	<b>100%</b>	<b>100%</b>

*\*\*Member subject to Character and Competence*

**Erik Rios, M.D.** is an Attending Radiologist at Main Street Radiology and Radiology Associates of Main Street. Previously, he was an Attending Radiologist at Christ Hospital, Attending Radiologist at Wyckoff Hospital, and Attending Radiologist at Flushing Hospital. He has been a Clinical Assistant Professor of Radiology at Weill Medical College of Cornell University for over 20 years. He is board-certified in Diagnostic Radiology.

**Kornylo Chorny, M.D.** has been a Clinical Assistant Professor of Radiology at Weill Medical College of Cornell University for over 20 years and was an attending Radiologist at Beth Israel Deaconess Medical Center and an Instructor in Radiology at Harvard Medical School. He received his medical degree from Albert Einstein College of Medicine and completed his residency in Diagnostic Radiology at St. Luke's/Roosevelt Hospital of Columbia and his Fellowship in Women's Imaging at Beth Israel Deaconess Medical Center. He is board-certified in Radiology.

**John Iraj, M.D.** has been an Attending Radiologist at Radiology Associates of Main Street and New York-Presbyterian/Queens for over 18 years. He is also an Attending Radiologist and Medical Director of Main Street Radiology. He previously served as an Attending Radiologist at Staten Island University Hospital/Seaview Radiology. He is a Clinical Assistant Professor of Radiology at Weill Cornell Medical College of Cornell University. He received his medical degree from Mount Sinai School of Medicine and completed his residency in Diagnostic Radiology at the University of Illinois Michael Reese and Mercy

Hospital and his fellowship in Body Imaging at Northwestern University Evanston Hospital. He is board-certified in Radiology.

**Maura Noordhoorn, M.D.** has been an Attending Radiologist at New York Hospital Queens and Main Street Radiology for over 19 years. Previously, she was an Assistant Attending Radiologist at NYU Downtown Hospital. She has been a Clinical Assistant Professor of Radiology at Weill Medical College of Cornell University for over nine years.

**Stanley Yang, M.D.** has been a Managing Partner of Radiology Associates of Main Street, P.C. for over 18 years. He has been a Clinical Assistant at New York-Presbyterian Queens for approximately 18 years. Previously, he was a Clinical Assistant at Bellevue Hospital Center, NYU Tisch Hospital, and Hospital for Joint Disease. He received his medical degree from Mount Sinai School of Medicine and completed his residency in Radiology and fellowship in Neuroradiology at NYU Medical Center. He is board-certified in Radiology with a sub-certification in Neuroradiology.

**Ari Jonisch, M.D.** is the President and Chief of Radiology of Main Street Radiology, the Chief of the Radiology Department at New York-Presbyterian Queens, and Section Head of Musculoskeletal Radiology at New York-Presbyterian Queens. Previously, he was the Assistant Chairperson at New York-Presbyterian Queens. He is a Clinical Assistant Professor of Radiology at Weill Medical College of Cornell University. He received his medical degree from Upstate Medical University and completed his residency in Radiology at Yale-New Haven Hospital and his Musculoskeletal fellowship at NYU Hospital of Joint Disease. He is board-certified in Radiology.

**Bobbi Ring, M.D.** has been an Attending Radiologist at New York Medical Center of Queens and Main Street Radiology at Bayside for over 12 years. She has been a Clinical Instructor in Radiology at Weill Medical College of Cornell University for over nine years. Previously, she was an Assistant Clinical Instructor of Radiology at Stony Brook University. Dr. Ring received her medical degree from the University at Buffalo School of Medicine and Biomedical Science and completed her residency in Radiology at Winthrop University Hospital and a Breast and Body fellowship at Memorial Sloan Kettering Cancer Center.

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

Dr. Rios disclosed a malpractice lawsuit that was filed on October 19, 2015, by a representative of the patient, alleging a negligent CT-guided biopsy of a retroperitoneal mass resulting in perforation, bleeding, and death of the patient. The case was closed on July 18, 2019, with an indemnity paid in the amount of \$163,333.33.

### **Conclusion**

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

## **Financial Analysis**

### **Capability and Feasibility**

There are no project costs associated with this application. The purchase price for the 25.04% ownership interest in Main RADS, LLC is \$2,090,574.99 and was paid for by members' equity.

BFA Attachment A is Main Street Radiology at Bayside LLC's financial summary. For the year ending December 31, 2020, and as of June 30, 2021, the facility maintained a positive average working capital position, an average positive net asset position, and achieved a net income in 2020 and through June 30, 2021.

### **Conclusion**

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

## **Attachments**

BFA Attachment A June 30, 2021, Internals and December 31, 2020, Certified Financial Statements for Main Street Radiology at Bayside, LLC



Project # 212208-B
World Health Clinicians, Inc.
d/b/a Circle Care Center - Westchester

Program: Diagnostic and Treatment Center County: Westchester
Purpose: Establishment and Construction Acknowledged: December 9, 2021

Executive Summary

Description

World Health Clinicians, Inc. (WHC), a Connecticut non-for-profit corporation qualified to do business in New York State, is seeking approval to establish and construct an Article 28 Diagnostic & Treatment Center (D&TC) at 34 South Broadway, White Plains (Westchester County). The D&TC will be housed in leased space on the 5th floor of an existing building. Upon approval by the Public Health and Health Planning Council (PHHPC) the center will do business as Circle Care Center – Westchester (CCCW) and will be certified for Medical Services – Primary Care.

World Health Clinicians, Inc was founded in 2011 with the mission of preventing the spread of HIV/AIDS and sexually transmitted infections, and reducing the associated morbidity and mortality in the developed and developing worlds through treatment, patient advocacy and assistance, and education. The center will target services to people living with HIV, as well as the LGBTQ community. Studies show that the LGBTQ population experiences health disparities and barriers related to sexual orientation and/or gender identity or expression.

The board of World Health Clinicians, Inc. is:

Table with 2 columns: Name, Title. Rows include Mark Hammond (CEO), Paola Greiger-Zanlugo, M.D. (Member), Reynold Jaglal, P.A. (Member), Andrew Mitchell-Namdar (Member), James Parker (Member), Betsy Randolph (Member).

CCCW expects to have a transfer and affiliation agreement with Westchester Medical Center (WMC). WMC is located 7.5 miles and is 12 minutes travel time from the proposed D&TC.

David S. Rubin, M.D., who is board-certified in Internal Medicine and Infectious Diseases, will serve as the medical director.

OPCHSM Recommendation

Contingent Approval

Need Summary

The new diagnostic and treatment center will provide primary medical care, HIV prevention, Hepatitis C and STI testing and treatment, as well as, mental health services. The target population for the center will be people living with HIV and the LGBTQ community.

Program Summary

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

Financial Summary

The total project cost of \$141,030 will be met via \$141,030 in accumulated funds from WHC. The proposed budget is as follows:

Table with 3 columns: Budget, Year One, Year Three. Rows include Revenues (\$358,744 vs \$785,328), Expenses (485,943 vs 697,860), Net Income (Loss) (\$127,199 vs \$87,468).

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

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

#### Approval conditional upon:

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

### Council Action Date

April 5, 2022



## Need and Program Analysis

### Program Description

<b>Proposed Operator</b>	World Health Clinicians, Inc.
<b>To Be Known As</b>	Circle Care Center – Westchester (CCCW)
<b>Site Address</b>	34 South Broadway White Plains, NY 10601 (Westchester County)
<b>Services</b>	Medical Services-Primary Care
<b>Hours of Operation</b>	Monday through Thursday 9:00 am to 5:00 pm Friday 9:00 am to 4:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	4.50 FTEs / 6.00 FTEs
<b>Medical Director(s)</b>	David Rubin, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Westchester Medical Center 7.5 miles / 12 minutes away

World Health Clinicians, Inc was founded in 2011 with the mission of preventing the spread of HIV/AIDS and sexually transmitted infections, and reducing the associated morbidity and mortality in the developed and developing worlds through treatment, patient advocacy and assistance, and education. The center will target services to people living with HIV, as well as, the LGBTQ community. Studies show that the LGBTQ population experiences health disparities and barriers related to sexual orientation and/or gender identity or expression. Services will include primary medical care, HIV prevention, Hepatitis C and STI testing and treatment, as well as, mental health.

### Analysis

The primary service area is the city of White Plains in Westchester County. The population of Westchester County was 1,004,457 in 2020 and is expected to grow to 1,016,760 by 2025. According to Data USA, in 2019 95.5% of the population in Westchester County has health coverage as follows.

Employer Plans	55.8%
Medicaid	13.8%
Medicare	13.3%
Non-Group Plans	12.3%
Military or VA	0.333%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition per 100, 000 adults. It shows that the PQI rate for the city of White Plains (zip code 10601) is higher than the New York State rate.

2017 PQI Rates	Zip Code 10601	New York State
All PQIs	1,835	1,431

The applicant projects 2,548 visits in Year One and 5,100 in Year Three with a Medicaid utilization of 25.9% and charity care at 6.7%. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

## Character and Competence

The board of World Health Clinicians, Inc. is:

<u>Name</u>	<u>Title</u>
Mark Hammond	CEO
Paola Greiger-Zanlugo, M.D.	Member
Reynold Jaglal, P.A.	Member
Andrew Mitchell-Namdar	Member
James Parker	Member
Betsy Randolph	Member

**Paola Greiger Zanlungo, MD** is the Director of HIV Services at Montefiore Mount Vernon Hospital, an Attending Physician at Montefiore Mount Vernon Hospital, an Assistant Clinical Professor at New York Medical College, the Director of the 5<sup>th</sup> Pathway Program at Mount Vernon Hospital, New York Medical College, and the Founder and Board Member of Beat AIDS Project Zimbabwe. She received her medical degree from the University of Bologna in Italy and completed her Internal Medicine residency at Mount Vernon Hospital. Dr. Greiger Zanlungo discloses membership interest in the following healthcare facilities:

*Circle Care Center-Connecticut* *2010-present*

**Mark Hammond** is the CEO of World Health Clinicians where he is responsible for the management and oversight of the clinic and pharmacy operations and reports to the Board of Directors. He is also the Owner of Mark Hammond Consulting where his responsibilities include the financial turnarounds for distressed healthcare organizations, including developing long-term strategies for marketing, best practice, compliance, and physician recruitment. Previously, he was the CFO of Wartburg, a retirement community, where his responsibilities included all financial functions of the adult campus in Mount Vernon. Mark Hammond discloses membership interest in the following healthcare facilities:

*Circle Care Center* *2019-present*

**Reynold Jaglai** is a Physician's Assistant and the Associate Program Director of Physician Assistant Studies at Sacred Heart University where he provides leadership support and coordinates with the program director in representation to the university and community organization and the clinical preceptors and sites. Previously, he was the Director of Clinical Education and Clinical Assistant Professor. He was also previously the PA Coordinator at Greenwich Hospital Emergency Department where he participated in strategic planning, design, and continuous quality improvement, and was a committee member for patient throughput and hospital operations. Reynold Jaglai discloses membership interest in the following healthcare facilities:

*Circle Care Center* *2015-present*

**Andrew Mitchell-Namdar** has been the Co-Owner, Chief Marketing, Officer, and Vice President of Ecommerce of Mitchell's Stores for over 22 years where he is responsible for the management of all commercial marketing. He is also responsible for all in-person store volumes and eCommerce relations. His experience has helped World Health Clinicians with all marketing efforts. Andrew Mitchell-Namdar discloses membership interest in the following healthcare facilities:

*Circle Care Center-Connecticut* *2013-present*

**James Parker** has been a Financial Advisor Vice President of UBS, a global investment firm, for over six years. In this role, he works with multigenerational families on customized investment strategies, portfolio management, lending and charitable giving, and retirement and estate planning. Previously, he was the Financial Advisor Vice President of Wells Fargo Advisors for six years. His work in these areas has helped World Health Clinicians with the adoption of financial strategies to secure proper cash flow management and planned portfolio growth to carry out their mission. James Parker discloses membership interest in the following healthcare facilities:

*Circle Care Center-Connecticut* *2013-present*

**Betsy Randolph** has been a member of the board of World Health Clinicians for over 10 years where she is responsible for supporting the organization's efforts to improve access to healthcare services for the LGBTQ population. She is a member of the Auxiliary of Lenox Hill Hospital (LHH), an all-volunteer group

that supports the hospital, its patients and staff, and the local community, and is the Chairperson of the Art Committee at Lenox Hill where she has managed the acquisition and placement of art throughout the LHH facility. She has also served on the Auxiliary Executive Committee, has volunteered at Lenox Hill Greenwich Village, taking aftercare surveys from patients, and has volunteered for the Bruce Museum, coordinating fundraising and event planning. For the Greenwich Historical Society, she chaired the largest fundraiser of the year, as well as, organized other events, which included organizing volunteer staff and security. Betsy Randolph discloses membership interest in the following healthcare facilities:

*Circle Care Centers-Connecticut*

*2011-present*

**David Rubin, MD** is the proposed Medical Director of the new D&TC. Dr. Rubin has been the Medical Director of World Health Clinicians/Circle Care Center for over five years. He was the former Medical Director and Attending Physician of New York-Presbyterian/Queens in the Infectious Disease Division and the NYSDOH Designated AIDS Center and Special Care Clinic for over 37 years. He was also previously an Infectious Disease Attending at St. Clare's Hospital. He received his medical degree from Cornell University and completed his residency in Internal Medicine at Beth Israel Medical Center of Mount Sinai and his fellowship in Infectious Disease at Manhattan Veteran's Administration Hospital. He is board-certified in Internal Medicine and Infectious Diseases.

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

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

### **Conclusion**

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval of this diagnostic and treatment center will expand services for people living with HIV or at risk of HIV in White Plains.

## **Financial Analysis**

### **Total Project Cost and Financing**

The total project cost for renovations and movable equipment is estimated at \$141,030 broken down as follows:

Renovation & Demolition	\$66,950
Design Contingency	6,695
Construction Contingency	6,695
Architect/Engineering Fees	5,356
Other Fees	5,150
Movable Equipment	47,424
Application Fee	2,000
Additional Processing Fee	<u>760</u>
Total Project Cost	\$141,030

The total project cost of \$141,030 will be met via \$141,030 in accumulated funds from WHC. BFA Attachments A and B show sufficient resources to meet the equity requirements.

## Operating Budget

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial MC	\$185.00	\$185,000	\$185.00	\$405,705
Medicare MC	\$166.00	59,760	\$166.00	150,064
Medicaid FFS	\$172.13	118,425	\$172.13	227,039
Medicaid MC	\$146.31	25,165	\$146.31	48,282
Private Pay	\$120.00	30,000	\$120.00	41,040
Bad Debt		<u>(30,000)</u>		<u>(30,000)</u>
Total Revenues		<u>\$358,744</u>		<u>\$785,328</u>
 <u>Expenses</u>				
Operating	\$170.15	\$433,544	\$126.38	\$644,544
Capital	<u>\$20.56</u>	<u>52,399</u>	<u>\$10.45</u>	<u>53,316</u>
Total Expenses	<u>\$190.71</u>	<u>\$485,943</u>	<u>\$136.83</u>	<u>\$697,860</u>
Net Income/(Loss)		(\$127,199)		\$87,468
Visits		2,548		5,100
Cost/Visit		\$190.71		\$136.83

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	39.3%	43.0%
Medicare MC	14.1%	17.7%
Medicaid FFS	20.2%	19.4%
Medicaid MC	6.8%	6.5%
Private Pay	9.8%	6.7%
Charity Care	<u>9.8%</u>	<u>6.7%</u>
Total	100.0%	100.0%

The following is noted concerning the submitted budget:

- Revenues and expenses are based on the experience of the applicant in operating an existing health clinic in Connecticut.
- An average reimbursement by payor was calculated using the total reimbursement by payor received by the Connecticut clinic and divided by the number of visits. The applicant anticipates that rates for other payors will not vary significantly from state to state.
- The Medicaid Fee for Service rate is conservatively estimated based on the Medicaid APG base rate of \$169.02, as obtained from the Department of Health's Bureau of D&TC Reimbursement, plus Capital Add-on.
- Expenses are based predominantly on the labor costs for the staffing model, as well as, medical supplies, utilities, and rent as documented per the lease agreement.
- Utilization assumptions, including the projected payor mix, are based on the experience of the applicant in operating an existing health clinic in Connecticut. Due to the more complex care needs of the patient population that the applicant intends to serve, including people living with HIV, the LGBTQ community and transgender patients, the length of time for a patient visit is typically longer than average – between 30 to 45 minutes.
- The applicant is conservatively estimating that the new D&TC will have 2,548 visits in the first year of operation and increase to 5,100 visits by the third year of operation.

## Lease Agreement

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

Date:	August 25, 2021
Premises:	1,848 square feet located at 34 South Broadway, White Plains, New York 10601
Landlord:	Broadway Freedom LLC
Tenant:	World Health Clinicians, Inc.
Rental:	Base rent of \$42,504 per year (\$3,542 per month) for the first year with a 2.5% increase thereafter. Additional rent of \$462 will be paid annually for tenant electric charges. Additional rent for all-of-hour and non-standard air-conditioning, heating, and electricity at the rates of \$475/hr. from April 15 <sup>th</sup> through October 14 <sup>th</sup> and \$350/hr. from October 15 <sup>th</sup> through April 14 <sup>th</sup> .
Term:	10 years and 5 months with two consecutive options for a period of five years each. Rent during the additional extension period shall be 104% of Base Rent for the last 12-month period of the expiring term with 2.5% increases thereafter.
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, insurance.

The lease arrangement is an arm's length agreement and the applicant has submitted an affidavit attesting there is no relationship between landlord and tenant. WHC has submitted letters from two New York real estate brokers attesting to the reasonableness of the rent.

## Capability and Feasibility

The total project cost of \$141,030 will be met via \$141,030 in accumulated funds from WHC. Working capital requirements are estimated at \$116,310 based on two months of third-year expenses and will be satisfied by the ongoing operations of the applicant. BFA Attachments A and B indicate the availability of sufficient funds. BFA Attachment C, the pro forma balance sheet for the applicant, indicates that the facility will begin operations with total equity of \$361,030.

The submitted budget indicates the facility will generate a net loss of \$127,199 and a net income of \$87,468 in the first and third years, respectively. The applicant is conservatively projecting first-year visits to allow for the initial ramping up of volume and submitted a letter attesting to cover all operating shortfalls during the first year using existing funds.

## Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	2020 Certified Financial Statements
BFA Attachment B	2021 Internal Financial Statements
BFA Attachment C	Pro Forma Balance Sheet for Circle Care Center - Westchester



Project # 212213-B
East 180 Operating, LLC d/b/a
East 180th Street Health and Treatment Center

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: December 9, 2021

Executive Summary

Description

East 180th Street, LLC, requests approval to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC) to be located at 870 East 180th Street, Bronx (Bronx County) in leased space.

Dr. Cecilia Griselda Calderon, who is board-certified in Internal Medicine, will serve as the Medical Director. The applicant has contacted BronxCare Health System, located approximately 2 miles and 11 minutes travel time from the proposed facility, to establish transfer and affiliation agreements.

OPCHSM Recommendation

Contingent Approval

Need Summary

Approval of this project will increase access to primary care, psychological, dental, and pharmacy services for Bronx County's residents.

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

Total project costs of \$11,660,135 will be met with \$1,556,729 of member's equity/operational cash and a bank loan of \$10,103,406 for a 25-year term. The first 10 years of the term will have a fixed interest rate of 2.5% over the prevailing Federal Home Loan Bank of New York (FHLB NY) 10-year advance rate.

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$4,331,025 vs \$7,218,375), Expenses (3,584,727 vs 4,578,050), Net Income (\$746,297 vs \$2,640,325).

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed bank loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-01. [AER]
5. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-01. [AER]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of a photocopy of an amended and executed Lease between East 180 Operating, LLC and Sonid Holdings, LLC, acceptable to the Department. [CSL]
8. Submission of photocopy of amended and executed Operating Agreement of East 180 Operating, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Restatement of the Articles of Organization of East 180 Operating, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Certificate of Assumed Name of East 180 Operating, LLC, acceptable to the Department. [CSL]

#### Approval conditional upon:

1. This project must be completed by **February 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **November 15, 2022**, and construction must be completed by **November 15, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

**Council Action Date**

April 5, 2022



## Need and Program Analysis

### Program Description

<b>Proposed Operator</b>	East 180 Operating, LLC
<b>Doing Business As</b>	East 180 <sup>th</sup> Street Health and Treatment Center
<b>Site Address</b>	870 East 180 <sup>th</sup> Street Bronx, NY 10460 (Bronx County)
<b>Certified Services</b>	Medical Services-Primary Care Dental O/P
<b>Hours of Operation</b>	Monday through Friday 8:00 AM to 4:00 PM Saturday 8:00 AM to 12:00 PM
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	25.5 FTEs / 32.2 FTEs
<b>Medical Director</b>	Cecilia Griselda Calderon, M.D.
<b>Emergency, In-Patient and Back-up Support Services Agreement and Distance</b>	Expected to be provided by BronxCare Hospital Center 2.2 miles / 11 minutes away

### Analysis

The primary service area is Bronx County, which in 2020 had a population of 1,472,654 according to the most recent U.S. Census data. The population of the county is estimated to increase to 1,567,988 by 2025 per projection data from the Cornell Program on Applied Demographics, an increase of 6.5%. According to Data USA, in 2019, 92.1% of the population of Bronx County has health coverage as follows:

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

The proposed facility is located in a Medicaid Eligible Population HPSA for Primary Care, Dental Health, and Mental Health, as well as a designated Medically Underserved Area/Population service area (U.S Health Resources & Services Administration). The center plans to establish arrangements with community organizations to present health education programs to schools, senior citizen centers, churches, and other community groups.

The applicant projects 28,390 visits in the first year and 47,317 visits in the third year, with 67% Medicaid, and 5% charity care. The proposed D&TC will accept all patients regardless of race, creed, color, religion, sex, age, payer status, or any other personal characteristic.

### Character and Competence

The members of East 180 Operating, LLC are:

<u>Name</u>	<u>Interest</u>
Divina Espinal	80.0%
Adam Henick	20.0%
<b>Total</b>	<b>100.0%</b>

**Divina Abreu Espinal** has been the Special Education High School Teacher and Chairperson for the Yonkers Public Schools for approximately 10 years. She has experience in human resources management and health care coordination as a program coordinator for special needs students. She has developed and implemented programs for students with learning disabilities of all spectrums, including interaction and coordination with the student's specialist providers. In this role, she has represented the school district with more than 400 special needs students and acted as a liaison between the schools and

the districts, and has engaged with all agencies to ensure services are provided properly. She has ensured compliance with state regulations for special education students, HIPAA, and New York State's Dignity for All Student's Act, and has supervised a team of teachers, social workers, and specialist providers to ensure the full spectrum of services are provided to the students in accordance with regulations.

**Adam Henick** retired in 2020. Before that, he was a Partner in La Familia Home Care for approximately two years. In that role, he was responsible for business strategy and financial oversight. Prior to that, he was the previous COO of AdvantageCare Physicians where he had operating responsibilities of a 500-person medical group. Other previous positions include President of Mount Sinai Medical Center, Senior Vice President of Continuum Health Partners, Vice President of UMDNJ Hospital System, and Executive Director of Montefiore Medical Center for approximately three years. Mr. Henick discloses board membership interest in the following healthcare facilities:

<i>East Side Endoscopy, LLC (D&amp;TC)</i>	<i>2010-2017</i>
<i>West Side GI, LLC (D&amp;TC)</i>	<i>2013-2017</i>
<i>Manhattan Surgery Center (D&amp;TC)</i>	<i>2014-2017</i>
<i>Carnegie Hill Endo, LLC (D&amp;TC)</i>	<i>2014-2017</i>
<i>South Brooklyn Endoscopy, LLC (D&amp;TC)</i>	<i>2014-2017</i>

**Dr. Cecilia Griselda Calderon** is the proposed Medical Director. She is the Chief Medical Officer of HDR Healthcare Network, Senior Medical Officer of Audubon Primary Care Medicine, Medical Director of 181<sup>st</sup> Street Medical PC, and an Internal Medical Physician at CCN General Medicine. She was previously a Primary Medical Physician at Amsterdam Medical PC for over three years. Dr. Calderon received her medical degree at Universidad Autonoma de Santo Domingo in the Dominican Republic and completed her residency in Internal Medicine at Bronx Lebanon Hospital. She is board-certified in Internal Medicine.

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

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

### **Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval of this project will increase access to primary care, psychological, dental, and pharmacy services for Bronx County's residents.

## Financial Analysis

### Operating Budget

The applicant submitted their year one and year three operating budget, in 2022 dollars, as shown below:

Revenues	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Commercial FFS	\$77.69	\$66,169	\$77.69	\$110,282
Commercial MC	\$62.60	53,333	\$62.60	88,890
Medicare FFS	\$134.05	152,228	\$134.05	253,714
Medicare MC	\$110.39	470,142	\$110.39	783,570
Medicaid FFS	\$219.20	124,503	\$219.35	207,504
Medicaid MC	\$176.77	3,262,051	\$176.76	5,436,753
Private Pay	\$79.79	22,712	\$80.03	37,854
Pharmacy*	-	145,499	-	242,499
All Other	\$60.56	<u>34,386</u>	\$60.56	<u>57,310</u>
<b>Total Revenue</b>		<b>\$4,331,025</b>		<b>\$7,218,376</b>
<b>Expenses</b>				
Operating	\$102.30	\$2,904,633	\$82.38	\$3,897,956
Capital	<u>21.43</u>	<u>680,094</u>	<u>12.65</u>	<u>680,094</u>
<b>Total Expenses</b>	<b>\$123.73</b>	<b>\$3,584,727</b>	<b>\$95.03</b>	<b>\$4,578,050</b>
<b>Net Income</b>		<b><u>\$746,298</u></b>		<b><u>\$2,640,325</u></b>
Visits		28,393		47,318
Cost/Visit		\$126.29		\$96.75

\*In-House Pharmacy Revenue (closed to the public).

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

Payor	Year One		Year Three	
	Visits	%	Visits	%
Commercial FFS	852	3%	1,420	3%
Commercial MC	852	3%	1,420	3%
Medicare FFS	1,136	4%	1,893	4%
Medicare MC	4,259	15%	7,098	15%
Medicaid FFS	568	2%	946	2%
Medicaid MC	18,454	65%	30,756	65%
Private Pay	284	1%	473	1%
Charity Care	1,420	5%	2,366	5%
All Other	<u>568</u>	<u>2%</u>	<u>946</u>	<u>2%</u>
<b>Total</b>	<b>28,393</b>	<b>100%</b>	<b>47,318</b>	<b>100%</b>

The following is noted regarding the submitted budget:

- The revenue assumptions are based on a review of Ambulatory Health Care Facility-1 Cost Reports for several Article 28 D&TCs operating in the same geographic area with similar square footage, specialties, and anticipated patient flow.
- Revenue assumptions in year three are based on the facility reaching 100% occupancy in treating behavioral health, obstetrics and gynecology, and cardiology. Commensurate staff will be hired to accommodate the increase in utilization.
- This information formed the basis for the projected revenue, payor mix, patient visits, staffing, and operating expenses for the first and third years.
- Actual expenses unique to this facility were substituted where it was known or could be reasonably estimated.

**Total Project Cost and Financing**

The total project cost of \$11,660,135 for site development, new construction, and moveable equipment is distributed as follows:

New Construction	\$8,049,699
Renovation & Demolition	274,050
Site Development	537,950
Temporary Utilities	37,555
Design Contingency	793,074
Construction Contingency	396,537
Fixed Equipment (NIC)	101,500
Planning Consultant Fees	35,000
Architect /Engineering Fees	350,000
Construction Manager Fees	158,616
Other Fees	35,000
Moveable Equipment	329,875
Telecommunications	126,875
Financing Costs	40,000
Interim Interest Expense	328,360
CON Fee	2,000
Additional Processing Fee	<u>63,769</u>
Total Project Cost	\$11,660,135

Total project costs of \$11,660,135 will be met with \$1,556,730 members’ equity/operational cash and a bank loan of \$10,103,406 for a 25-year term. BFA attachment A is the net worth statements of proposed members, which indicates sufficient resources to meet the equity requirements of this application.

**Lease Agreement**

The applicant has submitted an executed lease agreement, the terms of which are summarized below.

Date:	September 2021
Premises:	11,979 square feet of space at 870 East 180th Street, Bronx, NY 10460
Owner:	Sonid Holdings, LLC
Tenant:	East 180 Operating, LLC
Security:	\$56,250 deposit paid
Rental:	Base rent \$225,000 per annum for years one through five, with a 10% increase for each five-year period thereafter. From the commencement date until the existing building is vacant there shall be no rent due. From the date the existing building is vacant until the date construction commences, base rent shall be \$5,000 plus additional rent equal to all taxes and water/sewer due. The rent and additional rent due shall accrue and be payable by Tenant upon the commencement of construction. From the date construction commences until a date that is six months after the issuance of a permanent or temporary certificate of occupancy and the issuance of an operating certificate, Base Rent, and Additional Rent shall accrue and be payable by Tenant to Landlord of 60% of the distribution of profits according to the Operating Agreement of Tenant.
Term:	49 years
Provisions:	The tenant is also responsible for taxes, assessments, water and sewer rates or charges, and other governmental charges.

There is a relationship between the landlord and one of the lessees. The applicant has submitted two letters of rent reasonableness from New York State realtors indicating that the rental was reasonable.

**Capability and Feasibility**

The total project costs of \$11,660,135 will be funded via \$1,556,730 member’s equity/operational cash and a \$10,103,406 loan for a 25-year term. The first 10 years of the term will have a fixed interest rate of

2.5% over the prevailing Federal Home Loan Bank of New York (FHLBNY) 10-year advance rate. The rate will reset 10 years thereafter, at the prevailing FHLBNY 10-year advance rate plus 2.5% and again five years thereafter at the prevailing FHLBNY 5-year Advance rate plus 2.50% with a floor rate of 4.30%. Tompkins Mahopac Bank has provided a letter of interest for the financing.

Working capital requirements are estimated at \$763,008 based on two months of third-year expenses and will be satisfied via members' equity and a working capital loan of \$380,000 for a term of five years at an interest rate of 3.95%. Adam Henick and Divina Abreu-Espinal have each submitted affidavits of disproportionate share, indicating that Adam Henick and Divina Abreu-Espinal will each contribute 20% and 80% to working capital, respectively. BFA Attachment A is the net worth statements of the proposed members, which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$1,939,738. Divina Abreu-Espinal will have an unlimited and full guarantee as Guarantor.

The submitted budget indicates the facility will generate net income of \$746,297 and \$2,640,325 in the first and third years, respectively. The revenue assumptions are based on several Article 28 D&TCs operating in the same geographic area with similar square footage, specialties, and anticipated patient flow.

**Conclusion**

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

**Attachments**

- BFA Attachment A    Net Worth Statements of the proposed members
- BFA Attachment B    ProForma Balance Sheet for Community Health Center at East 180<sup>th</sup> Street



Project # 212219-B
Bronx Community Health Network, Inc.

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Bronx
Acknowledged: December 10, 2021

Executive Summary

Description

Bronx Community Health Network, Inc. (BCHN), a voluntary, not-for-profit, community-based organization, and Federally Qualified Health Center (FQHC) requests approval to establish and construct a new Article 28 diagnostic and treatment center (D&TC) that will have a main site and a mobile van extension clinic.

BCHN received its first Public Health Services (PHS) Act Section 330e Consolidated Health Center grant in 1997. Using a "health center without walls" model, BCHN contracted with Montefiore Health System and Promesa, Inc. for the delivery of comprehensive medical and related services at five sites.

The proposed center will occupy leased space in an existing vacant two-story plus basement business use building owned by White Plains Estates LLC. The applicant requests certification for Medical Services – Primary Care and Dental services at both the main site and the mobile van clinic.

Jay M. Izes, M.D, who is board-certified in Pediatrics, will serve as the Medical Director.

The proposed center is negotiating a transfer and affiliation agreement for emergency and backup services with NYC Health + Hospitals | Jacobi (3.7 miles and 12 minutes travel time) and BronxCare Health System (4.7 miles and 27 minutes travel time).

OPCHSM Recommendation

Contingent Approval

Need Summary

The new FQHC D&TC, with a mobile van extension clinic, will enhance access in a medically underserved area for the Medicaid eligible.

Program Summary

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

Financial Summary

Total project costs of \$5,031,392 will be met via \$2,141,698 in grant funds through the American Rescue Plan Act Funding for Health Centers; \$1,675,992 loan from the Community Health Center Capital Fund at 6% interest for a ten-year term and an amortization period of 20 years; and, the remaining \$1,213,702 to be financed through the New Markets Tax Credit (NMTC) program.

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

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (Department). Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department. [BFA]

#### Approval conditional upon:

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

### Council Action Date

April 5, 2022

## Need and Program Analysis

### Program Description

<b>Proposed Operator</b>	Bronx Community Health Network, Inc.
<b>Site Addresses</b>	<p><b>Main Site:</b> 3763 White Plains Road Bronx, NY 10467 (Bronx County)</p> <p><b>Mobile Van:</b> 3676 White Plains Road Bronx, NY 10467 (Bronx County)</p>
<b>Services</b>	<p><b>Main Site:</b> Medical Services-Primary Care Dental O/P Behavioral Health (below threshold for separate licensure)</p> <p><b>Mobile Van:</b> Medical Services-Primary Care Dental O/P</p>
<b>Hours of Operation</b>	<p><b>Main Site:</b> Monday through Thursday 8:00 am to 7:00 pm Friday 8:00 am to 5:00 pm Saturday 10:00 am to 1:00 PM</p> <p><b>Mobile Van</b> will operate at four sites: Edenwald Houses (NYCHA), Gunhill Houses (NYCHS), NorthEast Bronx YMCA, Community Board 12</p>
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	23.30 FTEs / 31.35 FTEs
<b>Medical Director(s)</b>	Jay Izes, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by NYC H+H/Jacobi: 3.7 miles / 12 minutes BronxCare Health System (Concourse): 4.7 miles / 27 minutes

BCHN was founded in 1996 with a mission to provide access to affordable high-quality, health care services, especially for uninsured persons; and to promote disease prevention, early treatment, and healthy lifestyles for the residents in the Bronx. In furtherance of that mission, BCHN received its first Public Health Services (PHS) Act Section 330e Consolidated Health Center grant in 1997. Using a “health center without walls” model, BCHN contracted with Montefiore Health System (Montefiore) and Promesa, Inc. for the delivery of comprehensive medical and related services at three Montefiore health center sites and two Promesa sites. A portion of BCHN’s health center grant supports its administrative and contractor compliance oversight functions and a portion is “passed through” to Montefiore and Promesa as compensation for eligible Section 330e primary health care and related services, including uncompensated care provided to patients with inadequate or no health care insurance. With this application, BCHN is seeking to be established as an Article 28 D&TC so that it may provide health care services directly. BCHN anticipates that its current arrangement with Montefiore will continue after approval of this CON and BCHN’s establishment as an Article 28 D&TC. However, the contract with Promesa, Inc. is not expected to continue.

Today, BCHN is responsible for regulatory compliance and governance oversight of Section 330e health services delivery at a network of 21 community and school-based health centers and receives funding from the Federal Health Resources and Services Administration (HRSA) Bureau of Primary Health Care and the HIV/AIDS Bureau. According to the applicant, over the past two decades, BCHN has invested \$143.8 million in Federal grant funding in its commitment to help improve the health status and quality of life of the predominantly Hispanic/Latino and African American populations it serves. BCHN served more than



118,000 Bronx residents (totaling more than 330,000 visits) in 2019, covering 75% of all Bronx ZIP codes. More than three-quarters of patients served have incomes below 200% of the Federal Poverty Level. In addition, BCHN’s outreach professionals are engaged in health promotion and education, community outreach, and engagement activities at the network’s health centers and in neighborhoods throughout the Bronx.

The facility will provide residents with primary care, dental, and behavioral health services. The mobile van will be providing primary care and dental services at the following locations: Edenwald Houses, Gunhill Houses, NorthEast Bronx YMCA, and Community Board 12.

**Analysis**

The primary service area is the northeast section of Bronx County. The population of Bronx County was 1,472,654 in 2020 and is expected to grow to 1,567,988 by 2025. According to Data USA, in 2019 92.1% of the population in Bronx County has health coverage as follows.

Employer Plans	31.30%
Medicaid	42.30%
Medicare	6.97%
Non-Group Plans	11.00%
Military or VA	0.41%

The Northeast Bronx is a federally designated Health Professional Shortage Area for both Primary Care and Dental for the Medicaid Eligible and Williamsbridge is federally designated as a Medically Underserved Area/Population by Health Resources and Services Administration (HRSA).

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

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

The applicant projects 11,765 visits in Year One and 20,824 in Year Three with Medicaid utilization at 58% and charity care at 7%. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

**Character and Competence**

The board members of Bronx Community Health Network, Inc., are:

<u>Name</u>	<u>Title</u>
Eleanor Larrier	CEO
Jay Izes, M.D.	CMO
Sandra Piggee, LCSW	President
Marjorie Cadogen, J.D.	Vice President
John Ruiz	Treasurer
Zahara Elmekawy	Corp. Secretary
Victor Quarshie	Record Secretary
Arthur Edwards	Board Members
Hamid Khalique	Board Member
Richard Thomas	Board Member
Emma Torres	Board Member

**Eleanor Larrier** has been the CEO of Bronx Community Health Network for 22 years where she is responsible for leading the oversight of the FQHC sites, developing partnerships and collaborations with

over 100 public and private organizations, pioneering initiatives to reduce ER utilization, and implementing social determinants of health services. She has grown the annual HRSA budget from \$1.8M to \$9.5M. Previously, she spent 15 years as an Associate Executive Director for Planning and Development at NYC Health and Hospitals/Elmhurst. At NYC Health and Hospitals/Harlem, she established the Planning Department, led planning for the establishment of the Ron Brown Ambulatory Care Building, and moved laterally to Clinical Services and Ambulatory Care.

**Jay Izes, MD** has been the Chief Medical Officer of Bronx Community Health Network, Inc., for over 12 years. He retired as the Vice President for Medical Affairs from St. John's Riverside Hospital and Yonkers General Hospital in December 2007. Previously, he was the Medical Director of Park Care Center, the Medical Director of Valentine Lane Family Practice, the Owner of a private practice, and a School Physician. He received his medical degree from Temple University School of Medicine and completed his residency in Pediatrics at Montefiore Medical Center. He is board-certified in Pediatrics. Dr. Izes is the proposed Medical Director.

**Sandra Piggee** has been on the Board of Directors for Bronx Community Health Network where she works with the CEO and Chair to oversee the organization's partnership with Montefiore Hospital and Promesa, secure and monitor the deployment of federal funds, monitor BCHN's organizational and financial health, and support the development of strategic growth initiatives. Previously, she was employed as a Special Consultant II at the New York City Department of Health and Mental Hygiene for 35 years where she advised public, private, and volunteer agencies receiving NYC funding to provide various mental health and social services on issues related to regulatory and legal compliance, operations, and service agreement execution, negotiated contracts for city funding with providers and monitored and evaluated professional standards, quality of care, and adequacy of services, and provided technical assistance to program Executive Directors and administrative teams.

**Marjorie Cadogen** has been the Executive Deputy Commissioner of the City of New York where she is responsible for developing City proposals and initiatives in collaboration with City and State agencies, health care providers, advocates, private insurers, and other stakeholders to promote and improve health insurance coverage for New York City residents and small businesses. She also serves as HRA/DHS liaison to Mayor's NYC Care Initiative and administers technical assistance, outreach, and enrollment assistance services for NYC Facilitated Enrollment Program for Aged, Blind, and Disabled. Previously, she was the Director of Operations and External Affairs at Primary Care Development Corp.

**John Ruiz** retired in September 2010. He has been a board member of Bronx Community Health Network for approximately five years and has been the Board Treasurer for two years. He is also a board member of La Casa de Salud, another FQHC. During his tenure with the two FQHCs, he has completed the following certificates: Certificate in Healthcare Governance, Ambulatory Care Risk Management, Digital Transformation in Healthcare Certificate, and NYS Public Citizen Health Leader Certificate.

**Zahara Elmekawy** is the Director of Delivery System Innovation at the Peterson Center on Healthcare where she leads a team focused on identifying and funding innovative solutions to reduce costs and improve healthcare quality in the U.S.; developed a grant strategy focused on addressing the needs of high needs patients and transforming the delivery of primary care; and oversees grant fund stewardship, analysis of the program outcomes and compliance with the program requirements. She was previously the Senior Managing Director and Head of Global Operational Risk Management of American International Group, Senior Vice President of Foreign Financial Institutions of the Federal Reserve Bank, Senior Vice President and COO of Group Operations of the Federal Reserve Bank, Vice President of Market Risk of the Federal Reserve Bank, Executive Sponsor of the African American and Latina Employee Resource Network, and helped found the Federal Reserve's Diversity Advisory Council.

**Victor Quarshie** was the Utility Steward at the Four Seasons Hotel where he was responsible for the kitchen hotline cleaning, overnight cleaning, setting up the back of the house, cleaning dishes and washing pits, and setting up banquets. Previous to that, he was a Housekeeper at Bainbridge Nursing Home and he was previously employed by the Ghana Airforce for 22 years where he was a Radio Officer and Air Traffic Control Assistant for three tours.

**Arthur Edwards** retired in 1995. Prior to that, he worked for the New York City Health and Hospitals Corporation for 14 years in the Office of Corporate Planning. In this position, he was responsible for the operation of 11 acute care hospitals, five long-term care facilities, and five diagnostic and treatment centers.

**Hamid Khaliq** is the Director of the Deutsche Bank Securities Inc. where he is responsible for understanding U.S. GAAP reporting companies and the financial risks present on income statements and balance sheets, appropriately networking internally and externally with key stakeholders, and managing high profile transactions successfully for the bank while executing with minimal risk or slippage. Previously, he was the Vice President of NatWest Markets Securities, Inc, an Associate at the Royal Bank of Scotland, and an Analyst at the Royal Bank of Scotland.

**Richard Thomas** retired in August 2005. In his leadership capacity on the Board, he serves as the Chair of the Bylaws and Fundraising Committees and also serves as a member of the Audit Committee.

**Emma Torres** retired in September 2018. Before that, she was employed as a Community Health Worker at Bronx Community Health Network, Inc. where she was responsible for presenting and developing workshops on various health topics to community organizations, enrolling and providing referral services to prenatal women in the Healthy Start Partnership Program, enrolling uninsured/underinsured in the New York State of Health Marketplace, connecting underserved populations to quality healthcare, and building partnerships with faith-based and community organizations. Previously, she was a Peer Leader at Emblem Health, a Community Health Worker for Institute for Leadership, and a Family Health Worker and Certified HIV Counselor at Montefiore Medical Group

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

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

### **Conclusion**

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). The new FQHC D&TC, with a mobile van extension clinic, will enhance access in a medically underserved area for the Medicaid eligible.

## Financial Analysis

### Total Project Cost and Financing

The total project cost for leasehold improvements, renovations, and moveable equipment is \$5,031,392, which is distributed as follows:

Renovation & Demolition	\$2,351,551
Site Development	5,000
Design Contingency	214,805
Construction Contingency	214,805
Architect /Engineering Fees	89,850
Other Fees	136,298
Moveable Equipment	1,058,933
Financing	886,500
Interim Expense	49,866
CON Fee	1,250
Additional Processing Fee	<u>22,534</u>
Total Project Cost	\$5,031,392

The total project cost of \$5,031,392 will be met via \$2,141,698 in grant funds through the American Rescue Plan Act Funding for Health Centers; \$1,675,992 loan from the Community Health Center Capital Fund at 6% interest for a ten-year term and an amortization period of 20 years; and, the remaining \$1,213,702 to be financed through the New Markets Tax Credit (NMTC) program.

### Operating Budget

The applicant has submitted their first year and third-year operating budget, in 2022 dollars, as shown below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$185	\$523,328	\$188	\$940,743
Medicare FFS	\$189	219,712	\$193	429,525
Medicaid FFS	\$139	683,339	\$140	1,170,476
Medicaid MC	\$137	274,878	\$139	520,911
Charity Care	\$35	30,036	\$35	53,267
All Other		<u>446,415</u>		<u>791,343</u>
Total Outp. Revenue		\$2,177,708		\$3,906,265
Ancillary Services		787,336		1,512,272
Other Operating Rev*		<u>684,100</u>		<u>732,840</u>
Total Revenue		<u>3,649,144</u>		<u>6,151,377</u>
 <u>Expenses</u>				
Operating	\$310	\$3,644,083	\$234	\$4,882,753
Capital	<u>\$83</u>	<u>979,580</u>	<u>\$39</u>	<u>817,283</u>
Total Expenses	\$393	\$4,623,663	\$274	\$5,700,036
Net Income		<u>(\$974,519)</u>		<u>\$451,341</u>
Visits		11,765		20,824
Cost/Visit		\$393		\$274

\* Other represents FQHC Grants and contributions, misc. revenue

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

Payor	Year One		Year Three	
	Visits	%	Visits	%
Commercial FFS	2,824	24.00%	4,998	24.00%
Medicare FFS	1,162	9.88%	2,227	10.69%
Medicaid FFS	4,921	41.83%	8,347	40.08%
Medicaid MC	2,000	17.00%	3,745	17.98%
Charity Care	858	7.29%	1,507	7.24%
Total	11,765	100.0%	20,824	100.0%

The following is noted for the submitted budget:

- Staffing is based on expected utilization and the experience of the applicant as a Federally Funded Health Center in contracting with other Article 28 providers.
- Reimbursement rate assumptions are based on the experience of the applicant as an existing Federally Qualified Health Center that contracts with existing health care providers in the Bronx for the delivery of health care services.
- Per the applicant, BCHN received CARES Act funding in 2021 for \$927,550 (out of a total award amount of \$2,487,350). This funding is also reflected on BCHN's September 20, 2021 internal financial statement under Attachment A. In addition, BCHN was a subcontractor on a DSRIP grant received by Bronx Partners for Healthy Communities. Monies through the subcontract totaled \$457,536, which was received from 2018 to 2021. BCHN has not previously received any direct support from New York State, nor has it been part of a state support program.
- The applicant plans to achieve the projected levels of utilization in the third year through leveraging existing relationships that have been established with a wide range of community providers and organizations to benefit operations of the proposed new center and build awareness of the new D&TC services through community outreach and communication. BCHN will leverage an existing and well-established outreach program to promote healthcare services, recruit patients, and help educate service area residents on relevant health topics, promote wellness, and address social needs. The outreach program will continue to work to build collaborative programs and partnerships with neighborhood groups to improve community health outcomes.

### Lease Agreement

The applicant has submitted an arm's length lease letter of interest and letters from two New York realtors attesting to the rent reasonableness. The terms of the lease letter of interest for the proposed center's main site are summarized below.

Premises:	11,000 square feet of space at 3763 White Plains Road, Bronx New York 11229
Landlord:	White Plains Estates LLC
Tenant:	Bronx Community Health Network, Inc.
Term:	10 years
Rent:	\$330,000 annually
Provisions:	Tenant is responsible for Insurance, maintenance, repairs, utilities and property taxes.

### Capability and Feasibility

Total project costs of \$5,031,392 will be met via \$2,141,698 in grant funds through the American Rescue Plan Act Funding for Health Centers; \$1,675,992 via a loan from the Community Health Center Capital Fund at 6% interest for a ten-year term and an amortization period of 20 years; and \$1,213,702 to be financed through the New Markets Tax Credit (NMTC) program. The applicant has provided a copy of the American Rescue Plan Notice of Award, and a loan letter of interest from Community Health Center Capital Fund at the stated terms.

Working capital requirements are estimated at \$950,006 based on two months of third-year expenses and will be satisfied via the ongoing operations of BCHN. BFA Attachment A, the Internal Financial Statements of BCHN as of September 30, 2021, reveals sufficient liquid resources available to meet the

working capital requirement of this application. BFA Attachment D, the pro forma balance sheet for the applicant, indicates that the facility will begin operations with equity of \$2,715,044.

The submitted budget indicates the facility will generate a net operating loss of \$974,519 in the first year and an excess of revenue over expenses of \$451,341 in the third year. Revenues are based on prevailing reimbursement methodologies for D&TCs. The applicant has provided a letter indicating that the first year's net operating losses will be offset via operating cash. The budget appears reasonable.

**Conclusion**

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

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**Attachments**

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- BHFP Attachment    Map
- BFA Attachment A    Bronx Community Health Network, Inc.'s Internal Financial Statement as of September 30, 2021
- BFA Attachment B    Pro Forma Balance Sheet for Bronx Community Health Network, Inc.



**Project # 212242-B  
NY PACE Care Facility, LLC**

**Program:** Diagnostic and Treatment Center      **County:** Kings  
**Purpose:** Establishment and Construction      **Acknowledged:** December 13, 2021

**Executive Summary**

**Description**

NY PACE Care Facility, LLC (NY PACE) is seeking approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) that will solely serve Welbe Health NYC PACE, LLC's Article 44 Program of All-Inclusive Care for the Elderly (PACE). The D&TC will be located on the second floor with the PACE program on the second, third, and fourth floors of 5521 8th Avenue, Brooklyn (Kings County). Welbe Health NYC PACE, LLC will lease space from the building owner, and the D&TC will sublease space from Welbe Health NYC PACE, LLC.

The PACE model of care provides comprehensive medical and social services, including case management, social services, physician, hospital, and nursing home care to adults aged 55 and older who want to remain in their own homes. Most of these individuals are dually eligible for Medicare and Medicaid benefits.

The D&TC, which is one component of the PACE program, will provide primary medical care, outpatient dental and blood draws (phlebotomy) solely for enrollees of the PACE program. To this end, the D&TC will be certified for Medical Services – Primary Care and Dental O/P services. This Certificate of Need (CON) application is only for the Article 28 D&TC. The managed long-term care portion of a PACE program is regulated under Article 44 of the New York Public Health Law; therefore, Welbe Health NYC PACE, LLC has submitted an application to be certified as a PACE provider under Article 44.

The sole member of NY PACE Care Facility, LLC is Clancy (Si) France, M.D. The D&TC will enter into an Administrative Services Agreement with Welbe Health NYC PACE, LLC. Welbe Health NYC PACE, LLC's ownership is comprised of Welbe Health, LLC (80%) and CAIPA, Inc (20%).

Dr. Otashe N. Golden, who is board-certified in family medicine, hospice and palliative care, and wound care, will serve as Medical Director.

The D&TC expects to have a transfer and affiliation agreement for emergency and backup services with Maimonides Medical Center, which is 1 mile and 7 minutes travel time from the proposed center.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

The facility will serve the Welbe Health NYC PACE, exclusively. The PACE will provide comprehensive medical and social services to elderly individuals who live in the community.

**Program Summary**

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

### **Financial Summary**

The total project cost is estimated at \$900,781 to be funded entirely by equity provided by Welbe Health, LLC. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,352,662	\$3,273,264
Expenses	<u>\$1,381,960</u>	<u>\$3,302,562</u>
Gain/(Loss)	(\$29,298)	(\$29,298)



## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

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

#### Approval conditional upon:

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

### Council Action Date

April 5, 2022

## Need and Program Analysis

### Program Description

<b>Proposed Operator</b>	NY PACE Care Facility, LLC
<b>Site Address</b>	5521 8 <sup>th</sup> Avenue Brooklyn, NY 11229 (Kings County)
<b>Certified Services</b>	Medical Services-Primary Care Dental O/P
<b>Hours of Operation</b>	Monday through Friday 8:00 AM to 4:00 PM
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	8.00 FTEs / 21.00 FTEs
<b>Medical Director(s)</b>	Otashe Golden, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Maimonides Medical Center 1.0 miles / 7 minutes away

### Analysis

The primary service area is Brooklyn (Kings County). Kings County is designated by the Health Resources and Services Administration (HRSA) as a Health Professional Shortage Area for both Primary Care and Dental Services. The population of Kings County was 2,736,074 in 2020 and is expected to grow to 2,810,876 by 2025. According to Data USA, in 2019 95.5% of the population in New York County has health coverage as follows.

Employer Plans	41.70%
Medicaid	33.20%
Medicare	8.05%
Non-Group Plans	10.50%
Military or VA	0.22%

The Hospital Prevention Quality Indicators (PQIs) for Adult Discharges in ZIP Code 11220 in 2017 are noted below:

PQIs	Observed*	Expected*
Diabetes Long Term	99.7	72.8
COPD	444.6	329.5
Heart Failure	228.7	232.5
Dehydration	103.5	75.7
Bacterial Pneumonia	71.6	89.3
Uncontrolled Diabetes	47.3	44.2
PQI Overall Composite	963.5	879.0
Acute Composite	253.0	256.1
Chronic Composite	710.5	623.1
Diabetes	175.1	148.9
All Circulatory Composite	279.8	282.2
All Respiratory Composite	255.6	192.1

\* per 100,000 people

Relevant data from the New York State Community Health Indicator Reports (CHIRS) for Kings County is noted below:

	Data Years	Kings County	NYS	NYC
Percent Population in Poverty	2018	18.9%		13.7%
Percent Population with Medicaid	2014-2018	36.5%	25.4%	33.0%
Number of Primary Care MDs per 100,000	2017	64	82	
Number of Mental Health Providers per 100,000	2019	220	289	
Number of Dentists per 100,000	2018	64	82	

The applicant projects 2,808 visits in Year One and 13,176 in Year Three.

### **Character and Competence**

The sole member of NY PACE Care Facility, LLC is Clancy (Si) France.

**Clancy (Si) France, MD** is the Founder and CEO of WelbeHealth, LLC, a PACE provider. Previously, he was the Founder and CEO of GoHealth Urgent Care where he was responsible for integrating urgent care with hospital systems, and the Engagement Manager of McKinsey & Company where he led operational transformation across several hospital systems for bottom-line impact, served private equity funds on thesis development and acquisition diligence, and developed knowledge around the combined impact of economic volatility and policy in the Health Reform Institute. Dr. France disclosed ownership of the following health care facilities/agencies:

WelbeHealth Sierra PACE (PACE)	2016-present
Stockton PACE (ADHC)	2016-present
Stockton PACE (HHA)	2016-present
WelbeHealth Pacific PACE (PACE)	2017-present
Pacific PACE (ADHC)	2017-present
Pacific PACE (HHA)	2017-present
WelbeHealth Coastline PACE (PACE)	2018-present
LA Coast PACE (ADHC)	2018-present
WelbeHealth Sequoia PACE (PACE)	2018-present
Sequoia PACE (ADHC)	2018-present

**Otashe Golden, MD** is the proposed Medical Director. She has been the owner of Otashe Golden MD, Inc for over 20 years and has been the Medical Director of NY PACE Care Facility for approximately one year. In addition, she holds the following positions: Medical Director of WelbeHealth Sierra PACE and the HHA Director of Patient Care Services of Stockton PACE (HHA), Pain Management Committee Chair, Palliative Care Medical Director, and member of the Utilization Management Committee. She was the Chief of Medicine for approximately six years. She received her medical degree from Albany Medical Center and completed her residency in Family Medicine at Sutter Health. She is board-certified in Family Medicine.

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

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

### **Conclusion**

The PACE program, which the proposed D&TC is a part of, will provide comprehensive medical and social services to elderly individuals residing in the community, most of whom are dually eligible for Medicare and Medicaid benefits. The individual background review indicates the proposed member has met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### Operating Budget

The applicant has submitted first and third years operating budgets, in 2022 dollars, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
MLTCP	\$481.72	<u>\$1,352,662</u>	\$248.43	<u>\$3,273,264</u>
Total Revenue		\$1,352,662		\$3,273,264
<u>Expenses</u>				
Operating	\$442.72	\$1,243,162	\$239.67	\$3,157,935
Capital	<u>\$49.43</u>	<u>\$138,798</u>	<u>\$10.98</u>	<u>\$144,627</u>
Total Expenses	\$492.15	\$1,381,960	\$250.65	\$3,302,562
Net Income (Loss)		<u>(\$29,298)</u>		<u>(\$29,298)</u>
Total Visits		2,808		13,176

The following is noted regarding the submitted budget:

- Article 44 PACE program utilization is based on the physical capacity of the initial PACE Program location and assumptions built around historical MMCOR data for New York City PACE plans.
- The proposed D&TC will serve only patients who are enrolled in Welbe Health NY PACE, LLC PACE Program. Therefore, the only payor will be Welbe Health NYC PACE, LLC (Medicare).
- The D&TC's revenue and utilization assumptions are based on the projected number of PACE program participants in the Article 44 application.
- The reimbursement rates were set by Welbe Health NYC PACE, LLC based on the overall expenses for the D&TC.
- Expense and staffing assumptions are based on the projected utilization, certain industry standards, and experience of similar D&TCs in New York State.

### Total Project Cost and Financing

The total project costs for renovations and the acquisition of moveable equipment are estimated at \$900,781 broken down as follows:

Renovation	\$585,989
Design Contingency	\$58,599
Construction Contingency	\$58,599
Architect /Engineering Fees	\$137,700
Moveable Equipment	\$52,978
CON Application Fee	\$2,000
Additional Fees	<u>\$4,916</u>
Total Project Cost	\$900,781

The total project costs of \$900,781 will be met via cash equity provided by Welbe Health, LLC.

### **Administrative Service Agreement**

The applicant has provided a draft Administrative Service Agreement, summarized below:

Facility Operator:	NY PACE Care Facility, LLC
Service Provider:	Welbe Health NYC PACE, LLC
Term:	3 years with unlimited 3-year renewals
Services:	General administrative services, accounting and financial services, banking and finance, collection services, compliance, and project management.
Compensation:	\$10,000 per month

While Welbe Health NYC PACE, LLC will be providing all the services listed above, the facility operator retains ultimate control in all final decisions associated with the services. The applicant has submitted an attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable. It is noted that the proposed Administrative Service Agreement is a non-arm's length agreement as there is a relationship between the facility operator and the consultant.

### **Lease Rental Agreement**

The applicant has submitted a draft lease for the proposed facility, summarized below:

Date:	September 27, 2021
Premises:	Suites 2a,2b,2c,2d, 2e, 2f,2g, 2h, 3e, 4f and 4h consisting of approximately 14,814 gross square feet of area in 5515 8 <sup>th</sup> Ave, Brooklyn, NY
Landlord:	Golden 8 <sup>th</sup> Ave Realty Corp
Lessee:	Welbe Health NYC Pace, LLC
Term:	15 years with two 5-year extension periods
Rental:	\$725,886 annually for Year One with an annual 3% rent increase
Provisions:	Tenant is responsible for maintenance, utilities, real estate taxes, and insurance

### **Sub-Lease Rental Agreements**

The applicant has submitted a draft sub-lease agreement for the facility, summarized below:

Premises:	Suites 2a, 2b, 2c, 2d, 2e, 2f, 2g, and 2h on the second floor of 5515 8 <sup>th</sup> Ave, Brooklyn, NY which is approximately 10,742 gross square feet.
Landlord:	Golden 8 <sup>th</sup> Ave Realty Corp
Lessee:	Welbe Health NYC Pace, LLC
Sub-Lessee	NY PACE Care Facility, LLC
Term:	15 years with 2 (5) year extension options
Rental:	Year 1 - \$526,358 abated, Year 2 - \$542,149, 3% increase for years 3-15. Options will be based on fair market rental rate for the first year of each option with a 2% annual increase for the remaining years.
Provisions:	Tenant is responsible for maintenance, utilities, real estate tax, and insurance

The applicant has provided an affidavit stating that the lease is an arm's length agreement, and the sublease agreement is a non-arm's length arrangement. Letters from two New York State licensed realtors have been provided attesting to the rental rate being of fair market value.

### **Capability and Feasibility**

Total project costs of \$900,781 will be funded via equity from Welbe Health, LLC. The working capital requirement is \$550,427 based on two months of first-year expenses and will also be funded with equity from Welbe Health, LLC. BFA Attachment A, the 2019-2020 Certified Financial Statements and 11/30/21 Internal Financial Statements of Welbe Health, LLC shows sufficient liquidity to fund the project and working capital equity requirements. BFA Attachment B is the pro forma balance sheet for NY PACE

Care Center, LLC as of the first day of operation, which indicates a positive member's equity of \$1,451,208.

As shown in BFA Attachment A, the 2019-2020 Certified Financials indicate the facility had an average positive working capital position and net asset position. Welbe Health, LLC had an average operating loss of \$13,169,158 for the period 2019-2020. As of 11/30/2021, they had positive working capital and net asset position and a net loss of \$32,425,817. The previous corporate losses for Welbe Health represent early investments in infrastructure necessary to serve PACE participants and initial support for the operational PACE program (these facilities are now profitable on a stand-alone basis). Welbe Health is well-capitalized following a Series D financing and as shown in the November 2021 internal balance sheet, Welbe Health has over \$150 million in cash on hand. Welbe Health is investing in growth and scale, with expansion into New York as part of its investment plan, and expects that its financial results will continue to improve throughout 2022.

**Conclusion**

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

**Attachments**

- BFA Attachment A 2019-2020 Certified Financial Statements and 11/30/2021 Internal Financial Statements for Welbe Health, LLC
- BFA Attachment B Pro Forma Balance Sheet
- BFA Attachment C Organizational Chart



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Kathy Marks *KSM*  
General Counsel

**Date:** March 3, 2022

**Subject:** Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.

---

NYP Community Programs, Inc. ("NYPCP") requests Public Health and Health Planning Council ("PHHPC") approval of a proposed Certificate of Amendment to its Certificate of Incorporation.

NYPCP wishes to eliminate references in its purposes language to New-York Presbyterian/Brooklyn Methodist ("NYP/BM"), as an affiliate of NYPCP. NYP/BM is the operator of New York-Presbyterian Brooklyn Methodist Hospital (the "Hospital"). Currently, NYPCP is the active sole member of NYP/BM and co-operator the Hospital. NYPCP is requesting this change in connection with CON Application #212223, which proposes to merge NYP/BM into The New York and Presbyterian Hospital (NYPH) and certify the Hospital as a new division of NYPH. NYPH is the passive parent of NYPCP and the ultimate parent of NYP/BM. Upon approval of CON Application #212223, NYP/BM will be merged into NYPH, with NYPH as the surviving corporation.

The Board of Directors of NYPCP approved the amendment on December 16, 2021. The Board of Directors of The New York and Presbyterian Hospital, the sole member of NYPCP, also approved the amendment on December 16, 2021.

Approval of the Public Health and Health Planning Council (PHHPC) is required under the Not-for-Profit Corporation Law § 804(a)(i).

There is no legal objection to the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., and it is legally acceptable.

Attachments.



## MEMORANDUM

**TO:** Lisa Thomson  
Division of Health Facility Planning  
  
Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**FROM:** Kerri Tily, Senior Attorney  
Division of Legal Affairs, Bureau of Health Facility Planning and Development

**DATE:** March 3, 2022

**SUBJECT:** Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.

---

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letter from Frank Cicero, consultant of NYP Community Programs, Inc., dated December 10, 2021;
- 3) A copy of the executed Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.;
- 4) A copy of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., dated April 13, 2018;
- 5) A copy of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., dated December 6, 2016;
- 6) A copy of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., dated July 1, 2015;
- 7) A copy of the Restated Certificate of Incorporation of NYP Community Programs, Inc., dated January 26, 2015;
- 8) A copy of the Certificate of Incorporation of NYP Community Programs, Inc., dated September 29, 2014.
- 9) A copy of the Bylaws of NYP Community Programs, Inc., dated November 12, 2017.
- 10) A copy of the proposed Amended and Restated Bylaws of NYP Community Programs, Inc.; and
- 11) A copy of the Resolution of the Board of Directors of the of New York Community Programs, Inc., dated December 16, 2021, consenting to amending the Certificate of Incorporation and bylaws; and



12) A copy of the Resolution of the Board of Directors of the New York and Presbyterian Hospital, the sole member of New York Community Programs, Inc., dated December 16, 2021, consenting to amending the Certificate of Incorporation and bylaws.

Attachments

cc: B. DeCogliano, M. Ngwashi

Attachment 1

Placeholder for memo from Kathy Marks

Attachment 2

# Cicero Consulting Associates

---

## VCC, Inc.

*White Plains Unit*  
Frank M. Cicero  
Charles F. Murphy, Jr.  
James Psarianos  
Michael D. Ungerer  
Noella Chung  
Brian Baldwin  
Michael F. Cicero  
Karen Dietz  
Evelyn Branford  
Michael C. Maiale  
Linda Cammisia, R.N.  
Patrick Clemente

925 Westchester Ave. • Suite 201 • White Plains, NY 10604  
Tel: (914) 682-8657 • Fax: (914) 682-8895  
cicero@ciceroassociates.com

*Albany Unit*  
William B. Carmello  
Joseph F. Poff  
Albert L. D'Amato  
Mark Van Guysling  
Rosemarie Porco  
Daniel Rinaldi, Jr.  
Mary Ann Anglin

*Emeritus Consultants*  
Nicholas J. Mongiardo  
Joan Greenberg  
Martha H. Poff  
Frank T. Cicero, M.D.  
Rose Murphy

Michael P. Parker, Sr.  
(1941-2011)  
Anthony J. Maddaloni  
(1952-2014)

December 10, 2021

Ms. Colleen M. Leonard, Executive Secretary  
Public Health and Health Planning Council  
NEW YORK STATE DEPARTMENT OF HEALTH  
Corning Tower, Room 1805  
Empire State Plaza  
Albany, New York 12237


**RE: NYP COMMUNITY PROGRAMS, INC.**  
**Certificate of Amendment of Certificate of Incorporation**

Dear Ms. Leonard:

We represent NYP Community Programs, Inc. (NYPCP), the active sole corporate member of NewYork-Presbyterian/Brooklyn Methodist (NYP/BM). Under Certificate of Need (CON) Application 212223-C, NYP/BM will be merged into NewYork-Presbyterian Hospital – New York Weill Cornell Center (NYPH-NYWCC) and NYP/BM will cease to exist as a separate corporate entity. As a result of that action, NYP Community Programs, Inc. must secure the approval of the Public Health and Health Planning Council (PHHPC) to amend its Certificate of Incorporation, to eliminate references to NYP/BM.

Please find enclosed a proposed Certificate of Amendment of the Certificate of Incorporation of NYPCP, which seeks to achieve the purpose noted above. I have also enclosed the existing Certificate of Incorporation, prior amendments, current bylaws and proposed bylaws of NYPCP. NYPCP requests the approval of PHHPC to amend its Certificate of Incorporation and, in keeping with discussions with the Bureau of Project Management, asks that this request be processed concurrently with CON Application 212223-C.

Please let me know if you require any additional information regarding this matter. Thank you.

Sincerely,  
  
Frank M. Cicero

cc: Ms. Celi Ortiz, NYPH-NYWCC

**Attachment 3**

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the  
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chairman of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("**NPCL**"), and does hereby further certify as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29, 2014 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:

i. Amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, to delete NewYork-Presbyterian/Brooklyn Methodist as an affiliate of the Corporation so that said Paragraph (a) shall read in its entirety as follows:

"THIRD: (a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliates, Hudson Valley Hospital Center (doing business as NewYork-Presbyterian/Hudson Valley Hospital), and NewYork-Presbyterian/Queens, each a New York not-for-profit corporation licensed as a

hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (individually, a "Hospital" and collectively, the "Hospitals"), by:

(1) serving as the sole member of each Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of a Hospital and/or the communities served by a Hospital by performing certain functions of, and carrying out the charitable mission of, each Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of, and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, the Hospitals, and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes."

ii. Amend Article ELEVENTH, which sets forth the agent of the Corporation upon whom process against it may be served, to read in its entirety as follows:

"ELEVENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

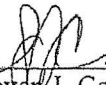
NYP Community Programs, Inc.  
c/o The New York and Presbyterian Hospital  
Office of Legal Affairs  
466 Lexington Avenue, Box 36  
New York, NY 10017  
Attn: General Counsel"

5. This Amendment to the Certificate of Incorporation was duly authorized by the Board of Directors of the Corporation at a meeting duly held and was authorized by the Member of the Corporation at a meeting duly held in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:



NYP Community Programs, Inc.  
c/o The New York and Presbyterian Hospital  
Office of Legal Affairs  
466 Lexington Avenue, Box 36  
New York, NY 10017  
Attn: General Counsel

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein affirmed astrue under penalty of perjury this 13th day of January, 2022.

By:   
Name: Steven J. Corwin, MD  
Title: Chairman

Attachment 4

*STATE OF NEW YORK*

*DEPARTMENT OF STATE*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on April 16, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

CSC 45  
Drawdown

1804 13000629

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the  
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chairman of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29th, 2014 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:

Amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, to delete New York-Presbyterian/Lawrence Hospital as an affiliate of the Corporation so that said Paragraph (a) shall read in its entirety as follows:

"THIRD: (a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York-Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliates, Hudson Valley Hospital Center (doing business as New York-Presbyterian/Hudson Valley Hospital), New York-Presbyterian/Queens and New York-Presbyterian/Brooklyn Methodist (doing business as New York-Presbyterian Brooklyn Methodist Hospital), each a New York not-for-profit

corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (individually, a "Hospital" and collectively, the "Hospitals"), by:

(1) serving as the sole member of each Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of a Hospital and/or the communities served by a Hospital by performing certain functions of, and carrying out the charitable mission of, each Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of, and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, the Hospitals, and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes."

5. This Amendment to the Certificate of Incorporation was duly authorized by the Board of Directors of the Corporation at a meeting duly held, and was authorized by the member of the Corporation at a meeting duly held, in each case in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

NYP Community Programs, Inc.  
c/o The New York and Presbyterian Hospital  
Office of Legal Affairs  
525 East 68th Street, Box 88  
New York, NY 10065  
Attn: General Counsel

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed  
as true under penalties of perjury this day of 12/14, 2017.

By:   
Name: Steven J. Corwin, MD  
Title: Chairman



*PUBLIC HEALTH AND HEALTH PLANNING COUNCIL*

---

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.ny.gov

December 20, 2017

Patricia Smyth  
Cicero Consulting Associates  
701 Westchester Avenue, Suite 210W  
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 7th day of December, 2017, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of Certificate of Incorporation of NYP Community Programs, Inc. dated December 14, 2017.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at [HFISmb@health.ny.gov](mailto:HFISmb@health.ny.gov)

Sincerely,

A handwritten signature in cursive script that reads "Colleen M. Leonard".

Colleen M. Leonard  
Executive Secretary

/cl



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

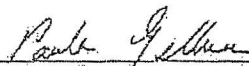
DIVISION OF SOCIAL JUSTICE  
CHARITIES BUREAU

TO: Anita R. Golbey, Esq.  
VP and Deputy General Counsel  
New York-Presbyterian-Weill Cornell  
525 East 68<sup>th</sup> Street, Box 88  
New York, NY 10065

RE: NYP Community Programs, Inc.

The Attorney General hereby approves pursuant to N-PCL § 804(a)(ii)(A) the proposed Certificate of Amendment of NYP Community Programs, Inc. Said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

April 6<sup>th</sup>, 2018

  
Paula Gellman  
Assistant Attorney General



CSC 45  
Drawdown

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

FILED

2018 APR 13 PM 4:42

Filed by:

Under Section 803 of the New York Not-for-Profit Corporation Law

Anita R. Golbey, Esq.  
525 East 68<sup>th</sup> Street, Box 88  
New York, NY 10065

Cust Ref #155518  
KXC

JCC  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 13 2018

TAXS \_\_\_\_\_

BY: HVP

RECEIVED

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**Attachment 5**

*STATE OF NEW YORK*  
*DEPARTMENT OF STATE*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 7, 2016.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

E-12

161206000390

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the  
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chief Executive Officer of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29th, 2014 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:

Amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, to add New York-Presbyterian/Lawrence Hospital and New York-Presbyterian/Brooklyn Methodist as affiliates of the Corporation so that said Paragraph (a) shall read in its entirety as follows:

"(a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and subsidizing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities

served from time to time by the Corporation's affiliates, Hudson Valley Hospital Center (doing business as New York-Presbyterian/Hudson Valley Hospital), New York-Presbyterian/Queens, New York-Presbyterian/Lawrence Hospital and New York-Presbyterian/Brooklyn Methodist, each a New York not-for-profit corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (individually, a "Hospital" and collectively, the "Hospitals"), by:

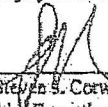
(1) serving as the sole member of each Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of a Hospital and/or the communities served by a Hospital by performing certain functions of, and carrying out the charitable mission of, each Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of, and (ii) the governance, policy making, and strategic planning for, and (b) provide other forms of support for the benefit of, the Hospitals, and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes."

5. This Amendment to the Certificate of Incorporation was duly authorized by the sole member of the Corporation.
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

NYP Community Programs, Inc.  
c/o The New York and Presbyterian Hospital  
Office of Legal Affairs  
325 East 68th Street, Box 88  
New York, NY 10065  
Attn: General Counsel

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 31<sup>st</sup> day of October 2016.

By:   
Name: Steven S. Corwin, MD  
Title: Chief Executive Officer



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.ny.gov

November 22, 2016

Patricia Smyth  
Cicero Consulting Associates  
701 Westchester Avenue  
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 6th day of October, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of the NYP Community Programs, Inc. dated October 31, 2016.

Sincerely,

*Colleen M. Leonard*  
Colleen M. Leonard  
Executive Secretary

/s/



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. ROSENTHAL  
Attorney General

DIVISION OF SOCIAL JUSTICE  
CHARLES SCHEIDT

The Attorney General hereby approves pursuant to N-PCL § 804(a)(1)(A) the proposed Certificate of Amendment of NYF Community Programs, Inc. Said approval is conditioned on submission to the Department of State for filing within 60 days hereof. A copy of the filed certificate shall be provided to the Attorney General.

11-28-16

*Paul J. Quinn*  
Paul J. Quinn  
Assistant Attorney General



350

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the New York Not-for-Profit Corporation Law

RECEIVED  
2016 DEC 6 AM 11:04

h.c.f.  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED DEC 06 2016  
DWS  
DWS

Filer: Anita Colbey  
525 East 68<sup>th</sup> Street (Box 88)  
New York, NY 10065.

E-12 /  
DRAWDOWN

2016 DEC -6 PM 12:14  
FILED

411

Attachment 6

*STATE OF NEW YORK*

*DEPARTMENT OF STATE*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on July 1, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CSC 45  
DRAW DOWN

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the  
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chief Executive Officer of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29th, 2014 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:

Amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, to add New York Presbyterian/Queens as an affiliate of the Corporation so that said Paragraph (a) shall read in its entirety as follows:

"(a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliates, Hudson Valley Hospital Center and New York Presbyterian/Queens, each a New York not-for-profit corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section

509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (individually, a "Hospital" and collectively, the "Hospitals"), by:


(1) serving as the sole member of each Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of a Hospital and/or the communities served by a Hospital by performing certain functions of, and carrying out the charitable mission of, each Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of; and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, the Hospitals; and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes."

5. This Amendment to the Certificate of Incorporation was authorized by the Board of Directors of the Corporation at a meeting duly held and was authorized by the members of the Corporation at a meeting duly held in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: NYP Community Programs, Inc., c/o The New York and Presbyterian Hospital Office of Legal Affairs, 525 E. 68<sup>th</sup> Street, Box 88, New York, NY 10065 Attn: General Counsel.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 20<sup>th</sup> day of May, 2015.

By:   
Name: Steven J. Corwin, M.D.  
Title: Chief Executive Officer



**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-8954  
PHHPC@health.ny.gov

June 17, 2015

Patricia Smyth  
Cleero Consulting Associates  
701 Westchester Avenue, Suite 210W  
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council and Health Planning Council held on the 16th day of April, 2015, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., dated May 20, 2015.

Sincerely,

*Colleen M. Leonard*  
Colleen M. Leonard  
Executive Secretary

/cl



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHWARTZMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
CHARLES BOSSAD

The Attorney General hereby approves pursuant to N-POL § 604(a)(1)(A) the proposed Certificate of Amendment of NYP Community Programs, Inc. said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

6-19-15  
Date

*Paula J. Allen*  
Paula J. Allen  
Assistant Attorney General



798

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DRAW DOWN

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

FILED

2015 JUL -1 PM 2:32

Under Section 803 of the New York Not-for-Profit Corporation Law

Filed by:

Anita R. Golbey, Esq.  
525 East 68<sup>th</sup> Street, Box 88  
New York, NY 10065

Call 692 7375JC

*la*

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2015 JUL -1 PM 1:16

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED JUL 01 2015  
TAXS  
BY: *par*

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Attachment 7

UNCLASSIFIED//FOR OFFICIAL USE ONLY

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on January 26, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CSC 45  
Drawdown

150126000619

RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

Under Section 805 of the  
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chief Executive Officer of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29th, 2014 under Section 402 of the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:
  - (a) amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, by modifying said Paragraph (a) to read in its entirety as follows:

"(a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliate, Hudson Valley Hospital Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (the "Hudson Valley Hospital"), by:

(1) serving as the sole member of Hudson Valley Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of Hudson Valley Hospital and/or the communities served by Hudson Valley Hospital by performing certain functions of, and carrying out the charitable mission of, Hudson Valley Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate; (i) the charitable mission and purposes of; and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, Hudson Valley Hospital; and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

- (b) re-designate Paragraph (b), (c) and (d) of Article THIRD as Paragraphs (c), (d), and (e), respectively, of said Article THIRD, and add new Paragraph (b) of said Article THIRD to provide that the Corporation's purposes as described in Paragraph (a) of Article THIRD do not preclude the Corporation from owning certain ownership or other interests in certain other entities, which new Paragraph (b) shall read in its entirety as follows:

"(b) Paragraph (a) of this Article THIRD shall not preclude the Corporation from owning, directly or indirectly: (i) shares of stock, membership interests or other ownership interests in one or more for-profit business corporations or other business entities, including, without limitation, general or limited partnerships, limited liability companies, or limited liability partnerships; or (ii) membership interests in one or more not-for-profit corporations, which for-profit and/or not-for-profit entities operate in furtherance of, and support the charitable purposes, mission, objectives, operations and activities, of the Corporation, as set forth in this Article THIRD."

- (c) Amend old Paragraph (c) of Article THIRD, which sets forth limitations on the Corporation's activities, which Paragraph (c) is to be re-designated as new Paragraph (d) of Article THIRD, as follows:

(i) delete clause (i) thereof in its entirety;

(ii) amend clause (ii) thereof, which shall be re-designated as clause (i) of said Paragraph C of Article THIRD, to delete the references to "hospital" and Article "28" of the PHL, so that said clause (i) of new Paragraph (d) of new Article THIRD shall read in its entirety as follows:

"(i) establish, operate or maintain a home care services agency, a hospice, a managed care organization or a health maintenance organization, as

provided for by Articles 36, 40 and 44 respectively, of the PHL and implementing regulations;"

(iii) amend clause (vi) thereof, relating to the Corporation's ability to solicit contributions for certain types of organizations, which shall be re-designated as clause (v) of said new Paragraph (d) of new Article THIRD, to delete the reference therein to "a PHL Article 28 facility" so that said clause (v) of new Paragraph (d) of Article THIRD shall read in its entirety as follows:

"(v) solicit any funds, contributions or grants, from any source, for the support of a SSL Article 7 facility."

(d) re-designate old clause (vi) of Paragraph (d) of Article THIRD, which sets forth certain restrictions on the Corporation's activities that require the prior consent or approval from specified New York State governmental and/or regulatory agencies, as clause (vi) of Paragraph (d) of said Article THIRD, and amend by:

(i) modifying the statutory reference to "Section 404(a) through (v) of the NPCL" to remove clauses (c) and (e) of NPCL Section 404 from such restrictions, and to change the reference to clause "(v)" of NPCL Section 404(a) to be clause "(w)" of NPCL Section 404(a), so that such statutory reference reads "Section 404(a) through (u), (e), (q), (r), (u), (v) and (w) of the NPCL";

(ii) adding the following sentence at the end of said new Paragraph (d):

"Notwithstanding the foregoing restrictions of this Paragraph (d) on the Corporation's activities, the Corporation may, directly or indirectly, be a member of, or hold an ownership interest in, any entity that is authorized to provide any of the services or perform any of the actions or functions listed herein."

(e) Omit Article FOURTH of the Certificate of Incorporation, which provides that the Corporation is not formed to engage in any purpose or activity requiring consent or approval, and accordingly re-designate Articles FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, and TENTH as Articles FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, and NINTH, respectively;

(f) Amend Article FIFTH, as re-designated above, which provides that no part of the assets, net earnings, income or profit of the Corporation shall be distributed to or inure to the benefit of any trustee, director, officer, or employee of the Corporation or to any other private person, so that said Article FIFTH reads in its entirety as follows:

"No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, trustee, director, officer or employee of the Corporation or other private person, except as permitted by law; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person

for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation."

- (g) Omit Articles ELEVENTH and FOURTEENTH of the Certificate of Incorporation, which set forth information regarding the incorporators and initial Directors of the Corporation, as such information is not required to be set forth in a restated certificate of incorporation in accordance with Section 805(c) of the NPCL, and accordingly redesignate Article TWELFTH and THIRTEENTH as Articles TENTH and ELEVENTH, respectively; and
- (h) make certain minor non-substantive changes to the format and language of the Certificate of Incorporation.
5. This Restated Certificate of Incorporation was unanimously authorized by the members of the Board of Directors of the Corporation by written consent and authorized by the members of the Corporation by written consent in accordance with NPCL Sections 708(b), 614(a), and 802(x).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: NYP Community Programs, Inc., c/o The New York and Presbyterian Hospital Office of Legal Affairs, 525 E. 68<sup>th</sup> Street, Box 88, New York, NY 10065 Attn: General Counsel.
7. The text of the Certificate of Incorporation of the Corporation, as amended hereby, is restated to read in its entirety as follows:

FIRST: The name of the Corporation is NYP Community Programs, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.

THIRD: (a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliate, Hudson Valley Hospital Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a).

of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(s)(1) and Section 170(b)(1)(A)(ii) of the Code (the "Hudson Valley Hospital"), by:

(1) serving as the sole member of Hudson Valley Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of Hudson Valley Hospital and/or the communities served by Hudson Valley Hospital by performing certain functions of, and carrying out the charitable mission of, Hudson Valley Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of; and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, Hudson Valley Hospital; and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities; and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

(b) Paragraph (a) of this Article THIRD shall not preclude the Corporation from owning, directly or indirectly: (i) shares of stock, membership interests or other ownership interests in one or more for-profit business corporations or other business entities, including, without limitation, general or limited partnerships, limited liability companies, or limited liability partnerships; or (ii) membership interests in one or more not-for-profit corporations, which for-profit and/or not-for-profit entities operate in furtherance of, and support the charitable purposes, missions, objectives, operations and activities, of the Corporation, as set forth in this Article THIRD.

(c) The Corporation shall engage in activities in furtherance of the purposes described in Paragraph (a) of this Article THIRD exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Code.

(d) Notwithstanding anything to the contrary in this Certificate, nothing contained herein shall authorize the Corporation, directly or indirectly, to: (i) establish, operate or maintain a home care services agency, a hospice, a managed care organization or a health-maintenance organization, as provided for by Articles 36, 40 and 44 respectively, of the PHL and implementing regulations; (ii) establish or operate an independent practice association; (iii) establish, operate, construct, lease or maintain an adult home, an enriched housing program, a residence for adults or an assisted living program, as provided for by Article 7 of the New York State Social Services Law, ("SSL"); (iv) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL; (v) solicit any funds, contributions or grants, from any source, for the support of a SSL Article 7 facility; or (vi) otherwise engage in or include among its purposes any of the activities mentioned in Section 404(a) through (a), (p), (q), (r), (u), (v) and (w) of the NPCL or Section 460-a of the SSL, without the Corporation first having obtained consent or approval from the appropriate governmental authority with respect thereto. Notwithstanding the foregoing restrictions of this



Paragraph (d) on the Corporation's activities, the Corporation may, directly or indirectly, be a member of, or hold an ownership interest in, any entity that is authorized to provide any of the services or perform any of the actions or functions listed herein.

(e) The Corporation shall not operate for the purpose of carrying on a trade or business, for profit.

**FOURTH:** In furtherance of the foregoing purposes, the Corporation shall have all of the general rights, powers and privileges enumerated in the NPCL. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

**FIFTH:** No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, trustee, director, officer or employee of the Corporation or other private person, except as permitted by law; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

**SIXTH:** No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

**SEVENTH:** Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation that is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; or (b) as a corporation contributions to which are deductible under Sections 170(e)(2), 2055(a) or 2522(a) of the Code.

**EIGHTH:** In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) NYPH and/or one or more affiliates or successors thereof as are then in good standing under Section 501(c)(3) of the Code; or (b) in the event that NYPH and its affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, in either case, subject to compliance with the rules

and regulations of the New York Department of Health and any other applicable laws of the State of New York and receipt of any and all approvals that may be required by applicable laws of the State of New York.

NINTH: The office of the Corporation shall be located in the County of New York within the State of New York.

TENTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(e) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.


ELEVENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is:

NYP Community Programs, Inc.  
c/o The New York and Presbyterian Hospital  
Office of Legal Affairs  
525 East 68<sup>th</sup> Street — Box 88  
New York, New York 10065  
Attention: General Counsel

[Remainder of this page intentionally left blank. Signature page follows.]

STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
OFFICE OF THE ATTORNEY GENERAL

IN WITNESS WHEREOF this Certificate has been signed and the statements made  
herein affirmed as true under penalties of perjury this 19<sup>th</sup> day of December, 2014.

By:   
Name: Stephen J. Corwin, M.D.  
Title: Chief Executive Officer

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12180

(518) 402-0964  
PHHPC@health.ny.gov

December 29, 2014

Patricia Smyth  
Cleero Consulting Associates  
701 Westchester Avenue  
White Plains, New York 10604

Re: Restated Certificate of Incorporation of NYP Community Programs, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 4th day of December, 2014, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Restated Certificate of Incorporation of NYP Community Programs, Inc., dated December 17, 2014.

Sincerely,

*Colleen M. Leonard*  
Colleen M. Leonard  
Executive Secretary

/s/



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SOLNEDERMAN  
Attorney General

DIVISION OF REGIONAL OFFICES  
WESTCHESTER REGIONAL OFFICE

December 30, 2014

Linda V. Tiano, Esq.  
Epstein, Becker Green  
1227 25<sup>th</sup> Street, NW  
Washington, DC 20037

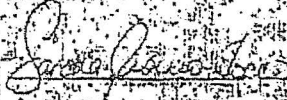
Re: Application of Restated Certificate of Incorporation of  
NYF Community Programs, Inc.

Dear Ms. Tiano:

The Attorney General hereby approves pursuant to the Not-For-Profit Corporation Law § 804(a)(ii)(A) the proposed Restated Certificate of NYF Community Programs, Inc. Said approval is conditioned on submission of the Restated Certificate of Incorporation to the Department of State for filing within 60 days hereafter. A copy of the filed Certificate shall be provided to the Attorney General within 30 days thereafter.

Sincerely,

Eric T. Solnederman  
Attorney General  
State of New York

By: 

Sandra Grant-Locco  
Assistant Attorney General  
Westchester Regional Office

cc: Charities Bureau Registration Unit

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RESTATED CERTIFICATE OF INCORPORATION

OF

NYP COMMUNITY PROGRAMS, INC.

Section 805 of the Not-for-Profit Corporation Law

FILED

2015 JAN 26 PM 2:58

Filer: Epstein Becker & Green, P.c.  
250 Park Avenue  
New York, NY 10177  
Cust. Ref#477347KXK

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loc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JAN 26 2015

TAX \$:

BY: luc

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Attachment 8

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

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ENTITY NAME: NYP COMMUNITY PROGRAMS, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: C COUNTY: NEWY

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FILED:09/29/2014 DURATION:PERPETUAL CASH#:140929000311 FILM #:140929000280

FILER:

EXIST DATE

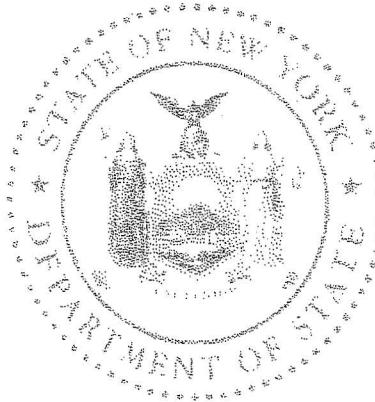
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EVAN M. HELLMAN, ESQ.  
EPSTEIN BECKER & GREEN, P.C.  
250 PARK AVENUE  
NEW YORK, NY 10177-1211

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09/29/2014

ADDRESS FOR PROCESS:

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NYP COMMUNITY PROGRAMS, INC.-C/O THE NY PRESBYTERIAN HOSPITAL  
ATTN: GENERAL COUNSEL 525 EAST 68TH STREET-BOX 88  
NEW YORK, NY 10065

REGISTERED AGENT:



=====

SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45

FEEs            160.00  
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FILING            75.00  
TAX                0.00  
CERT              0.00  
COPIES            10.00  
HANDLING         75.00

PAYMENTS        160.00  
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CASH              0.00  
CHECK             0.00  
CHARGE            0.00  
DRAWDOWN        160.00  
OPAL              0.00  
REFUND            0.00

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DOS-1025 (04/2007)



**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 30, 2014.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

140929000

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CERTIFICATE OF INCORPORATION  
OF  
NYP COMMUNITY PROGRAMS, INC.

Under Section 402 of the  
New York Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-for-Profit Corporation Law (the "NPCL"), does hereby certify (this "Certificate") as follows:

FIRST: The name of the corporation is NYP Community Programs, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.

THIRD: (a) The Corporation is organized, and shall be operated exclusively, as a charitable corporation for the purposes of: (i) supporting, promoting and improving the public health and welfare of the communities in the New York metropolitan area by planning for, preparing and assisting in the processing of an application to the Public Health and Health Planning Council of the New York State Department of Health and all other governmental and regulatory agencies as may be required by law, for the approval of the Corporation to become the sole member of one or more health care facilities licensed under Article 28 of the New York State Public Health Law (the "PHL"); and (ii) subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges, as may be applicable to not-for-profit corporations organized under the NPCL, in each case in furtherance of accomplishing the foregoing charitable purposes.

(b) The Corporation shall engage in activities in furtherance of the purposes described in paragraph (a) of this Article THIRD exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) Notwithstanding anything to the contrary in this Certificate, nothing contained herein shall authorize the Corporation, directly or indirectly, to: (i) provide hospital services or health related services, as such terms are defined in the PHL; (ii) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40, and 44, respectively, of the PHL and implementing regulations; (iii) establish or operate an independent practice association; (iv) establish, operate, construct, lease or maintain an adult home, an enriched housing program, a residence for adults or an assisted living program, as provided for by Article 7 of the New York State Social Services Law ("SSL"); (v) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B

of the PHL; (vi) solicit any funds, contributions or grants, from any source, for the support of a PHL Article 28 facility or a SSL Article 7 facility; or (vii) otherwise engage in or include among its purposes any of the activities mentioned in Section 404(a) through (v) of the NPCL or Section 460-a of the SSL, in each case without the Corporation first having obtained consent or approval from the appropriate governmental authority with respect thereto. Additionally, nothing in this Certificate shall authorize the Corporation to, within the State of New York, hold itself out as providing or provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physician therapy or radiation therapy.

(d) The Corporation shall not operate for the purpose of carrying on a trade or business, for profit.

FOURTH: The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency, or other body, and no such consent or approval is required.

FIFTH: In furtherance of the forgoing purposes, the Corporation shall have all of the general rights, powers and privileges enumerated in the NPCL. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

SIXTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any trustee, director, officer or employee of the Corporation or other private person; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

SEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

EIGHTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation that is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

NINTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) The New York and Presbyterian Hospital, a New York not-for-profit corporation qualifying under Section 501(c)(3) of the Code ("NYPH") and/or one or more affiliates or successors thereof, as are then in good standing under Section 501(c)(3) of the Code; or (b) in the event that NYPH and its affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, in either case, subject to compliance with the rules and regulations of the New York Department of Health and any other applicable laws of the State of New York and receipt of any and all approvals that may be required by applicable laws of the State of New York.

TENTH: The office of the Corporation shall be located in the County of New York within the State of New York.

ELEVENTH: The names and addresses of the initial Directors of the Corporation, each of whom is at least eighteen (18) years of age, are as follows:

Name	Address
Steven Corwin, M.D.	525 East 68 <sup>th</sup> Street New York, NY 10065
Wayne Osten	525 East 68 <sup>th</sup> Street New York, NY 10065
Gary Zuar	525 East 68 <sup>th</sup> Street New York, NY 10065

TWELFTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

THIRTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is:

NYP Community Programs, Inc.  
c/o The New York and Presbyterian Hospital  
Office of Legal Affairs  
525 East 68<sup>th</sup> Street — Box 88  
New York, New York 10065  
Attention: General Counsel

FOURTEENTH: The Incorporator is at least eighteen (18) years of age.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 29th day of September, 2014:

By: *Evan M. Hellman*  
Name: Evan M. Hellman, Sole Incorporator

c/o Epstein Becker & Green, P.C.  
250 Park Avenue  
New York, NY 10177

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CSC 45  
Drawdown

CERTIFICATE OF INCORPORATION

OF

NYP COMMUNITY PROGRAMS, INC.

Under Section 402 of the  
New York Not-for-Profit Corporation Law

Filed By:

Evan M. Hellman, Esq.  
Epstein Becker & Green, P.C.  
250 Park Avenue  
New York, New York 10177-1211

lcc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

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Attachment 9



AMENDED AND RESTATED BY-LAWS

OF

NYP COMMUNITY PROGRAMS, INC.

A New York Not-for-Profit Corporation

Adopted November 2, 2017 and to be effective upon the consummation of the merger of  
NewYork-Presbyterian Lawrence Hospital with and into  
The New York and Presbyterian Hospital

ARTICLE 1

SOLE MEMBER OF THE CORPORATION;  
ACTION OF THE SOLE MEMBER; NO LIABILITY OF SOLE MEMBER

- 1.1 Sole Member. The Corporation shall have a single member, The New York and Presbyterian Hospital, a New York not-for-profit corporation (the "Member").
- 1.2 Meetings of the Member.
- 1.2.1 The Member shall hold an annual meeting at such date, time and place as shall be established by the Member. In addition to the annual meeting of the Member, the Member may hold such other regular and special meetings at such dates, times and places as shall be determined by the Member and set forth in the notices of meeting. Special meetings of the Member may be called by the Member, the Chairman or Chief Executive Officer of the Corporation or the Board of Directors.
- 1.2.2 Notice of meetings of the Member may be given personally or by mail, or by facsimile telecommunications or electronic mail to the fax number or email address as it appears on the records, of the Member or as filed with the Secretary of the Corporation.
- 1.2.3 Notice of any meeting of the Member may be waived pursuant to the provisions set forth in the NPCL.
- 1.3 Action of the Member. Any action by the Member in regard to the affairs of the Corporation shall be taken in accordance with the By-Laws of the Member and as established by resolution of the Board of Directors of the Member or a duly authorized committee thereof. Whenever under the NPCL, the Member is required or permitted to take any action by vote, such action may be set forth in a consent of the Member, which may be written or electronic and shall in any event be delivered to the Corporation as provided by the NPCL and retained in the records of the Corporation.

- 1.4 No Personal Liability of the Member. In accordance with Section 517(a) of the Not-for-Profit Corporation Law of New York (as amended, restated, modified or supplemented from time to time, the "NPCL"), the Member shall not be personally liable or responsible for the debts, liabilities or obligations of the Corporation.

## ARTICLE 2

### MEMBERSHIP AND ACTIVE PARENT STATUS

- 2.1 Sole Member. The Corporation shall be the sole member of Hudson Valley Hospital Center (doing business as NewYork-Presbyterian Hudson Valley Hospital), NewYork-Presbyterian Queens and NewYork-Presbyterian Brooklyn Methodist Hospital, each a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (individually, a "Hospital" and collectively, the "Hospitals").
- 2.2 Active Parent Status Regarding the Hospitals. In addition to such other rights, powers and authority as are vested in the Corporation in its capacity as the sole member of a Hospital pursuant to the Certificate of Incorporation and By-Laws of each Hospital, the Corporation shall have, as the licensed "active parent" and co-operator under Article 28 of the New York Public Health Law, the following rights, powers and authorities with respect to each Hospital:
- (a) appointment of the members of the Board of Directors of the Hospital;
  - (b) appointment or dismissal of officers, managers and medical staff of the Hospital;
  - (c) approval of the operating and capital budgets and strategic and operating plans of the Hospital;
  - (d) adoption or approval of operating policies and procedures for the Hospital;
  - (e) approval of certificate of need applications filed by or on behalf of the Hospital;
  - (f) approval of any indebtedness of the Hospital;
  - (g) approval of management or clinical services contracts of the Hospital;
  - (h) adoption or approval of any amendment, repeal or other change to the organizational documents (including the Certificate of Incorporation and By-Laws) of the Hospital, including the adoption of any new By-Laws of the Hospital; and

- (i) approval of settlements of administrative or other litigation or proceedings to which the Hospital is a party.

For the purposes of these Bylaws, approval of the Corporation as member shall mean, *inter alia*, the power of the member to: (i) initiate action without a prior recommendation from the Board of Directors of the Hospital; (ii) accept, reject, or modify a recommendation of the Board of Directors of the Hospital and direct action by the Hospital upon such determination; or (iii) return a recommended action to the Hospital's Board of Directors setting forth the reasons for the rejection and/or suggested changes.

2.3 Action as Member. Any action required or permitted to be taken by the Corporation in its capacity as the sole member of a Hospital shall be taken (i) by resolution of the Board of Directors of the Corporation or a duly authorized committee thereof or (ii) pursuant to a Board-approved specific or general delegation to the Board of a Hospital or to an officer or agent of the Corporation or a Hospital.

### ARTICLE 3

#### BOARD OF DIRECTORS

- 3.1 Powers. The Board of Directors of the Corporation shall be vested with all powers and duties for the conduct of the activities of the Corporation and for the management of the properties, affairs and operations of the Corporation, except as may be limited to or conferred upon the Member by law, the Corporation's Certificate of Incorporation, these By-Laws, or a resolution duly adopted by the Member.
- 3.2 Qualifications. Each Director shall be an individual and at least eighteen (18) years of age. At least a majority of the Directors shall be individuals concurrently participating in the supervision, control or management of The New York and Presbyterian Hospital.
- 3.3 Number. The number of Directors comprising the entire Board of Directors shall be set from time to time by the Member, but shall consist of no fewer than three (3) Directors.
- 3.4 Appointment. Term. The Member shall make any new or renewed appointments to the Board of Directors, and shall deliver written notice of such appointment or appointments to the Corporation, in advance of the annual meeting of the Board of Directors. Each Director shall serve for a term of one (1) year and until his or her successor has been duly appointed and qualified. No action to decrease the number of Directors specified in Section 3.3 above shall shorten the term of any incumbent Director.
- 3.5 Resignation. Any Director may resign at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then effective as of that date. The resignation of any Director shall be effective regardless of any acceptance or rejection by the Corporation.
- 3.6 Removal. Any Director may be removed, with or without the assignment of any cause, by

the Member.

- 3.7 Vacancies. If any vacancy exists among the positions available for Directors, whether by the death, resignation or removal of any Director, or by an increase in the number of positions, or because any position has remained unfilled, then the position may be filled by the Member. The Member shall deliver written notice of the appointment to the Corporation. A Director appointed to fill a vacancy shall serve until the next annual meeting of the Board of Directors, and until her or his successor is appointed and qualified.

#### ARTICLE 4

##### MEETINGS OF THE BOARD OF DIRECTORS

- 4.1 Annual Meeting. The annual meeting of the Board of Directors shall be held on such date and at such time as shall be determined by the Board of Directors.
- 4.2 Regular Meetings. Regular meetings of the Board of Directors shall be held on such dates and at such times as shall be determined by the Board of Directors.
- 4.3 Special Meetings. A special meeting of the Board of Directors may be called at any time by the Chairman or the Chief Executive Officer of the Corporation, and shall be called by the Secretary upon the demand of a majority of the Directors, with the date and time for any such special meeting to be specified in the notice of meeting.
- 4.4 Place. Each annual, regular and special meeting of the Board of Directors shall be held at such places within or without the State of New York as may be fixed by the Chairman, the Chief Executive Officer or the Board for annual and regular meetings and in the notice of meetings for special meetings.
- 4.5 Notice. Notice of meetings of the Board of Directors may be given personally or by mail, or by facsimile telecommunication or electronic mail to the address, fax number or email address for each Director as the same appears on the record of Directors or as filed with the Secretary of the Corporation.
- 4.6 Waiver of Notice. Notice of any meeting of the Board of Directors may be waived pursuant to the provisions set forth in the NPCL.
- 4.7 Adjournment. The Directors present at any meeting may vote to adjourn a meeting to another time and place, even if they do not constitute a quorum, but no such meeting shall be reconvened without reasonable notice to those who were not present at the time of the adjournment.
- 4.8 Quorum. A majority of all the Directors then serving, present in person, shall constitute a quorum of the Board of Directors.
- 4.9 Vote. Each Director shall be entitled to one (1) vote on each matter before the Board of Directors.

- 4.10 Action. The affirmative vote of a majority of the Directors, present in person at the time of the vote at a meeting at which a quorum is present, shall be the act of the Board of Directors, except as may be otherwise provided in the Certificate of Incorporation of the Corporation, these By-Laws or the NPCL.
- 4.11 Participation in Meetings of the Board of Directors by Conference Telephone or Video Screen Communication. Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.
- 4.12 Action of the Board of Directors Without a Meeting. Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

## ARTICLE 5

### COMMITTEES OF THE BOARD OF DIRECTORS

- 5.1 Committees. The Board of Directors may create committees of the Board of Directors or committees of the Corporation from time to time, by resolution adopted by the affirmative vote of a majority of the entire Board, or as otherwise set forth in these By-Laws.
- 5.2 Composition, Conduct. Each committee of the Board shall consist of three (3) or more Directors. A quorum for the conduct of business of any committee of the Board of Directors shall consist of a majority of the Directors serving as members of that committee. Each committee of the Board of Directors shall keep regular minutes of its proceedings and report the same to the Board of Directors.
- 5.3 Authority. Each committee of the Board of Directors shall have such authority as is specified in these By-Laws or as may be delegated by resolution of the Board of Directors, except that no committee of the Board of Directors shall have authority as to the following matters:
- (a) the submission to the Member of any action requiring the Member's approval under the Certificate of Incorporation of the Corporation, these By-Laws or the NPCL;
  - (b) the filling of vacancies in the Board of Directors or in any committee of the

Board of Directors;

- (c) the fixing of compensation of any individual for serving as a Director or on any committee of the Board of Directors;
- (d) the amendment, repeal or replacement of these By-Laws, or the adoption of new by-laws of the Corporation; or
- (e) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable.

5.4 Audit and Corporate Compliance. Audit and compliance oversight for the Corporation and of any corporation of which the Corporation is the member shall be exercised by the audit and corporate compliance sub-committee of the System Strategy Committee of the Member (the "Audit and Corporate Compliance Committee").

## ARTICLE 6

### OFFICERS OF THE CORPORATION

- 6.1 Positions, Qualification. The officers of the Corporation shall include a Chief Executive Officer, a Secretary and a Treasurer, and may include one or more Executive Vice Presidents, Senior Vice Presidents and Vice Presidents and such other officers as the Board of Directors may choose to designate from time to time (each, an "Officer"). Any two (2) or more offices may be held by the same person, except the offices of Chief Executive Officer and Secretary.
- 6.2 Election, Term. Each Officer shall be elected by the affirmative vote of a majority of the Board of Directors then serving at the annual meeting of the Board, and shall serve until the following annual meeting and until her or his successor is elected and qualified.
- 6.3 Duties. The powers and duties of the Officers of the Corporation shall be such as may be prescribed by or pursuant to these Bylaws or from time to time by the Board of Directors and, to the extent not so prescribed, as usually appertain to their respective offices, subject to the control of the Board of Directors.
  - 6.3.1 The Chief Executive Officer shall preside at meetings of the Board of Directors and shall supervise the activities of the Board and its committees. The Chief Executive Officer shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors in the absence of the Chairman, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation.
  - 6.3.2 Executive, Senior and other Vice-Presidents shall have such powers and duties as the Board of Directors may prescribe or as the Chief Executive Officer may

delegate.

- 6.3.3. The Secretary shall assure that minutes are prepared for all meetings of the Board of Directors and retained as part of the corporate records of the Corporation, shall assure that appropriate notice is given for all meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer or as otherwise required by law. The Secretary is authorized to delegate any of these functions to one or more assistant secretaries.
- 6.3.4. The Treasurer shall assure that accurate accounts of the assets, receipts and disbursements of the Corporation are maintained, shall produce financial reports as described in these By-laws and as requested by the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. The Treasurer is authorized to delegate any of these functions to one or more assistant treasurers.
- 6.4. Resignation. Any Officer may resign at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then effective as of that date. The resignation of any Officer shall be effective regardless of any acceptance or rejection by the Corporation.
- 6.5. Removal. Any Officer may be removed by the Board of Directors at any time, with or without cause, but such removal shall be without prejudice to the individual's contractual rights, if any, in regard to the Corporation.
- 6.6. Vacancies. Interim Appointments. If any vacancy exists among the offices of the Corporation, whether by the death, resignation or removal of any Officer, or if the Board of Directors deems it necessary to appoint a new Vice President or create a new Officer position at any time between annual meetings of the Board of Directors, then the position may be filled by the affirmative vote of a majority of the Directors then serving. An Officer so appointed shall serve until the next annual meeting of the Board of Directors, and until her or his successor is elected and qualified.

## ARTICLE 7

### POLICIES

- 7.1. Conflict of Interest. The Board of Directors shall adopt a Conflict of Interest Policy of the Corporation, approved by the Audit and Corporate Compliance Committee, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Conflict of Interest Policy of the Corporation shall include: (a) a definition of circumstances that constitute a conflict of interest; (b) procedures for disclosing a conflict of interest; (c) procedures for disclosing, addressing and documenting "related party transactions" (as defined in the NPCL); and (d) such other matters as are required to be included or addressed in such Conflict of Interest Policy pursuant to Section 715-a(b) of the NPCL to the extent applicable to the Corporation.

- 7.2 Whistleblower Protection. The Board of Directors shall adopt a Whistleblower Policy of the Corporation approved by the Audit and Corporate Compliance Committee, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Whistleblower Policy of the Corporation shall include: (a) procedures for the reporting of violations or suspected violations of laws or corporate policies, including procedures for preserving the confidentiality of reported information; (b) a requirement that a copy of the Whistleblower Policy be distributed to all directors, officers and employees of, and volunteers who contribute substantial services to, the Corporation; and (c) such other matters as are required to be included or addressed in such Whistleblower Policy pursuant to Section 715-b(b) of the NPCL to the extent applicable to the Corporation.
- 7.3 Additional Policies. The Board of Directors shall adopt additional policies, as it sees fit and from time to time, in order to facilitate the efficient administration of the Corporation's affairs, and in order to protect and promote the quality and integrity of the Corporation's pursuits.

## ARTICLE 8

### RECORDS AND REPORTS

- 8.1 Annual Financial Report. At the annual meeting of the Member, the Board of Directors shall present a report showing in appropriate detail each of the following in regard to the most recently completed fiscal year of the Corporation:
- (a) the assets and liabilities, including trust funds, of the Corporation;
  - (b) the principal changes in assets and liabilities of the Corporation, including trust funds;
  - (c) the revenues and receipts of the Corporation, both restricted and unrestricted as to particular purposes;
  - (d) the expenses and disbursements of the Corporation, for both general and restricted purposes; and
  - (e) accounts of all restricted assets and the use made of such assets and of the income thereof.

The report shall be verified by the Chief Executive Officer and the Treasurer or by a majority of the Directors then serving, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board of Directors, and shall be attached to the minutes of the annual meeting.

- 8.2 Corporate Records. The Corporation shall maintain corporate records including, at a minimum, each of the following;



- (a) the Corporation's Certificate of Incorporation, with all amendments thereto;
- (b) the Corporation's By-Laws, with all amendments thereto;
- (c) minutes of each meeting of the Board of Directors and of each committee of the Board of Directors;
- (d) all resolutions adopted by the Board of Directors or of any committee of the Board of Directors without a meeting, together with all written consents thereto;
- (e) all written notices delivered by the Member; and
- (f) copies of all corporate tax returns, registrations and other filings with federal, state and local authorities.

## ARTICLE 9

### LIABILITY AND INDEMNIFICATION

9.1 Liability. No Director or Officer of the Corporation shall have any personal liability to the Corporation or its member for damage resulting from any breach of such Director's or Officer's duties as a Director or Officer of the Corporation; provided, however, that this Section 9.1 shall not eliminate or limit the liability of any Director or Officer: (a) if a judgment or other final adjudication adverse to such Director or Officer establishes that his or her acts or omissions: (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such Director or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled; or (ii) created personal liability pursuant to Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability; or (b) to the extent that such personal liability is otherwise required by, or cannot otherwise be eliminated in accordance with, the NPCL or other applicable law.

9.2 Indemnification.

9.2.1 Generally. The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any individual made or threatened to be made a party in any civil or criminal action or proceeding by reason of the fact that such individual, or his or her testator or intestate, is or was a Director or Officer of the Corporation, or, at the request of the Corporation, is or was serving as a director or officer of any other organization, entity or other enterprise, to the full extent and in all such circumstances as shall be permitted under the NPCL, and upon proper authorization all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding.

9.2.2 Exception for Bad Faith and Misconduct. Such required indemnification shall be

subject to the exception that no indemnification may be made to or on behalf of any Director or Officer in the event and to the extent that a judgment or other final adjudication adverse to the Director or Officer establishes that such individual's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law, or that such Director or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made upon any successful appeal of any adverse judgment of final adjudication).

9.2.3 Other Limitations and Prohibitions on Indemnification. No indemnification shall be made under this Section 9.2 if such indemnification would be inconsistent with the provisions of the Corporation's Certificate of Incorporation or a resolution of the Corporation's Board of Directors or other proper corporate action, as any of the foregoing may be in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification.

9.3 Other Rights. The foregoing right of indemnification shall not be deemed exclusive of any other right to which any Director or Officer may be entitled.

## ARTICLE 10

### MISCELLANEOUS

- 10.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January, and end on the last day of December.
- 10.2 Headings. Headings are provided in these By-Laws for reference only, and shall not control any interpretation of the content of any provision hereof.
- 10.3 Delivery of Notice. Whenever any notice is required under these By-laws, such notice shall be given in writing, and may be delivered by any of the following means:
- (a) by regular or certified mail, in which case such notice shall be sent to the addressee's last known street address, and shall be deemed effective three (3) days after mailing;
  - (b) by courier service, in which case such notice shall be sent to a location where the addressee is reasonably expected to be able to accept delivery, and shall be deemed effective upon first attempted delivery;
  - (c) by fax machine, in which case such notice shall be sent to the addressee's last known fax number, and shall be deemed effective upon transmission;
  - (d) by email, in which case such notice shall be sent to the addressee's last known email address, and shall be deemed effective upon transmission; or
  - (e) in person, in which case such notice shall be effective upon delivery.

10.4 Fictitious Names. The Corporation shall not conduct any activities in New York State under any name other than the name appearing in its Certificate of Incorporation, or another name duly registered as a fictitious, assumed or alternative name pursuant to applicable law.



Melissa E. Welch  
Secretary

Initially adopted: September 29, 2014

Amended: Effective July 1, 2015

Amended: Effective December 6, 2016

Amended: November 2, 2017 and to be effective upon the consummation of the merger of New York-Presbyterian Lawrence Hospital with and into The New York and Presbyterian Hospital

Attachment 10

DRAFT 11/04/21

PROPOSED

AMENDED AND RESTATED BY-LAWS

OF

NYP COMMUNITY PROGRAMS, INC.

A New York Not-for-Profit Corporation

Adopted \_\_\_\_\_ and to be effective upon the consummation of the merger of  
New York-Presbyterian/Brooklyn Methodist with and into  
The New York and Presbyterian Hospital

#### ARTICLE I

##### SOLE MEMBER OF THE CORPORATION; ACTION OF THE SOLE MEMBER; NO LIABILITY OF SOLE MEMBER

- 1.1 Sole Member. The Corporation shall have a single member, The New York and Presbyterian Hospital, a New York not-for-profit corporation (the "Member").
- 1.2 Meetings of the Member.
  - 1.2.1 The Member shall hold an annual meeting at such date, time and place as shall be established by the Member. In addition to the annual meeting of the Member, the Member may hold such other regular and special meetings at such dates, times and places as shall be determined by the Member and set forth in the notices of meeting. Special meetings of the Member may be called by the Member, the Chairman or Chief Executive Officer of the Corporation or the Board of Directors.
  - 1.2.2 Notice of meetings of the Member may be given personally or by mail, or by facsimile telecommunications or electronic mail to the fax number or email address as it appears on the records, of the Member or as filed with the Secretary of the Corporation.
  - 1.2.3 Notice of any meeting of the Member may be waived pursuant to the provisions set forth in the NPCL.
- 1.3 Action of the Member. Any action by the Member in regard to the affairs of the

Corporation shall be taken in accordance with the By-Laws of the Member and as established by resolution of the Board of Directors of the Member or a duly authorized committee thereof. Whenever under the NPCL, the Member is required or permitted to take any action by vote, such action may be set forth in a consent of the Member, which may be written or electronic and shall in any event be delivered to the Corporation as provided by the NPCL and retained in the records of the Corporation. No Personal Liability of the Member. In accordance with Section 517(a) of the Not-for-Profit Corporation Law of New York (as amended, restated, modified or supplemented from time to time, the "NPCL"), the Member shall not be personally liable or responsible for the debts, liabilities or obligations of the Corporation.

## ARTICLE 2

### MEMBERSHIP AND ACTIVE PARENT STATUS

- 2.1 Sole Member. The Corporation shall be the sole member of Hudson Valley Hospital Center (doing business as NewYork-Presbyterian Hudson Valley Hospital) and, NewYork-Presbyterian Queens, ~~and NewYork-Presbyterian Brooklyn Methodist Hospital~~, each a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (individually, a "Hospital" and collectively, the "Hospitals").
- 2.2 Active Parent Status Regarding the Hospitals. In addition to such other rights, powers and authority as are vested in the Corporation in its capacity as the sole member of a Hospital pursuant to the Certificate of Incorporation and By-Laws of each Hospital, the Corporation shall have, as the licensed "active parent" and co-operator under Article 28 of the New York Public Health Law, the following rights, powers and authorities with respect to each Hospital:
- (a) appointment of the members of the Board of Directors of the Hospital;
  - (b) appointment or dismissal of officers, managers and medical staff of the Hospital;
  - (c) approval of the operating and capital budgets and strategic and operating plans of the Hospital;
  - (d) adoption or approval of operating policies and procedures for the Hospital;
  - (e) approval of certificate of need applications filed by or on behalf of the Hospital;
  - (f) approval of any indebtedness of the Hospital;
  - (g) approval of management or clinical services contracts of the Hospital;
  - (h) adoption or approval of any amendment, repeal or other change to the

organizational documents (including the Certificate of Incorporation and By-Laws) of the Hospital, including the adoption of any new By-Laws of the Hospital; and

- (i) approval of settlements of administrative or other litigation or proceedings to which the Hospital is a party.

For the purposes of these Bylaws, approval of the Corporation as member shall mean, *inter alia*, the power of the member to: (i) initiate action without a prior recommendation from the Board of Directors of the Hospital; (ii) accept, reject, or modify a recommendation of the Board of Directors of the Hospital and direct action by the Hospital upon such determination; or (iii) return a recommended action to the Hospital's Board of Directors setting forth the reasons for the rejection and/or suggested changes.

2.3 Action as Member. Any action required or permitted to be taken by the Corporation in its capacity as the sole member of a Hospital shall be taken (i) by resolution of the Board of Directors of the Corporation or a duly authorized committee thereof or (ii) pursuant to a Board-approved specific or general delegation to the Board of a Hospital or to an officer or agent of the Corporation or a Hospital.

### ARTICLE 3

#### BOARD OF DIRECTORS

- 3.1 Powers. The Board of Directors of the Corporation shall be vested with all powers and duties for the conduct of the activities of the Corporation and for the management of the properties, affairs and operations of the Corporation, except as may be limited to or conferred upon the Member by law, the Corporation's Certificate of Incorporation, these By-Laws, or a resolution duly adopted by the Member.
- 3.2 Qualifications. Each Director shall be an individual and at least eighteen (18) years of age. At least a majority of the Directors shall be individuals concurrently participating in the supervision, control or management of The New York and Presbyterian Hospital.
- 3.3 Number. The number of Directors comprising the entire Board of Directors shall be set from time to time by the Member, but shall consist of no fewer than three (3) Directors.
- 3.4 Appointment, Term. The Member shall make any new or renewed appointments to the Board of Directors, and shall deliver written notice of such appointment or appointments to the Corporation, in advance of the annual meeting of the Board of Directors. Each Director shall serve for a term of one (1) year and until his or her successor has been duly appointed and qualified. No action to decrease the number of Directors specified in Section 3.3 above shall shorten the term of any incumbent Director.
- 3.5 Resignation. Any Director may resign at any time, such resignation to be made in writing

and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then effective as of that date. The resignation of any Director shall be effective regardless of any acceptance or rejection by the Corporation.

- 3.6 Removal. Any Director may be removed, with or without the assignment of any cause, by the Member.
- 3.7 Vacancies. If any vacancy exists among the positions available for Directors, whether by the death, resignation or removal of any Director, or by an increase in the number of positions, or because any position has remained unfilled, then the position may be filled by the Member. The Member shall deliver written notice of the appointment to the Corporation. A Director appointed to fill a vacancy shall serve until the next annual meeting of the Board of Directors, and until her or his successor is appointed and qualified.

#### ARTICLE 4

##### MEETINGS OF THE BOARD OF DIRECTORS

- 4.1 Annual Meeting. The annual meeting of the Board of Directors shall be held on such date and at such time as shall be determined by the Board of Directors.
- 4.2 Regular Meetings. Regular meetings of the Board of Directors shall be held on such dates and at such times as shall be determined by the Board of Directors.
- 4.3 Special Meetings. A special meeting of the Board of Directors may be called at any time by the Chairman or the Chief Executive Officer of the Corporation, and shall be called by the Secretary upon the demand of a majority of the Directors, with the date and time for any such special meeting to be specified in the notice of meeting.
- 4.4 Place. Each annual, regular and special meeting of the Board of Directors shall be held at such places within or without the State of New York as may be fixed by the Chairman, the Chief Executive Officer or the Board for annual and regular meetings and in the notice of meetings for special meetings.
- 4.5 Notice. Notice of meetings of the Board of Directors may be given personally or by mail, or by facsimile telecommunication or electronic mail to the address, fax number or email address for each Director as the same appears on the record of Directors or as filed with the Secretary of the Corporation.
- 4.6 Waiver of Notice. Notice of any meeting of the Board of Directors may be waived pursuant to the provisions set forth in the NPCL.
- 4.7 Adjournment. The Directors present at any meeting may vote to adjourn a meeting to another time and place, even if they do not constitute a quorum, but no such meeting shall be reconvened without reasonable notice to those who were not present at the time of the adjournment.
- 4.8 Quorum. A majority of all the Directors then serving, present in person, shall constitute a



quorum of the Board of Directors.

- 4.9 Vote. Each Director shall be entitled to one (1) vote on each matter before the Board of Directors.
- 4.10 Action. The affirmative vote of a majority of the Directors, present in person at the time of the vote at a meeting at which a quorum is present, shall be the act of the Board of Directors, except as may be otherwise provided in the Certificate of Incorporation of the Corporation, these By-Laws or the NPCL.
- 4.11 Participation in Meetings of the Board of Directors by Conference Telephone or Video Screen Communication. Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.
- 4.12 Action of the Board of Directors Without a Meeting. Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

## ARTICLE 5

### COMMITTEES OF THE BOARD OF DIRECTORS

- 5.1 Committees. The Board of Directors may create committees of the Board of Directors or committees of the Corporation from time to time, by resolution adopted by the affirmative vote of a majority of the entire Board, or as otherwise set forth in these By-Laws.
- 5.2 Composition, Conduct. Each committee of the Board shall consist of three (3) or more Directors. A quorum for the conduct of business of any committee of the Board of Directors shall consist of a majority of the Directors serving as members of that committee. Each committee of the Board of Directors shall keep regular minutes of its proceedings and report the same to the Board of Directors.
- 5.3 Authority. Each committee of the Board of Directors shall have such authority as is specified in these By-Laws or as may be delegated by resolution of the Board of Directors, except that no committee of the Board of Directors shall have authority as to the following matters:

- (a) the submission to the Member of any action requiring the Member's approval under the Certificate of Incorporation of the Corporation, these By-Laws or the NPCL;
  - (b) the filling of vacancies in the Board of Directors or in any committee of the Board of Directors;
  - (c) the fixing of compensation of any individual for serving as a Director or on any committee of the Board of Directors;
  - (d) the amendment, repeal or replacement of these By-Laws, or the adoption of new by-laws of the Corporation; or
  - (e) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable.
- 5.4 Audit and Corporate Compliance. Audit and compliance oversight for the Corporation and of any corporation of which the Corporation is the member shall be exercised by the audit and corporate compliance sub-committee of the System Strategy Committee of the Member (the "Audit and Corporate Compliance Committee").

## ARTICLE 6

### OFFICERS OF THE CORPORATION

- 6.1 Positions. Qualification. The officers of the Corporation shall include a Chief Executive Officer, a Secretary and a Treasurer, and may include one or more Executive Vice Presidents, Senior Vice Presidents and Vice Presidents and such other officers as the Board of Directors may choose to designate from time to time (each, an "Officer"). Any two (2) or more offices may be held by the same person, except the offices of Chief Executive Officer and Secretary.
- 6.2 Election. Term. Each Officer shall be elected by the affirmative vote of a majority of the Board of Directors then serving at the annual meeting of the Board, and shall serve until the following annual meeting and until her or his successor is elected and qualified.
- 6.3 Duties. The powers and duties of the Officers of the Corporation shall be such as may be prescribed by or pursuant to these Bylaws or from time to time by the Board of Directors and, to the extent not so prescribed, as usually appertain to their respective offices, subject to the control of the Board of Directors.
- 6.3.1 The Chief Executive Officer shall preside at meetings of the Board of Directors and shall supervise the activities of the Board and its committees. The Chief Executive Officer shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors in the

- absence of the Chairman, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation.
- 6.3.2 Executive, Senior and other Vice-Presidents shall have such powers and duties as the Board of Directors may prescribe or as the Chief Executive Officer may delegate.
- 6.3.3. The Secretary shall assure that minutes are prepared for all meetings of the Board of Directors and retained as part of the corporate records of the Corporation, shall assure that appropriate notice is given for all meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer or as otherwise required by law. The Secretary is authorized to delegate any of these functions to one or more assistant secretaries.
- 6.3.4. The Treasurer shall assure that accurate accounts of the assets, receipts and disbursements of the Corporation are maintained, shall produce financial reports as described in these By-laws and as requested by the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. The Treasurer is authorized to delegate any of these functions to one or more assistant treasurers.
- 6.4 Resignation. Any Officer may resign at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then effective as of that date. The resignation of any Officer shall be effective regardless of any acceptance or rejection by the Corporation.
- 6.5 Removal. Any Officer may be removed by the Board of Directors at any time, with or without cause, but such removal shall be without prejudice to the individual's contractual rights, if any, in regard to the Corporation.
- 6.6 Vacancies. Interim Appointments. If any vacancy exists among the offices of the Corporation, whether by the death, resignation or removal of any Officer, or if the Board of Directors deems it necessary to appoint a new Vice President or create a new Officer position at any time between annual meetings of the Board of Directors, then the position may be filled by the affirmative vote of a majority of the Directors then serving. An Officer so appointed shall serve until the next annual meeting of the Board of Directors, and until her or his successor is elected and qualified.

## ARTICLE 7

### POLICIES

- 7.1 Conflict of Interest. The Board of Directors shall adopt a Conflict of Interest Policy of the Corporation, approved by the Audit and Corporate Compliance Committee, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Conflict of Interest Policy of the Corporation shall include: (a) a definition of circumstances that constitute a conflict of interest; (b) procedures for

disclosing a conflict of interest; (c) procedures for disclosing, addressing and documenting "related party transactions" (as defined in the NPCL); and (d) such other matters as are required to be included or addressed in such Conflict of Interest Policy pursuant to Section 715-a(b) of the NPCL to the extent applicable to the Corporation.

- 7.2 Whistleblower Protection. The Board of Directors shall adopt a Whistleblower Policy of the Corporation approved by the Audit and Corporate Compliance Committee, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Whistleblower Policy of the Corporation shall include: (a) procedures for the reporting of violations or suspected violations of laws or corporate policies, including procedures for preserving the confidentiality of reported information; (b) a requirement that a copy of the Whistleblower Policy be distributed to all directors, officers and employees of, and volunteers who contribute substantial services to, the Corporation; and (c) such other matters as are required to be included or addressed in such Whistleblower Policy pursuant to Section 715-b(b) of the NPCL to the extent applicable to the Corporation.
- 7.3 Additional Policies. The Board of Directors shall adopt additional policies, as it sees fit and from time to time, in order to facilitate the efficient administration of the Corporation's affairs, and in order to protect and promote the quality and integrity of the Corporation's pursuits.

## ARTICLE 8

### RECORDS AND REPORTS

- 8.1 Annual Financial Report. At the annual meeting of the Member, the Board of Directors shall present a report showing in appropriate detail each of the following in regard to the most recently completed fiscal year of the Corporation:
- (a) the assets and liabilities, including trust funds, of the Corporation;
  - (b) the principal changes in assets and liabilities of the Corporation, including trust funds;
  - (c) the revenues and receipts of the Corporation, both restricted and unrestricted as to particular purposes;
  - (d) the expenses and disbursements of the Corporation, for both general and restricted purposes; and
  - (e) accounts of all restricted assets and the use made of such assets and of the income thereof.

The report shall be verified by the Chief Executive Officer and the Treasurer or by a majority of the Directors then serving, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board of Directors, and

shall be attached to the minutes of the annual meeting.

8.2 Corporate Records. The Corporation shall maintain corporate records including, at a minimum, each of the following:

- (a) the Corporation's Certificate of Incorporation, with all amendments thereto;
- (b) the Corporation's By-Laws, with all amendments thereto;
- (c) minutes of each meeting of the Board of Directors and of each committee of the Board of Directors;
- (d) all resolutions adopted by the Board of Directors or of any committee of the Board of Directors without a meeting, together with all written consents thereto;
- (e) all written notices delivered by the Member; and
- (f) copies of all corporate tax returns, registrations and other filings with federal, state and local authorities.

## ARTICLE 9

### LIABILITY AND INDEMNIFICATION

9.1 Liability. No Director or Officer of the Corporation shall have any personal liability to the Corporation or its member for damage resulting from any breach of such Director's or Officer's duties as a Director or Officer of the Corporation; provided, however, that this Section 9.1 shall not eliminate or limit the liability of any Director or Officer: (a) if a judgment or other final adjudication adverse to such Director or Officer establishes that his or her acts or omissions: (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such Director or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled; or (ii) created personal liability pursuant to Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability; or (b) to the extent that such personal liability is otherwise required by, or cannot otherwise be eliminated in accordance with, the NPCL or other applicable law.

9.2 Indemnification.

9.2.1 Generally. The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any individual made or threatened to be made a party in any civil or criminal action or proceeding by reason of the fact that such individual, or his or her testator or intestate, is or was a Director or Officer of the Corporation, or, at the request of the Corporation, is or was serving as a director or officer of any other organization, entity or other enterprise, to the full extent and in all such

circumstances as shall be permitted under the NPCL, and upon proper authorization all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding.

9.2.2 Exception for Bad Faith and Misconduct. Such required indemnification shall be subject to the exception that no indemnification may be made to or on behalf of any Director or Officer in the event and to the extent that a judgment or other final adjudication adverse to the Director or Officer establishes that such individual's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law, or that such Director or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made upon any successful appeal of any adverse judgment of final adjudication).

9.2.3 Other Limitations and Prohibitions on Indemnification. No indemnification shall be made under this Section 9.2 if such indemnification would be inconsistent with the provisions of the Corporation's Certificate of Incorporation or a resolution of the Corporation's Board of Directors or other proper corporate action, as any of the foregoing may be in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification.

9.3 Other Rights. The foregoing right of indemnification shall not be deemed exclusive of any other right to which any Director or Officer may be entitled.

## ARTICLE 10

### MISCELLANEOUS

10.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January, and end on the last day of December.

10.2 Headings. Headings are provided in these By-Laws for reference only, and shall not control any interpretation of the content of any provision hereof.

10.3 Delivery of Notice. Whenever any notice is required under these By-laws, such notice shall be given in writing, and may be delivered by any of the following means:

- (a) by regular or certified mail, in which case such notice shall be sent to the addressee's last known street address, and shall be deemed effective three (3) days after mailing;
- (b) by courier service, in which case such notice shall be sent to a location where the addressee is reasonably expected to be able to accept delivery, and shall be deemed effective upon first attempted delivery;
- (c) by fax machine, in which case such notice shall be sent to the addressee's last known fax number, and shall be deemed effective upon transmission;

- (d) by email, in which case such notice shall be sent to the addressee's last known email address, and shall be deemed effective upon transmission; or
- (e) in person, in which case such notice shall be effective upon delivery.

10.4 Fictitious Names. The Corporation shall not conduct any activities in New York State under any name other than the name appearing in its Certificate of Incorporation, or another name duly registered as a fictitious, assumed or alternative name pursuant to applicable law.

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Secretary

Initially adopted: September 29, 2014

Amended: Effective July 1, 2015

Amended: Effective December 6, 2016

Amended: November 2, 2017 and to be effective upon the consummation of the merger of New York-Presbyterian Lawrence Hospital with and into The New York and Presbyterian Hospital

Attachment 11



**CERTIFICATE OF THE CORPORATE SECRETARY OF THE CORPORATION**

Mary Braunsdorf, a member of the Bar of the State of New York, certifies that the following is true:

I am the duly elected, qualified, and acting Corporate Secretary of NYP Community Programs, Inc. ("NYPCP"), a New York Not-for-Profit Corporation and the sole member, active parent, and co-operator licensed under Article 28 of the New York Public Health Law of NewYork-Presbyterian Brooklyn Methodist Hospital ("NYP/BMH"). At a properly noticed and duly constituted meeting of the Board of Directors (the "Board") of NYPCP held on December 16, 2021, at which meeting a quorum was present and acting throughout, and upon motion duly made, seconded, and carried, the Board unanimously approved the following resolution:

**RESOLVED** that the Board of Directors of NYP Community Programs, Inc., a New York Not-For-Profit Corporation and the sole member, active parent, and co-operator licensed under Article 28 of the New York Public Health Law of NewYork-Presbyterian Brooklyn Methodist Hospital (NYP/BMH) hereby:

Approves an amendment to the Amended Certificate of Incorporation and Amendment and Restatement of the Bylaws of NYP Community Program, Inc. to delete entirely all references to NewYork-Presbyterian/Brooklyn Methodist d/b/a NewYork-Presbyterian Brooklyn Methodist Hospital as a corporation of which NYP Community Programs, Inc. is the Member under the New York Not-for-Profit Corporation Law, effective upon the filing with the New York Secretary of State of the Certificate of Merger of New York-Presbyterian Brooklyn Methodist Hospital into The New York and Presbyterian Hospital; and

Authorizes and Directs the officers of NYP Community Programs, Inc. to take all such actions that they deem necessary, appropriate and/or advisable in order to carry out the intent of these resolutions, the authority and necessity for the taking of such actions and the execution and delivery of such documents, certificates, and instruments to be conclusively evidenced thereby.

This resolution has not been revoked, amended, or modified in any respect and remains in full force and effect.

**IN WITNESS WHEREOF**, I have executed this Certificate on behalf of NYP Community Programs, Inc. as of the 18<sup>th</sup> day of January, 2022.

  
Mary Braunsdorf

Attachment 12

**CERTIFICATE OF THE CORPORATE SECRETARY OF THE CORPORATION**

John V. Campano., a member of the Bar of the State of New York, certifies that the following is true:

I am the duly elected, qualified, and acting Corporate Secretary of The New York and Presbyterian Hospital (d/b/a/ NewYork-Presbyterian Hospital), a New York Not-for-Profit Corporation duly organized and existing under the laws of the State of New York (the "Corporation") and the sole member of NYP Community Programs, Inc. At a properly noticed and duly constituted meeting of the Board of Directors of the Corporation (the "Board") held on December 16, 2021, at which meeting a quorum was present and acting throughout, and upon motion duly made, seconded, and carried, the Board acting in its capacity as sole Member of NYPCP unanimously approved the following resolution:

**RESOLVED** that the Member (The New York and Presbyterian Hospital by its Board of Trustees) of NYP Community Programs, Inc. hereby:

Approves an amendment to the Amended Certificate of Incorporation and Amendment and Restatement of the Bylaws of the NYP Community Program, Inc. to delete entirely all references to NewYork-Presbyterian/Brooklyn Methodist d/b/a NewYork-Presbyterian Brooklyn Methodist Hospital as a corporation of which NYP Community Programs, Inc. is the Member under the New York Not-for-Profit Corporation Law, effective upon the filing with the New York Secretary of State of the Certificate of Merger of New York-Presbyterian Brooklyn Methodist Hospital into The New York and Presbyterian Hospital.

This resolution has not been revoked, amended, or modified in any respect and remains in full force and effect.

**IN WITNESS WHEREOF**, I have executed this Certificate on behalf of NewYork-Presbyterian Hospital as of the 18th day of January, 2022.

  
John V. Campano



## MEMORANDUM

**To:** Lisa Thomson  
Division of Health Facility Planning  
  
Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Vincent DiCocco, Senior Attorney  
Bureau of Health Facility Planning and Development  
Division of Legal Affairs

**Date:** March 2, 2022

**Subject:** The Northeast Health Foundation, Inc.  
Proposed Certificate of Amendment to Certificate of Incorporation to change  
name to Samaritan and the Eddy foundation Inc.

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This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

1. A memorandum from Kathy Marks, General Counsel, to the Public Health and Health Planning Council.
2. An October 25, 2021 letter from the attorney for the corporation explaining the intent and meaning of the proposed name change.
3. The draft Verified Petition of the proposed name change.
4. Corporate Merger documentation to help substantiate the need for the name change.
5. The Restated Certificate of Incorporation of the name change.

cc: B. DeCogliano, M. Ngwashi



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Kathy Marks *KSM*  
General Counsel  
Division of Legal Affairs

**Date:** March 2, 2022

**Subject:** The Northeast Health Foundation, Inc.  
Name Change Pursuant to N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(1)  
resulting in Samaritan Hospital and the Eddy Foundation, Inc.

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The Northeast Health Foundation Inc. (NE Foundation) requests Public Health and Health Planning Council ("PHHPC") approval to change its name to the SAMARITAN HOSPITAL AND THE EDDY FOUNDATION, INC.

Attached is the proposed Restated Certificate of Incorporation of The NE Foundation. The NE Foundation served as the funding entity of Northeast Health and its affiliates. Northeast Health was a not-for-profit health care system that included hospitals, nursing homes, home care and other facilities.

On December 31, 2015, Northeast Health merged into St. Peter's Health Partners with St. Peter's Health Partners being the surviving entity. As a result of the merger the NE Foundation is requesting the name change to better reflect its affiliation with St. Peter's Health Partners.

Public Health and Health Planning Council approval is required under Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11(a)(1) prior to the filing of the Restated Certificate of Incorporation.

Attached is an electronic letter dated October 25, 2021, from Robert N. Swidler which explains the intent and meaning of the proposed name change and the Verified Petition. Also attached are the corporate documents of the merger, the existing Certificate of Incorporation, and the amendments thereto.

These documents have been reviewed. There is no legal objection to the proposed Restated Certificate of Incorporation of the NE Foundation, and it is in legally acceptable form.

Attachments

[Type here]



ST PETER'S HEALTH  
PARTNERS

Robert N. Swidler, Esq.  
V.P. Legal Services  
St. Peter's Health Partners  
315 S. Manning Blvd.  
Cusack Bldg 5th Floor  
Albany NY 12208

October 25, 2021

Colleen Leonard  
Executive Secretary  
Public Health and Health Planning Committee  
Corning Tower, Room 1805,  
Albany, NY 12237

Re: The Northeast Health Foundation, Inc.:  
Proposed Amendment to Change Name

Dear Ms. Leonard:

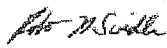
As you know, I am counsel to St. Peter's Health Partners and its affiliated organizations, including THE NORTHEAST HEALTH FOUNDATION, INC. ("the Foundation"). I am writing to seek the department's approval of an amendment to the certificate of the Foundation to change its name to "SAMARITAN AND THE EDDY FOUNDATION, INC." as required by NYS NFP-CL § 804(a)(i) and § 404(o).

As background, prior to 2010 Northeast Health was a not-for-profit health care system that included hospitals, nursing homes, home care and more. Its principal foundation, THE NORTHEAST HEALTH FOUNDATION, INC., supported most of the Northeast Health affiliates. On December 31, 2015 Northeast Health merged into St. Peter's Health Partners. The Foundation continues to be active and effective but, since Northeast Health no longer exists, the name "Northeast Health Foundation" no longer makes sense. Accordingly, the Foundation board recently voted to change its name to "SAMARITAN HOSPITAL AND THE EDDY FOUNDATION, INC." Accordingly, I am seeking the Department's approval for that change.

At the same time, I am also seeking the consent of the Attorney General's Charities Bureau to the proposed amendment. I am attaching the Verified Petition and related documents that I submitted in connection with that application. My understanding is that the Charities Bureau will not act until it receives the DOH approval.

Thank you for for your assistance. Feel free to contact me should you have any questions.

Yours truly,

  
Digitally signed  
by Robert Swidler  
Date: 2021.10.25  
13:24:01 -04'00'

Robert N. Swidler  
VP Legal Services  
St. Peter's Health Partners

**Restated Certificate of Incorporation of  
THE NORTHEAST HEALTH FOUNDATION, INC.**

Under Section 805 of the NYS Not-for-Profit Corporation Law

The undersigned, being the Secretary of THE NORTHEAST HEALTH FOUNDATION, INC. (the "Corporation"), does hereby certify:

- FIRST:** The name of the Corporation is THE NORTHEAST HEALTH FOUNDATION, INC., and was formed under the name THE SAMARITAN HOSPITAL FOUNDATION, INC.
- SECOND:** The Corporation's Certificate of Incorporation was filed by the Department of State on April 23, 1985 under the NYS Not-for-Profit Corporation Law ("NFPCL")
- THIRD:** The text of the Certificate of Incorporation is amended to effect the following changes, including changes to the name and purposes of the Corporation:
1. Change the name of the Corporation to "SAMARITAN HOSPITAL AND THE EDDY FOUNDATION"
  2. Change the purpose of the corporation as stated in sections 3.1 – 3.3 to delete all references to support for Northeast Health (which merged into St. Peter's Health Partners) and for Memorial Hospital, Albany NY (which merged into Samaritan Hospital); to insert support for St. Peter's Health Partners in those sections; and to retain references for support for Samaritan Hospital of Troy N.Y., LTC (Eddy), Inc., and their related organizations.
  3. Change the agent for service of process.
- FOURTH:** The text of the Certificate of Incorporation is restated as amended to read as set forth in full below:
-



## SAMARITAN HOSPITAL AND THE EDDY FOUNDATION, INC.

Under Section 402 of the NYS Not-for-Profit Corporation Law

1. The name of the Corporation is SAMARITAN HOSPITAL AND THE EDDY FOUNDATION (the "Corporation"),
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("N-PCL") and a charitable corporation under Section 201 of the N-PCL.
3. The objects and purposes of the Corporation shall be exclusively within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1986, as the same may be amended from time to time, and without limiting the generality of the foregoing, shall include the following objects and purposes:
  - (1) To foster and facilitate the delivery of health care services to the Community by Samaritan Hospital of Troy, New York, LTC (Eddy), Inc., and such related organizations, corporations, foundations and institutions which qualify as organizations exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code;
  - (2) To develop financial programs and solicit contribution for and on behalf of Samaritan Hospital of Troy, New York, LTC (Eddy), Inc., and their related organizations;
  - (3) To receive and administer property and funds for and on behalf of Samaritan Hospital of Troy, New York, LTC (Eddy), Inc., and their related organizations, and to that end to take and hold by bequest device, gift, grant, purchase, lease or otherwise, either absolutely or jointly with any other person, persons, or corporation, any property, real, personal, tangible, or intangible, or any divided interest therein, without limitation as to amount or value; to sell, convey, or otherwise dispose of any such property and to invest, reinvest, or deal with the principal or the income thereof in such manner as, in the judgment of the directors, will best promote the purposes of the Corporation without limitation, except such limitations, if any, as may be contained in the instrument under which said property is received, this certificate of incorporation, the bylaws of the corporation or any laws applicable thereto.
  - (4) To grant funds to St. Peter's Health Partners, Samaritan Hospital of Troy, New York, LTC (Eddy), Inc., and their related organizations and such other organizations or not-for-profit corporations which are also organizations described in Section 501(c)(3) and Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code, as the Corporation may deem appropriate;
  - (5) To give, convey or assign any of its property outright, or upon lawful terms regarding the use thereof: to other organizations which, in the judgment of the Board of Directors, are engaged in the promotion of the health of the community;
  - (6) To publicly solicit funds in support of the foregoing purposes; and
  - (7) To do any other lawful thing incidental to, connected with or useful, suitable or proper for the furtherance or accomplishment of the foregoing purposes.

Nothing herein contained shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital or to provide service or health-related services to operate a drug maintenance program, a certified home health agency, or a health maintenance organization or to

provide a health services plan as defined in and conveyed by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law. Notwithstanding any other provision of these articles, this Corporation is organized exclusively for charitable, educational, religious, or scientific purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

The objects and purposes provided herein shall be subject to the approvals or consents of such regulatory authorities as may be required by law. "Related organization" as used in this Article shall mean only organizations duly established pursuant to Article 28 of the Public Health Law, certified or licensed pursuant to Article 36 of the Public Health Law or approved pursuant to other applicable laws of the State of New York. "Other organizations" and not-for-profit corporations as used in this Article shall not include "hospitals" as defined in Article 28 of the Public Health Law other than hospitals duly established pursuant to said Article 28.

4. As means of accomplishing the foregoing purposes, the Corporation shall have all the powers set forth in Section 202 of the Not-for-Profit Corporation Law of the State of New York and, in general, to exercise such powers which now are or hereafter may be conferred by law upon a corporation for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the Corporation, subject to such limitations as are or may be prescribed by law. The Corporation shall have the power to engage in the public solicitation of funds, and to enter into contracts and hire personnel in connection with its above designated purposes.
5. Notwithstanding any other provisions of these Articles, the Corporation shall not carry on any activities or have or exercise any powers not permitted to be carried on or exercised:
  - (1) By a corporation exempt from federal income taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended.
  - (2) By a corporation, contributions to which are deductible under Section 170 (c) of the Internal Revenue Code of 1986, as amended.
6. It is the intention of the Corporation to qualify and remain qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Accordingly:
  - (1) No part of the net earnings of the Corporation shall inure to the benefit of any individual; provided that nothing contained in this Certificate shall prevent the payment in good faith of reasonable and proper remuneration to any officer, director or employee of the Corporation, or to any other person, organization, firm, association, corporation or institution in return for services actually rendered to the Corporation, and
  - (2) No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; nor shall the Corporation participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to, any candidate for public office, and
  - (3) In the event of dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, education, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be

disposed of by the Supreme Court of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.


7. The member of the Corporation is St Peter's Health Partners.
8. The Office of the Corporation shall be located in the City of Troy, County of Rensselaer, and State of New York.
9. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may- be served. The post office address to which the Secretary shall mail a copy of any process against the Corporations served upon him is: 2224 Burdett Avenue, Troy, New York 12180.
10. The Corporation hereby expressly reserves and delegates certain powers to St. Peter's Health Partners. St. Peter's Health Partners may initiate and implement any proposal with respect to any of the following, or if any proposal with respect to any of the following is otherwise initiated, it shall not become effective unless the requisite approvals and other actions shall have been taken by St. Peter's Health Partners, as required pursuant to the Corporation's Governance Documents:
  - (a) Approve the amendment or restatement of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part;
  - (b) Elect and remove members of the Corporation's Board of Directors;
  - (c) Elect and remove the Executive Director of the Corporation;
  - (d) Approve the strategic plan of the Corporation;
  - (e) Approve Significant Finance Matters;
  - (f) Approve the annual operating and capital budgets of the Corporation;
  - (g) Conduct financial planning and monitor and assure long-term financial performance of the Corporation;
  - (h) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries);
  - (i) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation;
  - (j) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation;
  - (k) Approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by St. Peter's Health Partners (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries);
  - (l) Approve any change to the structure or operations of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
  - (m) Approve all other matters and take all other actions reserved to members of nonprofit corporations (or shareholders of for-profit corporations, as the case may be) by the laws

of the state in which the Corporation is domiciled or as reserved in the Governance Documents of the Corporation;

- (n) Approve settlements of litigation when such settlements exceed an amount to be fixed from time to time by St. Peter's Health Partners; and
- (o) Approve, interpret and change the statement of mission and philosophy adopted by the Corporation and require the Corporation to operate in conformance with its statement of mission and philosophy.

FIFTH: This Restated Certificate of incorporation was authorized by the member in accordance with Section 802(a) of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned executed this Restated Certificate of Incorporation on this 24<sup>th</sup> day of September 2021

  
\_\_\_\_\_  
Joseph CELESTE, SECRETARY

**Restated Certificate of Incorporation of  
THE NORTHEAST HEALTH FOUNDATION, INC.**

Under Section 805 of the NYS Not-for-Profit Corporation Law

Filed by:  
Robert N. Swidler  
VP Legal Services  
St. Peter's Health Partners  
315 South Manning Boulevard  
Albany NY 12208  
518-525-6099

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of

**THE NORTHEAST HEALTH FOUNDATION, INC.**

**VERIFIED PETITION**

OAG No. \_\_\_\_\_

For Approval to Amend its Certificate of Incorporation  
to Change Its Name

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TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Charities Bureau  
The Capitol  
Albany, New York 12224-0341

Petitioner, The Northeast Health Foundation, Inc., ("The Foundation") through Peter Semenza, its Executive Director, alleges:

1. The name of the corporation is THE NORTHEAST HEALTH FOUNDATION, INC. INC., and was formed under the name THE SAMARITAN HOSPITAL FOUNDATION, INC.
2. The Foundation's Certificate of Incorporation was filed by the Department of State on April 23, 1985 under the NYS Not-for-Profit Corporation Law ("NFPCL").
3. The current Certificate of Incorporation of The Foundation is attached as Exhibit A.
4. The Foundation's NYS Charities Registration Number is 06-18-28.
5. On June 22, 2021, the board of the The Foundation approved an amendment to the Certificate of Incorporation to change the name of The Foundation to "SAMARITAN HOSPITAL AND THE EDDY FOUNDATION." A certification of the approval is attached as Exhibit B.
6. On July 30, the board of St. Peter's Health Partners, the sole member of The Foundation, approved the aforesaid amendment. The approval resolution is attached as Exhibit C.
7. The proposed Restated Certificate of Incorporation is attached as Exhibit D.

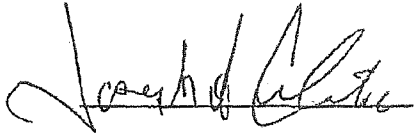
WHEREFORE, Petitioners request that the Attorney General, pursuant to Section 804 of the Not-for-Profit Corporation Law, approve the Restated Certificate of Incorporation and authorize its filing with the Secretary of State.

IN WITNESS WHEREFORE, The Foundation has caused this Petition, by its Executive Director, to be executed this 24<sup>th</sup> day of September 2021.

By:   
\_\_\_\_\_  
Peter Semenza, Executive Director

**Certification**

I Joseph CELESTE hereby certify that I am secretary of THE NORTHEAST HEALTH FOUNDATION, INC.; that on June 22, 2021, the Board of the Foundation, at a regular meeting, with a quorum present, unanimously approved an amendment to change the name of the Foundation to "SAMARITAN HOSPITAL AND THE EDDY FOUNDATION, INC." and authorized the filing of the attached restated certificate of incorporation.



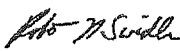
9-24-21  
Date



**Certification**

I Robert N. Swidler hereby certify that I am secretary of the board of St. Peter's Health Partners,  
the sole member of THE NORTHEAST HEALTH FOUNDATION, INC.;

That on October 22, 2021, the Executive Committee of the Board of St. Peter's Health Partners,  
at a regular meeting, with a quorum present, acting with full authority of the Board, unanimously  
approved the action of the board of THE NORTHEAST HEALTH FOUNDATION, INC. to  
change the name of the Foundation to "SAMARITAN AND THE EDDY FOUNDATION,  
INC."

  
Digitally signed  
by Robert Swidler  
Date: 2021.10.22  
15:44:32 -04'00'

October 22, 2021

Date

Robert N. Swidler



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

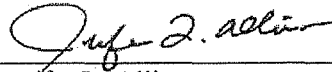
DIVISION OF SOCIAL JUSTICE  
CHARITIES BUREAU

TO: Robert N. Swidler, Esq.  
V.P. Legal Services  
St. Peter's Health Partners  
315 South Manning Blvd.  
Cusack Building, 5<sup>th</sup> Floor  
Albany, NY 12208

RE: The Northeast Health Foundation, Inc.

The Attorney General hereby approves pursuant to N-PCL § 805 the proposed Restated Certificate of Incorporation of The Northeast Health Foundation, Inc. Said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

November 2, 2021

  
\_\_\_\_\_  
Jennifer L. Allinson  
Assistant Attorney General

*STATE OF NEW YORK*  
*DEPARTMENT OF STATE*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
November 15, 2018.

A handwritten signature in cursive script, appearing to read "Whitney Clark".

Whitney Clark  
Deputy Secretary of State for Business and  
Licensing Services

181002000392


**CERTIFICATE OF MERGER  
OF  
SETON HEALTH FOUNDATION, INC.  
INTO  
THE NORTHEAST HEALTH FOUNDATION, INC.**

*Under Section 904 of the NYS Not-for-Profit Corporation Law*

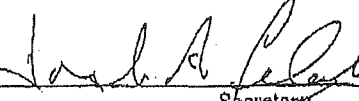
- FIRST:** The names of the constituent corporations to be merged are (each a "Constituent Corporation"):
- (a) The Northeast Health Foundation, Inc. ("NEH Foundation"), which was formed under the name The Samaritan Hospital Foundation, Inc.; and
  - (b) Seton Health Foundation, Inc. ("Seton Foundation"), which was formed under the name St. Mary's Hospital of Troy Foundation, Inc. (collectively, "Constituent Corporations").
- SECOND:** The certificates of incorporation of each Constituent Corporation were filed by the New York Department of State on the following dates under the New York State Not-for-Profit Corporation Law ("NPC-L"):
- (a) NEH Foundation on April 23, 1985; and
  - (b) Seton Foundation on January 6, 1981.
- THIRD:** St. Peter's Health Partners is the sole member of NEH Foundation and Seton Health System, Inc., is the sole member of Seton Foundation.
- FOURTH:** NEH Foundation shall be the surviving corporation of the merger (the "Surviving Corporation").
- FIFTH:** The Certificate of Incorporation of NEH Foundation shall be amended as follows:
- (a) Any references to "Northeast Health, Inc." in Article 3, Sections (1), (2), (3) and (4) are deleted because this entity no longer exists.
- SIXTH:** The effective date of the merger shall be January 1, 2019.
- SEVENTH:** The merger was authorized by affirmative vote of the Board of Directors and the sole members of each Constituent Corporation.

IN WITNESS WHEREOF, the Constituent Corporations, by their duly authorized officers, have executed this Certificate of Merger on this 27 day of July, 2018.

The Northeast Health Foundation, Inc.

By:   
Secretary

Seton Health Foundation, Inc.

By:   
Secretary



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D.,  
J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

August 21, 2018

Karen E. Sosler, Esq.  
Partner  
Rivkin Radler  
9 Thurlow Terrace  
Albany, New York 12203-1005

Re: Plan of Merger and Certificate of Merger for the proposed merger of Seton Health Foundation into The Northeast Health Foundation, Inc.

Ms. Sosler:

The above referenced proposed merger, stated to be effective on January 1, 2019, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law, since the Certificate of Merger does not add, change or delete a purpose from the Certificate of Incorporation of The Northeast Health Foundation, Inc., the surviving corporation, that requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

There is no legal objection to the certificate being filed with the New York State Department of State.

Sincerely,

Mark Furnish  
Director  
Bureau of Health Facility Planning and  
Development  
Division of Legal Affairs

cc: Colleen Leonard

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of

Seton Health Foundation, Inc. and  
The Northeast Health Foundation, Inc.

ATTORNEY GENERAL  
APPROVAL  
OAG No. OAG-\_\_\_\_\_

For Approval of their Plan of Merger Under Section 907-b  
of the Not-for-Profit Corporation Law and Authorizing the  
Filing of a Certificate of Merger under Section 904 of the  
Not-for-Profit Corporation Law

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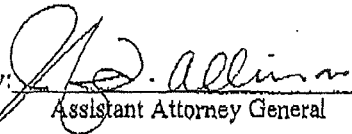
1. By Petition verified on September 5, 2018, Seton Health Foundation, Inc. ("Seton Foundation") and The Northeast Health Foundation, Inc. ("NEH Foundation"), with NEH Foundation being the surviving corporation, applied to the Attorney General pursuant to Article 9 of the Not-for-Profit Corporation Law for approval of an application of merger (the "Merger").
2. The name of the surviving corporation is The Northeast Health Foundation, Inc. (the "Surviving Corporation").
3. The purpose of the merger is to merge NEH Foundation and Seton Foundation, with NEH Foundation being the Surviving Corporation of the merger. Seton Foundation was formed with the purpose of financially supporting Seton Health System, Inc., which is licensed as an Article 28 hospital and is doing business as St. Mary's Hospital ("Seton"). Effective January 1, 2019, Seton will be merged into Samaritan Hospital of Troy, New York, with Samaritan Hospital being the surviving entity, to create administrative efficiencies and reduce costs. NEH Foundation financially supports Samaritan Hospital. Therefore, the Boards of Directors of Seton and NEH Foundations have determined that it is in the best interest of each to merge the two Foundations in a manner that is consistent with the merger of the two hospitals.
4. The Merger is authorized by the Laws of the State of New York, the jurisdiction in which each Constituent Corporation was formed.
5. The effective date of the Merger shall be January 1, 2019.
6. Neither the Petitioners nor any third party have raised with the Attorney General any objections to the Merger.
7. The interests of the Constituent Corporations and the public interest will not be adversely affected by the Merger.

7. The interests of the Constituent Corporations and the public interest will not be adversely affected by the Merger.

Based on a review of the Petition and the Exhibits attached thereto (and any additional documents and information requested by the Attorney General), and the verifications of Karl Cote, Executive Director of both Constituent Corporations, the Attorney General has determined that (a) the Petitioners have complied with the provisions of Article 9 of the Not-for-Profit Corporation Law applicable to the Merger of the Constituent Corporations; (b) neither the Petitioners nor any third party having raised with the Attorney General any objections to the proposed Merger, and it appearing to the satisfaction of the Attorney General that the interest of the Constituent Corporations and the public interest will not be adversely affected by the Merger, the Plan of Merger is approved and the Certificate of Merger is authorized to be filed with the Department of State.

A copy of the Certificate of Merger, as filed with the Department of State, shall be sent to the Attorney General's office within ten (10) days of its filing.

Barbara Underwood  
Attorney General of the State of New York

By:   
Assistant Attorney General

Date: 9/25/18



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CERTIFICATE OF MERGER  
OF  
SETON HEALTH FOUNDATION, INC.  
INTO  
THE NORTHEAST HEALTH FOUNDATION, INC.

*Under Section 904 of the NYS Not-for-Profit Corporation Law*

Filed by: Karen E. Sosler, Esq.  
Rivkin Radler, LLP  
9 Thurlow Terrace  
Albany, New York 12203  
(518) 462-3000

Drawdown Account: J8

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT 02 2018

TAX \$ \_\_\_\_\_

NY \_\_\_\_\_

*[Signature]*  
Penske

417

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***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on January 4, 2016.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

151231000324

CERTIFICATE OF MERGER  
OF  
ST. PETER'S HEALTH CARE SERVICES  
AND  
NORTHEAST HEALTH, INC.  
AND  
ST. PETER'S HEALTH PARTNERS  
INTO  
ST. PETER'S HEALTH PARTNERS

*Under Section 904 of the NYS Not-for-Profit Corporation Law*

FIRST: The names of the constituent corporations to be merged are (each a "Constituent Corporation"):

- (a) St. Peter's Health Care Services ("SPHCS"), a New York not-for-profit corporation that was formed under the name MercyCare Corporation;
- (b) Northeast Health, Inc. ("NEH"), a New York not-for-profit corporation that was formed under the name SH, Inc.; and
- (c) St. Peter's Health Partners ("SPHP"), a New York not-for-profit corporation.

SECOND: The certificates of incorporation of each Constituent Corporation were filed with the New York Department of State on the following dates: SPHCS, on May 13, 1985; NEH on January 7, 1983; and SPHP on August 15, 2011.

THIRD: SPHP is the sole member of both SPHCS and NEH. SPHP's sole member is Trinity Health Corporation, an Indiana nonprofit corporation. None of these entities have any holders of any certificates evidencing capital contributions or subventions.

FOURTH: SPHP will be the surviving corporation of the merger (the "Surviving Corporation").

FIFTH: The certificate of incorporation of SPHP, as the Surviving Corporation, is amended as follows:

- (a) Article THIRD, subparagraph (a), regarding the Surviving Corporation's purposes, is amended in its entirety and shall read:

"(a) The Corporation's purposes shall be to foster acts of caring for the health care needs of the community by being organized and operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code (the "Code"), and for the benefit of, and to support the charitable functions, purposes, mission and identity of, the following New York not-

(01065669)

151231000324

for-profit corporations (each for so long as it is exempt from federal income taxation under Section 501(c)(3) of the Code and is a public charity under Section 509(a)(1) or 509(a)(2) of the Code): St. Peter's Hospital of the City of Albany, Memorial Hospital, Albany, N.Y., Samaritan Hospital of Troy, New York, Sunnyview Hospital and Rehabilitation Center, Seton Health System, Inc., and such other charitable, tax exempt organizations that have the Corporation as their member within the meaning of the N-PCL, or are related to the Corporation through a direct chain of subsidiary membership relationships (collectively, the "Supported Affiliates"), with Trinity Health Corporation ("Trinity Health"), an Indiana nonprofit corporation, as the sole member of the Corporation within the meaning of the N-PCL and with the Corporation as a "Regional Health Corporation" of Trinity Health, as defined in Trinity Health's Governance Documents (as herein defined). The Corporation shall carry out such purposes as part of and in concert with the Roman Catholic health care system governed by Trinity Health. The Corporation shall not have a Catholic mission or identity, but shall (i) conduct its operations and affairs in a way that respects the mission and identity of each Supported Affiliate, and (ii) pursue its purposes in conformity with the Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Conference of Catholic Bishops ("ERDs").

In furtherance of the foregoing purposes, the Corporation shall support the charitable purposes, functions and missions of the Supported Affiliates by:

- (i) promoting the coordination, rationalization, and quality of health care services provided by the Supported Affiliates, optimizing the availability of and access to such services, and improving patient transitions across the continuum of such services; and
  - (ii) exercising any reserved powers that are delegated to the Corporation by the Supported Affiliates;"
- (b) Article EIGHTH, first sentence, regarding the Surviving Corporation's establishment of a committee to review compliance with the ERDs, is amended in its entirety and shall read:

"The Corporation shall establish a committee to review its compliance and the compliance of the Supported Affiliates with the ERDs, including any relationships with The Burdett Care Center, Inc."

- (c) Article ELEVENTH, regarding dissolution, reference to "St. Peter's, NEH and Seton" is replaced with "St. Peter's Health Care Services, Northeast Health, Inc., and Seton Health System, Inc."

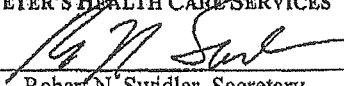
SIXTH: The effective date of the merger shall be December 31, 2015.

SEVENTH: The merger was authorized by affirmative vote of the board of directors and the sole member of each Constituent Corporation.

IN WITNESS WHEREOF, the Constituent Corporations, by their duly authorized officers, have executed this Certificate of Merger on this 30<sup>th</sup> day of July, 2015.

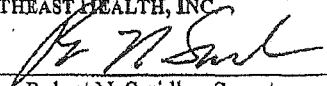
ST. PETER'S HEALTH CARE SERVICES

By:

  
Robert N. Swidler, Secretary

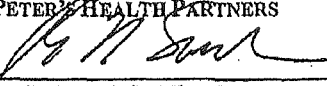
NORTHEAST HEALTH, INC.

By:

  
Robert N. Swidler, Secretary

ST. PETER'S HEALTH PARTNERS

By:

  
Robert N. Swidler, Secretary



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

August 10, 2015

Karen E. Sosler, Esq.  
Iseman, Cunningham, Reister & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203

Re: Proposed Certificate of Merger of St. Peter's Health Care Services and Northeast Health, Inc. and St. Peter's Health Partners into St. Peter's Health Partners

Dear Ms. Sosler:

The above referenced Certificate of Merger dated July 30, 2015 and signed by Robert N. Swidler does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law. The purposes of the surviving corporation, St. Peter's Health Partners, which is already established under Article 28 of the Public Health Law, will not substantively change as a result of the merger.

The Department of Health does not object to the Certificate being filed with the Department of State.

Sincerely,

Michael M. Stone  
Assistant Counsel  
Bureau of House Counsel

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of

St. Peter's Health Care Services,  
Northeast Health, Inc., and  
St. Peter's Health Partners,

ATTORNEY GENERAL  
APPROVAL  
OAG No. 2015-040

For Approval of their Plan of Merger Under Section 907-b  
of the Not-for-Profit Corporation Law and Authorizing the  
Filing of a Certificate of Merger under Section 904 of the  
Not-for-Profit Corporation Law

---

1. By Petition verified on June 10, 2015, as amended and verified on July 31, 2015, St. Peter's Health Care Services ("SPHCS"), Northeast Health Inc. ("NEH"), and St. Peter's Health Partners ("SPHP"), with SPHP being the surviving corporation, applied to the Attorney General pursuant to Article 9 of the Not-for-Profit Corporation Law for approval of an application of merger (the "Merger").
2. The name of the surviving corporation is St. Peter's Health Partners (the "Surviving Corporation").
3. The purpose of the merger is to merge SPHCS, NEH and SPHP (each, a "Constituent Corporation"), with SPHP being the Surviving Corporation of the Merger. SPHCS and NEH are each the sole member of certain operating entities, including Article 28 hospitals and nursing homes and other health care entities (collectively, "Affiliates"). In 2011, SPHCS, NEH and Seton Health System, Inc., entered into an affiliation that resulted in the creation of SPHP, which is the sole member of each. The Merger subject to the current application will (a) allow SPHP to hold SPHCS's and NEH's membership interests in the Affiliates, and (b) create administrative efficiencies and reduce costs because there will be fewer corporate entities to maintain. The proposed Merger was contemplated for completion on or about December 31, 2015.
4. The Merger is authorized by the laws of the State of New York, the jurisdiction in which each Constituent Corporation was formed and all requisite approvals from the Department of Health for the State of New York were obtained and provided by Petitioner prior to this approval.
5. The effective date of the Merger shall be December 31, 2015, at 11:59p.m.
6. As of the date of execution of this Approval, the Petitioners have not provided any objections from their Affiliates, the Constituents or any Third Party that have been raised to the proposed Merger. Nor have any Affiliates, Constituents or Third Parties provided

Notice of any objections to the proposed Merger to the attention of the Attorney General's Office.

7. As a result of the Merger, the Certificate of Incorporation of the Surviving Corporation, SPHP, shall be amended to replace subparagraph (a) of Article Third with the following language:
  - (a) The Corporation's purposes shall be to foster acts of caring for the health care needs of the community by being organized and operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code (the "Code"), and for the benefit of, and to support the charitable functions, purposes, mission and identity of, the following New York not-for-profit corporations (each for so long as it is exempt from federal income taxation under Section 501(c)(3) of the Code and is a public charity under Section 509(a)(1) or 509(a)(2) of the Code): St. Peter's Hospital of the City of Albany, Memorial Hospital, Albany, N.Y., Samaritan Hospital of Troy, New York, Sunnyview Hospital and Rehabilitation Center, Seton Health System, Inc., and such other charitable, tax exempt organizations that have the Corporation as their member within the meaning of the N-PCL, or are related to the Corporation through a direct chain of subsidiary membership relationships (collectively, the "Supported Affiliates"), with Trinity Health Corporation ("Trinity Health"), an Indiana nonprofit corporation, as the sole member of the Corporation within the meaning of the N-PCL and with the Corporation as a "Regional Health Corporation" of Trinity Health, as defined in Trinity Health's Governance Documents (as herein defined). The Corporation shall carry out such purposes as part of and in concert with Roman Catholic health care system governed by Trinity Health. The Corporation shall not have a Catholic mission or identity, but shall (i) conduct its operations and affairs in a way that represents the mission and identity of each Supported Affiliate, and (ii) pursue its purposes in conformity with Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Conference of Catholic Bishops ("ERDs").
8. The Petitioner agrees that there shall be no changes in the board of directors for the Surviving Corporation and that the Constituent Corporations do not own any real estate which would require transfer to the Surviving Corporation.
9. Pursuant to 907-b(d), two Constituent Corporations, SPHCS and SPHP do not have restricted funds. NEH does have restricted funds, however the Merger herein will not affect the continued use for their intended purposes and therefore a petition for *Cy Pres* relief is not necessary at this time. Petitioner asserts that all intended use for said funds will be strictly enforced by the Surviving Corporation.



10. The interests of the Constituent Corporations and the public interest will not be adversely affected by this Merger.
11. The Petitioner has supplied and the Attorney General has relied on the accuracy of said documents having based this approval thereon. All approvals and resolutions were supplied to the Attorney General containing original signatures certified to be that of Robert N. Swidler as Secretary to SPHCS, NEH and SPHP. The Attorney General has not received any notice that his position or authority to sign in said capacity has been terminated.

Based on a review of the Petition, the assertions made therein and the Exhibits attached thereto, the consent of the New York State Department of Health, the consent of Trinity Health (and any additional documents and information requested by the Attorney General), and the verifications of Robert N. Swidler, Secretary of each of the Constituent Corporations, the Attorney General has determined that:

(a) the Petitioners have complied with the provisions of Article 9 of the Not-for-Profit Corporation Law applicable to the Merger of the Constituent Corporations;

(b) neither the Petitioners nor any third party having raised with the Attorney General any objections to the proposed Merger, and it appearing to the satisfaction of the Attorney General that the interest of the Constituent Corporations and the public interest will not be adversely affected by the Merger;

(c) based on the above assertions, the Plan of Merger is hereby APPROVED and the Certificate of Merger is authorized to be filed with the Department of State.

A copy of the Certificate of Merger, as filed with the Department of State, shall be sent to the Attorney General's office within ten (10) days of its filing.

Eric T. Schneiderman  
Attorney General of the State of New York

By:   
Assistant Attorney General

Date: December 30, 2015.

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CERTIFICATE OF MERGER  
OF  
ST. PETER'S HEALTH CARE SERVICES  
AND  
NORTHEAST HEALTH, INC.  
AND  
ST. PETER'S HEALTH PARTNERS  
INTO  
ST. PETER'S HEALTH PARTNERS

*Under Section 904 of the NYS Not-for-Profit Corporation Law*

Filed by: Karen E. Sosler, Esq.  
Iseman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203  
(518) 462-3000

**Drawdown Account# J8**

1cc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 3 1 2015

TAX \$ \_\_\_\_\_

BY: lmc

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