

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

ANNUAL MEETING

AGENDA

February 9, 2023

- *90 Church Street, Conference Rooms 4 A/B, NYC*
- *Empire State Plaza, Concourse Level, Meeting Room 6, Albany*

*Immediately following the Committee on Codes, Regulations, and Legislation Meeting
(Codes scheduled to begin immediately following the Special Establishment and Project
Review Committee meeting beginning at 10:00 a.m.)*

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. ELECTION OF OFFICERS

A. Election of Vice Chairperson

B. Announce Committee Chairpersons and Vice Chairpersons

- Committee on Codes, Regulations, and Legislation
- Committee on Establishment and Project Review
- Committee on Health Planning
- Committee on Public Health
- Ad Hoc Committee to Lead the State Health Improvement Plan

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

James V. McDonald, M.D., M.P.H., Acting Commissioner of Health

B. Report of the Office of Public Health

Ursula Bauer, Ph.D., MPH, Deputy Commissioner, Office of Public Health

C. Report of the Office of Health Equity and Human Rights

Johanne Morne, Deputy Commissioner, Office of Health Equity and Human Rights

D. Report of the Office of Aging and Long Term Care

Adam Herbst, Deputy Commissioner, Office of Aging and Long Term Care

E. Report of the Office of Primary Care and Health Systems Management

John Morley, M.D., Deputy Commissioner, Office of Primary Care and Health Systems Management

IV. REGULATION

Report of the Committee on Codes, Regulations, and Legislation

Thomas Holt, Chair of the Committee on Codes, Regulations, and Legislation

For Adoption

22-21 Amendment of Section 23.1 of Title 10 NYCRR (Mpx to the List of Sexually Transmitted Diseases (STDs))

For Discussion

20-28 Amendment of Sections 12.2 & 405.21, and Parts 721, 754 & 795 of Title 10 NYCRR (Perinatal Services, Perinatal Regionalization, Birthing Centers and Maternity Birthing Centers)

V. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Application

Diagnostic and Treatment Center - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221257 C	Open Door Family Medical Center, Inc. (Westchester County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Application

Cardiac Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182144 C	Nassau University Medical Center (Nassau County) Mr. Kraut – Recusal Dr. Strange – Recusal	Contingent Approval

Ambulatory Surgery Center - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	222012 C	The New York Eye Surgical Center (Saratoga County) Dr. Bennett - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Application

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	222087 C	Mount Sinai Beth Israel (New York County) Dr. Berliner – Opposed at ERPC Ms. Monroe – Opposed at EPRC	No Recommendation

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221280 E	Specialists' One-Day Surgery Center, LLC (Onondaga County)	Approval
2.	222011 B	Flushing Endoscopy Center, LLC (New York County)	Contingent Approval
3.	222024 B	787 Ortho ASC LLC d/b/a Peakpoint Midtown West ASC (New York County)	Contingent Approval
4.	222036 B	Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery Center (Kings County)	Contingent Approval
5.	222089 B	Peakpoint Flatiron LLC (New York County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221281 B	Integrity Care Services (Kings County)	Contingent Approval
2.	222032 B	Mount Valley Care LLC (Rockland County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	222123 E	The Knolls at Goshen, Inc. (Orange County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221252 B	Upstate Endoscopy Associates, LLC d/b/a Upstate Endoscopy Center (Rensselaer County) Dr. Bennett – Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Application

Midwifery Birthing Center – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	202086 B	Coit House, LLC (Erie County) Dr. Bennett – Opposed at ERPC Dr. Berliner – Opposed at EPRC Mr. Lawrence – Opposed at EPRC Ms. Monroe – Opposed at ERPC	No Recommendation

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	192237 E	JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation (Herkimer County) Dr. Berliner – Opposed at EPRC Mr. LaRue – Opposed at EPRC	No Recommendation
2.	212117 E	Livingston Two Operations LLC d/b/a Livingston Hills Nursing and Rehabilitation Center (Columbia County)	No Recommendation Considered at the 2/9/23 Special Establishment and Project Review Committee Meeting
3.	222124 E	Woodcrest Rehabilitation & Residential Health Care Center (Queens County)	No Recommendation Considered at the 2/9/23 Special Establishment and Project Review Committee Meeting

Certificates

Certificate of Amendment of the Certificate of Incorporation

Applicant

Beth Israel Medical Center

E.P.R.C. Recommendation

No Recommendation

Considered at the 2/9/23
Special Establishment and
Project Review Committee
Meeting

Restated Certificate of Incorporation

Applicant

Cayuga Health System, Inc.

E.P.R.C. Recommendation

No Recommendation

Considered at the 2/9/23
Special Establishment and
Project Review Committee
Meeting

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	201222 E	True North III DC, LLC d/b/a Grand Boulevard Dialysis (Suffolk County) Mr. Kraut – Recusal Dr. Strange – Recusal Dr. Berliner – Opposed at EPRC	Establishment and Project Review Committee recommended contingent approval at the 5/19/22 Meeting. Full Council deferred application on 6/2/22
2.	211244 E	True North VI DC, LLC d/b/a Peconic Bay Dialysis (Suffolk County) Mr. Kraut – Recusal Dr. Strange - Recusal Dr. Berliner – Opposed at EPRC	Establishment and Project Review Committee recommended contingent approval at the 5/19/22 Meeting. Full Council deferred application on 6/2/22

VI. PUBLIC HEALTH SERVICES AND HEALTH POLICY

Report on the Activities of the Public Health Committee and Health Planning Committee

Jo Ivey Boufford, M.D., Chair of the Public Health Committee
John Rugge, M.D., Chair of the Health Planning Committee

VII. HEALTH POLICY

Report on the Activities of the Health Planning Committee

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

****Agenda items may be called in an order that differs from above****

VIII. NEXT MEETINGS

March 30, 2023 (Albany and NYC)

April 18, 2023 (Albany and NYC)

IX. ADJOURNMENT

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 225(4), 2304, 2305 and 2311 of the Public Health Law, Section 23.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the State Register, to read as follows:

Group B of Section 23.1 is amended to read as follows:

Group B

Facilities referred to in section 23.2 of this Part must provide diagnosis and treatment, including prevention services, as provided in section 23.2(d) of this Part for the following STDs:

Human Papilloma Virus (HPV)

Genital Herpes Simplex

Human Immunodeficiency Virus (HIV)

Mpox

Regulatory Impact Statement

Statutory Authority:

Pursuant to sections 225(4), 2304, 2305 and 2311 of the Public Health Law (PHL), the Commissioner of Health and the Public Health and Health Planning Council have the authority to adopt regulations that list the sexually transmitted diseases (STDs) for which PHL Article 23 is applicable and, in particular, that establish requirements for local health departments (LHDs) concerning STD services.

Legislative Objectives:

PHL section 2311 requires the Commissioner of Health to promulgate a list of STDs. The purpose of Article 23 of the PHL, and its associated regulations, is to ensure that persons at risk for or diagnosed with an STD have access to diagnosis and treatment, including prevention services, thereby improving their health and public health in New York State. Additionally, providing STD diagnosis and treatment, including prevention services, is vital to protecting the health of newborn children whose mothers may have an STD.

Needs and Benefits:

This amendment adds mpox to Group B of the existing list of STDs. County LHDs already have an obligation to control the spread of mpox under PHL Article 6 communicable disease guidance. Consistent with such guidance, this regulation requires STD clinics operated by LHDs or providing services through contractual arrangements to provide diagnosis and treatment, including prevention services, to persons diagnosed or at risk for mpox, either directly or through

referral. Further, minors will be able to consent to their own mpox testing, prevention services (including vaccine), and treatment.

This amendment supports the Department's plan to control the current and future mpox outbreaks by connecting persons diagnosed with, exposed to, or at risk of mpox with testing, vaccine, treatment, and prevention services. Young people currently face barriers that can prevent or delay access to care, including denial and fear of their mpox infection, misinformation, mpox-related stigma, low self-esteem, lack of insurance, homelessness, substance use, mental health issues, and lack of adequate support systems. Because of these factors, many young people need the ability to consent to mpox diagnosis and treatment, including prevention services.

These regulations will help ensure that more young people have optimal health outcomes and do not transmit the virus to others. In addition, young people will have the ability to consent to mpox related preventive services, including those who have been exposed to STDs or who are at high risk for mpox. Under the amended regulation, such individuals will be able to obtain mpox vaccine so they can remain mpox negative. These amendments are necessary to provide appropriate health care rights and protections to minors and remove the barriers that can prevent or delay access to diagnosis and treatment, including prevention services.

Costs to Regulated Parties:

LHDs may diagnose patients for mpox by offering mpox testing. In regard to mpox treatment, including prevention services, some LHDs may experience up-front costs associated with providing treatment to additional individuals. However, these regulations do not mandate that an

LHD provide treatment directly. As with the other conditions already listed in Group B, LHDs may fulfill their obligation to provide mpox treatment by referring the patient to another provider; they are not required to pay for treatment.

Providing diagnosis and treatment, including mpox vaccine, to persons diagnosed or at risk for mpox may increase the use of mpox vaccine. It is anticipated that any increase in mpox vaccination will decrease the number of people who become mpox positive, thereby greatly decreasing the cost of providing care to individuals who are mpox positive. The mpox vaccine is provided by the federal government at no cost to the State.

Generally, LHDs and other providers that provide mpox treatment must seek to offset any costs by billing insurance for rendered services. At this time, treatment for mpox, including Tecovirimat (also known as TPOXX or ST-246), is provided under an expanded access Investigational New Drug (EA-IND) protocol, which allows for the use of TPOXX for primary or early empiric treatment of non-variola orthopoxvirus infections, including mpox, in adults and children of all ages. The treatment is provided at no cost.

Costs to State Government:

There are no direct costs to the State or the Department. The Department will continue to work with LHDs using existing resources to provide guidance regarding the control of communicable diseases using STD clinics and other methods as required by the PHL Article 6 State aid rules and these regulations.

Local Government Mandates:

As discussed above, these amendments will require STD clinics operated by LHDs to provide mpox diagnosis and treatment, including prevention services, either directly or by referral. LHDs are not, however, required to provide mpox treatment directly; they may refer patients to other providers for treatment.

Paperwork:

LHDs will be required to bill public and commercial third-party payers to the extent practicable to offset the costs of providing mpox treatment services.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that conflict with this rule. Like other STDs (syphilis, gonorrhea, etc.), since mpox will be listed on both the state communicable disease list and the STD list, two sets of Article 6 guidance documents for LHDs will apply to mpox.

Alternatives:

The alternative is to continue not to list mpox as an STD in New York. However, to advance the goal of controlling mpox outbreaks, mpox should be listed as an STD. This will not only reduce morbidity and mortality, but will also decrease health care costs statewide by lowering the prevalence of mpox and the cost of providing care to mpox-positive individuals.

Federal Standards:

There are no Federal standards in this area.

Compliance Schedule:

The amendment will take effect upon publication of a Notice of Adoption in the State Register.

The Department will assist affected entities in compliance efforts.

Contact Person: Katherine Ceroalo
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Bureau of House Counsel, Regulatory Affairs Unit
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Albany, New York 12237
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Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of the Rule:

The proposed amendments to 10 NYCRR Part 23 will impact the 58 local health departments (LHDs) and the New York City Department of Health and Mental Hygiene, which are required to provide STD services as a condition of State Aid pursuant to Article 6 of the Public Health Law. In addition, local governments are responsible for the local share of the cost of the Medicaid program. The amendments will not impact small businesses (i.e., small private practices or clinics) any differently from other health care providers.

This mandate does not create new costs for local government. Currently, since mpox is listed as a communicable disease in 10 NYCRR §2.1, and since LHDs are responsible for controlling the spread of communicable diseases, LHDs are already required to treat mpox. Therefore, this regulation adding mpox to the list of STDs will not create any unfunded mandate for local government.

Increasing vaccination rates will decrease the number of mpox cases and will reduce Medicaid costs to care for Medicaid recipients with mpox, thereby reducing the local share of the cost of the Medicaid program. Since the vaccine is provided for free, this regulation implements a public health measure that will save money for local governments that are supported by property taxpayers.

Compliance Requirements:

Pursuant to these amendments, LHDs must provide mpox diagnosis and treatment, including prevention services, either directly in an STD clinic, or by making a written or electronic prescription or referral to another health care provider. Implementation of this rule will require recordkeeping and reporting by LHDs.

Professional Services:

Those LHDs that provide mpox treatment services directly or through contract may be required to ensure the development or updating of billing systems to comply with the obligation to seek payment from insurance providers to the extent practicable.

Compliance Costs:

LHDs diagnose patients for mpox by offering mpox testing. In regard to mpox treatment, including prevention services, some LHDs may experience up-front costs associated with providing treatment to additional individuals. However, these regulations do not mandate that an LHD provide treatment directly. As with the other conditions already listed in Group B, LHDs may fulfill their obligation to provide mpox treatment by referring the patient to another provider; they are not required to pay for treatment.

Providing diagnosis and treatment, including prevention services, to persons diagnosed or at risk for mpox may increase the use of mpox vaccine. It is anticipated that any increase in the use of prophylactic services will decrease the number of people who become mpox positive, thereby greatly reducing the cost of providing care to individuals who are mpox positive.

In addition, LHDs and other providers that provide mpox treatment must seek to offset any costs by billing insurance for rendered services to the extent practicable. Remaining costs may be eligible for reimbursement from other sources that fund mpox treatment in New York.

Economic and Technological Feasibility:

The requirement to seek insurance recovery and the availability of other funding sources make this requirement economically feasible. There are no new technology requirements. The Department will also provide technical advice and support as needed.

Minimizing Adverse Impact:

LHDs and other providers that provide mpox treatment must seek to offset any costs by billing insurance for rendered services. Remaining costs may be eligible for reimbursement from other sources that fund mpox treatment in New York.

Small Business and Local Government Participation:

Community stakeholders, representative of regions and businesses across New York State, have been engaged in the response to the mpox outbreak, including ensuring that minors have the right to consent to mpox treatment and prevention services. The recommendation to amend regulations to ensure minors have the right to consent to mpox treatment and prevention services has been supported by community stakeholders. The Department sought and received input from local health departments, including the New York City Department of Health and Mental Hygiene.

This regulation does not have the effect of imposing a mandate. Rather, it permits local governments to expand access to mpox vaccine, which will result in cost savings, because less money will need to be spent on treatment. LHDs are already providing mpox vaccine. The reason minors should be permitted to access mpox vaccine is that it will prevent minors from getting mpox, which furthers the Department’s mission to decrease morbidity and mortality.

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed amendments to 10 NYCRR Part 23 will impact clinicians in rural areas no differently than throughout New York State.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This rule imposes no mandates upon entities in rural areas outside those entities noted in Article 23 of the Public Health Law. As stated, local health departments (LHDs) must provide mpox treatment, including prevention services, either directly in an STD clinic, or by making a written or electronic prescription or referral to another health care provider. Implementation of this rule will require recordkeeping and reporting by LHDs.

Costs:

Some clinicians may experience up-front costs associated with providing mpox treatment services, including prevention services, to additional individuals. However, these regulations do not mandate health care providers to provide mpox treatment services. Any provider that does provide mpox treatment for additional patients can offset any costs by billing for services rendered.

Minimizing Adverse Impact:

As discussed above, the ability to recover costs will minimize the impact of these regulations.

Rural Area Participation:

Community stakeholders, representative of regions and businesses across New York State, including those in rural areas, have been engaged in the response to the mpox outbreak, including ensuring that minors have the right to consent to mpox treatment and prevention services. The recommendation to amend regulations to ensure minors have the right to consent to mpox treatment and prevention services has been supported by community stakeholders in rural areas.

**Statement in Lieu of
Job Impact Statement**

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendments, that it will not have an adverse impact on jobs and employment opportunities.

SUMMARY OF EXPRESS TERMS

This regulation amends 10 NYCRR sections 12.2 and 405.21, and Parts 721, 754 and 795.

The amendments carry out the recommendations of the Department's perinatal regionalization expert panel. The Department's expert panel made recommendations for the perinatal system in New York State, which includes Regional Perinatal Centers (RPCs), Level III hospitals, Level II hospitals, Level I hospitals, and freestanding birth centers including midwifery-led birth centers.

The recommendations addressed the role of RPCs and affiliation agreements with RPCs, transfers, maternal services, neonatal services, behavioral health and substance use, subspecialists (obstetric and neonatal), and finance. The regulations align with current standards of practice as advised by the American Association of Birth Centers (AABC), American College of Gynecologists (ACOG), and American Academy of Pediatrics (AAP). Standards from the Commission for the Accreditation of Birth Centers (CABC) related to accreditation and clinical requirements were reviewed in relation to freestanding- and midwifery-led birth center standards, to assess the impact of accreditation. Operational requirements for accredited midwifery birth centers were added to maintain their involvement in the regional perinatal system, including affiliation and transfer agreements and data and quality improvement requirements. These requirements are identical to those of other freestanding birth centers.

The proposed regulations also reflect New York State's requirements for the establishment of midwifery led birth centers, which includes physical plant standards,

namely compliance with National Fire Protection Association (NFPA) 101 Life Safety Code, Facility Guidance Institute (FGI) requirements for Birth Centers, and ADA Standards for Accessible Design. These national standards are utilized by the Department of Health in Article 28 licensure, similar to those referenced by the CABC for accreditation. Regulations also remove Advanced Cardiac Life Support (ACLS) requirements for freestanding and midwifery birth centers, in line with current standards of practice. Additionally, the Department has outlined areas of flexibility to those national standards for birthing centers with a maximum of three birthing rooms (and a maximum of six rooms total, birthing and exam).

The proposed regulations add requirements to notify the Department within two days when Neonatal Intensive Care Unit (NICU) and/or maternity census exceeds the number of licensed beds.

The proposed regulations strengthen the role of RPCs in offering support to affiliates. The regulations will require RPCs to coordinate transfers among its affiliates. The role of the RPCs in quality improvement and data review ensures that identified problems are reported to and addressed by quality assurance committees. Quality improvement will be achieved through a systematic, formal application of continuous actions aimed at optimizing patient health and safety.

In addition, section 12.2 is amended to remove references to tetracycline or erythromycin eye preparation or a one percent solution of nitrate of silver, while still requiring eye prophylaxis to newborns to prevent purulent conjunctivitis in accordance with current standards of care.

Finally, updating regulatory language with the use of gender-neutral terminology will make the document more all-inclusive of persons receiving midwifery, obstetrical and neonatal health care services in New York.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803 of the Public Health Law, Sections 12.2 and 405.21, and Parts 721 and 754 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

Section 12.2 is amended read as follows:

Precautions to be observed for the prevention of purulent conjunctivitis of the newborn. It shall be the duty of the attending physician, licensed midwife, licensed nurse or other authorized provider in attendance at a [delivery] birth to place into the eyes of the [infant, on delivery] neonate upon birth, an agent effective for preventing purulent conjunctivitis of the [newborn such as tetracycline or erythromycin eye preparation or a one percent solution of nitrate of silver] neonate in accordance with current standards of care.

Section 405.21 is amended to read as follows:

Perinatal services.

- (a) **Applicability.** This section shall apply to all general hospitals having [maternity] midwifery, obstetrical and [newborn] neonatal services and providing pregnancy-related care for [women] patients who are pregnant at any stage, parturient or within six weeks from [delivery] birth and for infants 28 days of age or less (i.e., neonate) or, regardless of age, who are less than 2,500 grams (5 1/2 pounds).

- (b) Definitions. For the purposes of this section:
- (1) Perinatal services shall mean those services provided in a particular hospital where, as a regular practice, [maternity] midwifery/obstetrical patients and [newborn infants] neonates receive care on a continuum ranging from preconception services to care during all stages of pregnancy, parturition, postpartum and neonatal care.
 - (2) Perinatal regionalization system shall mean the statewide organization of [maternal] midwifery, obstetrical and [newborn] neonatal health care services, designed as set forth in [Part] this section and Parts 721, 754 and 795 of this Title, to ensure that [mothers] midwifery/obstetrical patients and [newborns] neonates receive the care they need in a timely, safe and effective manner.
 - (3) Labor room shall mean a room for parturient patients [in labor], distinct from patient bedrooms and from operating or delivery rooms.
 - (4) Delivery room shall mean a room distinct from patient bedrooms and set apart for the delivery and birth of parturient patients.
 - (5) Single unit [maternity] midwifery, obstetrical or labor-delivery-[recovery] recovery-postpartum model shall mean a model for family-centered [maternity] midwifery, obstetrical and [newborn] neonatal care in which labor, [delivery] birth, nursery and postpartum care are all provided in a single room and movable equipment is introduced and withdrawn from the room as required to provide services and care to the [mother and neonate] patients.
 - (6) Rooming-in shall mean an arrangement which allows the [mother] postpartum patient and [her newborn infant] neonate to be cared for

together, so that the [mother may have access to her infant] neonate is accessible during all or a substantial part of the day and night, not limited to feeding times.

- (7) [Newborns] Neonate shall mean [all infants] an infant 28 days of age or less.

* * *

- (9) Low [birth weight infant] birthweight neonate shall mean [an infant] a neonate weighing less than 2,500 grams (5 1/2 pounds) at birth. Very low birthweight neonate shall mean a neonate weighing less than 1,500 grams (3 pounds 5 ounces). Extremely low birthweight neonate shall mean a neonate weighing less than 1,000 grams (2 pounds 3 ounces).

- (10) Normal newborn nursery shall mean a room for housing [newborns] neonates who do not need intensive care and are not suspected of nor diagnosed as having any communicable condition.

- (11) Neonatal intensive care unit (“NICU”) shall mean a room at Level II, Level III and Regional Perinatal Center perinatal care services for housing [newborns] neonates, including premature [infants] and low [birth weight infants] birthweight neonates, who require specialized care and who are not suspected of nor diagnosed as having any communicable condition. A Level I hospital shall not provide NICU or other specialized care services to neonates.

- (12) Observation nursery shall mean a room, physically separate from the normal newborn nursery, where [newborns] neonates, including premature and low birthweight neonates exposed to potential sources of infection,

and [newborns] neonates suspected of but not diagnosed as having any communicable condition may be observed, pending diagnosis.

- (13) Isolation nursery shall mean a room, physically separate from other nurseries, for the isolation of [newborns] neonates diagnosed as having any communicable condition, or neonates suspected of exposure to communicable conditions.

* * *

- (15) Level I perinatal care service shall mean [a comprehensive maternal] an obstetrical and [newborn] neonatal service as defined by Section 721.2([a]c) of this Title. Midwifery services may also be provided.

- (16) Level II perinatal care service shall mean a comprehensive [maternal] obstetrical and [newborn] neonatal service as defined by Section 721.2([b]d) of this Title. Midwifery services may also be provided.

- (17) Level III perinatal care service shall mean a comprehensive [maternal] obstetrical and [newborn] neonatal service as defined by Section 721.2([c]e) of this Title. Midwifery services may also be provided.

- (18) Regional perinatal center (“RPC”) shall mean a hospital [or hospitals] housing a Level III perinatal care service and providing additional services to perinatal affiliates within a regional perinatal network as defined by Sections 721.2([d]g) and 721.2(h) of this Title.

- (19) Perinatal affiliates shall mean birth centers and Level I, Level II and Level III hospitals which belong to a regional perinatal network and have a current perinatal affiliation agreement as defined [in Part] by Parts 721, 754 and 795 of this Title as applicable.

- (20) Birth center shall mean a place, other than a traditional hospital childbirth unit or birthing room, where births are planned to occur away from the [mother's] patient's usual residence following a normal uncomplicated pregnancy, as defined in sections 754.1 and 795.1 of this Title.
- (21) Birthing room shall mean a hospital room designed as a homelike setting which serves as a combined [labor/delivery/recovery] labor/birthing/recovery room and where family members or other supporting persons may remain with [a woman] a patient as much as possible throughout the childbirth process.
- (22) Quality improvement shall mean improvement of the quality of care provided by the RPC or affiliate hospitals [through initiatives and analyses designed to identify and then address potential problems in care in its own hospital or in affiliated hospitals, or in the region as a whole, through review of either sentinel cases or patterns of] in alignment with evidence-based practice and current standards of professional care.

(23) Definitions in section 721.2 of this Title shall apply to this section.

(c) General requirements.

- (1) Hospitals providing perinatal services shall provide such services in accordance with current standards of professional practice. Written policies and procedures shall be developed and implemented which address the following:
- (i) the professional qualifications of the [obstetric] midwifery, obstetrical and [pediatric] neonatal staff;

* * *

- (iii) the establishment and implementation of rooming-in at the option of each patient unless the establishment or implementation of such program for that patient is medically contraindicated [or unless the hospital does not have sufficient facilities to accommodate all such requests];
 - (iv) protocols and resources available to stabilize and assess [infants] neonates for their need of neonatal intensive care; and
 - (v) the daily care of [maternity] midwifery/obstetrical patients and [infants] neonates in the perinatal service.
- (2) Medical record for each [maternity] patient. The medical record for each [maternity] patient admitted to the perinatal service shall be maintained in accordance with section 405.10 of this Part and also shall include the following:
- (i) a copy or abstract of the prenatal record, if existing, including [a maternal] a reproductive history and physical examination as well as [results] documentation of [maternal and fetal risk assessment, results of maternal] any HIV [, Hepatitis] testing under section 69-1.3(n) of this Title, prenatal hepatitis B [and] antigen test result, including the date of specimen collection, in accordance with Subpart 69-3 of this Title, syphilis and other sexually transmitted infection testing and treatment during the current pregnancy, Group B strep testing if done, and ongoing assessments of fetal growth and development and [maternal] patient health;

* * *

- (iii) labor and birth information, including records of fetal monitoring and antepartum, intrapartum, and postpartum assessment.
- (3) Medical record for each [newborn] neonate. The medical record for each [newborn] neonate shall be cross-referenced with the [mother's] postpartum patient's medical record and contain the following additional information:
- (i) [newborn] neonatal physical assessment, including but not limited to Apgar scores, presence or absence of three cord vessels, ability to feed, vital signs and accommodation to extrauterine life;
 - (ii) [newborn] neonatal care, including the administration of eye prophylaxis and vitamin K;
 - (iii) description of [maternal-newborn] patient-neonate interactions;
[and]
 - (iv) orders for newborn screening tests, including [arrangements for] screening for hearing[.] and critical congenital heart defects;
 - (v) documentation of hepatitis B vaccination in accordance with subpart 69-3 of this Title; and
 - (vi) documentation of HIV prophylaxis and/or treatment under section 69-1.3(n) of this Title.
- (4) The hospital shall ensure the transfer to the [newborn's] neonate's medical records of [a mother's] the midwifery/obstetrical patient's HIV test result under section 69-1.3(n) of this Title, hepatitis B antigen test result, including the date of specimen collection, in accordance with subpart 69-3 of this Title, and syphilis and other sexually transmitted infection test results, if [one exists] such results exist.

- (5) The hospital shall maintain in a timely manner in the perinatal service area, a register of births, in which shall be recorded the name of each patient admitted, date of admission, date and time of birth, type of [delivery] birth, names of personnel present [in the delivery room] at birth, sex, weight and gestational age of [infant] neonate, location of [delivery] birth and outcome of [delivery] birth. Any [delivery] birth for which the institution is responsible for filing a birth certificate shall be listed in this register.
- (6) Control of infection or other communicable condition. The provisions of section 405.11 of this Part shall apply to the perinatal service. In addition, the following requirements relating to the control of infection or other communicable conditions in the perinatal service shall be met:
- (i) each patient admitted to the labor-delivery unit shall be screened for signs of, or exposure to, infection. Those with suspected or confirmed communicable conditions shall be reported to the responsible attending [practioner] practitioner and the infection control officer for observation or isolation as required;
 - (ii) isolation precautions shall be carried out for patients in labor with confirmed or suspected infection. There shall be at least one room readily available for the use of [a maternity] a midwifery/obstetrical patient requiring isolation. The hospital shall implement safe and effective isolation precautions to prevent the spread of infection and assign professional and other staff in the perinatal service in a manner that will prevent the spread of

- infection. Written policies and procedures shall be developed and implemented reflecting such isolation precautions;
- (iii) the hospital shall adopt and implement written policies and procedures governing the placement in observation or isolation nurseries of [infants] neonates exposed to or showing signs of developing an infection or communicable condition. Such policies shall not unnecessarily restrict the [mother's] postpartum patient's access to [her infant; and] the neonate;
 - (iv) infection control measures shall be instituted to protect [infants] neonates when the care and treatment of [infants requires] neonates require common surfaces[.]; and
 - (v) the hospital shall adopt and implement written policies and procedures to address situations in which the labor-delivery/maternity unit and/or neonatal intensive care unit (NICU) census exceeds the number of licensed beds identified on the hospital's certificate of need. Level I, II and III birthing hospitals shall develop such policies in collaboration with their Regional Perinatal Center (RPC); RPCs shall also develop such policies. These policies and procedures must include at a minimum:
 - (a) notification to the Department within two (2) business days when the maternity and/or NICU census exceeds the number of licensed beds;

- (b) prioritization of current patients who are stable to transfer to another affiliate hospital that is capable of providing appropriate care;
 - (c) documentation of consent to transfer midwifery/obstetrical patients, and consent from the birthing person, or their family if the birthing person is not able to give consent, to transfer neonatal patients;
 - (d) documentation of refusal and patient education efforts when consent to transfer is not given;
 - (e) policies to reduce the number of newly admitted patients, including those newly presenting for birth and those transferred from a lower level of care when there is an alternate and appropriate hospital that is available to admit the transferred patient.
- (7) Preconception services. The hospital shall develop and implement written policies and procedures for preconception services either onsite or through referral arrangements. Services shall include but not be limited to family planning and reproductive health services, sexual health assessment, including partner HIV and sexually transmitted infection status, nutritional assessment and counseling, genetic screening and counseling, screening for depression and perinatal mood disorder, intimate partner violence, alcohol and substance use, tobacco use, and identification and treatment of medical conditions that could adversely affect the patient's health,

including a future pregnancy, and referral for identified supportive service needs.

- (8) [Hospital prenatal] Prenatal care activities.
- (i) The hospital shall participate in and shall provide or arrange for effective prenatal care activities including conducting effective community outreach programs either directly or in collaboration with community-based providers and practitioners who provide prenatal care and services to [women] pregnant people in the hospital service area. Such prenatal care activities shall encourage active participation by patients and families in their own plan of health care. Hospitals shall implement policies and procedures to address missed visits and patients lost to care. Activities and services of a prenatal care program shall include but not be limited to the following:
- (a) active promotion of prenatal care for pregnant [women] patients during the first trimester of pregnancy and making services available to patients seeking initial care during each trimester;
- (b) the initial prenatal care visit shall include a complete history, physical examination, pelvic examination, laboratory screening, initiation of patient education, screening for nutritional status, [nutrition counseling] screening for depression and perinatal mood disorder, intimate partner violence, alcohol and substance use, tobacco use, provision of pregnancy complications

educational material as required by section 2803-w and subdivision 2 of section 266 of Public Health Law, and use of a standardized prenatal risk assessment tool;

(c) arrangements for repeat visits for follow-up prenatal care and education;

(d) nutrition counseling;

(e) psychosocial, mental health and alcohol, substance, and tobacco cessation support services as needed;

(f) ongoing [maternal and fetal] risk assessment of the pregnant person and fetus;

(g) prebooking for [delivery] birth;

(h) providing HIV counseling and a clinical recommendation for testing to pregnant [women] patients as early in pregnancy as possible, and again in the third trimester, preferably between 34 and 36 weeks gestation, for all patients who test negative for HIV in early pregnancy.

Counseling and/or testing, if accepted, shall be provided pursuant to Public Health Law Article 27-F and Part 63 of this Title. Information regarding the [woman's] patient's HIV counseling and HIV status must be transferred as part of [her] the medical history to the [labor and delivery site] birth center or birthing hospital. [Women] Patients with positive test results shall be referred to the necessary health and social services as soon as possible and within a clinically appropriate time. If no HIV test result is

documented in the health record of the patient, and the patient's HIV status during the current pregnancy is unknown, the hospital shall immediately arrange an expedited HIV test of the patient with the patient's consent. If the patient declines testing, the hospital shall arrange for expedited HIV antibody screening for the neonate, with results available as soon as practicable in accordance with current standards of care.

- (ii) To perform the activities and provide the services in subparagraph (i) of this paragraph, the perinatal service shall accommodate and coordinate services with primary care providers as follows:
 - (a) the hospital shall develop a memorandum of understanding with each diagnostic and treatment center[;] and prenatal care provider who is not a member of the medical staff[, and prenatal care assistance program] in the hospital service area. These memoranda shall establish protocols for the provision of prenatal care, testing, prebooking arrangements, timely transfer of records, and other necessary services; and
 - (b) the hospital shall require as a condition of continuing medical and midwifery staff membership that [medical] staff members provide to [maternity]patients under their care prenatal care, prebooking arrangements, testing, timely transfer of records and other necessary services. Written

policies and procedures implementing this requirement shall be developed.

- (iii) Hospitals shall assure the availability of prenatal childbirth education classes for all prebooked [women] patients which address [as] at a minimum the anatomy and physiology of pregnancy, labor and [delivery] birth, neonatal/infant care and feeding, breastfeeding, formula feeding if desired by the patient, parenting, nutrition, prenatal, neonatal, infant and childhood vaccines, the effects of smoking, alcohol and other drugs on the patient and fetus, signs of perinatal depression or perinatal mood and anxiety disorder, what to expect if transferred, [and]the newborn screening program with the distribution of newborn screening educational literature, and the newborn hearing screening program.
- (iv) The hospital shall assure that each prebooked [woman] patient receives the hospital's maternity information leaflet as described in PHL section 2803-j, which includes a written description of available options for labor, [delivery] birth, and postpartum services. The attending [practioner] practitioner shall:
 - (a) advise the [woman] patient of options for treatment, care and support, including technological support that are expected to be available at the time of labor and [delivery] birth, together with the advantages and disadvantages of each option;

- (b) answer fully any questions the [woman] patient may have regarding the options available; and
 - (c) obtain from the [woman her] patient informed [choice of] consent for mode of treatment, care and technological support that are expected to be necessary.
- (9) Hospitals in consultation with the medical staff shall develop [memoranda of understanding] transfer agreements with [free standing] birth centers in their service area, [upon request from such centers,] for the prompt admission of [women and newborns] patients and transfer of records of any birth center patients whose assessed condition necessitates admission to the level of perinatal service provided by such hospital.

* * *

- (ii) Unless already performed at a [free-standing] birth center, [newborns] neonates transferred to a hospital shall have newborn screening performed at the hospital in accordance with Part 69 of this Title.
- (iii) The hospital, as part of its quality improvement activities, shall allow the RPC to review all [maternal] obstetrical and [/or newborn] neonatal transfers [from birth centers] between perinatal providers within its affiliate network to ensure [adequacy of] that perinatal providers are adequately assessing risk [assessment] and [care, that each transfer has been appropriately arranged] arranging for and [that] documenting the reasons for the transfer [have been documented clearly].

(10) Quality improvement activities. In addition to the quality assurance provisions of section 405.6 of this Part, the hospital shall, in conjunction with the medical staff and the nursing staff, monitor the quality and appropriateness of patient care and ensure that identified problems are reported to the quality assurance committee together with recommendations for corrective action. In accordance with section 721.[9]10 of this Title, the hospital shall also perform quality improvement activities in accordance with its perinatal affiliation agreement. Continuous quality improvement practices shall be undertaken by the affiliate birth centers, hospitals and RPC, and, as facilitated by the RPC, in the affiliate region as a whole. Quality improvement shall be achieved through a systematic, formal application of continuous actions aimed at optimizing patient health and safety. These actions include, but are not limited to:

- (i) accurate collection, submission and analysis of perinatal data;
- (ii) review of sentinel cases and patterns of care;
- (iii) identification of processes and practices for improvement;
- (iv) planning and implementation of rapid cycle improvements; and
- (v) ongoing review of policies and procedures to ensure alignment with current standards of professional practice.

(11) Functioning of perinatal services.

* * *

- (ii) The perinatal service shall meet all requirements for level of perinatal care in accordance with Part 721 of this Title, and have available: services for the identification of high-risk [mothers]

obstetrical patients and fetuses, and continuous electronic fetal monitoring. [Cesarean delivery capabilities within 30 minutes of determination of need for such procedure, anesthesia services available on a 24-hour basis, radiology and ultrasound examination, with at least one ultrasound machine immediately available for use by the labor and delivery service.]

(12) Laboratory services. The perinatal service shall:

(i) meet all requirements for level of perinatal care in accordance with Part 721 of this Title and have immediate access to the [hospital's] hospital's laboratory services including a 24-hour capability to provide blood group, Rh type and cross-matching, and basic emergency laboratory evaluations. The perinatal service shall establish protocols for massive transfusion. Either ABO Rh-specific or O-Rh-negative blood and fresh frozen plasma shall be available at the facility at all times. Such other procedures as may be required by the perinatal service shall be performed on a timely basis.

(ii) ensure the availability at all times of expedited HIV testing, with results reported as soon as practical but no later than 12 hours after the pregnant or postpartum patient provides consent or, if consent is not provided, 12 hours after the birth of the neonate, in accordance with subpart 69-1 of this Title.

(13) Admissions.

(i) [Women] Patients in need of medical care and services pertaining to pregnancy, [delivery] birth and the puerperal period shall be

admitted to the [maternity] midwifery or obstetrical service. Such admission shall be consistent with section 405.9 of this Part and Part 721 of this Title.

* * *

(b) [A patient may be sent home without] The hospital must notify and obtain the [prior knowledge and] approval of [her] the patient's attending physician or licensed midwife before making the determination not to admit the patient.

(c) Patients who present to a perinatal service who may need care that is not available at that hospital shall be stabilized and transferred, in consultation with the RPC, and in accordance with Part 721 of this Title.

(ii) Admission of [non obstetric] non-pregnant patients.

(a) The hospital shall develop and implement written policies and procedures for the admission of [non obstetric female] non-pregnant patients to the perinatal service area. The hospital shall ensure that [obstetric] pregnant and birthing patients take precedence over [non obstetric] non-pregnant patients and that the safety and physical and psychological well-being of [obstetric] pregnant and birthing patients are not jeopardized.

(b) The following [non obstetric] non-pregnant patients shall not be admitted to the [maternity] obstetrical service:

* * *

(14) Voluntary acknowledgement of paternity for [a child born out of wedlock] certain children pursuant to section 4135-b of the Public Health Law.

* * *

(16) Each hospital providing Level I, II or III perinatal care services shall enter into a perinatal affiliation agreement with its designated RPC in accordance with Part 721 of this Title. Level I and II hospitals may also enter into transfer agreements in accordance with Part 721 with [Level III] higher level perinatal hospitals.

(d) High-risk antepartum services at Level II, Level III and RPC perinatal services.

* * *

(2) [Maternal] Obstetrical intensive care services.

- (i) Hospitals providing Level I or II perinatal care services shall develop, enter into and implement written agreements with hospitals providing Level III and RPC perinatal care services for the transfer of obstetric patients whose [physical] conditions are evaluated in collaboration with the RPC as needing such higher level of care.
- (ii) Hospitals [which provide multiple levels of perinatal care services] shall develop and implement written protocols and procedures for the in-house transfer of patients who are evaluated as requiring a level of care other than the level being provided in the area where the patient is currently located, including but not limited to critical care or intensive care services.
- (iii) Evaluation of the patient's condition and need for intensive care services shall be conducted in accordance with standardized risk assessment criteria based on generally accepted standards of practice which shall be adopted in writing and implemented

uniformly throughout the perinatal service. The hospital shall consult with the RPC as needed.

- (iv) Level II, Level III and RPC perinatal care services shall maintain a nursing staff that is appropriately trained and adequate in size to provide specialized care to distressed [mothers and infants] patients. The number of patient care staff on duty during any shift shall reflect the volume and [nature] acuity of patient services being provided during that shift.
- (v) An RPC shall:
 - (a) offer education and training to its perinatal affiliates [and associated birth centers]. Education and training shall be designed to update and enhance staff knowledge and familiarity with relevant procedures [and], technological advances, and current standards of professional practice;
 - (b) review, in conjunction with its perinatal affiliates, all cases of patients transferred to a higher level of care to determine whether such transfers were appropriate and accomplished according to established transfer and affiliation agreements; and
 - (c) participate in case conferences with its perinatal affiliates [and associated birth centers] to determine whether any non-transferred cases including high-risk cases were handled appropriately and whether the transfer guidelines were adequate to address such circumstances.

(d) For purposes of participation in such activities, the RPC representative or representatives shall be deemed member(s) of the perinatal affiliate's quality assurance committee. RPC representatives may only access confidential patient information for quality improvement purposes through their roles on the affiliate hospitals' quality assurance committees as set forth in the affiliation agreements and these regulations. Members of [hospitals' birth center and hospital] quality assurance committees must maintain the confidentiality of patient information and are subject to the confidentiality restrictions of Public Health Law Section 2805-m.

(e) Intrapartum services.

- (1) [The hospital] Hospitals shall develop and implement written policies and procedures that indicate the areas of responsibility of [both] medical, midwifery and nursing personnel as appropriate for normal, high-risk, and emergency deliveries. These policies and procedures shall be reviewed yearly and made available to all staff. There also shall be written policies for the care of pregnant patients when all antepartum and postpartum beds [are occupied] in the hospital are occupied. Level II and III facilities and RPCs shall implement written policies for the care of neonatal intensive care unit (NICU) patients, which may include back transports and transfers under the direction of the RPC when resources are at capacity.
- (2) Written policies and procedures shall be developed and implemented governing restrictions of entry to the closed labor and delivery unit, and

the hospital shall ensure that, unless medically contraindicated, the patient may choose to be accompanied during labor and [delivery] birth by [the father] a partner and/or other supportive person(s) who can provide emotional comfort and encouragement. Any such contraindications shall be noted in the medical record.

(3) Evaluation and preparation.

(i) In conjunction with the required updated history and physical exam, the hospital shall provide for the following:

(a) laboratory data including, but not limited to, serologic tests for blood group, Rh type, hepatitis B, syphilis and rubella titer and HIV test results;

(1) if the [woman's] patient's serology is positive, a cord blood serology shall be obtained. If the sample could not be taken prior to the pregnancy's end, the serology shall be taken at the time of termination of the pregnancy;

(2) the [woman] patient shall be evaluated for the risk of sensitization to Rho (D) antigen and if the use of Rh immune globulin is indicated, an appropriate dosage thereof shall be administered to her as soon as possible within 72 hours after [delivery] birth or termination of pregnancy;

(3) For patients found to be hepatitis B surface antigen negative early in the pregnancy, the hospital shall repeat the hepatitis B surface antigen test upon

admission if the patient has identified risk factors for acquiring hepatitis B virus infection during the pregnancy or has developed clinical signs and symptoms of hepatitis infection since the previous test.

- (b) an assessment of the [woman's] patient's HIV status and risk of syphilis infection or reinfection, and the provision of testing in accordance with Section 69-1.3([i]n) and subparts 69-2 and 69-3 of this Title;
- (c) an admitting physical examination in accordance with current standards of professional practice which shall include at a minimum the [woman's] patient's blood pressure, pulse and temperature, the fetal heart rate, the frequency, duration and evaluation of the quality of the uterine contractions, and which shall be recorded in the patient's medical record. An evaluation of any complications [should be made. If there is suspected leakage of amniotic fluid or any unusual bleeding, the attending physician or licensed midwife] shall be [notified immediately before a pelvic examination is performed] made. When there are no complications or contraindications, qualified midwifery or nursing personnel may perform the initial pelvic examination to evaluate labor status and the imminence of [delivery] childbirth. The physician or licensed midwife responsible for the

[woman's] patient's care shall be informed of [her] the status, so that a decision can be made regarding further management; and

(d) interval assessments including physical and psychological status of the [woman] patient and fetal status.

(ii) Pharmacological or surgical induction or augmentation of labor.

(a) Qualified practitioner as referred to in this section shall mean a practitioner functioning within [his or her] their scope of practice according to State Education [law] Law who meets the hospital's criteria for privileging and credentialing practitioners in management of labor and [delivery] birth in accordance with the hospital's policies and procedures.

(b) [~~Pharmacological~~] Mechanical, pharmacological, or surgical induction or augmentation of labor may be initiated only after a qualified practitioner has evaluated the [woman] obstetric patient, determined that induction or augmentation is medically necessary for the obstetric patient [woman] or fetus, recorded the indication, obtained informed consent, including shared decision making as appropriate, for induction or augmentation of labor, and established a prospective plan of management acceptable to the [woman]obstetric patient. If the qualified practitioner initiating these procedures does not have privileges to perform cesarean [deliveries] birth, a physician who has

such privileges shall be contacted directly prior to initiation of the induction or augmentation and a determination made that he or she shall be available [within 30 minutes of determination of the need] to perform a [Cesarean delivery] cesarean birth within a timeframe appropriate to meet the needs of the patient. If the patient has had a previous cesarean [delivery] birth, a physician with cesarean privileges must be immediately available during pharmacological induction or augmentation of labor.

(c) [Pharmacological] Mechanical, pharmacological, or surgical induction or augmentation shall be initiated by a qualified practitioner. A qualified practitioner shall initiate the induction or augmentation and shall remain with the [woman] patient for a period of time sufficient to ensure that the procedure or medication has been well-tolerated and has caused no adverse reaction. A [physician] practitioner capable of managing any reasonably foreseeable complications from the induction or augmentation of labor shall be available within a timeframe appropriate to the [woman's] patient's needs.

* * *

(e) During the entire time of the labor induction or augmentation, the [woman] patient shall be monitored by staff who are trained and competent in [both the] monitoring of fetal heart rate and uterine contractions

[and], interpretation of such monitoring, and addressing complications that may result. The monitoring shall be by [either] electronic fetal monitoring [or auscultation. Where auscultation is used] in [lieu of electronic fetal monitoring it shall be performed no less frequently than every 15 minutes during the first stage of labor and every five minutes during the second stage of labor] accordance with current standards of professional practice.

- (iii) No attempt shall be made to delay birth of a [infant] neonate by physical restraint or anesthesia.
- (iv) Each [maternity] obstetric patient, when present in a labor, delivery, birthing room or birth center shall be under the care of a licensed midwife or registered professional nurse available in accordance with the patient's needs.
- (v) The medical record shall be updated to note whenever the [woman's] patient's choice of position for labor, use of drugs or technological support devices or mode of treatment and care cannot be honored due to medical contraindications. Standing orders for drugs or technological support devices may only be implemented after the nature and consequences of the intervention have been explained to the [woman] patient, and the [woman] patient agrees to such implementation.

(4) Delivery and Childbirth.

- (i) Hospitals shall develop and implement policies and procedures for the delivery or birthing room that shall require at least the following:
- (a) regular evaluation of [maternal] the patient's health status in accordance with current standards of care, including but not limited to, patient blood pressure and pulse both during and after [delivery] birth; [and]
 - (b) fetal heart evaluation[.]; and
 - (c) accurate methodology to qualitatively and quantitatively assess blood loss.
- * * *
- (iv) Alternative arrangements for the organization of the perinatal service, including but not limited to birthing rooms, birth centers or single unit maternity models, shall conform to pertinent requirements of this section and Parts 711 and 712 of this Title. Birth centers shall also conform to the patient care provisions of [Part 754] Parts 754 and 795 of this Title as appropriate.
- (v) Immediate care of the [newborn] neonate. The practitioner who [delivers the baby] attends the birth of a neonate shall be responsible for the immediate [post-delivery] postpartum care of the [newborn] neonate until another qualified person assumes this duty. At all times, the [newborn] neonate shall be attended by a physician or licensed midwife and shall be under the care of a registered professional nurse in accordance with Parts 721 and 754 of this Title.

(a) Resuscitation of a distressed [newborn] neonate. The hospital shall develop and implement policies and procedures for the recognition and immediate resuscitation of a distressed [newborn] neonate, in accordance with Neonatal Resuscitation Program (NRP) guidelines. Level I and II perinatal care services shall accomplish this in consultation with, and with assistance of, the RPC with which the hospital has a perinatal affiliation agreement. The policies and procedures shall include the following elements:

* * *

(2) approval of these policies and procedures by the directors of [maternity] obstetrical and [newborn] neonatal services, anesthesia, pediatrics, nursing, midwifery, and by the medical staff;

(3) requirement for immediate availability of needed resuscitative equipment and personnel, in accordance with Part 721 of this Title;

(4) presence in the delivery or birthing room of a member of the professional staff specifically qualified in [newborn] neonatal resuscitation;

* * *

(6) procedures for the stabilization of the distressed [newborn] neonate; and

[(7) capability to perform endotracheal intubation and umbilical vessel catheterization. For a Level I

perinatal care service, the perinatal affiliation agreement with its designated RPC shall provide for staff training to develop current staff competence in these procedures; and]

([8]7) procedures for the preparation and transfer of the distressed [newborn] neonate to a [a Level III or RPC] higher level of care perinatal [care service] hospital when medically indicated.

(b) Ventilation of a distressed neonate. Ventilation of distressed patients shall include the following:

(1) Level I hospitals shall provide immediate resuscitation after birth as appropriate, stabilization, and assisted ventilation of patients until timely transfer to a higher level of care hospital;

(2) Level II hospitals shall implement standard short-term mechanical ventilation and airway maintenance. If it is determined that the neonate does not require transfer, the Level II hospital may retain the neonate for no more than a total of seven days on assisted ventilation or oxygen at 50% or greater, and must then transfer the neonate to a higher level of care hospital unless the RPC is consulted and agrees that the neonate's care is in accordance with current standards of professional

practice and remaining at the Level II hospital is in the best interests of the neonate.

(3) Level III hospitals and RPCs may provide long-term standard mechanical ventilation and complex ventilation techniques, such as high-frequency ventilation and extracorporeal membrane oxygenation (ECMO).

([b]c) The hospital shall administer eye prophylaxis and vitamin K in accordance with sections 12.2 and 12.3 of this Title, test for hepatitis B, obtain a specimen for neonate screening of phenylketonuria and other diseases and provide or arrange for newborn hearing in accordance with Part 69 of this Title.

([c]d) The hospital shall conduct expedited HIV testing of a [newborn whose mother's] neonate when the midwifery or obstetric patient's HIV status is unknown at [delivery] birth in accordance with Section 69-1.3([l]n) of the Title and shall determine the need for, and ensure the provision of, HIV prophylaxis and/or treatment, in accordance with standards of care to prevent transmission to the infant;

(e) The hospital shall offer the universal dose of hepatitis B vaccine to all neonates without known medical contraindications, shall offer to vaccinate neonates whose birth parent has a positive or unknown hepatitis B surface

antigen test result, and shall provide a certificate of immunization, in accordance with Part 69 of this Title.

([d]f) A professional staff person in attendance at a [delivery] birth shall ensure the proper identification of a [newborn] neonate before [it] the neonate leaves the room where the [delivery] birth has occurred.

(1) The hospital shall ensure continuous identification of the [newborn infant] neonate during the entire period of [hospitalization] neonatal care including verification of identity after each separation and reunion of [mother] postpartum patient and [newborn] neonate. In addition to the development and implementation of written policies and procedures for continuous identification, further policies and procedures shall set forth steps to be taken when the means of identification which has been placed on the [newborn] neonate becomes separated from the [newborn] neonate.

(2) [Newborns] Neonates born of different [mothers] birthing patients shall not be present at the same time in the room where [delivery] birth/recovery takes place, unless each has previously been identified by the methods prescribed in this clause.

([e]g) Circumcision, which shall be an elective procedure, shall not be performed during the [newborn] neonatal stabilization period after birth.

(f) Postpartum care of [mother] midwifery or obstetric patient.

(1) Appropriate nursing care shall be available to the [mother] patient during the period of recovery after [delivery] birth. At all times after [delivery] birth, the [mother] patient shall have maximum access to the [the baby] neonate unless such access is medically contraindicated and recorded in the appropriate medical record.

([1]2) The [mother] postpartum patient shall be transferred to the postpartum area, if applicable, only after [her vital signs have] being stabilized. The hospital shall adopt and implement policies and procedures for identifying any postpartum complications that arise and informing the responsible practitioner who shall manage complications.

([2]3) Postpartum monitoring shall be in accordance with current standards of professional practice and shall, at a minimum, include the following:

* * *

(iii) blood loss occurring during and after birth shall be estimated accurately;

([iii]iv) the patient's practitioner shall be notified of any unusual findings;

([iv]v) nursing and midwifery personnel qualified to recognize postpartum emergencies and problems shall be immediately available to the patient;

([v]vi) the [father] partner or other support person(s) shall be allowed to remain with the [mother] midwifery or obstetric patient during the

recovery period unless medically contraindicated or unless the [nursing] staff determines that the continued presence of the individual would interfere with the continuing care of the [mother] patient or other patients;

([vi]vii) a physical assessment of the [mother] midwifery or obstetric patient shall be conducted in accordance with established protocols; and

([vii]viii) unless medically contraindicated or unacceptable to the [mother] midwifery or obstetric patient, the [newborn] neonate shall remain with the [mother] patient, who shall provide a preferred source of body warmth for the [newborn] neonate. During this period the [newborn] neonate shall be closely observed for any abnormal signs and breastfeeding shall be encouraged.

([3]4) Education and orientation of the [mother] parent who is planning to raise the baby.

(i) [The] Unless the pregnant or postpartum patient has contraindications to breastfeeding, the hospital shall provide instruction and assistance to each [maternity] patient who has chosen to breastfeed and shall provide information on the advantages of breastfeeding [and possible impacts of not breastfeeding] to [women] patients who are undecided as to the feeding method for their [infants] neonates. At a minimum:

(a) the hospital shall designate at least one person who is thoroughly trained in breastfeeding physiology and management to be responsible for ensuring the

implementation of an effective breastfeeding program. At all times, there [should] shall be available at least one staff member qualified to assist and encourage [mothers] patients with breastfeeding;

(b) written policies and procedures shall be developed, updated, implemented and disseminated annually to staff providing [maternity] midwifery, obstetrical or [newborn] neonatal care to assist and encourage the [mother] patient to breastfeed, in the absence of contraindications, which shall include, but not be limited to:

* * *

- (2) placement of the [newborn] neonate skin-to-skin for breastfeeding immediately following delivery, unless contraindicated;
- (3) restriction of the [newborn's] neonate's supplemental feedings to those indicated by the medical condition of the [newborn] neonate or of the [mother] postpartum patient;
- (4) provision for the [newborn] neonate to be fed on demand; and
- (5) pacifiers or artificial nipples may be supplied by the hospital to breastfeeding [infants] neonates to decrease pain during procedures, or for specific medical reasons[, or upon the specific request of the mother]. Before providing a pacifier or artificial

nipple that has been requested by the [mother] patient, the hospital shall educate the [mother] patient on the possible impacts to the success of breastfeeding and discuss alternative methods for soothing [her infant] the neonate, and document such education;

(6) prohibition of the distribution of marketing materials, samples or gift packs that include breast milk substitutes, bottles, nipples, pacifiers, or coupons for any such items to pregnant [women, mothers] and postpartum patients or their families;

(7) prohibition of the use of educational materials that refer to proprietary product(s) or bear product logo(s), unless specific to the [mother's] patient's or [infant's] neonate's needs or condition; and

* * *

(8) sources for advice and information available to the [mother] patient following discharge; and

(d) for [mothers] patients who have chosen formula feeding or for whom breastfeeding is medically contraindicated, hospitals shall provide individual training in formula preparation and feeding techniques.

(ii) The hospital shall provide to the [mother] patient instructions in self-care and caring for [herself and her] the baby. Topics to be covered shall include but not be limited to: [to] self-care, nutrition,

breast examination, exercise, signs of perinatal depression, infant care including taking temperature, feeding, bathing, diapering, infant growth and development, neonatal, infant and childhood vaccines, and parent-infant relationships.

- (iii) The hospital shall determine that the [maternity] midwifery or obstetric patient can perform basic self-care and infant care techniques prior to discharge or make arrangements for post discharge instruction.
- (iv) Each [maternity] midwifery or obstetric patient shall be offered a program of instruction and counseling in family planning and, if requested by the patient, the hospital shall provide the patient with a list, compiled by the department and made available to the hospital, of providers offering the services requested.
- (v) For postpartum patients and neonates with a pending expedited HIV test, breastfeeding shall not be initiated until confirmatory results are available and indicate a negative HIV status. Postpartum patients without a documented HIV-negative status during the current pregnancy shall be provided with lactation support during the time that expedited HIV testing is pending, to establish and maintain breastmilk supply and to avoid the risk of breast complications. A risk reduction plan shall be in place for pregnant or postpartum patients who are at significant risk for HIV acquisition to reduce the incidence of acute infection and subsequent transmission of HIV to their neonates.

([4]5) Visiting. The hospital shall develop and implement written policies and procedures regarding visiting that:

- (i) do not unreasonably restrict [fathers] partners or other primary support person(s) from visitation to the [mother] patient during the recovery period;
- (ii) promote family bonding by allowing regular visitation for the [newborn's] neonate's siblings in a manner consistent with safety and infection control; and

* * *

([5]6) Discharge planning. The discharge of [mother and newborn] patients shall be performed in accordance with section 405.9 of this Part. In addition, prior to discharge, the hospital shall determine that:

- (i) sources of nutrition for the [infant] neonate and [mother] obstetric patient will be available and sufficient and if this is not confirmed, the attending practitioner and an appropriate social services agency shall be notified;
- (ii) follow-up medical arrangements, consistent with current perinatal guidelines and recommendations, have been made for the [mother] postpartum patient and [newborn] neonate;
- (iii) the [mother] patient has been informed of community services and benefits, including but not limited to, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and shall make referrals to such community services as appropriate.
- (iv) the [mother] patient has been instructed regarding normal postpartum events, care of breasts and perineum, care of the

- urinary bladder, amounts of activity allowed, diet, exercise, [emotional response] signs of perinatal depression, family planning, resumption of coitus and signs of common complications;
- (v) the [mother] patient has been advised on what to do if any complication or emergency arises;
- (vi) the [newborn] neonate has had a documented and complete physical examination and verification of a passage of stool and urine;
- (vii) the means of identification of [mother] postpartum patient and [newborn] neonate are matched. If the [newborn] neonate is discharged in the care of someone other than the [mother] postpartum patient, the hospital shall ensure that the person or persons are entitled to the custody of the [newborn; and] neonate;
- (viii) the [newborn] neonate is stable; sucking and swallowing abilities are normal. Routine medical evaluation of the neonate's status [at two to three days] in a timeframe that meets the needs of [age] the neonate and postpartum patient shall have been conducted or arranged. Newborn screening shall be conducted at time of discharge, provided discharge is greater than 24 hours after the birth, or between the third and fifth day of life, whichever occurs first, in accordance with Part 69 of this Title[.]; and
- (ix) postpartum patients with HIV infection and neonates exposed or infected with HIV shall be provided with adequate supplies of antiretroviral medications for each patient. The postpartum patient

shall be instructed on proper storage, dosing and administration of such medication for all affected patients and shall be provided instructions on when and where to call for assistance as necessary. The hospital shall transmit a copy of the neonate's HIV test result to the responsible provider. For any neonate with a result indicating exposure to HIV, the hospital shall coordinate with the responsible provider to arrange appointments for follow-up care with a provider experienced with the treatment of pediatric HIV, case management and other social services as needed. The responsible provider shall also submit to the Department any specimens necessary to confirm the HIV infection status of the neonate or submit documentation of confirmatory test results from a laboratory permitted pursuant to section 574 of Public Health Law and subpart 69-1 of this Title.

- (g) High-risk neonatal care.
 - (1) Each hospital providing Level I, II or III perinatal services shall enter into a perinatal affiliation agreement with its designed RPC in accordance with Part 721 of this Title. Level I and II hospitals may also enter into transfer agreements in accordance with Part 721 with [Level III] higher level affiliate hospitals.
 - (i) The perinatal affiliation agreements and transfer agreements shall include provisions for standardized risk assessment of the obstetric patient and neonate, based on generally accepted standards of practice, stabilization and resuscitation of [newborns] obstetric and neonatal patients as necessary, newborn screening in accordance

with Part 69 of this Title, consultation, obstetric and neonatal patient transport, transfer of [maternal] obstetrical and [newborn] neonatal records and any other features needed to ensure prompt and efficient transport of [newborns] obstetric patients and neonates, that minimize risks and provide the [newborns] obstetric patients and neonates with needed services.

- (ii) Unless medically contraindicated, [mothers] postpartum patients shall be permitted to accompany distressed [newborns] neonates to receiving perinatal care facilities.
- (iii) The perinatal affiliation agreements and transfer agreements shall provide for the return of the distressed [newborn] neonate to [the sending] a Level II or III hospital when the condition has been stabilized and return is medically appropriate. Level I hospitals shall not receive neonates from a higher level of care hospital. A Level I hospital may receive a postpartum patient when their condition has been stabilized and return is medically appropriate; such hospital should be closer to the patient's residence and be able to continue care including potential obstetrical emergencies.
- (iv) If transfer necessitates separating the [mother] postpartum patient and [newborn, mothers] neonate, a postpartum patient who [have] has chosen to breastfeed should be encouraged to maintain lactation, and breast milk should be available to the [newborn] neonate.

- (2) Placement in nurseries.

- (i) Healthy [newborns] neonates shall be placed in a normal newborn nursery. If a [newborn] neonate in a normal newborn nursery is removed temporarily from the perinatal service for any reason, the [newborn] neonate may be returned to the normal newborn nursery only if infection control measures established by the hospital have been followed.
 - (ii) [Newborns] Neonates requiring specialized care shall be placed in a NICU and hospitals shall develop and implement protocols for all phases of treatment of such [newborns] neonates. [Newborns] Neonates who are delivered in perinatal care services that are not capable of providing all necessary care and services shall be transferred to [perinatal] higher level of care [services at] hospitals that can meet the [newborns'] patients' needs.
- (h) Neonatal intensive care services.

* * *

- (2) Decisions regarding the appropriate level of care and the need for transport of a neonate to a higher level of care shall be made in consultation with the hospital's RPC and shall be consistent with generally accepted standards of care and the hospital's perinatal affiliation agreement.
- (3) Treatment of severely ill, injured, or [handicapped infants] disabled neonates with life-threatening conditions.
 - (i) Severely ill, injured or [handicapped infants] disabled neonates exhibiting life-threatening conditions shall be transferred to and/or treated at RPCs or other hospitals having Level III perinatal care

services after a consultation with [that service] the RPC has established that the [infant] neonate might benefit from such transfer.

(ii) Level III [perinatal care services] hospitals and RPCs shall consult with the hospital's bioethical review committee which shall assist the service and provide guidance to staff and families in the resolution of issues affecting the care, support and treatment of severely ill, injured, or [handicapped infants] disabled neonates with life-threatening conditions. The committee:

(a) shall consist of such members of the medical staff, midwifery staff, nursing staff, social work staff and administration as designated by the governing body and such other community-based individuals with experience in bioethical matters as may be chosen by the governing body;

(b) shall operate in accordance with written policies and procedures developed by the hospital. Such policies shall establish the protocols for organization and functioning of the committee and scope of responsibility for specified cases as well as development of general review policies governing bioethical matters. The hospital shall:

(1) ensure that the [parents are] parent is fully advised regarding the [infant's] neonate's condition, prognosis, options for treatment, likely outcomes of such treatment and options, if any, for the

discontinuance of heroic life-maintenance efforts;

and

(2) ensure that any decision by a competent [parents] parent to continue life-sustaining efforts is

implemented by the hospital; and

(c) shall, in conjunction with the attending physician(s), child protective services, the medical staff and the governing body, recommend that the hospital obtain an appropriate court order to undertake a course of treatment, in all cases when in the judgment of the committee:

(1) the parents do not have the capacity to make a decision; or

(2) the parents' decision on a course of action is manifestly against the [infant's] neonate's best interest.

Section 721.1 is amended to read as follows:

Introduction.

(a) All birth centers, including midwifery birth centers and hospital-based perinatal care services shall participate in the statewide perinatal regionalization system.

Such system shall coordinate perinatal care within a particular geographic [areas or among a group] region of perinatal affiliates.

(b) Each perinatal service within a general hospital shall be designated by the Department as providing Level I perinatal care, Level II perinatal care, Level III

perinatal care₂ or [,] the hospital shall be designated as a Regional Perinatal Center (RPC).

- (c) The RPC shall be the source of perinatal clinical consultation, outreach and education, and quality improvement support within the group of perinatal affiliates. The RPC shall provide assistance when an affiliate facility's patient requires specialized services beyond the capacity of the RPC and its perinatal affiliates.

Section 721.2 is amended to read as follows:

Definitions.

- (a) Birth center shall mean a diagnostic and treatment center organized to provide care to low-risk patients during pregnancy, labor and birth who require a stay of less than 24 hours after birth as defined in Part 754.1 of this Title.
- (b) Midwifery birth center shall mean a facility licensed pursuant to Article 28 of the Public Health Law that is engaged principally in providing prenatal and obstetric care, and where such services are provided principally by midwives as defined in Part 795.1 of this Title.
- (c) Hospital shall mean a physician-led birth center, midwifery birth center, or general hospital that provides perinatal care services as defined in this Part.
General hospital shall mean a Level I, Level II, Level III, or RPC-designated perinatal care hospital excluding physician-led birth centers.
- ([a]d) Level I perinatal care service means a comprehensive [maternal and newborn] obstetrical and neonatal service provided by a hospital designated as such by the Department for normal low-risk [newborns] neonates and for [women] obstetrical patients who have been assessed as having a normal, low-risk pregnancy and

having a fetus which has been assessed as developing normally and without apparent complications. Midwifery care services may also be provided.

((b)e) Level II perinatal care means a comprehensive [maternal and newborn] obstetrical and neonatal service provided by a hospital designated as such by the Department which includes services for moderately high-risk [newborns] neonates greater than or equal to 37 and 0/7 weeks and for [women] obstetrical patients who have been assessed as having the potential or likelihood for a moderately complicated or high-risk [delivery] birth and/or bearing a fetus exhibiting the potential for unusual or high-risk development. Such services may also provide services to [women] patients requiring care normally provided at Level I perinatal care services.

((c)f) Level III perinatal care means a [maternal and newborn] obstetrical and neonatal service provided by a hospital designated as such by the Department and which includes services for [women and newborns] patients who have been assessed as high-risk patients and/or are bearing high-risk fetuses, who will require a high level of specialized care. Such programs may also provide services to [women and newborns] patients requiring care normally provided at Level I and II perinatal care services.

((d)g) Regional Perinatal Center (RPC) means a hospital [or hospitals] housing a perinatal care service which meets the standards for a Level III perinatal care service [but which] and also [,] includes highly specialized services that may not be available at all Level III hospitals, and is designated as such by the Department. An RPC serves [a geographic area or a group of] perinatal affiliates within a regional perinatal network as defined in subdivision (h) of this section. It provides all aspects of comprehensive [maternal] obstetrical and neonatal care,

and its functions and responsibilities also include efforts to coordinate and improve quality of perinatal care among its affiliates, attending level consultation regarding patient transfer and clinical management, [transport of high-risk patients] coordination of obstetrical and neonatal transports, including coordination of transfers to the RPC as well as between affiliate facilities, outreach to affiliates to determine educational needs, education and training of [affiliate hospitals] affiliates, data collection, evaluation and analysis within that region. [If two or more hospitals jointly sponsor an RPC, they must define in a written agreement between or among the hospitals comprising the RPC how the aforementioned functions and responsibilities will be carried out.]

(h) A Regional perinatal network shall include one RPC, at least one lower-level birthing hospital, and any birth centers within the geographic catchment area. Regional perinatal networks shall cover one or more contiguous geographic regions as determined by the Department and must include all birthing hospitals and centers within the designated region(s) unless otherwise agreed upon by the Department and all affected birthing hospitals and birth centers.

((e)i) Perinatal affiliation agreement shall mean a written fully executed agreement between a birth center, or Level I, II or III perinatal care hospital, and that [hospital's] facility's designated RPC. [A perinatal affiliation agreement shall include provisions for, at a minimum:

- (1) criteria, policies and procedures for transfer of patients, with appropriate consent, to the RPC and from the RPC back to the sending hospital.
- (2) criteria and process for attending level subspecialty consultation on a 24-hour basis, including types of consultation processes (i.e., via telephone, telemedicine or in-house consults) acceptable for each subspecialty;

- (3) participation in the statewide perinatal data system (SPDS) including the provision of the confidentiality and protection of all data obtained through the SPDS;
- (4) cooperation in outreach, education, training, research and data collection activities; and
- (5) authority for one geographically accessible RPC representative or representatives to participate in the affiliate hospital's quality assurance committee and other reviews of the quality of perinatal care provided by the affiliate and to provide recommendations for quality improvement of perinatal services. Each RPC and each affiliate hospital shall take actions necessary, including but not limited to, entering into a perinatal affiliation agreement, to authorize such participation by the RPC's representatives in the affiliate hospital's quality assurance committee and for purposes of such participation, the RPC representative or representatives shall be deemed member(s) of the affiliate's quality assurance committee, shall maintain the confidentiality of all information obtained in such capacity and are subject to the confidentiality restrictions of Public Health Law Section 2805-m.
- (6) RPC involvement in the development of written agreements among perinatal affiliates including criteria regarding transport of women and newborns;
- (7) timely consultation on treatment plans for women and neonates who develop or exhibit unanticipated conditions which may require transfer to a higher level of care; and,

(8) resolution of disputes or disagreements between the RPC and the perinatal affiliate, including disagreements regarding interpretation of affiliation agreement criteria for consultation and/or transfer. In cases of disputes or disagreement between an affiliate and its RPC, the affiliate and the RPC shall follow the dispute resolution process outlined in their perinatal affiliation agreement. If the dispute is not resolved within sixty days, the parties must request review by the Department. The Department shall initiate compliance reviews at both sites, advise each facility of its findings, and require corrective action, as indicated, to resolve the dispute. This process shall not interfere with the timely and proper transfer of mothers and newborns.]

((f)i) Transfer agreement shall mean a written agreement between [a Level I or II perinatal service and a Level III hospital for the transfer of patients requiring Level III care] an affiliate birth center and an affiliate Level I, II or III hospital, or two affiliate hospitals that provide different levels of care. Perinatal transfer agreements shall address the provision and/or coordination of all high-risk [maternal and newborn] obstetrical and neonatal transports. [The agreements shall reflect the following:

- (1) the maximum allowable surface travel time to reach a Level III or RPC hospital shall be two hours under usual weather and road conditions, and the receiving hospital shall be accessible and convenient to the mother's place of residence whenever possible;
- (2) mutually agreed criteria for determining when consultation and/or transfer is required;
- (3) procedures and responsibility for arranging transport;

- (4) requirement for 24-hour availability of appropriately qualified RPC medical staff to respond to calls from affiliates;
- (5) policies for obtaining patient or parent/guardian consent for patient transfer and to exchange medical information;
- (6) procedures for making arrangements for transfer to another hospital if the receiving hospital is unable to accept the transfer due to capacity/bed limitations;
- (7) a provision that an emergency transport shall depart within thirty minutes of the request for transfer;
- (8) provisions for the back transfer of newborns who no longer need Level III or RPC care but who need continuing care in a hospital located near their home communities shall be part of the perinatal affiliation and/or transfer agreements between two hospitals; and
- (9) higher level hospitals shall inform referring hospitals of major changes in status of transferred patients, with patient's consent or with parental or guardian consent in the case of newborn transfers.]

(k) Patient shall mean a pregnant, parturient or postpartum person, or a neonate receiving medical services.

[(g)] Definitions contained in section 405.21(b) of this Title shall apply to this Part.

Section 721.3 is amended to read as follows:

Perinatal designation of hospitals.

(a) Perinatal services will be designated by the Commissioner based on the following:

- (1) [each hospital designated as a Level I, Level II or Level III hospital shall enter a written perinatal affiliation agreement with an RPC;] the level of

care currently provided by the hospital shall meet the definition, standards and criterion set forth in this Part for a Level I, Level II, Level III perinatal service or RPC, Part 754 of this Title for a birth center and Part 795 of this Title for a midwifery birth center;

- (2) [the level of care currently provided by the hospital shall meet the definition, standards and criterion set forth in this Part for a Level I, Level II, Level III perinatal service or RPC] each hospital designated as a birth center, midwifery birth center, Level I, Level II, or Level III perinatal care hospital shall enter into a written perinatal affiliation agreement with an RPC;
- (3) for Level II, Level III and RPCs, the number of births and intensity of obstetrical and neonatal care at the hospital during the previous full calendar year must meet the following volume and acuity standards:
 - (i) a Level II perinatal care hospital shall provide no fewer than 1,200 high-risk [newborn] neonatal patient days annually, and no fewer than 150 high-risk [maternal] obstetrical patient days annually;
 - (ii) a Level III perinatal care hospital shall provide no fewer than 2,000 high-risk [newborn] neonatal patient days annually, and no fewer than 250 high-risk [maternal] obstetrical patient days annually;
 - (iii) RPCs shall provide no fewer than 4,000 high-risk [newborn] neonatal patient days annually, and no fewer than 400 high-risk [maternal] obstetrical patient days annually[.]; and
 - (iv) An RPC shall provide quality improvement services to a group of perinatal affiliates with a minimum total of 8,000 births annually [each year];

(4) the availability of appropriate medical, nursing, and other staffing as described in this Part, Part 754 of this Title for birth centers, or Part 795 of this Title for midwifery birth centers, supportive of the perinatal service at the hospital; and

[(5) surface travel time for transfers. The surface travel time to reach a Level II hospital, a Level III hospital, or an RPC within the geographic area or affiliative perinatal network, under usual travel conditions shall be no more than two hours. Transfer decisions must be based on the appropriate level of perinatal care required, and care shall be provided at a hospital offering the appropriate level of care which is accessible and convenient to the mother's place of residence whenever feasible.

(6) the geographic distribution of designated hospitals throughout the state to ensure access to appropriate levels of care throughout the state; and,]

[(7)]5 such other additional information as the Commissioner may require to make the designation.

(b) Designation process.

(1) Each hospital certified to provide perinatal services shall complete a designation survey by the Department [and verify specific data about its maternal and newborn discharges]. The Department shall assess the results of the survey and data [in order] to assign a designation. The Department may require an on-site review of services at a hospital before making a designation, in which case the hospital shall participate and cooperate in the review and provide any additional information requested. A hospital shall receive its designation only after this process is complete and the

Department has obtained and considered all relevant information to its satisfaction.

- (2) The perinatal designation of a hospital shall appear on the hospital's site-specific operating certificate.

* * *

- (4) Only those hospitals designated for a level of perinatal care shall provide pre-booked or pre-planned admission and care to midwifery, obstetrical and neonatal patients.

- (5) Any hospital not designated to provide perinatal care that receives a laboring or birthing patient or neonate shall transfer such patient to the most appropriate perinatal care hospital, in collaboration with the nearest RPC.

- (i) All perinatal hospitals shall admit obstetrical and neonatal patients for emergency services, in accordance with state and federal law.

- (ii) All non-perinatal hospitals shall have policies and procedures for the stabilization and transfer of obstetrical and neonatal patients.

- (6) Only those hospitals designated as a Level II, III or RPC level of care may maintain a neonatal intensive care unit (NICU) and provide care to obstetrical and neonatal patients in accordance with this Part. No hospital shall state or imply that it has the capability to provide care to obstetrical or neonatal patients outside the scope of perinatal designation, including advertising or promoting the ability to care for high risk obstetrical or neonatal patients, or neonates requiring special care.

- (c) Redesignations.

* * *

[(4) Maintenance of minimum volume standards. To ensure that service capability and staff competence are maintained for Level II, Level III, or an RPC, a hospital which fails to meet minimum volume standards and is seeking to maintain its designation, or applying for another designation, shall present evidence that the annual minimum volume standards will be achieved within one year following the decision to allow the hospital to remain at the present level of designation or the initiation of the new designation. Minimum volume standards may be waived by the Department if the Department determines that a waiver will improve access while maintaining high quality care.]

(d) Criteria for Maintenance of Designation.

(1) Upon designation, a hospital shall:

(i) remain subject to the provisions of this Part and all other applicable requirements of this Part and of the Public Health Law related to hospitals;

(ii) notify the Department immediately in writing of any inability to meet the capabilities required by its current designation. Such notification must be made in writing to the Department by the hospital's chief administrative official.

(2) The Department or its designee may request documentation from the hospital in question, conduct one or more conference calls or site visits with appropriate staff, or engage in other activities to obtain information regarding the hospital's plan to come into compliance with requirements.

If the hospital in question is a birth center or Level I, II, or III facility, the Department may involve the hospitals' RPC at its discretion.

(3) Upon notification of the inability to meet requirements, or that the hospital is determined to be performing below the expected level of care, the

Department may:

(i) request a corrective action plan from the hospital to address the identified issue(s) in accordance with Department requirements; and/or

(ii) require participation in specific Department- or RPC-led quality assurance and quality improvement activities as outlined in section 721.10 of this Part related to identified areas of concern.

(4) If a Level II or III hospital, or an RPC is unable to improve performance to meet or exceed the relevant requirements established in Part 721 of this Title, the Department may reduce the hospital's designation to a level appropriate for the services provided.

(5) Birth centers and Level I facilities unable to improve performance to meet or exceed the relevant requirements established in Parts 721, 754 and 795 of this Title may be required to participate in Department- and RPC-led quality improvement initiatives and other activities designed to improve the quality of care to at least minimum required levels.

(e) Reduction or Withdrawal of Designation. The Department may change a level of designation from the hospital if:

(1) The hospital fails to comply with SPDS or other reporting requirements and is unable to meet requirements as agreed to in the corrective action plan;

- (2) The hospital fails to participate in quality improvement activities and provide evidence of internal quality improvement activities, when specific issues related to reducing maternal or neonatal morbidity and mortality have been identified by either the RPC or the Department; or
- (3) The Department documents findings that indicate ongoing evidence that the hospital has not been able to provide the level of care expected for the hospital's designation level.
- (f) Upon reduction of designation level, the hospital shall immediately notify affected parties, including emergency medical services, to ensure that obstetrical and neonatal patients are taken to appropriate designated perinatal hospitals, and within 30 days, provide to the Department a written plan describing the specific measures it has taken to notify affected parties, and its process for transfer of obstetrical and neonatal patients received. The facility shall ensure it has a transfer agreement with a perinatal hospital to ensure timely and safe transfer of obstetrical and neonatal patients.

Section 721.4 is amended to read as follows:

Patient care and transfers.

- (a) Each hospital providing perinatal care services shall provide patient care based on the individual needs of the patient and in accordance with the following criteria.
- (1) A Level I perinatal care service hospital shall evaluate and stabilize all [women and neonates] midwifery, obstetrical and neonatal patients.
- (i) For patients needing a higher level of care, it shall consult with [a higher level hospital] its affiliated RPC and arrange for timely

transfer to a Level III perinatal care service hospital or an RPC that provides the appropriate level of perinatal care.

- (ii) For healthy [women] obstetrical patients with an anticipated [delivery] birth at [36] 35 weeks gestation or later and for healthy [newborns] neonates with a birthweight of 2,500 grams or more, it shall provide continuing care until their discharge.
- (iii) Except in unusual circumstances, smaller and more premature [infants] neonates shall be delivered at higher level hospitals; if such [an infant] a neonate is born at a Level I perinatal care hospital, he/she shall be transferred promptly after birth.
- (iv) [Women] Obstetrical patients and neonates who have relatively minor problems that do not require advanced laboratory, radiologic, or consultation services may remain in the Level I perinatal care hospital.
- (v) When it is known that the [newborn] neonate may require immediate complex care, it shall be delivered at a Level III perinatal care hospital or an RPC whenever possible.

* * *

- (2) A Level II perinatal care services hospital shall:
 - (i) provide the Level I perinatal care services described in paragraph (1) above and be capable of providing care for moderately high-risk [women] obstetrical patients, fetuses and [newborns] neonates and moderately ill [women and newborns] obstetrical and neonatal patients who have problems that do not require highly specialized care; and

- (ii) stabilize ill [women and newborns and women whose fetuses] patients and patients who are expected to need complex care, consult with [a higher level hospital] the RPC for care coordination and [arrange for] timely transfer to a hospital that provides the appropriate level of perinatal care.
 - (iii) Level II perinatal care hospitals are qualified to deliver [infants] neonates with an anticipated [delivery] birth at [30] 32 weeks gestation or later and with an anticipated birthweight of [1,250] 1,500 grams or more.
 - (iv) Except in unusual circumstances, [infants] neonates smaller and more premature than is described at subparagraph (iii) of this paragraph shall be delivered at Level III hospitals or RPCs. If [an infant] a neonate who is smaller or a lower gestational age than described in subparagraph (iii) of this paragraph is born at the Level II hospital, he/she shall be transferred promptly after birth.
- (3) A Level III perinatal care services hospital shall:
- (i) provide Level I and Level II perinatal care services described in paragraphs (1) and (2) of this subdivision and shall care for [women, fetuses, and newborns] patients who may require complex care.
 - (ii) stabilize ill [women and newborns] patients prior to transfer, including [women whose newborns] patients who are expected to need the most complex care, consult with its designated RPC, and transfer if appropriate.

(iii) [Women] Obstetrical patients in unstable medical and/or obstetric situations shall be cared for at a Level III hospital or an RPC.

(4) Regional Perinatal Care Centers (RPC) shall provide Level I, Level II and Level III perinatal care services described in paragraphs (1), (2), and (3) of this subdivision and shall also care for [women, fetuses and newborns] patients who require highly specialized services not available at the Level III care hospital, such as sophisticated ventilation techniques (e.g., high-frequency ventilation and extracorporeal membrane oxygenation), cardiac surgery or neurosurgery.

* * *

[(b) Ventilation for distressed newborns. Resuscitation and ventilation of neonates who require cardiorespiratory assistance shall be performed at each Level of perinatal care and in the following ways:

- (1) at a Level I perinatal care services hospital the ventilation of distressed newborns shall be immediate resuscitation after birth as appropriate, stabilization, and assisted ventilation of newborns until timely transfer to a hospital that provides a higher level of perinatal care;
- (2) at a Level II perinatal care hospital the ventilation of a distressed newborn shall be as described in paragraph (1) above and, in addition, standard short-term mechanical ventilation. A Level II perinatal care hospital may care for infants requiring mechanical ventilation and/or 50% or more oxygen for no more than four days. By the fourth day of a newborn's receipt of assisted ventilation or oxygen at 50% or more, the Level II hospital shall consult with its designated RPC regarding the status of the newborn and determine whether to transfer the newborn to a higher level

hospital. If after such consultation the neonate stays at the Level II hospital, that hospital may retain the neonate for no more than a total of seven days on assisted ventilation or oxygen at 50% and must then transfer the neonate to a Level III hospital or to an RPC unless the hospital's RPC is consulted and agrees that the neonate's care is appropriate and in accordance with current standards of professional practice and remaining at the Level II hospital is in the best interests of the neonate.

- (3) at Level III perinatal care services hospitals and RPCs the ventilation of a distressed newborn shall be as described in paragraphs (1) and (2) of this subdivision and, in addition, may also include long-term standard mechanical ventilation and complex ventilation techniques, such as high-frequency ventilation and extracorporeal membrane oxygenation (ECMO).
- (c) Transfers.
- (1)]
- (b) All patient care and transfers shall be in accordance with generally accepted professional standards and be consistent with section 405.21(g) and this Part. Requirements for consultation and for transfer to a higher level of perinatal care and transfer back to [the referring] a Level II or III hospital for neonates, or for obstetrical patients the referring hospital or other hospital providing a lower level of care, shall be described in any transfer agreement negotiated between a birth center or Level I, II and III perinatal care hospitals, and in transfer provisions in the perinatal affiliation agreements between affiliate birth centers, Level I, II and III perinatal care hospitals and their RPCs.

[(2)](c) When a [newborn and/or mother] patient requires transfer, care shall be provided at an affiliate hospital providing the appropriate level of perinatal care which is, whenever feasible, accessible and convenient to the [mother's] patient's place of residence. When [mothers and their infants] patients need different levels of care, efforts shall be made to keep the [mother-newborn] dyad together. Level III hospitals and RPCs shall return a [newborn] neonate to the sending hospital when the condition has been stabilized and return is medically appropriate.

(d) Transfer decisions must be based on the appropriate level of perinatal care required, and care shall be provided at a hospital offering the appropriate level of care which is accessible and convenient to the parent's place of residence whenever feasible.

(e) Unless otherwise directed by the RPC, the transfer of midwifery/obstetrical and neonatal patients shall be to the nearest affiliate facility that has the capacity to provide appropriate care for the patient. Whenever possible, the surface travel time to reach the receiving hospital within the geographic affiliate network, under usual travel conditions, shall be no more than two hours. Transfers to a non-affiliate hospital must be coordinated by the RPC, and the patient must be transferred to the nearest non-affiliate hospital that has the capacity to provide appropriate care for the patient.

(f) Higher level hospitals shall, whenever feasible, transfer a stable neonatal patient back to a Level II or III level of care hospital that is closer to the parent's or parents' residence. Such back transfers shall require the receiving hospital to agree to admit the neonate and have sufficient clinical expertise and availability to continue care for the neonate during the convalescence period, including but not limited to, care related to thermoregulation, the neonate's ability for oral feeding,

and assessment and response to episodes of immature respiratory control. Such care shall be provided in accordance with current standards of practice.

- (g) Higher level hospitals shall, whenever feasible, transfer a stable postpartum patient back to a lower level of care hospital that is closer to the patient's residence. Such back transfers shall require the receiving hospital to agree to admit the patient and have sufficient clinical expertise and availability to continue patient care during the convalescence period.

Section 721.5 is repealed and a new Section 721.5 is added to read as follows:

Requirements for the Designation of a Level I Perinatal Care Service Hospital

(a) Qualifications and Responsibilities of Chiefs of Services

(1) Qualifications

- (i) Obstetrics. A board-certified or board-eligible obstetrician with admitting privileges at the hospital shall serve as the chief of obstetrics.
- (ii) Pediatrics. A board-certified or board-eligible pediatrician with admitting privileges at the hospital shall serve as the chief of pediatric services.
- (iii) Anesthesiology. A board-certified or board-eligible anesthesiologist with admitting privileges at the hospital shall serve as the chief of anesthesia services.
- (iv) Midwifery. A midwife or nurse-midwife licensed in the state of New York, at minimum, with privileges at the hospital shall serve as the chief of midwifery services. Facilities that do not employ or utilize midwifery staff are exempt from this requirement.

- (v) Nursing. Nursing leadership shall include, at minimum, a registered nurse with expertise in perinatal and neonatal care.
- (2) Care Coordination. Care shall be coordinated jointly by the applicable chiefs of obstetrics, pediatrics and anesthesia, midwifery, and nursing leadership in collaboration with appropriate physicians/staff in the fields of midwifery and family medicine. For hospitals that do not have chiefs of service in all such areas, each discipline shall have effective input in care coordination.
- (3) Responsibilities of Chiefs of Services.
 - (i) The coordinators of perinatal care at a Level I hospital shall be responsible for developing policy, maintaining standards of care, and collaborating and consulting with professional staff of hospitals providing higher level of care services in the region.
 - (ii) The chiefs of obstetrics, pediatrics, anesthesiology, and nursing leadership each shall have oversight of and be responsible for their respective services' quality improvement initiatives, including but not limited to participation in Department-led and RPC-led initiatives as defined by section 721.9 of this Part.
 - (iii) In hospitals that do not separate midwifery, obstetrical and/or neonatal services, one person may be given the responsibility for coordinating perinatal care.
- (b) Qualifications and Responsibilities of Physicians and Other Licensed Midwifery, Obstetrical and Pediatric/Neonatal Practitioners.
 - (1) Staff and Equipment Required for All Births

- (i) A physician or licensed midwife with appropriate training and expertise shall attend all births.
- (ii) At least one additional person who is a current Neonatal Resuscitation Program (NRP) provider shall be present at every birth to attend to the neonate.
- (iii) At least one person who is a current basic life support (BLS) provider shall be present at every birth to attend to the pregnant or postpartum patient.
- (iv) At least one person who is an advanced cardiac life support (ACLS) provider shall be immediately available at every birth to attend to the pregnant or postpartum patient.
- (v) An ultrasound machine shall be readily available to labor and delivery. A radiologist or obstetrician skilled in interpretation of ultrasound scans shall be available, either onsite or by telemedicine, within a timeframe appropriate to meet the patients' needs.
- (vi) The Level I facility shall have ventilation and resuscitative equipment appropriate to the patients' age and weight immediately available for all deliveries. This includes equipment necessary to carry out neonatal resuscitation under current NRP guidelines. In addition to requirements in subparagraphs (ii) and (iii) of this paragraph, a current BLS, ACLS, and NRP provider must be immediately available onsite to labor and delivery.

(2) Physicians

- (i) Obstetricians should be available for consultation 24 hours a day, onsite, by telephone or telemedicine. Such staff shall be available onsite within a timeframe appropriate to meet the patient's needs to address emergencies, including cesarean deliveries.
 - (ii) The expertise of the maternal-fetal medicine (MFM) board-certified obstetrician and care team of the RPC, as described in section 721.8(a)(2)(ii) of this Part, shall be engaged to provide consultation and support, as required by the Level I hospital.
 - (iii) The expertise of the neonatologist board-certified pediatrician and care team of the RPC, as described in section 721.8(a)(2)(iii) in this Part, shall be engaged to provide consultation and support, as required by the Level I hospital.
 - (iv) An anesthesiologist shall supervise or directly provide anesthesia care for all obstetrical and neonatal patients.
- (3) Physician Assistants and Nurse Practitioners. A licensed Physician Assistant (PA) or Nurse Practitioner (NP) may assist in caring for patients throughout pregnancy, labor, birth, and postnatal care. Such staff shall be current BLS, ACLS, and NRP providers.
- (c) Midwifery Staff
- (1) Licensed midwives shall be continuously available onsite to provide care for patients at all stages of pregnancy during a normal, uncomplicated pregnancy.
 - (2) Midwives attending births shall be current BLS and NRP providers.

- (3) Midwives shall have the ability to stabilize patients in distress, and transfer to an appropriate higher level of care facility for continued care, following consultation with the RPC.
 - (4) Midwifery staff shall co-manage the care of pregnant and birthing patients with obstetricians within obstetrician-led, midwifery-led, or shared models of care.
- (d) Nursing Care
- (1) Obstetrical and neonatal nursing care shall be provided under the direct supervision of a registered nurse. Licensed midwives who are also nurses (i.e., a licensed nurse-midwife) may be under the direct supervision of a registered nurse or other provider as determined by the birthing facility; licensed nurse-midwives may supervise other licensed midwives and nursing staff as determined by the birthing facility.
 - (2) Nursing leadership shall have expertise in perinatal nursing care, and the ability to stabilize and transfer high-risk patients.
 - (3) All obstetrical nursing personnel shall be qualified in interpretation of fetal heart rate monitoring and understand the physiology of labor and postpartum. All obstetrical and neonatal nursing personnel shall be qualified in assessment of the neonate and all aspects of routine monitoring and care, including education and support related to breastfeeding.
 - (4) All neonatal nursing personnel shall be current BLS and NRP providers; obstetrical nursing personnel shall be current BLS, ACLS, and NRP providers.

- (5) Licensed practical nurses and other licensed patient care staff with demonstrated knowledge and clinical competence in the nursing care of pregnant patients and neonates during labor, birth, and the postpartum and neonatal periods may be assigned to perinatal services.
- (e) Ancillary Services
- (1) Alcohol and Substance Use Specialists
 - (i) As part of routine midwifery and obstetrical care, all patients shall receive a screening for alcohol, tobacco use and substance use, as well as physical, sexual and emotional abuse.
 - (ii) The Level I hospital shall have a pre-arranged system with a local institution or higher level of care affiliate hospital for alcohol/substance use and opioid replacement therapy, if necessary, to co-manage patients.
 - (iii) A qualified mental health professional with experience in alcohol and substance use shall be available for consultation, onsite, by phone or by telemedicine, and within a timeframe appropriate to meet the needs of the patients.
 - (iv) Neonates with the potential of having neonatal abstinence syndrome (NAS) or fetal alcohol spectrum disorder (FASD) shall be stabilized and monitored after birth. Transfer of neonates with NAS or FASD, along with the parent patient, to a higher level of care hospital is dependent on professional judgement and availability of resources at the Level I hospital.
 - (v) For patients who are currently receiving alcohol or substance use disorder services, the prenatal provider will collaborate with the

patient's alcohol or substance use service provider to co-manage care of pregnant and postpartum patients.

- (vi) Patients identified as using tobacco products will be offered tobacco cessation support services and education as appropriate.

(2) Anesthesia Care

- (i) The Level I hospital will provide labor analgesia and surgical anesthesia for the patients on a 24-hour basis.
- (ii) The Level I hospital shall have the capability to perform cesarean birth in a timeframe appropriate to meet the patients' needs, including availability of anesthesia services, labor analgesia and surgical anesthesia.
- (iii) Prior to birth, anesthesiology staff shall assure access to anesthesia consultation when indicated.

(3) Breastfeeding

- (i) A certified lactation counselor (CLC) or an International Board-Certified Lactation Consultant (IBCLC) shall be responsible for the hospital's breastfeeding support program, as described in section 405.21(f)(4)(i) of this Title.
- (ii) Staff shall be available to educate and assist patients during the antenatal and postpartum periods.

- (4) Genetic Specialists. The Level I hospital shall provide access, through referral or consultation onsite, by telephone or telemedicine, to genetic screening, carrier testing, and genetic counseling for patients.

- (5) Infection Control. Infection control personnel shall be responsible for surveillance of infections in patients, as well as for the development of an appropriate environmental control program.
- (6) Laboratory Services. Personnel who are capable of determining blood type, cross-matching blood, and performing antibody testing shall be continuously available.
- (7) Nutrition. A Certified Dietitian-Nutritionist shall be available through referral for consultation with patients during the prenatal, intrapartum and postpartum phase.
- (8) Occupational and Physical Therapy. The Level I facility shall refer patients to an appropriate occupational or physical therapist.
- (9) Pharmacists and Pharmacy Services
 - (i) A pharmacist shall be immediately available 24 hours a day for consultation.
 - (ii) A Level I hospital shall have immediate access to emergency obstetrical and pediatric medications 24 hours a day for labor, birth, and emergent care.
 - (iii) To ensure patient safety, pharmacy services shall incorporate the use of patient-specific identifiers.
- (10) Radiology
 - (i) The Level I hospital shall have a radiologic technician or obstetrician skilled in interpretation of ultrasound scans available within a timeframe appropriate to meet the patients' needs, either onsite or by telemedicine.

- (ii) When results are inconclusive, or an abnormality is detected that requires immediate neonatal care, patients shall be directed to a higher level of care affiliate hospital for further management including consultation by a radiologist or other qualified provider who can interpret results.
- (11) Respiratory Therapy, Ventilation and Respiratory Support Services
- (i) A Level I hospital shall have respiratory therapists in-house or on-call 24 hours a day and available within a timeframe to meet the patients' needs, with the ability to provide respiratory stabilization of the patient, and neonatal cardiorespiratory monitoring to stabilize, assess, or observe the neonate prior to transport.
 - (ii) Clinical or nursing staff who are NRP providers shall be available onsite 24 hours a day.
- (12) Social Work, Psychosocial and Mental Health
- (i) A Level I hospital shall assess all patients to determine availability of sufficient resources prior to or following birth.
 - (ii) A Level I hospital shall provide prenatal and postpartum screenings during prenatal and postpartum visits, and provide referrals as indicated. Patients who screen positive during prenatal screening for perinatal depression or perinatal mood disorder shall receive a consultation at a higher level of care facility or a local institution with a perinatal qualified mental health professional to determine an appropriate course of action.

- (iii) If a patient is receiving mental health services, the Level I hospital shall collaborate with the patient's mental health service provider to co-manage care of the patient.
 - (iv) At least one qualified social worker who has experience with the socioeconomic and psychosocial problems of pregnant patients, ill neonates, and their families shall be assigned to the perinatal service.
 - (v) Additional qualified social workers sufficient to meet the needs of patients are required when there is a high volume of medical activity or psychosocial need.
 - (vi) At least one staff person with expertise in bereavement shall be responsible for the hospital's bereavement activities, and shall be available to assess and meet the patients' needs and the needs of patient families.
- (13) Speech-Language Pathology. Neonates demonstrating difficulty feeding and swallowing shall be referred to a licensed speech-language pathologist.

Section 721.6 is repealed and a new Section 721.6 is added to read as follows:

Requirements for the Designation of a Level II Perinatal Care Service Hospital.

(a) Qualifications and Responsibilities of Chiefs of Services

(1) Qualifications

- (i) Obstetrics. A full-time board-certified obstetrician with admitting privileges shall serve as the chief of the obstetrical service.

- (ii) Neonatology. A full-time board-certified pediatrician with subspecialty certification in neonatal medicine, or at a minimum successful neonatal medicine fellowship completion, with admitting privileges shall be the chief of neonatal care services.
 - (iii) Anesthesiology. A board-certified anesthesiologist shall be the chief of anesthesiology.
 - (iv) Midwifery. A midwife or nurse-midwife licensed in the state of New York, at minimum, with privileges at the hospital shall serve as the chief of midwifery services. Facilities that do not employ or utilize midwifery staff are exempt from this requirement.
 - (v) Nursing. Nursing leadership shall be, at minimum, a registered nurse with expertise in perinatal and neonatal care.
- (2) Care coordination. The hospital's perinatal care services shall be coordinated jointly by the chiefs described in paragraph (1) of this subdivision.
- (3) Responsibilities of Chiefs of Services
- (i) The chiefs of obstetrics, neonatology, anesthesiology, midwifery, and nursing leadership shall, in conjunction with the hospital administration and the chiefs of critical care, midwifery, family practice, and other patient care, shall develop policies concerning staffing, procedures, equipment, and supplies; maintaining standards of care; and planning, developing, and coordinating in-hospital professional education program.
 - (ii) The chiefs of obstetrics, neonatology, anesthesiology, midwifery, and nursing leadership each shall have oversight of and be

responsible for their respective services' quality improvement initiatives, including participation in Department-led and RPC-led initiatives as defined by section 721.9 of this Part.

(b) Qualifications and Responsibilities of Physicians and Other Licensed Midwifery, Obstetrical and Neonatal Practitioners

(1) Staff and Equipment Required for All Deliveries. Level II facilities shall meet the requirements described in section 721.5(b)(1) of this Part.

(2) Physicians. Care for moderately high-risk women and neonates shall be provided by appropriately qualified physicians.

(i) Obstetricians shall meet the requirements described in section 721.5(b)(2)(i) of this Part.

(ii) Maternal-fetal medicine (MFM). A board-certified maternal-fetal medicine specialist shall be available 24 hours a day, either onsite, by telephone, or by telemedicine, to provide consultation and support, and shall be available onsite when indicated within a timeframe appropriate to meet the patients' needs. In addition, the expertise of the MFM specialist and care team of the RPC, as described in section 721.8(a)(2)(ii) of this Part, shall be engaged to provide consultation and support, as required, by the Level II hospital.

(iii) Neonatology. A board-certified neonatologist shall be available on-site 24 hours a day within a timeframe appropriate to meet the patients' needs to provide needed services. A designated immediate response team shall be available, with at least two personnel who are current BLS, ACLS, and NRP providers.

- (iv) Pediatrics. General pediatricians with the expertise to assume responsibility for acute care of patients, shall be available on-site 24 hours a day within a timeframe appropriate to meet the patients' needs to provide needed services.
 - (v) Radiology. The hospital staff shall also include a radiologist skilled in interpretation of ultrasound scans, available 24 hours a day.
 - (vi) Pathology. The hospital staff shall include a clinical pathologist, available 24 hours a day.
 - (vii) Medical and surgical subspecialists. Specialized adult and pediatric medical and surgical staff shall be available for consultation, either onsite, by phone, or by telemedicine. If such subspecialists are not available, the hospital shall consult with subspecialty staff from the RPC.
- (3) Physician Assistants and Nurse Practitioners
- (i) At a minimum, a Physician Assistant (PA) or Nurse Practitioner (NP) with expertise, as defined by the hospital or neonatologist shall be available onsite within a timeframe appropriate to meet the patients' needs, 24 hours a day.
 - (ii) A licensed PA or NP may assist in caring for patients throughout pregnancy, labor, birth, and postnatal care. Such staff shall be current BLS, ACLS, and NRP providers.
- (c) Midwifery. Level II hospitals shall meet the qualifications described in section 721.5(c) of this Part.
- (d) Nursing care. Level II hospital obstetrical and neonatal nursing care staff shall meet the qualifications described in section 721.5(d) of this Part. In addition:

- (1) Direct patient care shall be provided by registered nurses (RNs) who have the education and experience in the care of moderately high-risk obstetrical and/or neonatal patients.
 - (2) All nurses caring for patients shall demonstrate competence in the observation and treatment of such patients, including cardiorespiratory monitoring.
 - (3) There shall be an appropriate and adequate number of nursing staff who are trained in breastfeeding support for patients, including neonates with special needs. Such staff shall be available within a timeframe to meet the patients' needs.
- (e) Ancillary Services.
- (1) Alcohol and Substance Use Specialists. The Level II hospital shall meet the requirements and qualifications as described in section 721.5(e)(1) of this Part. In addition, the Level II hospital shall have appropriately skilled staff and protocols in place for the treatment and management of infants with neonatal abstinence syndrome and/or fetal alcohol spectrum disorder.
 - (2) Anesthesia Care. The Level II hospital shall meet the requirements as described in section 721.5(e)(2) of this Part.
 - (3) Breastfeeding. The Level II hospital shall meet the requirements and qualifications as described in section 721.5(e)(3)(i) of this Part. In addition, staff shall be available 24 hours a day to educate and assist patients during the antenatal and postpartum periods.
 - (4) Genetic Specialists. The Level II hospital shall meet the requirements described in section 721.5(e)(4) of this Part.

- (5) Infection Control. The Level II hospital shall meet the requirements described in section 721.5(e)(5) of this Part.
- (6) Laboratory Services.
 - (i) Qualified personnel for laboratory services shall be available onsite 24 hours a day.
 - (ii) Blood bank services shall be maintained 24 hours a day, with all blood components available on an emergency basis, either on premises or by pre-arrangement with another hospital.
- (7) Nutrition. At least one Certified Dietitian-Nutritionist who has special training in perinatal nutrition and can plan diets that meet the special needs of high-risk patients shall be available in a timeframe that meets the patient's needs.
- (8) Occupational and Physical Therapy. At least one occupational or physical therapist with neonatal expertise shall be available for consultation in a timeframe to meet the patient's needs.
- (9) Pharmacists and Pharmacy Services. The Level II hospital shall meet the requirements described in section 721.5(e)(9) of this Part. In addition:
 - (i) Hospital staff shall include personnel available on-site 24 hours a day who are qualified to compound and dispense specialized pharmaceutical services, appropriate to the patients' size and age, and consult with obstetrical and neonatal staff on medication administration.
 - (ii) The pharmacy shall have available total parenteral nutrition appropriate for patients, including neonates and infants.

(10) Radiology. The Level II hospital shall meet the requirements described in section 721.5(e)(10) of this Part. In addition:

- (i) A pediatric radiologist shall be available for consultation, either onsite or by telemedicine, 24 hours a day.
- (ii) Radiology services, including computed tomography with interpretation, shall be available onsite, 24 hours a day.
- (iii) Whenever possible, radiology services shall be designed to accommodate patients with disability and/or patients who are severely obese. If such equipment is not available, the Level II hospital shall consult with the RPC to identify affiliate hospitals that can provide such services in a timeframe appropriate to meet the patients' needs.

(11) Respiratory Therapy, Ventilation, and Respiratory Support Services. The Level II hospital shall meet the requirements as described in section 721.5(e)(11) of this Part. In addition:

- (i) Hospital staff shall include a designated, in-house credentialed person for neonatal resuscitation, available 24 hours a day. In addition, an advanced practice nurse or physician shall be available onsite 24 hours a day to provide ongoing care, manage airways of ventilated patients, and address emergencies.
- (ii) Respiratory therapists, who are current BLS, ACLS, and NRP providers, can provide stabilization and respiratory support for the pregnant or postpartum patient and neonate. In addition, supplemental oxygen, assisted ventilation, and continuous positive pressure ventilation, including high flow nasal cannula, shall be

available for neonates. Such staff shall be continuously available onsite to provide ongoing care as well as to address emergencies.

- (iii) Respiratory therapists, with the ability to provide conventional ventilation to neonates, shall be available onsite 24 hours a day.
- (12) Social Work, Psychosocial, and Mental Health. The Level II hospital shall meet the requirements and qualifications as described in section 721.5(e)(12) of this Part.
- (13) Speech-Language Pathology. A licensed speech-language pathologist with neonatal expertise, skilled in evaluation and management of neonatal feeding and swallowing disorders, shall be available for consultation, either onsite, by telephone, or telemedicine, in a timeframe appropriate to meet the patients' needs.

Section 721.7 is repealed and a new Section 721.7 is added to read as follows:

Requirements for the Designation of a Level III Perinatal Care Service Hospital.

- (a) Qualifications and Responsibilities of Chiefs of Services
 - (1) Qualifications
 - (i) Obstetrics and maternal-fetal medicine. A full-time, board-certified obstetrician with admitting privileges and subspecialty certification in maternal-fetal medicine shall be the chief of obstetrical services.
 - (ii) Neonatology. A full-time, board-certified pediatrician with admitting privileges and subspecialty certification in neonatal medicine shall be the chief of neonatal services.

- (iii) Anesthesiology. A board-certified anesthesiologist shall be the chief of anesthesiology.
 - (iv) Midwifery. A midwife or nurse-midwife licensed in the state of New York, at minimum, with privileges at the hospital shall serve as the chief of midwifery services. Facilities that do not employ or utilize midwifery staff are exempt from this requirement.
 - (v) Nursing. Nursing leadership shall be at minimum a registered nurse with expertise in perinatal and neonatal care.
- (2) Care coordination. The hospital's perinatal care services shall be coordinated by the chiefs described in paragraph (1) of this subdivision.
 - (3) Responsibilities of Chiefs of Services. Chiefs of services shall meet the responsibilities described in section 721.6(a)(3) of this Part.
- (b) Qualifications and Responsibilities of Physicians and Other Licensed Obstetrical and Neonatal Practitioners
- (1) Staff and equipment required for all deliveries. Level III hospitals shall meet the requirements described in section 721.5(b)(1) of this Part.
 - (2) Physicians. Care for high-risk patients shall be provided by appropriately qualified physicians.
 - (i) Obstetrics. The Level III hospital shall have a board-certified obstetrician with admitting privileges available onsite, 24 hours a day.
 - (ii) Maternal-fetal medicine.
 - (a) A board-certified maternal-fetal medicine specialist with admitting privileges shall be available 24 hours a day by telephone or telemedicine for consultation and management

and be onsite as needed and within a timeframe appropriate to meet patient's needs for patient care.

(b) Maternal-fetal medicine specialists who care for high-risk patients shall be a board-certified obstetrician with subspecialty certification in maternal-fetal medicine, or at a minimum will have successfully completed a fellowship in maternal-fetal medicine.

(c) A maternal-fetal medicine specialist may also be available for interpretation of ultrasound scans, as described in section 721.5(b)(1)(v) of this Part. Staff available for interpretation must be available in-house 24 hours a day.

(iii) Neonatology.

(a) A board-certified neonatologist with admitting privileges shall be available onsite 24 hours a day to provide needed services.

(b) Neonatologists who care for high-risk neonates shall have qualifications equivalent to those of the chief of neonatology, as described in subparagraph (ii) of paragraph (1) of subdivision (a) of this section, or at a minimum will have successfully completed a fellowship in neonatology.

(c) A neonatology fellow who is a board-certified pediatrician, may meet the requirements in place of nursing or physician assistants as described in paragraph (3) of subdivision (b) of this section. Such fellows must be credentialed by the

institution in all necessary procedures, and must also be current NRP providers.

- (iv) Anesthesiology. A board-certified anesthesiologist with a maternal-fetal anesthesia team shall be available onsite 24-hours per day. The anesthesiology team shall provide labor analgesia and surgical anesthesia for the patient. Anesthesia care for neonatal and pediatric patients shall be provided or supervised by anesthesiologists with clinical privileges. Personnel with credentials in the administration of neonatal and pediatric deep sedation anesthesia shall be onsite 24 hours per day.
- (v) Radiology.
 - (a) A board-certified or board-eligible radiologist shall be available 24 hours a day for consultation onsite or by telemedicine for patients at the Level III hospital in a timeframe appropriate to meet the patient's needs.
 - (b) A pediatric radiologist shall be available for consultation either onsite or by telemedicine in a timeframe appropriate to meet the patient's needs.
- (vi) Pathology. Pathologists with special competence in placental, fetal, and neonatal disease shall be members of the Level III facility staff. A clinical pathologist shall be available 24 hours a day.
- (vii) Medical and surgical subspecialties.
 - (a) Adult-trained medical subspecialists in the following fields shall be available onsite for consultation within a timeframe to meet the patient's needs: cardiology, critical care,

endocrinology, gastroenterology, hematology, immunology, infectious disease, nephrology, neurology, and pulmonology. In addition, general surgeons and surgical subspecialists in the following fields shall be available onsite for consultation and care within a timeframe appropriate to meet the patient's needs: cardiothoracic, neurosurgery, orthopedics, ophthalmology, otolaryngology, and urology.

- (b) Pediatric subspecialists in the following fields shall be available onsite for consultation within a timeframe to meet the patient's needs: cardiology, critical care, endocrinology, gastroenterology, hematology, immunology, infectious disease, nephrology, neurology and pulmonology. In addition, general pediatric surgeons and surgical subspecialists in the following fields shall be available onsite for consultation and care within a timeframe to meet the patient's needs: cardiothoracic, neurosurgery, orthopedics, ophthalmology, otolaryngology, and urology.
- (c) Adult and pediatric medical and surgical specialists and subspecialists shall be available onsite to collaborate with the Level III hospital's maternal-fetal medicine care team and neonatology care team.
- (d) In the event of a medical and surgical subspecialist vacancy at a Level III birthing hospital, the hospital may consult the

Regional Perinatal Center's subspecialists to determine appropriate treatment and possible transfer.

- (3) Physician Assistants and Nurse Practitioners.
 - (i) A Physician Assistant (PA), or Nurse Practitioner (NP) with neonatal expertise shall be available onsite at all times.
 - (ii) All PAs, NPs, and must be credentialed by the institution in all necessary procedures. These staff must also be current NRP providers.
- (c) Midwifery. Level III hospitals shall meet the qualifications described in section 721.5(c) of this Part.
- (d) Nursing care. Level III hospital obstetrical and neonatal nursing care staff shall meet the qualifications described in section 721.6(d) of this Part. In addition:
 - (1) Obstetrical and critical care (Intensive Care Unit and Critical Care Unit) RNs shall have special training and experience in management of patients with complex obstetrical illnesses and complications.
 - (2) An advance practice nurse (APN) shall be available to staff for consultation and support on nursing care issues. Licensed nurse-midwives may serve in this capacity as appropriate.
 - (3) Assessment and monitoring activities shall remain the responsibility of RN or APN staff in obstetrical or neonatal care, even when personnel with a mixture of skills are used.
 - (4) The Level III hospital shall have a nurse educator on staff to provide obstetrical and neonatal staff education.
- (e) Ancillary Services.
 - (1) Alcohol and substance use specialists.

- (i) The Level III hospital shall have a system of care for alcohol and substance use disorders, including opioid replacement therapy, to co-manage the patient(s).
 - (ii) If a patient is receiving alcohol or substance use services prior to admission, the prenatal provider shall collaborate with the patient's alcohol or substance use provider to co-manage care of the patient.
 - (iii) A qualified mental health professional with experience in alcohol and substance use, or a substance use specialist, shall be available onsite for consultation, within a timeframe to meet the patient needs.
 - (iv) The Level III hospital shall have appropriately skilled staff and protocols in place for the treatment and management of neonates with severe neonatal abstinence syndrome or fetal alcohol spectrum disorder.
- (2) Anesthesia Care. The Level III hospital shall meet the requirements of section 721.6(e)(2) of this Part.
- (3) Breastfeeding. The Level III hospital shall meet the requirements of section 721.6(e)(3) of this Part.
- (4) Genetic specialists. Genetic counseling services shall be available for consultation onsite, by phone or telemedicine, including a certified genetic specialist with experience in managing metabolic and genetic disorders.
- (5) Infection control. The Level III hospital shall meet the requirements described in section 721.5(e)(5) of this Part.
- (6) Laboratory services. The Level III hospital shall meet the requirements described in section 721.6(e)(6)(i) of this Part. In addition, blood bank

services shall be maintained 24 hours a day, with all blood components available onsite.

- (7) Nutrition.
 - (i) The Level III hospital must have at least one certified dietitian-nutritionist who has special training in perinatal nutrition and can plan diets that meet the special needs of high-risk antepartum and postpartum patients, in a timeframe to meet patient needs.
 - (ii) The Level III hospital must have at least one certified dietitian-nutritionist who has special training in parenteral and enteral nutrition of low birthweight (under 1,500g) and other high-risk neonates and infants.
- (8) Occupational and physical therapy. At least one occupational therapist and one physical therapist with neonatal expertise shall be available onsite for consultation within a timeframe appropriate to meet the patient's needs.
- (9) Pharmacists and pharmacy services. The Level III hospital shall meet the requirements as described in section 721.6(e)(9) of this Part. In addition, the Level III facility shall have pharmacists onsite 24 hours a day available to prepare and dispense specialized pharmaceutical services, including to neonates and infants.
- (10) Radiology. The Level III hospital shall meet the requirements as described in section 721.6(e)(10) of this Part. In addition, radiology services, including basic interventional radiology, obstetrical echocardiography, computed tomography, magnetic resonance imaging, and nuclear medicine imaging shall be readily available 24 hours a day, with interpretation in a timeframe appropriate to meet the patients' needs.

- (11) Respiratory therapy. The Level III hospital shall meet the requirements described in section 721.6(e)(11) of this Part. In addition:
- (i) The ventilation of a distressed neonate shall include long-term standard conventional ventilation and complex ventilation techniques.
 - (ii) Respiratory therapists shall be available onsite 24 hours a day for immediate care of patients to provide assisted ventilation, including conventional and/or high-frequency ventilation and inhaled nitrous oxide or nitric oxide as appropriate and as needed.
- (12) Social work, psychosocial and mental health.
- (i) Patients who screen positive for perinatal mood disorder during prenatal screening or have a history of psychiatric/mental health conditions, shall be evaluated by a licensed, qualified mental health professional, including but not limited to a psychiatrist, psychologist, psychiatric NP, clinical social worker, or other mental health counselor with training in perinatal mental health. This evaluation may be conducted onsite or by telemedicine.
 - (ii) If a patient is receiving mental health services, the prenatal care provider shall collaborate with the patient's mental health provider to co-manage care of the patient prenatally and post-partum. The patient shall be screened to determine any new symptoms.
- (13) Speech-language pathology. A speech-language pathologist with neonatal expertise, skilled in evaluation and management of neonatal feeding and swallowing disorders shall be available onsite for consultation, in a timeframe appropriate to meet the patients' needs.

Section 721.8 is repealed and a new Section 721.8 is added to read as follows:

Requirements for the Designation of a Regional Perinatal Center.

(a) Qualifications and Responsibilities of Chiefs of Services

(1) Qualifications

(i) Obstetrics. The chief of obstetrics shall be one of the following:

(a) A full-time, board-certified obstetrician with subspecialty certification in maternal-fetal medicine and admitting privileges; or

(b) A full-time board-certified obstetrician with critical care certification and admitting privileges.

(ii) Neonatology. A full-time, board-certified pediatrician with subspecialty certification in neonatal medicine and admitting privileges shall be the chief of neonatal services.

(iii) Anesthesiology. A board-certified anesthesiologist shall be the chief of anesthesiology.

(iv) Midwifery. A midwife or nurse-midwife licensed in the state of New York, at minimum, with privileges at the hospital shall serve as the chief of midwifery services. Facilities that do not employ or utilize midwifery staff are exempt from this requirement.

(v) Nursing. Nursing leadership shall be at minimum a registered nurse with expertise in perinatal and neonatal care.

(2) Care coordination.

(i) The hospital's perinatal care services shall be coordinated by the chiefs described in paragraph (1) of this subdivision, in order to

ensure provision of a comprehensive continuum of high-quality care to mothers and neonates.

(ii) The RPC shall have a maternal-fetal medicine care team, which shall have expertise to assume responsibility for patients who are in critical condition or have complex medical conditions. This includes co-management of ICU-admitted obstetrical patients. An MFM care team member with admitting privileges shall be available 24 hours a day for onsite consultation and management. The care team shall be led by a board-certified obstetrician with subspecialty certification in maternal-fetal medicine and with expertise in critical care obstetrics.

(iii) The RPC shall have a neonatal care team, which shall have expertise to assume responsibility for patients who are in critical condition or have complex medical conditions. A neonatal care team member with admitting privileges shall be available 24 hours a day for onsite consultation and management. The care team shall be led by a board-certified pediatrician with subspecialty certification in neonatology.

(3) Responsibilities of Chiefs of Services. Chiefs of services shall meet the responsibilities described in section 721.7(a)(3) of this Part. In addition, the chiefs of obstetrics, neonatology, and midwifery will be responsible for providing outreach and professional education programs, participating in the evaluation and improvement of perinatal care in the region, and coordinating the services provided at their hospital with those provided at

birth centers and Level I, Level II, and Level III perinatal care affiliate hospitals in the region.

- (b) Qualifications and Responsibilities of Physicians and Other Licensed Obstetrical and Neonatal Practitioners.
 - (1) Staff and equipment required for all deliveries. RPCs shall meet the requirements described in section 721.5(b)(1) of this Part.
 - (2) Physicians. Care for high-risk patients shall be provided by appropriately qualified physicians. RPCs shall meet the requirements described in section 721.7(b)(2) of this Part.
 - (3) Physician Assistants and Nurse Practitioners. RPCs shall meet the requirements described in section 721.7(b)(3) of this Part. In addition, NPs and PAs may have additional responsibilities, such as maintaining clinical care during patient transfers, and conducting continuing education both at the RPC and at affiliate facilities.
- (c) Midwifery. RPCs shall meet the requirements described in section 721.5(c) of this Part.
- (d) Nursing care. RPC obstetrical and neonatal nursing care staff shall meet the requirements and qualifications described in section 721.7(d) of this Part. In addition, advanced practice registered nursing staff shall be responsible for outreach and education to registered nurses in obstetrics, neonatology and critical care within the RPC as well as in affiliate hospitals. Licensed nurse-midwives may serve in this capacity as appropriate, and may also provide education to registered nurses and licensed midwives in midwifery.
- (e) Ancillary Personnel. RPCs shall meet all of the requirements described in section 721.7(e) of this Part. In addition, the RPC shall have access to in-patient

psychiatric consultative services. Such services shall also be available for consultation in person, by telephone or by telemedicine, to affiliate hospitals.

Section 721.9 is amended to read as follows:

Regional quality improvement activities.

- (a) Quality of care reviews of affiliates. Each birth center and hospital with a Level I, Level II or Level III perinatal care service shall enter into and comply with a perinatal affiliation agreement as defined in section 721.10 of this Part with an RPC in its geographic [area or] network of perinatal affiliates. [RPC representatives shall participate in the affiliate hospital's quality assurance committee and other reviews of the quality of perinatal care provided by the affiliate and in the provision of recommendations for quality improvement of perinatal services. Each RPC and each affiliate hospital shall take actions necessary, including but not limited to entering into a perinatal affiliation agreement, to authorize such participation by the RPC's representatives in the affiliate hospital's quality assurance committee and for purposes of such participation, the RPC representative or representatives shall be deemed members of the affiliate's quality assurance committee. RPC representatives may only access confidential patient information for quality improvement purposes through their roles on the affiliate hospitals' quality assurance committees as set forth in the affiliation agreements and these regulations. Members of hospitals' quality assurance committees must maintain the confidentiality of patient information and are subject to the confidentiality restrictions of Public Health Law Section 2805-m.]

(1) The RPC representative(s) shall participate in the review of information and data for quality [improvement] assurance purposes as described in the affiliation agreement which [may] shall include, at a minimum:

* * *

- (ii) the affiliate hospital's quality assurance and quality improvement [program] programs, policies, and procedures;
- (iii) care provided by medical, midwifery, nursing, and other health care practitioners associated with the perinatal service;
- (iv) appropriateness and timeliness of [maternal] perinatal and [newborn] neonatal referrals and transfers and of patients retained at the affiliate hospital who met criteria for transfer to a higher level of care; and
- (v) [maternal] perinatal and [newborn] neonatal serious adverse events or occurrences that may include the following:
 - (a) [maternal] perinatal and [newborn] neonatal fatalities, including pathology and significant surgical specimens;
 - (b) [maternal] perinatal and [newborn] neonatal morbidity in circumstances other than those related to the natural course of disease or illness, including pathology and significant surgical specimens;
 - (c) [maternal and newborn] nosocomial infections; and
 - (d) [maternal] obstetrical and [newborn] neonatal high-risk procedures[; or].

[(vi) pathology related to all deaths and significant surgical specimens.]

- (2) The hospital shall implement quality improvement recommendations by its RPC. In the event of a disagreement related to a recommendation, the hospital and the RPC shall follow the dispute resolution process outlined in their perinatal affiliation agreement and section 721.[2]10 of this [Title] Part.
- (b) Each RPC shall cooperate with the [department] Department in regular quality improvement reviews by the [department] Department of the RPC's perinatal care, the RPC's internal quality improvement activities, and the services it provides to its perinatal affiliates:
 - (1) The [department's] Department's quality of care review of the RPC shall include the elements set forth in section 721.9(a)(1) of this [Title] Part.
 - (2) The [department's] Department's quality improvement review of an RPC shall include review of the quality of the services it has provided to its perinatal affiliates.
 - (3) The RPC shall cooperate with the [department] Department by providing medical records and other relevant documents and information on a timely basis when requested.
 - (c) [Quality improvement] Professional education and outreach program. Each RPC shall provide professional education and training for physicians, midwives, nurses, and other staff at all birthing hospitals and centers in the [region or affiliate] region's affiliate network for which it provides quality of care review. The RPC may also provide such education to private practitioners, community-based providers and non-clinical providers as appropriate. Education and training shall be designed to update and enhance staff knowledge and familiarity with relevant procedures and technological advances and shall also enhance staff

knowledge of systemic and individual factors that may impact outcomes including but not limited to implicit bias, cultural humility, physiological impacts of racism, the importance of informed consent, including shared decision-making, during pregnancy through postpartum period, recognizing obstetric violence and neglect, providing trauma-informed patient care, honoring client autonomy and satisfaction, and understanding of the impact of policies and practices of the patients served by the facilities, including marginalized groups. RPCs may provide such education and training directly, through engagement with subject matter experts, and shall provide such training using modalities best suited for the topic and audience.

- (d) Quality improvement initiatives. In addition to hospital-specific quality improvement initiatives defined by section 405.6 of this Title, each birth center, Level I, II or III facility and RPC may participate in applicable initiatives led by the Department to improve quality of midwifery, obstetrical, and neonatal care and patient outcomes. RPCs shall provide guidance to their affiliate facilities, in conjunction with the Department, on such initiatives.

Section 721.10 is amended to read as follows:

Perinatal affiliation agreements and transfer agreements.

- (a) Each [hospital with a] birth center and Level I, II or III perinatal care service hospital shall enter into and comply with a perinatal affiliation agreement with an RPC. Each [hospital] birth center or Level I or II perinatal care service hospital may also enter into a transfer agreement with a [hospital with a] Level III perinatal care service hospital if such an agreement would result in an acceptable level of care and provide a more [convenient] accessible alternative for the patient

and the patient's family than transfer to an RPC. All such agreements and amendments to such agreements shall be made available to the [department] Department, upon request. The terms of such agreements shall be mutually agreed upon by the [affiliating hospitals] affiliate hospital and the RPC.

(b) RPCs are required to enter into a perinatal affiliation agreement with all birth centers and birthing hospitals within their geographic regions. Where the geographic regions overlap with one or more RPCs:

(1) the geographically closest RPC to a newly established birth center or birthing hospital is required to enter into a perinatal affiliation agreement; or

(2) another RPC that is geographically close to the new facility may enter into a perinatal affiliation agreement, provided that this must be agreed upon by both the RPC and new facility and approved by the department.

(3) The Department may review proposed affiliation agreements and make recommendations and directives related to establishing perinatal affiliation agreements under this section.

([b]c) Changes in the identity of the RPC with which a hospital has a perinatal affiliation agreement may not be made more frequently than once annually. Such changes shall require [30 days prior notice to the department] 90 days prior notice to the Department. If such a change results in an affiliation agreement with an RPC that does not serve the birthing hospital or center's geographic area, the birthing hospital or birth center, current RPC and proposed RPC must agree to such a change in affiliation; this new affiliation must still be geographically close and of similar travel time to the new RPC.

(d) Minimum requirements of affiliation agreements.

- (1) Birth centers and Level I, II, and III perinatal care service hospitals. The affiliation agreement shall include, at minimum, the following provisions:
- (i) allowance for the hospital to provide continuing care of patients with anticipated birthweight and gestational age as described in section 405.21 of this Title;
 - (ii) timely consultation on treatment plans for patients who develop or exhibit unanticipated conditions which may require transfer to a higher level of care;
 - (iii) criteria and process for attending-level specialty or subspecialty consultation on a 24-hour basis, including types of consultation processes (i.e., via telephone, telemedicine or in-house consults) acceptable for each specialty or subspecialty;
 - (iv) RPC involvement in the development of written transfer agreements between perinatal affiliates including criteria regarding transport of patients;
 - (v) criteria, policies and procedures for transfer of patients, with appropriate consent, to the RPC or other affiliate hospitals, transfers of neonatal patients back to a Level II or III hospital that is closer to the parent's residence, and transfers of postpartum patients back to the sending hospitals;
 - (vi) participation in the statewide perinatal data system (SPDS) including the provision of the confidentiality and protection of all data obtained through the SPDS;
 - (vii) cooperation in outreach, education, training and data collection activities;

- (viii) assurances to provide the RPC with full access to medical records and quality assurance reports as described in section 721.9(a) of this Part, in accordance with applicable confidentiality laws;
- (ix) the affiliate birth center and hospital shall take actions necessary to authorize participation by the RPC's representatives in the affiliate facility's quality assurance committee. For purposes of such participation, the RPC representative or representatives shall be deemed member(s) of the affiliate's quality assurance committee and shall maintain the confidentiality of all information obtained in such capacity. RPC representatives are subject to the confidentiality restrictions of Public Health Law Section 2805-m; and
- (x) established policies which describe the process to resolve disputes between the RPC and affiliate hospital. Resolution of disputes or disagreements between the RPC and the affiliate hospital, including disagreements regarding interpretation of affiliation agreement criteria for consultation and/or transfer. In cases of disputes or disagreement between an affiliate and its RPC, the facilities shall follow the dispute resolution process outlined in their perinatal affiliation agreement. If the dispute is not resolved within 60 days, the parties must request review by the Department. The Department shall initiate compliance reviews at both sites, advise each hospital of its findings, and require corrective action, as indicated, to resolve the dispute. This process shall not interfere with the timely and proper care and transfer of patients.

(xi) The transfer and consultation criteria included in the affiliation and transfer agreements may be customized to reflect the RPC's knowledge and the capabilities of each affiliate hospital. Any variation in transfer of patients to a higher-level perinatal care service hospital as specified in this Section must be in accordance with generally accepted standards of professional practice and criteria established in the affiliation agreement with each hospital's respective RPC.

(2) Regional Perinatal Centers. In addition to the minimum requirements described in paragraph (1) of subdivision (d) of this section, the RPC shall:

(i) maintain a prearranged system for the transfer of patients, antenatally or postpartum, to an appropriate level of care hospital. The system shall include consultation prior to all transfers of patients.

(ii) participate in at least quarterly scheduled meetings with each affiliate hospital to engage in quality improvement reviews and to facilitate Department-led quality improvement initiatives. At least one such meeting annually shall be onsite at the affiliate hospital, with additional onsite meetings at the discretion of the RPC or request of the affiliate hospital, based on mutually agreed-upon criteria identified in the affiliation agreement. Meetings may include reviewing information and data for quality improvement purposes.

(iii) The RPC shall be involved with the development of written agreements, such as transfer agreements, among lower-level perinatal affiliates. This may include criteria regarding transport of patients to assure all patients shall be transferred to the appropriate level hospital for medical care.

(e) Transfer Agreements.

(1) Transfer agreements between two affiliate hospitals that provide different levels of care shall include, at minimum, the following provisions:

- (i) the maximum allowable surface travel time to reach a hospital that provides a higher level of care shall be two hours under usual weather and road conditions, and the receiving hospital shall be accessible and convenient to the patients' place of residence whenever possible;
- (ii) mutually agreed-upon criteria for determining when consultation with the RPC and/or transfer is required;
- (iii) procedures and responsibility for arranging transport, in consultation with the RPC;
- (iv) policies for obtaining patient or parent/guardian consent for patient transfer and to exchange medical information;
- (v) emergency transport shall depart from the transferring facility within thirty minutes of the request for transfer;
- (vi) back transfer of neonates who no longer need a higher level of care but who need continuing care in a Level II or III hospital located near their home communities; such transfers shall take into consideration any relationships between the facilities,

reimbursement issues, and overcrowding of the NICU to prevent infectious disease outbreaks. Family and geographical preference for back transfer will be considered whenever possible within these contexts;

- (vii) if a postpartum patient and their neonate need different levels of care, efforts shall be made to keep the patient dyad together; and
- (viii) the higher-level hospital shall inform referring hospitals of the patient's status as well as major changes in status of transferred patients, with patient's consent or with parental or guardian consent in the case of neonatal transfers.

(2) Transfers from Birth Centers, Level I or Level II Perinatal Care Service Hospital.

- (i) Transfer procedures shall be initiated immediately upon identification of risk for the patient(s). Transfer optimally shall occur in the antenatal period.
- (ii) All referrals for inter-hospital transfer from the birth center or Level I facility shall be evaluated for patient acuity, physiologic stability, and the need for urgent, time sensitive diagnostic or therapeutic intervention.
- (iii) Decisions regarding the appropriate level of care and need for transport shall be made consistent with generally accepted standards of care, the perinatal affiliation agreement, and through consultation with the RPC.
- (iv) The method of transport shall be determined based on the region, level of acuity, availability of transport services, and weather

conditions. The transport unit shall have the appropriate equipment and qualified providers on board to handle obstetrical or neonatal emergencies. If such a unit is unavailable, the hospital shall coordinate with the RPC for appropriate transportation.

(3) Transfers from a Level III Perinatal Care Service Hospital. The Level III facility shall meet the requirements of paragraph (2) of subdivision (e) of this section. In addition, transfer agreements shall include critical transport decisions to:

- (i) assess the patients' clinical status;
- (ii) determine the medical care necessary before and during transport, especially determining what level of care will be necessary during transport;
- (iii) assess the urgency of transport; and
- (iv) provide options on the mode of transport.

(4) Role of the RPC in Transfer Coordination. The RPC shall meet the requirements of paragraph (3) of subdivision (e) of this section. In addition:

- (i) be involved and provide consultation in establishing transfer agreements between affiliate facilities;
- (ii) develop policies and procedures to address situations where multiple emergency transfers are needed and such policies shall be provided and enacted at all affiliate hospitals; and
- (iii) determine the appropriate level of care when directing transfers based on patient acuity and for neonatal transfers, the receiving hospital's available NICU capacity. Additional factors, such as

organizational relationships between the transferring and receiving hospitals, insurance and payment issues, and family preference, shall also be considered secondary to patient care.

Section 754.1 is amended to read as follows:

Definitions.

- (a) A birth center is a diagnostic and treatment center organized to provide care to low-risk patients during pregnancy, labor and [delivery] birth who require a stay of less than 24 hours after birth. Services are provided by a physician or licensed midwife to [women] a birthing person during a normal and an uncomplicated pregnancy, labor, birth and puerperium. Birth center services are based on a philosophy that promotes a family-centered approach to care and views pregnancy and [delivery] birth as a normal physiological process requiring limited technological and pharmacological support. The center services are designed to meet the specific needs of the population being served and promote optimum pregnancy outcomes. The licensed midwife or physician provides care for the low-risk [woman] patient during pregnancy and stays with [her] the patient during labor from the time of admission to the birth center through the immediate postpartum period providing continuous physical and emotional support, evaluating progress, facilitating family interaction and assisting the [woman] patient in labor and [delivery] birth. Nurse practitioners may provide prenatal and [post partum] postpartum care to [birthing] birth center patients. They may also provide supportive care during labor and [delivery] birth, but the attending provider for birth must be a physician or licensed midwife.

- (b) A patient at low risk means a patient with a [normal] medical, mental health, surgical and [obstetrical] reproductive history, including alcohol, tobacco and substance use history, and a normal, uncomplicated prenatal course as determined by adequate prenatal care, and prospects for a normal uncomplicated birth. A [pregnant woman] patient, parturient patient, or [newborn] neonate shall be determined as low risk during the prenatal period, intrapartum and postpartum by the use of standardized criteria based on generally accepted standards of professional practice [such as those approved by the department's Prenatal/Perinatal Advisory Council Subcommittee on Birth Centers in Guidelines for Birth Centers in New York State].

754.2 is amended to read as follows:

Administrative Requirements. When [birthing] birth center services are provided the operator shall ensure that:

- (a) only those [women] patients for whom a prenatal and intrapartum history, physical examination and laboratory screening procedures have demonstrated the expectation of a normal, uncomplicated course of pregnancy and labor are admitted and cared for at the birth center;

* * *

- (d) a physician or licensed midwife reviews the content of the informed consent form with each [woman] patient, and a copy is given to the [woman] patient before signing;
- (e) there is a transfer agreement with a Level I, II or III perinatal care service hospital[(s)], or a regional perinatal center (RPC) located within [20 minutes'] a transport time [from the birth center to the transfer hospital] less than two hours

- under usual weather and road conditions for medical care of a [woman or an infant] patient when complications arise during the antepartum, intrapartum, postpartum or [newborn] neonatal period, written in accordance with [section] sections 400.9 and 721.10(d) of this Title;
- (f) support and ancillary services such as mental health, alcohol and substance use, laboratory, radiology and family planning services not provided by the birth center are available by referral;
 - (g) the birth center services are available 24 hours a day for the admission of [women] patients, professional consultation and prompt response to inquiries;
 - (h) kitchen facilities are available to enable families to store and prepare food brought in for the laboring family; [and]
 - (i) the birth center takes action in accordance with the requirements of paragraph 405.21(c)(14) of this Title with respect to a voluntary acknowledgement of paternity [for a child born out of wedlock.]; and
 - (j) the birth center enters into an affiliation agreement with an RPC as defined in Part 721 of this Title. The affiliated RPC shall be the closest geographically located RPC provided, however, when two or more RPCs are approximately equal distance from the birth center, the birth center may use additional criteria to determine affiliation. Any requested change in affiliation to a new RPC must be submitted to the Department as described in section 721.10(b) of this Title.

Section 754.3 is amended to read as follows:

Service restrictions. The operator shall ensure that:

- (a) only [women] patients assessed as being low-risk by application of risk assessment criteria during pregnancy, labor, birth and puerperium are admitted and cared for at the birth center;

* * *

- (c) general and regional anesthesia are not administered at the center; [and]
- (d) labor is not induced, inhibited, stimulated or augmented with pharmacological agents acting directly on the uterus during the first or second stages of labor[.];
and
- (e) patients requiring services outside the scope of practice of the birth center shall be transferred to a higher level of care facility, in coordination and consultation with the birth center's affiliated RPC. If such transfer is required after birth, the birth center shall coordinate with the RPC to transfer both the postpartum patient and neonate(s) to the same receiving hospital.

Section 754.4 is amended to read as follows:

Hospital transfer procedures.

- (a) There are written plans and procedures for the transfer of a [woman or an infant] patient to the obstetrical or pediatric services of the [transfer] receiving hospital(s) when complications arise of an emergency nature. Such plans and procedures shall include consultation and coordination with the RPC and arrangements for an ambulance service and, when appropriate, the escort of the patient to the admitting facility by a clinical staff member of the birth center.
- (b) The operator, in collaboration with the transfer hospital(s), shall develop a list of indicators necessitating transfer and a written procedure for automatic acceptance

of such transfers by the transfer hospital. This information shall be incorporated into any written transfer agreements as described in section 721.10 of this Title.

* * *

- (d) There shall be an established mechanism for jointly reviewing all transfer cases by the RPC, transfer hospital(s) and the birth center as part of the quality assurance program specified in section 754.9 of this Part.

Section 754.5 is amended to read as follows:

Medical director and medical consultants. The operator shall:

- (a) appoint a medical director who:

* * *

- (2) has [obstetrical] privileges that include admission and care of [maternity] patients at the hospital(s) used for transfer. In the absence of [obstetrical] such privileges at the transfer hospital(s), there must be formal arrangements for the provision of obstetrical care at the transfer hospital(s)[;] as described in section 721.10 of this Title;

* * *

- (4) approves standardized criteria for admission screening and monitoring the risk status of each [mother] patient during pregnancy, labor, birth and postpartum; [and]

- (5) has oversight and is responsible for quality improvement initiatives, including participation in Department-led and RPC-led initiatives as defined by section 721.9 of this Title; and

(6) oversees the establishment and implementation of an affiliation agreement with an RPC, as described in section 721.10 of this Title;

(b) appoint a consultant physician who:

(1) is a qualified specialist, as defined in section 700.2 of this Title, in pediatrics or family practice and who has pediatric privileges that include admission and care of [newborns] neonates at the transfer hospital(s). In the absence of pediatric privileges, there must be formal arrangements for the provision of pediatric care at the transfer hospital(s) as described in section 721.10 of this Title; and

* * *

Section 754.6 is amended to read as follows:

Clinical staff. The operator shall ensure that:

(a) a licensed midwife or an obstetrician or a family practitioner attends each [woman in labor] pregnant or laboring person from the time of admission, during labor, during the birth and through the immediate postpartum period. Such person shall be a current basic life support (BLS) and Neonatal Resuscitation Program (NRP) provider; providers may also be current advanced cardiac life support (ACLS) providers. Such attendance may be delegated only to another licensed midwife or physician;

(b) a second staff person is also present at each birth who:

* * *

(2) has specialized training in labor and [delivery] birth techniques and care of the [newborn] neonate, and is a current BLS and NRP provider; and

* * *

- (c) if the center employs licensed midwives[.];
- (1) _____ a licensed midwife is appointed as director of midwifery services who is responsible for the development of policies and procedures for such services[.];
- (2) _____ midwives attending births shall be current BLS and NRP providers and may be current ACLS providers; and
- (3) _____ midwives attending births shall have the ability to stabilize patients in distress and, if necessary, transfer to an appropriate higher level of care facility for continued care, following consultation with the RPC.
- (d) _____ If the center employs nursing staff, licensed nurse practitioners must be currently certified and registered, with the ability to prescribe medications. Nursing staff shall be current BLS and NRP providers, may be current ACLS providers, and may provide prenatal and postpartum care to birth center patients.

Section 754.7 is amended as follows:

Services for the care of [mothers] midwifery and [newborns] neonatal patients.

The operator shall ensure that the birth center provides at least the following:

- (a) admission screenings to assure that only low risk [women] birthing persons are admitted to the birth center;
- (b) active participation by [women] birthing persons and families in their own health care plan to include but not be limited to:

* * *

- (2) attendance at prenatal education classes approved by the clinical staff which address, as a minimum, labor and [delivery] birth, infant care and feeding, parenting, nutrition, the effects of [smoking] tobacco and

nicotine, alcohol and other drugs on the fetus, what to expect if transferred, and the newborn screening program with the distribution of newborn screening educational literature;

(c) prenatal and intrapartum care including:

* * *

- (2) selection of pediatric services [by the woman] for follow-up care of the [infant] neonate;
- (3) providing HIV counseling and recommending voluntary testing to pregnant [women] patients during a prenatal visit. Counseling and/or testing, if accepted, shall be provided pursuant to Public Health Law Article 27-F. Information regarding the [woman's] patient's HIV counseling and HIV status must be transferred as part of [her] the medical history to the [labor and delivery site] birth center or birthing hospital. [Women] Patients with positive test results shall be referred to the necessary health and social services within a clinically appropriate time;
- (4) continuous risk assessment of the [woman] patient and fetus; and
- (5) labor support and professional attendance at birth for the [mother] patient and [her] the patient's family;

(d) postpartum care including:

* * *

- (2) a physical assessment of the [newborn] neonate with the required eye prophylaxis and vitamin K prophylaxis in accordance with section 12.2 of this Title and newborn screening tests in accordance with Part 69 of this Title;

- (3) birth registration in accordance with [s]Section 4130 of the Public Health Law or in instances of a birth that requires registration in the City of New York, and any and all applicable laws associated with birth registration as set forth in the laws, codes and regulations of the City of New York;
 - (4) a physical assessment of the [mother] patient in accordance with established protocols including the evaluation of Rh status, need for Rh prophylaxis and the [mother's] patient's ability to feed the [infant] neonate prior to discharge from the birth center; and
 - (5) the transfer to the [newborn's] neonate's medical record of a [mother's] prenatal or postpartum patient's HIV test result, if one exists.
- (e) discharge and follow-up including:
- (1) [maternal and newborn] home visits the following day after discharge and upon the third day after discharge unless arrangements have been made for the [infant] neonate to be seen by his/her physician. The home visits may be performed by professional nursing staff from the birth center, if the facility is approved under article 36 of the Public Health Law, or through an arrangement with a certified or licensed home health agency, to include an assessment of the [mother-child] postpartum patient-neonate relationship, an evaluation of the nutritional status of the [infant] neonate and the physical and psychological status of the [mother] patient, performance of a hematocrit, rubella and hepatitis B vaccination and Rh prophylaxis, if indicated, and newborn screening blood collection in accordance with Part 69 of this Title;

* * *

- (f) Ancillary services. The birth center, in coordination with the RPC, affiliate birthing hospitals and other community-based providers as appropriate, shall provide the following ancillary services to birth center patients, through referral, onsite, telephone or telemedicine as available and appropriate:
- (1) Alcohol and substance abuse specialists:
- (i) The birth center shall have a prearranged system for referral of patients with alcohol or substance use disorders to a higher level-of-care facility.
- (ii) The birth center shall screen patients prior to admission for alcohol, tobacco and substance use during pregnancy, in addition to screening for physical, sexual and emotional abuse as part of routine midwifery care.
- (iii) Patients who fall out of the scope of practice due to alcohol and substance use shall be referred for consultation with a qualified perinatal mental health professional to determine an appropriate course of action.
- (iv) Patients identified as using tobacco or nicotine products shall be referred to appropriate tobacco cessation services and programs.
- (2) Anesthesia care: Patients requiring services outside the scope of practice at the birth center, including anesthesia, shall be transferred to a higher level of care facility, in coordination with the RPC.
- (3) Breastfeeding: A trained and qualified international board-certified lactation consultant or a certified lactation counselor shall be available to educate and assist patients to initiate breastfeeding in a timeframe appropriate to meet the needs of the patient.

- (4) Genetic specialists: The birth center shall provide access to genetic screening, carrier testing, and genetic counseling for patients.
- (5) Infection control: The birth center shall have policies and procedures for infection control in accordance with current standards of care.
- (6) Laboratory services: The birth center shall have a prearranged plan for access to laboratory services for patients.
- (7) Nutrition: The birth center shall have policies and procedures for nutrition support in accordance with current standards of care.
- (8) Occupational and physical therapy: The birth center shall refer patients to an appropriate occupational or physical therapist in a timeframe appropriate to meet the needs of the patient.
- (9) Pharmacy services: Any controlled drugs or medications prescribed, dispensed or administered in the birth center shall be properly stored and tracked.
- (10) Radiology services: The birth center shall have a prearranged plan for access to imaging services such as ultrasonography. When results are inconclusive or an abnormality that requires immediate neonatal care is detected, patients shall be directed to a higher level of care facility for further management, including consultation by a radiologist or a qualified provider who can interpret results.
- (11) Respiratory therapy: Birth center staff attending deliveries must be current NRP providers and shall be able to provide oxygen and utilize all necessary equipment to support resuscitation to maintain the airway of the patient(s).
- (12) Social work, psychosocial and mental health:

- (i) Patients shall be assessed to determine availability of sufficient resources prior to or following birth.
 - (ii) The birth center shall have a prearranged system for referral of patients with mental health conditions.
 - (iii) The birth center shall provide prenatal and postpartum screenings for perinatal depression and perinatal mood disorder during such visits, and provide referrals as indicated.
 - (iv) Patients who screen positive during prenatal or postpartum screening for perinatal depression or perinatal mood disorder shall be referred to a higher level-of-care facility or a local institution with a perinatal qualified mental health professional to determine an appropriate course of action.
 - (v) If a patient is receiving mental health services, the birth center provider shall collaborate with the patient's mental health service provider to co-manage care of the pregnant or postpartum patient.
- (13) Speech-language pathology: Neonates demonstrating difficulty feeding and swallowing shall be referred to a licensed speech-language pathologist.

Section 754.8 is amended to read as follows:

Medical records. The operator shall ensure that, in addition to meeting the requirements in section 751.7 of this Title:

- (a) The medical record for each [woman] patient admitted to the birth center shall contain the following information:

* * *

- (2) [maternal] reproductive history, to include medical, surgical, gynecological and psychosocial history;
- (3) shared decision making including informed consent for birth center services;
 - * * *
- (5) periodic evaluations of [maternal] the patient's health;
 - * * *
- (8) [newborn] neonatal physical assessment, including APGAR scores, [maternal-newborn] postpartum patient-neonate interaction, ability to feed, eye prophylaxis, vital signs and accommodation to extrauterine life;
 - * * *

(b) The medical record for each [newborn] neonate shall be cross-referenced with the [mother's] postpartum patient's medical record and contain the following information:

- (1) copy of the [newborn] neonatal physical assessment;
 - * * *
- (3) vaccination information, including the date, time, site(s) of administration, dosage, vaccine manufacturer and lot number for each vaccine; record of parental consent and parental receipt of relevant vaccine information sheets; or documentation of an-exemption as described in Sections 69-3.9 and 69-3.10 of this Title;
- (4) discharge summary with follow-up plans; and
- [4] (5) home visit report.

Section 754.9 is amended to read as follows:

Quality assurance. In addition to meeting the requirements set forth in [section] sections 721.9 and 751.8 of this Title, the operator shall ensure that there is a review of all [mother and/or newborn] hospital patient transfers, with reasons for such transfers documented. Findings from these reviews shall be used in the development and revision of policies and in the consideration of renewing or granting staff privileges.

Section 754.10 is amended to read as follows:

Emergency care. The operator shall ensure that:

- (a) emergency equipment and supplies approved by the medical director are available for use at all deliveries and include at least the following:

* * *

- (4) oxygen and oxygen administration equipment appropriate for [mother and infant] the patient(s);
- (5) airways and manual breathing bags appropriate for [mother and infant] the patient(s);
- (6) suction machine and equipment appropriate for [mother and infant] the patient(s);
- (7) infant laryngoscope and either endotracheal tubes or laryngeal mask airways; [and]
- (8) medications and intravenous fluids with supplies and equipment for administration; and
- (9) any additional equipment required for compliance with BLS and NRP guidelines;
- (b) center staff are trained in resuscitation and other emergency procedures and are current BLS and NRP providers as previously described in this section; and

- (c) a physician or registered professional nurse and another staff member, both trained in emergency procedures and current BLS and NRP providers, are on duty in the center when a [mother] patient is in the birth center.

Section 795.1 is amended to read as follows:

Definitions.

As used in this Part:

- (a) A midwifery birth center means a facility licensed pursuant to Article 28 of the Public Health Law that is engaged principally in providing [prenatal and obstetric] midwifery care, and where such services are provided principally by midwives. The facility shall be organized to provide prenatal, child birth and postpartum care and primary preventive reproductive health care to patients at low risk. Services are provided by a midwife, licensed pursuant to Article 140 of the Education Law, to patients at low risk, during pregnancy, labor, [delivery,] birth, and who require only a stay of less than 24 hours after birth. Such services shall include newborn evaluation, resuscitation and referral. Midwifery birth center services are based on a philosophy that promotes a home-like setting and family-centered approach to care and views pregnancy and [delivery] birth as a normal physiological process requiring limited technological and pharmacological support. The center services are designed to meet the specific needs of the population being served and promote optimum pregnancy outcomes. The licensed midwife provides care for the low-risk patient during pregnancy and remains available to the patient during labor from the time of admission to the midwifery birth center through the immediate postpartum period, providing continuous physical and emotional support, evaluating progress, facilitating family

interaction and assisting the patient in labor and [delivery] birth. Other health care providers can provide prenatal and postpartum care to midwifery birth center patients. They may also provide supportive care during labor and [delivery] birth, but the attending provider for birth must be a licensed midwife.

- (b) A patient at low risk means a patient [who has:] with a [normal] medical, mental health, surgical, and [obstetrical] reproductive history, including alcohol, tobacco and substance use history, and [;] a normal, uncomplicated pregnancy as determined by adequate prenatal care; and prospects for a normal, uncomplicated gestation and birth. Risk shall be determined using standardized criteria based on generally accepted standards of professional practice.

* * *

Section 795.2 is amended to read as follows:

Administrative requirements. The operator shall ensure that:

- (a) only patients [at] for whom a prenatal and intrapartum history, physical examination and laboratory screening procedures demonstrate the expectation of a low risk, uncomplicated course of pregnancy and labor are admitted and cared for at the midwifery birth center;

* * *

- (e) there is a transfer agreement with one or more Level I, II or III perinatal [center] care service hospital, or a regional perinatal center (RPC) as defined in section 721 of this Title, for medical care of patients when complications arise antepartum, intrapartum, or postpartum and that meets the following requirements:

- (1) compliance with [section] sections 400.9 and 721.10(d) of this Title;

(2) the surface travel time to reach a receiving perinatal hospital within the geographic affiliate network is less than two hours under usual weather and road conditions; and

* * *

(f) support and ancillary services such as mental health, alcohol and substance use services, laboratory, radiology and imaging, and family planning services not provided by the midwifery birth center are available by referral;

* * *

(i) the midwifery birth center acts in accordance with the requirements of section 405.21(c)(14) of this Title with respect to a voluntary acknowledgement of paternity [for a child born out of wedlock];

[(j) the midwifery birth center refers patients for genetic screening, carrier testing, and genetic counseling as needed;

(k) the midwifery birth center refers patients requiring physical or occupational therapy to an appropriate therapist as needed; and]

(j) the midwifery birth center provides ancillary services, directly or through referral, as described in section 795.7(f) of this Title;

[(1)](k) the needs of infants demonstrating difficulty feeding and swallowing are addressed to ensure the infant is healthy and developing properly, including referral to a lactation consultant or licensed speech and language pathologist as needed[.]; and

(l) the midwifery birth center shall enter into an affiliation agreement with an RPC as defined in section 721.2 of this Title, for the provision of professional education and outreach, quality improvement and transfer coordination, and that meets the

requirements described in section 721.10 of this Title. The RPC must be the closest geographically located facility; when two or more RPCs are approximately equal distance from the midwifery birth center, the midwifery birth center may use additional criteria to determine affiliation. Any requested change in affiliation to a new RPC must be submitted to the Department as described in section 721.10(c) of this Title.

Section 795.3 is amended to read as follows:

Service restrictions. The operator shall ensure that:

* * *

- (c) general and regional anesthesia are not administered at the center; [and]
- (d) labor is not induced, inhibited, stimulated or augmented with pharmacological agents acting directly on the uterus during the first or second stages of labor[.];
and
- (e) patients requiring services outside the scope of practice of the midwifery birth center, as described in this section, shall be transferred to a higher level of care birthing hospital, in coordination and consultation with the affiliated RPC. If such transfer is required after birth, the midwifery birth center shall coordinate with the RPC to transfer both the postpartum patient and neonate(s) to the same receiving hospital.

Section 795.4 is amended to read as follows:

Midwifery birth center transfer procedures.

- (a) The midwifery birth center shall maintain the capability to evaluate, stabilize and transfer patients other than patients at low risk, including newborns. The

midwifery birth center shall refer or transfer patients for any health care services that fall outside the scope of midwifery birth center resources and risk criteria at any point during the course of care. The midwifery birth center shall [initiate] consult and coordinate with the affiliated RPC to transfer patients when risks are identified, including when there is prolonged labor, fetal distress, or a need for spinal or epidural anesthesia, or when there may be an operative or cesarean birth.

- (b) Midwifery birth centers shall have written plans and procedures for the transfer of patients to the obstetrical or pediatric services of the receiving hospital(s) when complications arise. Such plans and procedures shall include consultation and coordination with the RPC and arrangements for an ambulance service and, when necessary, accompanying the patient in the ambulance with a clinical staff member of the midwifery birth center.
- (c) The operator, in consultation with the [receiving hospital(s)] affiliate RPC, shall develop a list of indicators necessitating transfer and a written procedure for automatic acceptance of such transfers by the receiving hospital, which shall include transfer of patients when neonatal abstinence syndrome or fetal alcohol syndrome is evident or suspected. This information shall be incorporated into any written transfer agreements as described in section 721.10 of this Title.

* * *

- (e) The operator shall establish a mechanism for jointly reviewing all transfer cases by the receiving hospital(s), the affiliate RPC, and the midwifery birth center as part of the quality assurance program specified in section 795.9 of this Part.

Section 795.5 is amended to read as follows:

Midwifery birth center director and medical consultants. The operator shall appoint a midwifery birth center director who:

* * *

(f) has oversight of and responsibility for quality improvement initiatives, including participation in Department-led and RPC-led initiatives as defined by section 721.9 of this Title;

(g) oversees the establishment and implementation of an affiliation agreement with an RPC, as defined in section 721.10 of this Title;

(h) may appoint a consultant physician who:

(1) is a qualified specialist, as defined in section 700.2 of this Title, in pediatrics or family practice and who has pediatric privileges that include admission and care of [newborns] neonate at the receiving hospital(s). In the absence of pediatric privileges, there must be formal arrangements included in the transfer agreement for the provision of pediatric care at the receiving hospital(s); and

* * *

([g]i) ensures that the midwifery birth center has:

* * *

(2) collaborative relationships with pediatricians and other medical specialists needed to meet patients' needs, including with at least one pediatrician who has pediatric privileges that include admission and care of [newborns] neonates at the receiving hospital(s). In the absence of pediatric privileges, there shall be arrangements for the provision of pediatric care at the receiving hospital(s); and

(3) transfer agreements with one or more perinatal [centers] care hospitals which are geographically close, affiliated with the midwifery birth center's RPC, and licensed under Article 28 of the Public Health Law to provide:

(i) obstetrics through a licensed physician having obstetrical privileges at such perinatal [center] care hospital;

* * *

([h]j) has standardized criteria for admission screening and monitoring risk.

Section 795.6 is amended to read as follows:

Clinical staff. The operator shall ensure that:

(a) a licensed midwife attends each patient from the time of admission, during labor, during the birth and through the immediate postpartum period, and that such practitioner [maintains current certification by the American Academy of Pediatrics as a] is a current basic life support (BLS) and Neonatal Resuscitation Program (NRP) provider;

(b) a second trained staff person is also present at each birth who:

* * *

(4) maintains current status as a BLS and NRP provider;

(c) trained and qualified staff are available to educate and assist patients to initiate breastfeeding;

(d) at least two [people] staff members who [attend patients during labor, delivery and postpartum are currently certified NRP, Basic Life Support (BLS)] are current BLS and NRP providers shall be immediately available at all times and [Advanced Cardiac Life Support (ACLS) providers and are] able to provide

oxygen to patients, and operate all equipment necessary to maintain airways for the [patient and infant.] patients; and

- (e) if the midwifery birth center employs nursing staff, licensed nurse practitioners must be currently certified and registered, with the ability to prescribe medications. Nursing staff shall be current BLS and NRP providers, may be current Advanced Cardiac Life Support (ACLS) providers, and may provide prenatal and postpartum care to patients.

Section 795.7 is amended to read as follows:

Services for the care of patients. All patients shall be assessed to determine availability of sufficient resources prior to and following [delivery] birth. The operator shall ensure that the midwifery birth center provides at least the following:

* * *

- (b) active participation by patients and families in their own plan of health care, which shall include but not be limited to:

* * *

- (2) access to prenatal education classes approved by the clinical staff which address, at a minimum, labor and [delivery] birth, infant care and feeding, parenting, nutrition, the effects of [smoking] tobacco and nicotine, alcohol and other drugs on fetal development and on the newborn patient, signs of [postpartum] perinatal mood and anxiety disorders and perinatal depression, what to expect if transferred, and the newborn screening program, including hearing screening, with the provision and distribution of newborn screening educational literature;

(c) prenatal and intrapartum care including:

* * *

(2) selection of pediatric services by the patient for follow-up care of the [infant] neonate;

* * *

(6) consultation with perinatal qualified mental health professionals to determine the appropriate course of action for patients who screen positive during the prenatal screening for perinatal depression or perinatal mood and anxiety disorder or who have other mental health conditions;

(7) a system for screening patients prior to admission for alcohol[/] and substance use during pregnancy and for prior physical, sexual and emotional abuse, as part of routine obstetric care, and for referral of patients as appropriate to a higher-level facility; and

* * *

(d) postpartum care including:

* * *

(2) a physical assessment of the newborn with the required eye prophylaxis and vitamin K prophylaxis in accordance with sections 12.2 and 12.3 of this Title and newborn screening tests in accordance with Part 69 of this Title;

(3) birth registration in accordance with [s]Section 4130 of the Public Health Law or in instances of a birth that requires registration in the City of New York, and any and all applicable laws associated with birth registration as set forth in the laws, codes and regulations of the City of New York;

- (4) a physical assessment of the patient in accordance with established protocols including the evaluation of Rh status, need for Rh prophylaxis and the patient's ability to feed the [infant] neonate prior to discharge from the center; and
 - (5) the transfer to the [newborn's] neonate's medical record of a patient's HIV test result, if one exists; and
- (e) discharge and follow-up including:
- (1) a program for discharge and follow-up of the [patient and infant] patients in their home for the immediate postpartum period unless arrangements have been made for the [infant] neonate to be seen by another health care provider. The home visits may be performed by licensed professional nursing staff from the midwifery birth center, if the facility is approved under article 36 of the Public Health Law, or through an agreement with a certified or licensed home health agency, to include an assessment of the parent-child relationship, an evaluation of the nutritional status of the [infant] neonate and the physical and psychological status of the postpartum patient, performance of a hematocrit, rubella and Hepatitis B vaccination if not already provided, and Rh prophylaxis, if indicated, and newborn screening blood collection in accordance with Part 69 of this Title;

* * *

- (4) arrangements for follow-up visits at the midwifery birth center within a six-week period following the birth[.]; and

(f) ancillary services: the midwifery birth center, in coordination with the RPC, affiliate birthing hospitals and other community-based providers as appropriate, shall provide the following ancillary services to patients, through referral or direct onsite, telephone or telemedicine provision as available and appropriate:

(1) Alcohol and substance abuse specialists:

(i) The midwifery birth center shall have a prearranged system for referral of patients with alcohol or substance use disorders to a higher level-of-care facility or community-based provider.

(ii) The midwifery birth center shall screen patients prior to admission for alcohol, tobacco and substance use during pregnancy, in addition to screening for physical, sexual and emotional abuse as part of routine midwifery care.

(iii) Patients who fall out of the scope of practice due to alcohol and substance use shall be referred for consultation with a qualified perinatal mental health professional to determine an appropriate course of action.

(iv) Patients identified as using tobacco or nicotine products shall be referred to appropriate tobacco cessation services and programs.

(2) Anesthesia care: Patients requiring services outside the scope of practice at the midwifery birth center, including anesthesia, shall be transferred to a higher level of care facility, in coordination with the RPC.

(3) Breastfeeding: A trained and qualified international board-certified lactation consultant or a certified lactation counselor shall be available to

educate and assist patients to initiate breastfeeding in a timeframe appropriate to meet the needs of the patient.

- (4) Genetic specialists: The midwifery birth center shall provide access to genetic screening, carrier testing, and genetic counseling for patients.
- (5) Infection control: The midwifery birth center shall have policies and procedures for infection control in accordance with current standards of care.
- (6) Laboratory services: The midwifery birth center shall have a prearranged plan for access to laboratory services for patients.
- (7) Nutrition: The midwifery birth center shall have policies and procedures for nutrition support in accordance with current standards of care.
- (8) Occupational and physical therapy: The midwifery birth center shall refer patients to an appropriate occupational or physical therapist in a timeframe appropriate to meet the needs of the patient.
- (9) Pharmacy services: Any controlled drugs or medications prescribed, dispensed or administered in the midwifery birth center shall be properly stored and tracked.
- (10) Radiology services: The midwifery birth center shall have a prearranged plan for access to imaging services such as ultrasonography. When results are inconclusive or an abnormality that requires immediate neonatal care is detected, patients shall be directed to a higher level of care facility for further management, including consultation by a radiologist or a qualified provider who can interpret results.
- (11) Respiratory therapy: Midwifery birth center staff attending deliveries must be current BLS and NRP providers and shall be able to provide oxygen

and utilize all necessary equipment to support resuscitation to maintain the airway of the patient(s).

(12) Social work, psychosocial and mental health:

(i) Patients shall be assessed to determine availability of sufficient resources prior to or following birth.

(ii) The midwifery birth center shall have a prearranged system for referral of patients with mental health conditions.

(iii) The midwifery birth center shall provide prenatal and postpartum screenings for perinatal depression and perinatal mood and anxiety disorder during such visits, and provide referrals as indicated.

(iv) Patients who screen positive during prenatal or postpartum screening for perinatal depression or perinatal mood and anxiety disorder shall be referred to a higher level-of-care facility or a local institution with a perinatal qualified mental health professional to determine an appropriate course of action.

(v) If a patient is receiving mental health services, the birth center provider shall collaborate with the patient's mental health service provider to co-manage care of the pregnant or postpartum patient.

(13) Speech-language pathology: Neonates demonstrating difficulty feeding and swallowing shall be referred to a licensed speech-language pathologist.

Section 795.8 is amended to read as follows:

Medical records. The operator shall ensure that, in addition to meeting the requirements in section 751.7 of this Title:

(a) The medical record for each patient shall contain the following information:

* * *

(2) patient history, to include medical, surgical, [gynecological] reproductive, and psychosocial history;

* * *

(8) newborn patient physical assessment, including APGAR scores, [maternal-newborn] parent-neonate or surrogate-neonate interaction, ability to feed, eye prophylaxis, vitamin K prophylaxis, vital signs and accommodation to extrauterine life;

* * *

(b) The medical record for each newborn shall be cross-referenced with the patient's medical record and contain the following information:

(1) copy of the [newborn] neonatal physical assessment

* * *

(3) [discharge summary with follow-up plans; and] vaccine information, including the date, time, site(s) of administration, dosage, vaccine manufacturer and lot number of for each vaccine, record of parental consent and parental receipt of relevant vaccine information sheets, or documentation of medical or religious exemption as described in sections 69-3.9 and 69-3.10 of this Title;

(4) discharge summary with follow-up plans; and

([4]5) home visit report.

Section 795.9 is amended to read as follows:

Quality assurance. In addition to meeting the requirements set forth in [section] sections 721.9 and 795.8 of this Title, the operator shall ensure that there is a review of all pregnant and postpartum patients and/or [newborn] neonatal hospital transfers, with reasons for such transfers documented. Findings from these reviews shall be used by the operator and midwifery birth center director in the development and revision of policies and in the consideration of renewing or granting staff privileges.

Section 795.10 is amended to read as follows:

Emergency care. The midwifery birth center shall have the capability and equipment to provide care to patients at low risk and a readiness at all times to meet any unexpected needs of patients within the center, and to facilitate transport to an acute care setting when necessary. The midwifery birth center shall stabilize and transfer patients, in consultation with the birth center's RPC, to an appropriate [general] perinatal care hospital for continued care when medically indicated. Staff [with required current course completion status in] who are current NRP, and BLS [, and ACLS] shall be immediately available and shall have immediate access to all necessary equipment in accordance with these certifications to initiate resuscitation of patients. The midwifery birth center must have availability of adequate numbers of qualified professionals with competence and ability to stabilize and transfer high-risk patients. The operator shall ensure that at a minimum:

- (a) emergency equipment and supplies approved by the midwifery birth center director are available for use for resuscitation of [both adult and neonate] all patients and include at least the following:

* * *

- (3) [infant] neonatal transport equipment;
 - (4) oxygen and oxygen administration equipment for the midwifery patient and [infant] neonate;
 - (5) airways and manual breathing bags for the midwifery patient and [infant] neonate;
 - (6) suction machine and equipment for the midwifery patient and [infant] neonate;
 - (7) adult and [infant] neonatal laryngoscope and endotracheal tubes or neonatal laryngeal mask airways; [and]
 - (8) medications and intravenous fluids with supplies and equipment for administration; and
 - (9) any additional equipment required for compliance with BLS and NRP guidelines;
- (b) center staff are current BLS and NRP providers and are certified in [NRP, BLS, and ACLS resuscitation and] other emergency procedures; and
 - (c) a licensed midwife, and one other staff member, both [trained] current BLS and NRP providers and are certified in [NRP, BLS, and ACLS] other emergency procedures, are on duty in the center when patients are in the midwifery birth center.

Section 795.11 is repealed and a new Section 795.11 is added to read as follows:

Midwifery birth center operational standards and accreditation.

- (a) Minimum operational standards of a midwifery birth center require compliance with sections 400.2 through 400.7, 400.9, and 400.10, sections 751.5 through 751.10, and Part

795 of this Title and require utilization of evidence-based standards for midwifery birth centers published by a national standards body selected by the Department and published on the Department's website.

(b) Additional operational requirements for New York State midwifery birth centers shall include affiliation agreements with designated Regional Perinatal Centers; patient transfer agreements with those facilities and/or other designated birthing hospitals; and the implementation of quality improvement protocols related to their integration with a regional perinatal care system, as described in sections 795.2, 795.4, and 795.9 of this Part, respectively.

(c) The Department may, at its sole discretion, accept as evidence of

- (i) the intent and capability to comply with minimum operational standards,
- or
- (ii) ongoing compliance with minimum operational standards in this subdivision, accreditation by an accreditation agency that the Department has determined has standards sufficient to assure the Department that midwifery birth centers so accredited are in compliance with such minimum operational standards.

(d) The Department may enter into collaborative agreements with one or more accreditation agencies to provide that such an agency's accreditation survey can be used in lieu of a survey by the Department. As part of such collaborative agreements, an accreditation agency may, at the Department's discretion, investigate complaints received by the Department related to care and services provided by a midwifery birth center.

(1) Notwithstanding any such collaborative agreements, the Department reserves the right to survey any midwifery birth center for compliance

with the evidence-based standards established pursuant to this section. A list of accreditation agencies with which the Department has a collaborative agreement will be posted on the Department's website.

- (2) Except as otherwise prohibited by law, all survey reports, complaint investigation results, plans of correction, interim self-evaluation reports, certificates of accreditation, notices of noncompliance, or any other document, provided to the Department by an accreditation agency, pursuant to a collaborative agreement with the Department, shall be subject to public disclosure.
- (e) The midwifery birth center shall notify the Department in writing within seven days of failure to be accredited, re-accredited or the loss of accreditation by the accreditation agency.

Section 795.12 is amended to read as follows:

Application for establishment.

- (a) An application to the Public Health and Health Planning Council (Council) for establishment of a midwifery birth center, as required by law, shall be in writing on forms provided by the Department and executed by the chief executive officer or other officer duly authorized by the proposed operator. [An original and eight copies] The application shall be [filed with the Council] submitted electronically through the [project management unit] New York State Electronic Certificate of Need (NYSECON) system or its replacement. The Project Management Unit in the Department's central office in Albany[, which] shall transmit [one] an

electronic copy of the application to the health systems agency, if any, having geographic jurisdiction.

(b) Applications to the Council shall contain information and data with reference to:

(1) the [public need] number of projected births over time for [the existence of] the proposed midwifery birth center at the time and place and under the circumstances proposed;

(2) the character, experience, competency and standing in the community of the proposed incorporators, directors, stockholders, sponsors, individual operators, members, or partners;

(3) the [financial resources and sources of future revenue] capability of the applicant to fund any acquisition, renovations, and construction costs for the midwifery birth center to be operated by the applicant;

(4) the fitness and adequacy of the premises and equipment to be used by the applicant for the proposed midwifery birth center [; and], which includes, but is not limited to:

- (i) compliance with Part 711 of this Title which sets forth the minimum construction and physical environment standards applicable to all health facilities subject to Department of Health oversight and pursuant to Article 28 of the Public Health Law;
- (a) As required by NFPA 101 *Life Safety Code*, only birth centers occupied by fewer than four patients at any one time, not including infants, shall be classified as “Business Occupancies” and must comply with Chapter 38, “New Business Occupancies” or Chapter 39, “Existing Business Occupancies” of NFPA 101 *Life Safety Code*;

(b) compliance with The Facility Guidelines Institute, Guidelines for Design and Construction of Outpatient Facilities, Chapter 2.4, "Specific Requirements for Birth Centers,";

(c) compliance with 2010 ADA Standards for Accessible Design;

(1) The local authority having jurisdiction for accessibility requirements, which includes New York State or New York City Building Code and/or local codes, may conflict with the Department's accessibility requirements, in those situations the most stringent requirement governs pursuant to Department regulations in section 711 of this Title;

(ii) due to their limited size, birth centers with a maximum of 3 birthing rooms (a maximum of 6 rooms total birthing and exam rooms), have minimum physical environment standards that allow for greater flexibility, including:

(a) waiting area is not required;

(b) staff lounge is not required, provisions for personal storage for staff remains a requirement;

(c) separate toilet rooms, containing a toilet and hand washing sink, for staff and public are not required, may provide shared staff/public toilet room;

(d) reduced number of required electrical receptacles in birthing rooms;

- (e) 44" width of corridors are not required with an occupant load of less than 50, minimum corridor widths required is 36";
- (f) exam rooms shall be a minimum of 80 sq. ft clear floor area and demonstrate clearances and accessibility; at the Department's discretion, a minimum of 72 sq. ft. clear floor area may be permitted for existing construction, if the applicant demonstrates clearances and accessibility;
- (g) birthing rooms shall be a minimum of 120 sq. ft. clear floor area and demonstrate clearances, space for newborn care, and accessibility;
- (h) environmental services room may be shared with other tenants that are business occupants only (this would exclude ambulatory health care settings, hospitals, and nursing homes) on the same floor. Only cleaning supplies may be stored in this room/area and it must be located near birth center space; and
- (i) ventilation per ASHRAE Standard 170 is not required
- (iii) Where an applicant is unable to meet a requirement in this paragraph, such application shall include a detailed explanation, including proposed alternatives, regarding the identified requirement, for the Department and/or the Council's consideration.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The Department of Health (Department) and the Public Health and Health Planning Council (PHHPC) are authorized under Section 2803 of the Public Health Law to regulate health care facilities, including general hospitals and birth centers.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

It has been over 20 years since standards for New York's regionalized perinatal system have been updated. Significant changes have occurred to standards for perinatal care, hospital systems and health care. In addition, maternal mortality rates are high in New York State, with significantly higher rates for Black women compared to other racial and ethnic groups, and must be addressed.

To improve perinatal care in New York State, the Department identified the current standards for perinatal care from the American College of Obstetricians and Gynecologists (ACOG) and American Academy of Pediatrics (AAP) *Guidelines for Perinatal Care* (8th Edition), the ACOG's *Obstetric Care Consensus – Levels of Maternity Care* (2019), the standards and indicators of the American Association of Birth Centers (AABC; 2017) and the Commission for Accreditation of Birth Centers (CABC;

2020), and a literature review. The Department also convened a 49-member expert panel to make recommendations for the perinatal system in New York State, which includes freestanding birth centers, Level I hospitals, Level II hospitals, Level III hospitals, and Regional Perinatal Centers (RPCs), as described in 10 NYCRR Part 721. Freestanding birth centers with physician medical directors are regulated under 10 NYCRR Part 754. Midwifery birth centers are regulated under 10 NYCRR 795.

The expert panel met three times in September and November of 2017 and in May 2018, with subcommittees meeting to address more complex topics requiring in-depth discussion. The subcommittees discussed the role of RPCs, affiliation agreements with RPCs, transfers, maternal services, neonatal services, behavioral health and substance use, subspecialists (obstetric and neonatal), and financials. The subcommittees' recommendations were brought to the full expert panel for review and approval.

The expert panel made extensive recommendations concerning perinatal regionalization in New York, including recommendations for freestanding birth centers and midwifery birth centers. These recommendations have been incorporated into these regulations, and are broadly described as follows:

The requirement to provide eye prophylaxis for newborns, to prevent purulent conjunctivitis, is updated to align with current practice. This will protect the neonates from aseptic neonatal conjunctivitis that is induced by silver nitrate solution, previously used at birth for prophylaxis of infectious conjunctivitis. This update also removes reference to treatments no longer considered as standard practice.

The regulations align the appropriate gestational age and birthweight with current standards of practice as advised by experts in perinatology including AABC, AAP and ACOG.

The proposed regulations will add requirements to notify the Department within two days when the Neonatal Intensive Care Unit (NICU) and/or maternity census exceeds the licensed number of beds on the site's Certificate of Need (CON). This allows the Department to work with the facility and in the case of a lower-level birthing hospital, their RPC, to reduce overcrowding. Overcrowding is a significant risk factor associated with nosocomial outbreaks (i.e., Methicillin-resistant *Staphylococcus aureus* (MRSA), Gram-negative bacteria, or fungal infections) in NICUs. These infections may be debilitating or fatal to already immunocompromised NICU patients with multiple risk factors.

The proposed regulations strengthen the RPC's role in offering support to affiliates, including coordination of RPC and affiliate staff education on implicit bias, cultural competency, and the impact of these areas on patient care. This will help address social disparities in perinatal treatment and outcome in New York.

The regulations will require RPCs to coordinate neonatal transports between affiliates, and to coordinate maternal transports both between affiliates and from affiliates to the RPC. This change will ensure that the appropriate level of care, including the need for transport of a neonate or midwifery/obstetrical patient to a higher level of care, is consistent with generally accepted standards and with the hospital's perinatal affiliation agreement.

The role of the RPCs in quality improvement and data review will be to monitor the quality and appropriateness of patient care provided by its affiliates and to ensure that identified problems are reported to the quality assurance committee together with recommendations for corrective action. Quality improvement shall be achieved through a systematic, formal application of continuous actions aimed at optimizing patient health and safety.

The regulations will require RPCs to establish affiliation agreements with any freestanding and midwifery birth centers, and to provide appropriate supportive and consultation services similar to those provided to lower-level affiliate birthing hospitals. Additionally, regulations related to accreditation and establishment of midwifery birth centers have been added to address regulatory items noted in the Midwifery Birth Center Accreditation Act (Public Health Law § 2803(11)).

Finally, updating regulatory language with the use of gender-neutral terminology will make the regulations more inclusive of all persons receiving midwifery, obstetrical and neonatal health care services in New York and will align the language with New York State policies.

COSTS:

Costs to Private Regulated Parties:

Under these regulations, there are no costs to hospitals specific to the voluntary designation process. Hospitals may incur costs associated with hiring of perinatal clinical staff. According to the Bureau of Labor Statistics (BOLS), the New York State average salaries (May 2020) are as follows: registered nurse (\$89,760), obstetrician/gynecologist (\$214,490), pediatrician (\$170,720), and nurse-midwives (\$125,780). BOLS does not provide salary estimates for specialty and subspecialty clinicians (e.g., maternal-fetal medicine specialists, neonatologists).

Additional costs may be incurred related to establishing systems for maternal transport between affiliate hospitals; costs related to purchasing equipment and construction to meet the new requirements. Costs will likely be significantly higher if a hospital seeks to become designated at a higher level of care than their current level.

Costs for existing birth centers are anticipated to be relatively minimal. Costs may include purchasing of equipment and training costs to meet regulatory requirements (e.g., basic life support and Neonatal Resuscitation Program® training and associated equipment requirements). Costs for newly established birth centers, including midwifery birth centers, are anticipated to be similar to those incurred without adoption of these regulations. Costs will vary depending on the specifics of the physical premises.

For all currently designated birthing hospitals, the requirement to review and update policies and procedures is expected to be accomplished with existing staff, imposing little or no additional cost.

Designated RPCs are already required to perform a significant proportion of the proposed requirements. Obstetrical transfer coordination, as well as neonatal transfer support between lower-level affiliates, may result in increased need for staff to coordinate transfers and provide stabilization and ongoing care during transportation to a receiving hospital.

Costs to State and Local Governments:

No additional costs to state and local governments are anticipated, with the exception of eleven NYC Health and Hospital Corporation and 2 State University of New York perinatal hospitals. These entities may incur additional costs as described above.

Costs to the Department of Health:

No additional costs to the Department of Health are anticipated. Costs for designation, hospital surveying and hospital site visits are funded by the federal Title V Maternal and Child Health Services Block Grant. Existing staff will be utilized for ongoing oversight, contract management, site visits, quality improvement initiatives and other services to monitor compliance with these provisions.

Local Government Mandates:

There are no specific mandates that impact local governments.

Paperwork:

Hospitals may need to develop or revise written policies and procedures, including obstetrical and neonatal transfer and referral protocols for ancillary services. Additionally, hospitals will likely need to revise affiliation agreements with an RPC and hospitals that choose to establish a transfer agreement with another non-RPC affiliate will need to develop or revise such agreements.

Birthing hospitals seeking to increase the number of maternity and/or neonatal intensive care beds on their operating certificate will need to apply through the Department's Certificate of Need process; this requirement and the application process are not impacted directly by these regulations.

Midwifery birth centers seeking accreditation through a third-party recognized establishment organization will be required to adhere to the requirements of those organizations, and provide documentation of proof of accreditation to the Department. Midwifery birth centers seeking establishment through the Department's Certificate of

Need process will need to submit the required documents for consideration by the Department and the Public Health and Health Planning Council. In adherence with the Midwifery Birth Center Accreditation Act (see Public Health Law § 2803(11)), the Department is promulgating this regulation to meet the requirements of the Law; additional efforts related to reducing the burden of establishment and the Certificate of Need process that can be accomplished administratively are in development.

Duplication:

These regulations will not duplicate State or federal rules.

Alternatives:

There are multiple professional medical organizations (ACOG, AAP, AABC; Society of Maternal-Fetal Medicine) that establish standards of care for perinatal patients specific to each organization's membership. Current guidelines from these organizations were used to establish comprehensive regulations for service delivery.

Leaving the regulations unchanged from 2005 would subject birthing hospitals and their patients to outdated standards that would be contrary to good medical practice. These regulatory changes ensure that perinatal care is provided with the most up-to-date standards.

Federal Standards:

The United States Department of Health and Human Services, and its' constituent agencies, do not currently have standards for perinatal regionalization systems. Any requirements of the regulations are based on recommendations of national healthcare provider organizations not affiliated with the federal government.

Compliance Schedule:

These regulations will go into effect upon a Notice of Adoption in the New York State Register. Hospitals seeking perinatal designation will need to meet all relevant requirements at the time of designation request.

Contact Person:

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

These regulations will apply to all birthing hospitals that currently have a perinatal designation. The regulation will apply to all currently operating birth centers regulated under 10 NYCRR 754. Freestanding birth centers, as well as midwifery birth centers (regulated under 10 NYCRR 795) are likely to qualify as small businesses with fewer than 100 FTE. Birthing hospitals are unlikely to qualify as a small business. Any hospitals seeking to become newly designated, as well as newly established birth centers and midwifery birth centers would be subject to these regulations.

Currently there are 11 perinatal hospitals operated by New York City Health and Hospitals Corporation (NYCHHC) and 2 perinatal hospitals operated by the State University of New York (SUNY).

Compliance Requirements:

There are no additional programs, services, duties, or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district. Hospitals would only need to comply with these regulations if they perform maternity services outside of emergency rooms in accordance with the federal Emergency Medical Treatment and Labor Act. The Department reviews compliance with all applicable sections of 10 NYCRR 721 based on the birthing hospital's current level of designation or the level of designation which a new or upgrading hospital seeks to obtain. This is done through the designation process, as well as through various mechanisms and

programs within the Department, and includes hospital attestations, surveys, remote and/or on-site visits, and complaint investigations.

Freestanding birth centers under 10 NYCRR 754 and midwifery birth centers under 10 NYCRR 795 may be small businesses. As noted above, there are three operating freestanding birth centers and two centers in various stages of pre-licensure; there are currently no midwifery birth centers. They are regulated in a similar manner to Level I perinatal hospitals. Birth centers will be affiliated with an RPC, and they will have transfer agreements and quality assurance activities that are coordinated on a regional basis. Midwifery birth centers under 10 NYCRR 795 who choose to become accredited through a recognized accrediting organization will be required to comply with all requirements of accreditation and maintenance of accreditation, and will need to submit proof of accreditation to the Department as a condition of establishment.

Professional Services:

These regulations are not expected to require any additional use of professional services.

Compliance Costs:

Under these regulations, there are no costs to hospitals specific to the voluntary designation process. Hospitals may incur costs associated with hiring of perinatal clinical staff. According to the Bureau of Labor Statistics (BOLS), the New York State average salaries (May 2020) are as follows: registered nurse (\$89,760), obstetrician/gynecologist (\$214,490), pediatrician (\$170,720), and nurse-midwives (\$125,780). BOLS does not provide salary estimates for specialty and subspecialty clinicians (e.g., maternal-fetal medicine specialists, neonatologists).

Additional costs may be incurred related to establishing systems for maternal transport between affiliate hospitals, costs related to purchasing equipment, and construction to meet the requirements. Costs will likely be significantly higher if a hospital seeks to become designated at a higher level of care than their current level.

Costs for existing birth centers are anticipated to be relatively minimal. Cost may include purchasing of equipment and training costs to meet requirements (e.g., basic life support and Neonatal Resuscitation Program® training and associated equipment requirements). Costs for newly established birth centers, including midwifery birth centers, are anticipated to be similar to those incurred without adoption of these regulations. Costs will vary depending on the specifics of the physical premises.

For all currently designated perinatal centers, the requirement to review and update policies and procedures is expected to be accomplished with existing staff, imposing little or no additional cost.

Designated RPCs are already required to perform a significant proportion of the requirements the regulations. Obstetrical transfer coordination, as well as neonatal transfer support between lower-level affiliates, may result in increased need for staff to coordinate transfers and provide stabilization and ongoing care during transportation to a receiving hospital.

There are no anticipated costs to local and state agencies, with the exception of 11 NYCHHC and 2 SUNY perinatal hospitals, which may incur additional costs as described above.

Economic and Technological Feasibility:

These regulations are economically and technically feasible.

Minimizing Adverse Impact:

The Department has considered how best to ensure that these recommendations create minimal disruption to the perinatal regionalization system, in coordination with the expert panel. With the advice of the expert panel, the proposed regulations take into consideration the balance between patient need for advanced cardiac life support and existing capacity within hospital systems that may not be assigned specifically to obstetrics or labor and delivery.

The Department periodically communicated with birthing hospitals and birth centers about the intent to reform the perinatal care, perinatal regionalization, and birth center regulations. This included formal and informal communication with all levels of perinatal care and departments affiliated with perinatal services. Additionally, following passing of the Midwifery Birth Center Accreditation Act, the Department engaged with midwifery stakeholders and advocates, including representatives of state and national midwifery organizations, to discuss the proposed regulations with a focus on accreditation and establishment. Following these discussions, the regulations were further revised to clarify requirements and reduce burdensome requirements while still supporting the integration of midwifery birth centers into the perinatal regionalization system and ensuring compliance with national life and safety standards.

Upon adoption of these regulations, the Department will begin the process of redesignating hospitals in accordance with the new provisions. Hospitals that wish to be redesignated, including those seeking to maintain their current level of designation, will complete a comprehensive assessment of perinatal and ancillary services. A proportion of Level I and II hospitals, as well as all Level III and RPC hospitals, will receive a site visit to ensure compliance. Any deficiencies found during such checks may result in a

corrective action plan to ensure that the hospital is making progress towards meeting all requirements. Facilities that receive a corrective action plan will be given an appropriate timeframe to come into compliance with regulation; this will be dependent on situations and the potential impact to direct patient care. The Department may issue provisional designations if a hospital demonstrates a good faith effort to meet new or updated requirements within a timely fashion.

Small Business and Local Government Participation:

The Department has conducted outreach to the affected parties, including representatives from state midwifery and birth center professional organizations. Representatives from the New York State Association of Licensed Midwives (NYSALM) were involved in the expert panel that developed recommendations for all levels of perinatal care. Additionally, discussions with representatives from the New York State Birth Center Association (NYSBCA) were held related to the proposed regulations related to midwifery practice and birth center operations. Outreach was also conducted with midwives not representing leadership of NYSALM or NYSBCA. Midwifery practices, as well as freestanding birth centers are typically small private practices that operate within a wide variety of communities (urban, suburban and rural). The Department also had conversations with the Commission for the Accreditation of Birth Centers (CABC), which represents birth centers that are traditionally small businesses and/or rurally located, as well as leadership of the American College of Nurse-Midwives (ACNM) which represents the nurse-midwifery profession.

Local government was not involved as a category of stakeholders, although representatives from NYCHHC and SUNY perinatal hospitals were on the expert panel as well. These regulations do not have an anticipated impact on local government outside

of perinatal care settings. Finally, the Department discussed the feasibility and current capacity of emergency medical services as they relate to availability of advanced cardiac life support (ACLS) and obstetric and neonatal transportation, particularly at rural and suburban locations.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<https://www.census.gov/quickfacts/>).

Allegany County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County	Oswego County	Washington County
Essex County	Otsego County	Wayne County
Franklin County	Putnam County	Wyoming County
Fulton County	Rensselaer County	Yates County
Genesee County	Schenectady County	
Greene County	Schoharie County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Compliance Requirements:

Health care facilities in rural areas providing perinatal services will be subject to the same requirements as regulated entities in non-rural areas. Perinatal hospitals and birth centers will be affiliated with a Regional Perinatal Center (RPC), and hospitals will have transfer agreements and quality assurance activities that are coordinated on a regional basis.

Professional Services:

These regulations are not expected to require any additional use of professional services.

Compliance Costs:

Under these regulations, there are no costs to hospitals specific to the voluntary designation process. Hospitals may incur costs associated with hiring of perinatal clinical staff. According to the Bureau of Labor Statistics (BOLS), the New York State average salaries (May 2020) are as follows: registered nurse (\$89,760), obstetrician/gynecologist (\$214,490), pediatrician (\$170,720), and nurse-midwives (\$125,780). BOLS does not provide salary estimates for specialty and subspecialty clinicians (e.g., maternal-fetal medicine specialists, neonatologists).

Additional costs may be incurred related to establishing systems for maternal transport between affiliate hospitals, costs related to purchasing equipment, and construction to meet the requirements. Costs will likely be significantly higher if a hospital seeks to become designated at a higher level of care than their current level.

Costs for existing birth centers are anticipated to be relatively minimal. Cost may include purchasing of equipment and training costs to meet requirements (e.g., basic life

support, advanced cardiac life support, and Neonatal Resuscitation Program® training and associated equipment requirements). Costs for newly established birth centers, including midwifery birth centers, are anticipated to be similar to those incurred without adoption of these regulations. Costs will vary depending on the specifics of the physical premises.

For all currently designated perinatal centers, the requirement to review and update policies and procedures is expected to be accomplished with existing staff, imposing little or no additional cost.

Designated RPCs are already required to perform a significant proportion of the requirements. Obstetrical transfer coordination, as well as neonatal transfer support between lower-level affiliates, may result in increased need for staff to coordinate transfers and provide stabilization and ongoing care during transportation to a receiving hospital.

There are no anticipated costs to local and state agencies, with the exception of the 11 NYCHHC and 2 SUNY perinatal hospitals, which may incur additional costs as described above.

Minimizing Adverse Impact:

The Department has considered how best to ensure that these recommendations create minimal disruption to the perinatal regionalization system, in coordination with the expert panel. With the advice of the expert panel, the proposed regulations take into consideration the balance between patient need for advanced cardiac life support and existing capacity within birth centers and birthing hospitals that may not be assigned specifically to obstetrics or labor and delivery.

The Department periodically communicated with birthing hospitals and birth centers about the intent to reform the perinatal care, perinatal regionalization, and birth center regulations. This included formal and informal communication with all levels of perinatal care and departments affiliated with perinatal services.

Upon adoption of these regulations, the Department will begin the process of redesignating hospitals in accordance with the new provisions. Hospitals that wish to be redesignated, including those seeking to maintain their current level of designation, will complete a comprehensive assessment of perinatal and ancillary services. A proportion of Level I and II hospitals, as well as all Level III and RPC hospitals, will receive a site visit to ensure compliance. Any deficiencies found during such checks may result in a corrective action plan to ensure that the hospital is making progress towards meeting all requirements. Facilities that receive a corrective action plan will be given an appropriate timeframe to come into compliance with regulation; this will be dependent on situations and the potential impact to direct patient care. The Department may issue provisional designations if a hospital demonstrates a good faith effort to meet new or updated requirements within a timely fashion.

Rural Area Input:

The Department has conducted outreach to the affected parties. Staff from rural and community hospitals (typically Level I hospitals), as well as representatives from the fields of nursing and midwifery were involved in the development of recommendations. Additionally, the Department involved lower level (I, II and III) facilities, as well as RPCs in discussions around the role of the RPC and affiliation agreements, particularly the role of the RPC in obstetrical and neonatal transport in rural areas that may not have

adequate emergency medical services for around-the-clock availability. The Department held multiple discussions with experts and representatives from health care plans (Medicaid and private) and emergency medical services to obtain feedback and gain information on appropriate services and feasibility of these regulations. The Department also had conversations with the Commission for the Accreditation of Birth Centers (CABC), which represents birth centers that are traditionally small businesses and/or rurally located, and the American College of Nurse-Midwives representing the nurse-midwifery profession. Finally, midwives representing both urban and rural private practice were consulted on issues related to midwifery practice in birthing hospitals and birth centers.

JOB IMPACT STATEMENT

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of these regulations. As a result of these regulations, hospitals and birth centers may need to increase staffing through new hires; this is particularly true for hospitals which choose to redesignate at a higher level of care. Additionally, newly established birth centers and midwifery birth centers may increase staffing through new hires.



Project # 221257-C
Open Door Family Medical Center, Inc

Program: Diagnostic and Treatment Center **County:** Westchester
Purpose: Construction **Acknowledged:** August 15, 2022

Executive Summary

Description

Open Door Family Medical Center, Inc. (Open Door), a not-for-profit, Article 28 diagnostic and treatment center (D&TC) and Federally Qualified Health Center (FQHC) at 165 Main Street in Ossining, is seeking approval to certify an extension clinic at 2 Church Street, Ossining.. The proposed extension clinic would be kitty-corner to the current main site only 148 feet away, allowing the expansion of services at that location.

Open Door would move primary care and behavioral health to the proposed extension clinic and keep specialty medical services as well as dental at the main site, creating a community-focused medical campus centered on the two buildings. A separate Certificate of Need application will be submitted for renovations needed at the main site to complete the plan.

Upon PHHPC approval, the new extension clinic will be called Open Door Family Medical Center – Ossining Primary Care. Daren Wu, M.D., who is Board-certified in Family Medicine, will serve as the Medical Director.

Open Door has an existing Transfer Agreement with Phelps Hospital, 4.2 miles (14 minutes travel time) away, which will be extended to cover the extension clinic.

OPCHSM Recommendation

Contingent approval

Need Summary

The applicant projects 50,564 visits in Year One and 56,855 in Year Three with 47.43% Medicaid utilization in both years and Charity Care at 0.35% in Year One and 0.62% in Year Three.

Program Summary

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

Financial Summary

The total project cost of \$15,169,784 will be met with accumulated funds from Open Door’s operations. The submitted budget projects break-even operating performance during Years One and Three of operations, respectively.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Revenues	\$8,900,079	\$10,074,746
Expenses	<u>8,900,079</u>	<u>10,074,746</u>
Net Income	\$0	\$0

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 forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [CSL]

Approval conditional upon:

1. This project must be completed by **February 15, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2023**, and construction must be completed by **November 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 9, 2023

Need Analysis

Background and Analysis

The primary service area is Ossining, Westchester County. Open Door is currently a designated FQHC in a Medically Underserved Area. The applicant expects the majority of patients to come from Ossining and Croton-on-Hudson, which they report as communities with large immigrant populations (26% foreign-born) and a high percentage of Latino residents (41.3%) specifically living in Ossining. The proposed extension clinic will allow Open Door to create a community-focused medical campus in Ossining centered around the proposed extension clinic and the existing D&TC at 165 Main Street. The following services will be provided: primary care and other medical specialties including behavioral health. Hours of operation will be Monday-Thursday, 8:30 AM-7:00 PM; Friday, 8:30 AM-5:00 PM; Saturday, 9:00 AM-3:00 PM. The number of projected visits is 50,564 in Year One and 56,855 in Year Three.

According to Data USA, in 2019 94.5% of the population in Westchester County had health coverage as follows:

Employer Plans	55.9%
Medicaid	14.2%
Medicare	12.8%
Non-Group Plans	11.3%
Military or VA	0.3%

The applicant projects the following payor mix:

Projected Payor Mix		
Payor	Year One	Year Three
Commercial	16.22%	16.22%
Medicare	3.79%	3.79%
Medicaid	47.43%	47.43%
Private Pay	23.63%	23.63%
Charity Care	2.0%	2.0%
Other	6.93%	6.93%

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.

Hospital Admissions per 100,000 Adults for Overall PQIs				
PQI Rates: 2017	Zip Code (10562) Ossining	Zip Code (10520) Croton-on-Hudson	Westchester County	New York State
All PQI's	1,059	1,548	1,250	1,431

Through this project, Open Door is looking to expand its services to the community but cannot do so due to space constraints at the current D&TC site, which provided approximately 53,700 in-person visits in 2021.

Conclusion

The proposed extension clinic will allow Open Door Family Medical Center to better meet the needs of its community.

Program Analysis

Program Description

The Applicant reports that Open Door is looking to expand their services in the community but cannot do so due to space constraints at the current D&TC. The building at 2 Church Street will be renovated to become a primary medical and behavioral health center. The behavioral health services will be provided by a psychiatrist and remain under the OMH thresholds.

The Applicant reported in its 2020 Uniform Data Systems report in its Primary Health Care that it cared for 59,026 unduplicated users with 235,709 encounters in all of its sites. By providing comprehensive primary care and specialty care that is accessible and affordable, Open Door is helping to eliminate disparities in healthcare and ensuring the community receives quality services regardless of insurance status or ability to pay.

Staffing is expected to increase as a result of this construction/expansion project to 92.6 FTEs in Year One of the completed project with an increase to 104.2 FTEs by Year Three.

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.

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$15,169,784 and is distributed as follows. The project will be funded with accumulated funds from operations.

New Construction	\$1,214,645
Renovation & Demolition	9,271,274
Site Development	156,750
Design Contingency	1,048,592
Construction Contingency	987,859
Architect/Engineering Fees	1,010,765
Other Fees	544,123
Movable Equipment	866,573
Application Fee	1,250
Additional Processing Fee	<u>67,953</u>
Total Project Cost	\$15,169,784

Operating Budget

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

	<u>Year One (2024)</u>		<u>Year Three (2026)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$60.49	\$496,118	\$60.49	\$557,850
Medicare FFS	\$118.31	226,558	\$119.45	257,296
Medicaid FFS	\$217.26	627,881	\$219.47	713,068
Medicaid MC	\$217.29	4,583,431	\$219.47	5,205,284
Private Pay	\$31.71	378,977	\$31.71	426,133
All Other*		<u>761,045</u>		<u>864,299</u>
Total Op. Rev		\$7,074,010		\$8,023,930
Other Revenue**		<u>1,826,069</u>		<u>2,050,816</u>
Total Revenue		\$8,900,079		\$10,074,746
Expenses:				
Operating	\$171.55	\$8,674,263	\$169.26	\$9,623,114
Capital	<u>\$4.47</u>	<u>225,816</u>	<u>\$7.94</u>	<u>451,632</u>
Total	\$176.02	\$8,900,079	\$177.20	\$10,074,746
Net Income / (Loss)		<u>\$0</u>		<u>\$0</u>
Total Visits		50,564		56,855
Cost per Visit		\$176.02		\$177.20

*All Other includes revenues received from visits reimbursed from Child Health Plus.

**Other Revenue is comprised of NYS Safety Net Funds, a Federal 330 Grant, and Patient-Centered Medical Home revenue.

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

<u>Payor:</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	16.22%	16.22%
Medicare FFS	3.79%	3.79%
Medicaid FFS	5.72%	5.72%
Medicaid M/C	41.71%	41.71%
Private Pay	23.63%	23.63%
Charity	2.0%	2.0%
All Other	<u>6.93%</u>	<u>6.93%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Commercial rates are based on organization's current average reimbursement rates.
- Private pay visits for the proposed site are based on actual visit payer mix data and services currently offered at the 165 Main Street location.
- Medicare and Medicaid rates are based on Open Door's current average rates and are enhanced to reflect the annual 1% Medicare Economic Index (MEI) rate adjustment.
- NYS Safety Net and Federal 330 grants funds are allocated towards uninsured visits. Year One and Year Three projections are based on Open Door's prior year uninsured visits rate with an underlying assumption that the rate of uninsurance among the population remains steady.
- Patient Centered Medical Home incentive revenues are based on the current Medicaid Fee-For-Service rate add-on and capitation per-member, per-month rate for Medicaid Managed Care.
- Staffing is based on expected utilization and experience of Open Door providing outpatient services.
- Expenses are based predominantly on the labor costs for a staffing model that includes 92.6 FTEs in Year One and 104.2 FTEs in Year Three, medical and non-medical supplies, and other direct expenses. Salary expenses are based on Open Door's 2022 operating budget, employee benefits are based on budgeted fringe rate of 21.26%.
- Utilization is based on average visits per FTE by discipline based on organization's historical experience.

Capability and Feasibility

Project costs of \$15,169,784 will be met with accumulated funds from Open Door. Working capital requirements are estimated at \$1,679,124, based on two months of third-year expenses, and will be funded through the ongoing operations of Open Door Family Medical Center, Inc. Open Door has sufficient funds to cover any potential losses during Years One and Three. Medicare and Medicaid rates are based on Open Door's current average rates, Commercial rates are based on organization's current average reimbursement rates. Private pay rates are based on actual visit payer mix data and services currently offered at the 165 Main Street location. The submitted budget projects a break-even operating performance during Years One and Three of operations, respectively. The budget appears reasonable.

BFA Attachment A presents audited financial statements for Open Door Family Medical Center, Inc. and Affiliates for the year ended December 31, 2021, which show Open Door reported positive working capital and net assets of \$8,836,948 and \$145,465,632, respectively. For this same period, operating income amounted to \$1,493,125 and was augmented by \$10,853,678 in unrealized gains and a \$17,892 change in net assets with donor restrictions, resulting in a positive change in net assets of \$12,328,911. During 2021, Open Door received \$2.5M in Provider Relief Funds, \$14.4M in American Rescue Plan Act (ARPA), and \$1.2M in American Rescue Plan – Health Center Construction and Capital Improvements (ARP-Capital) funds. The applicant anticipates meeting the expenditure requirements for these funds.

Attachment B presents Open Door Family Medical Center's internal financial statements for the period ended November 30, 2022 and show the facility reported positive working capital and total net assets of \$13,067,665 and \$139,368,812, respectively. During the same period, Open Door reported a \$4,691,459, net gain from operations, offset by \$2,689,406 in depreciation expenses, resulting in a net income of \$2,002,053 after depreciation.

The proposed extension is expected to increase the availability of needed primary medical care and behavioral health care for the low-income service area population, improve the timeliness of care delivery, and overall efficiency in providing care suited to meet the needs of the targeted population.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2021 Audited Financial Statement – Open Door Family Medical Center, Inc. and Affiliates
BFA Attachment B	November 30, 2022 Internal Financial Statements – Open Door Family Medical Center



Project # 182144-C
Nassau University Medical Center

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: September 28, 2018

Executive Summary

Description

Nassau University Medical Center (NUMC), a 530-bed, Public Article 28 acute care hospital located at 2201 Hempstead Turnpike, East Meadow (Nassau County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization – Electrophysiology (EP) services, with requisite renovations. NUMC will convert its existing adult diagnostic cardiac catheterization laboratory to a PCI-capable cardiac catheterization laboratory center and EP studies laboratory. North Shore University Hospital (NSUH), a full-service cardiac surgery provider located at 300 Community Drive in Manhasset (Nassau County), will be the cardiac surgery backup facility. NSUH is a 756-bed quaternary hospital approximately 12 miles from NUMC. NSUH will work collaboratively with NUMC to expand NUMC’s established quality and performance improvement program to include PCI and EP service.

NUMC refers approximately 50 PCI and 36 EP cases each year. Implementation of this project will enable NUMC to perform these procedures on-site. Seven physicians have committed to providing PCI and EP procedures at NUMC’s proposed PCI-capable cardiac catheterization laboratory. These physicians currently work at Long Island Jewish Medical Center and North Shore University Hospital.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant has projected 50 Emergency PCI procedures in Year One and 100 by Year Three of operation.

Program Summary

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

Financial Summary

The total project cost of \$4,079,014 for renovation and equipment will be funded with equity from Nassau Health Care Corporation (Operator).

Table with 3 columns: Budget, Year One 2024, Year Three 2026. Rows: Revenues (\$3,234,491 vs \$5,738,686), Expenses (\$2,946,000 vs \$4,425,247), Net Income (\$288,491 vs \$1,313,439).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a fully executed clinical sponsorship agreement. [HSP]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02 [AER]
4. The submission of Engineering (MEP) Drawings, per SHC guidelines, for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]

Approval conditional upon:

5. This project must be completed by **July 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]
6. Construction must start on or before **August 15, 2023**, and construction must be completed by **April 15, 2024**, 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]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 9, 2023

Need Analysis

Background and Analysis

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. The tables below display various breakdowns of 2021 E-PCIs performed on Long Island residents at various facilities in and out of the Long Island Region.

2021 Emergency PCI's Migration of Long Island Region Residents: County-Specific Location of Treatment			
Resident Migration	Nassau	Suffolk	Total
County Residents Treated All Locations	3,277	4,256	7,533
County Residents Receiving Emergency PCI Treatment in Long Island	2,900	4,133	7,033
County Residents Leaving Long Island for Emergency PCI Treatment	377	123	500

2021 Emergency PCI's Performed on Long Island Region Residents by County, By Operational Long Island Region Facilities					
Travel Time and Distance from Nassau University					
Operational Long Island Region Facility	Nassau	Suffolk	Total	Minutes	Miles
Good Samaritan University Hospital	68	735	803	30	19.2
Huntington Hospital	22	261	283	38	16.8
John T. Mather Memorial Hospital	1	88	89	79	41.4
Long Island Community Hospital		304	304	46	34.1
Mercy Medical Center	80	4	84	20	7.8
Mount Sinai South Nassau Hospital	484	14	498	22	9.9
North Shore University Hospital	728	138	866	26	12.4
NYU Langone Hospital - Long Island	599	300	899	20	6.1
Peconic Bay Medical Center	4	203	207	71	55.4
South Shore University Hospital	30	610	640	36	19.2
St. Catherine of Siena Medical Center	3	198	201	48	29.1
St. Francis Hospital	865	392	1257	24	11.1
Stony Brook Southampton Hospital		54	54	81	67.5
University Hospital at Stony Brook	16	832	848	73	41.8
St. Joseph Hospital (Services started in 2021)	N/A	N/A	N/A	19	4.3
Total	2,900	4,133	7,033		

Applicant Projected Emergency PCI's				
Project	Facility	County	Projected Emergency PCIs	
			Year One	Year Three
182144	Nassau University Medical Center	Nassau	50	100

Nassau University Medical Center has projected 50 Emergency PCI procedures by year one and 100 by year three of operation.

The applicant projects 150 total PCIs by year one and 300 by year three of operations.

By providing PCI-capable Cardiac Catheterization services, Nassau University Medical Center hope to:

- Reduce the “door-to-balloon” time for residents of the service area requiring PCI.
- Improve mortality rates for PCI services.
- Reduce travel inconvenience.
- Reduce the number of patients requiring a second cardiac catheterization for PCI after undergoing the initial diagnostic cardiac catheterization.

Conclusion

Through this project Nassau University will increase access to PCI services in their service area. and increase .

Program Analysis

Project Proposal

Nassau University Medical Center (NUMC), a 530-bed not-for-profit acute care hospital, located at 2201 Hempstead Turnpike in East Meadow (Nassau County), seeks to convert its existing adult diagnostic cardiac catheterization laboratory to a PCI capable cardiac catheterization laboratory center and EP studies laboratory with renovation of space to accommodate these services.

The program will be coordinated () with Northwell Health North Shore University Hospital via an executed clinical sponsorship agreement. North Shore is a 738-bed acute care hospital on Manhasset, Long Island (Nassau County) that offers a full-service cardiac surgery center and is also a member of Northwell Health. North Shore University Hospital will facilitate integration of expertise and resources for the cardiac catheterization laboratory located at Nassau University Medical Center and will provide quality oversight.

Based on internal tracking from NUMC, in 2017, patients having a total 186 procedures were transferred to North Shore for higher level cardiac procedures, including 128 cardiac catheterization procedures and 36 electrophysiology procedures. Presently, NUMC refers out 50 PCI and 36 EP cases each year due to inability to perform advanced interventional procedures. There are no PCI or EP providers located within the primary service area of NUMC, Not having these interventional services available at NUMC forces these patients to be sent to a more distant hospital and causes and delay in care. The implementation of this project will enable NUMC to perform these procedures for patients in a more convenient, local facility.

Upon approval, Nassau University Medical Center will have the following services added to their operating certificate:

- Cardiac Catheterization – Electrophysiology (EP)
- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and electrophysiology services and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1), 405.29(e)(2) and 405.29(e)(5).

Compliance with Applicable Codes, Rules, and Regulations

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

Conclusion

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

Financial Analysis

Total Project Costs and Financing

Project costs for renovation and moveable equipment are estimated at \$4,079,015 broken down as follows in 2022 dollars:

Renovation & Demolition	\$2,125,495
Asbestos Abatement or Removal	\$232,368
Design Contingency	\$212,549
Construction Contingency	\$212,549
Architect/Engineering Fees	\$182,025
Construction Manager Fees	\$100,940
Other Fees	\$10,300
Moveable Equipment	\$567,530
Telecommunications	\$421,064
Application Fee	\$2,000
Processing Fee	<u>\$12,194</u>
Total Project Cost with fees	\$4,079,015

The project will be financed via equity from Nassau Health Care Corporation (NHCC), the operator of NUMC.

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
<u>Inpatient Revenues:</u>	<u>Per</u>	<u>Total</u>	<u>Per</u>	<u>Total</u>
	<u>Disch.</u>		<u>Disch.</u>	
Commercial FFS	\$24,219	\$532,824	\$23,629	\$968,808
Medicare FFS	\$29,285	\$790,698	\$29,287	\$1,347,197
Medicare MC	\$26,361	\$158,165	\$26,361	\$316,329
Medicaid FFS	\$14,882	\$714,367	\$15,146	\$1,211,734
Medicaid MC	\$15,547	\$361,191	\$15,546	\$722,381
Other: (Bad Debt)		<u>(\$9,323)</u>		<u>(\$18,645)</u>
Total Inpt Revenue		\$2,547,922		\$4,547,804
<u>Outpatient Revenues:</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$7,284	\$160,253	\$7,182	\$294,468
Medicare FFS	\$9,669	\$261,055	\$9,125	\$419,758
Medicare MC	\$6,507	\$39,039	\$6,506	\$78,077
Medicaid FFS	\$3,460	\$166,087	\$3,478	\$278,308
Medicaid MC	\$2,712	\$62,397	\$2,712	\$124,795
Other: (Bad Debt)		(\$2,262)		(\$4,524)
Total Outpt Revenue		<u>\$686,569</u>		<u>\$1,190,882</u>
Total Revenues		\$3,234,491		\$5,738,686
<u>Expenses (Combined):</u>				
Operating	\$19067.67	\$2,536,000	\$16,941.97	\$4,015,247
Capital	<u>\$3082.71</u>	<u>\$410,000</u>	<u>\$1,729.26</u>	<u>\$410,000</u>
Total Expenses	\$11,075.18	\$2,946,000	\$9,335.96	\$4,425,247
Gain/(Loss)		<u>\$288,491</u>		<u>\$1,313,439</u>

Utilization: (procedures)		
Total Inpatient	133	237
Total Outpatient	133	237
EP Procedures	116	174
PCI Procedures	<u>150</u>	<u>300</u>
Total Procedures	266	474
Avg. Cost Per Procedure	<u>\$11,075.18</u>	<u>\$9,335.96</u>

The following is noted concerning the operating budget:

- Revenues and rate assumptions for inpatient and outpatient services are based on the current experience of the existing cardiac catheterization lab volume within NUMC.
- Commercial rates are based upon a percentage of Medicare and negotiated rates. Commercial reimbursement rates are lower than Medicare FFS due to the blend of procedures. NUMC has a small percentage of commercially insured patients and rates are negotiated.
- EP reimbursement is based upon the following DRG and outpatient procedure CPT codes.
- Utilization and expense projections are based on NUMC's current experience in providing diagnostic cardiac catheterization services. Projected utilization is based on the volume of patients NUMC currently transports to other facilities for EP or PCI services, with an increase expected due to EMS transporting patients with suspected coronary syndrome.
- Payor mix is based upon the historical payor mix of NUMC and the payor mix of patients transferred out to NSUH (the cardiac affiliate for NUMC) for PCI and EP procedures.

Utilization by payor source for inpatient and outpatient services is projected as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2023</u>		<u>2025</u>	
<u>Inpatient:</u>	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>
Commercial-FFS	22	16.5%	41	17.3%
Medicare-FFS	27	20.3%	46	19.4%
Medicare-MC	6	4.5%	12	5.1%
Medicaid-FFS	48	36.1%	80	33.8%
Medicaid-MC	23	17.3%	46	19.4%
Private Pay	<u>7</u>	<u>5.3%</u>	<u>12</u>	<u>5.1%</u>
Total	133	100%	237	100%

	<u>Year One</u>		<u>Year Three</u>	
	<u>2023</u>		<u>2025</u>	
<u>Outpatient:</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial-FFS	22	16.5%	41	17.3%
Medicare-FFS	27	20.3%	46	19.4%
Medicare-MC	6	4.5%	12	5.1%
Medicaid-FFS	48	36.1%	80	33.8%
Medicaid-MC	23	17.3%	46	19.4%
Private Pay	<u>7</u>	<u>5.3%</u>	<u>12</u>	<u>5.1%</u>
Total	133	100%	237	100%

Capability and Feasibility

Total project costs of \$4,079,014 will be funded with equity from Nassau Health Care Corporation (NHCC), a Public Benefit Corporation and operator of NUMC. BFA Attachments A and B present NHCC's 2020 - 2021 certified financial statements and their internal financial statements as of January 1, 2022, thru September 30, 2022, respectively. The facility 9/30/2022 internal indicates sufficient resources for this project.

NUMC projects an incremental operating income of \$288,491 and \$1,313,439 in Year One and Year Three, respectively. BFA Attachment A, NUMC 2020-21 Certified Financial Statement indicate that the entity, during 2020 and 2021, had negative working capital and net asset positions. Additionally, the facility incurred an operating loss of \$102,277,000 in 2020 and \$135,646,000 in 2021. Operating losses include an underfunded expense of \$39,463,000 for post-employment benefits other than pensions. GASB 75 adopted effective January 1, 2018, required disclosure of these underfunded expenses to be disclosed on the financial statements. Northwell Health has agreed to provide operational assistance and develop a five-year plan for NUMC, of which these PCI and EP services are part of financial sustainability. Also, NUMC will continue to provide funding to decrease debt service and increase revenue via its plan of action.

Attachment B, 9/30/22 Internal Financial Statements, indicate the entity had a negative working capital position and net asset position, and incurred an operating loss of \$94,127,000. This operating loss includes underfunded employee benefits and pension expenses. The net deficit position of NUMC is primarily the result of recording its "Other Post Employment Benefit" obligation for retiree health benefits. There are ongoing discussions between NHCC/NUMC and the NYS DOH focusing on NUMC's current working capital position.

NHCC is a public benefit corporation created by New York State in 1996 to acquire and operate NUMC and its divisions. NHCC has been actively engaged with DOH regarding its financial situation and NHCC leadership indicates the organization is striving to improve its operating results by continuing to progress with collections on patient accounts, through cash flows provided by government subsidies for the funding of capital projects, and by participating in certain other value-based payment programs. The applicant also indicates that NHCC has undertaken several initiatives, including the renegotiation of commercial managed care contracts, changes to medical management practices, improved supply chain, inventory management, rightsizing of personnel, and further cost reductions. Nassau County Interim Finance Authority (NIFA) currently has oversight of the operations of NHCC and, in that capacity, reviews certain operational aspects of the Corporation.

NUMC anticipates that PCI and EP services will generate additional volume and net revenue, as shown in the budget projections, as EMS will be able to transport cases to NUMC because of its PCI-capable hospital status. Currently, the applicant states that emergency services drive by knowing that NUMC cannot perform the necessary procedures putting the patient in jeopardy as minutes count.

Conclusion

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

Attachments

RNR Attachment B	Map
BFA Attachment A	Nassau Health Care Corp. 2020 - 2021 Certified Financial Statements.
BFA Attachment B	Nassau Health Care Corp. 9/30/22 Internal Financial Statement.



Project # 222012-C
The New York Eye Surgical Center

Program: Diagnostic and Treatment Center
Purpose: Construction
County: Saratoga
Acknowledged: August 24, 2022

Executive Summary

Description

North Country EC, LLC d/b/a The New York Eye Surgical Center (the "Center"), an existing Article 28 Ambulatory Surgery Center (ASC) at 6135 North Road, Wilton, 12831, is seeking approval to convert from a single-specialty-ophthalmology to a multi-specialty ambulatory surgery center. The Center has three operating rooms, approved under Certificate of Need (CON)112382 and was granted permanent life under CON 181438. The Center has determined that it has capacity for additional cases and the flexibility to allow physicians in other specialties to use the Center. Jason Steindler, D.O., board-certified in Pain Management and Anesthesiology, has expressed interest in performing approximately 204 cases during the first year. The service is centered on Warren County but includes Washington, Albany, Saratoga, and Montgomery counties. An executed transfer and affiliation agreement has been submitted between Glens Falls hospital and North Country, EC, LLC.

The Center estimates around 40% of the patients are referred by providers affiliated with Hudson Headwaters Health Network, an FQHC, and accepts patients regardless of their ability to pay. Dr. Steven Solomon will continue as Medical Director.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 4,804 procedures in Year One and 5,040 in Year Three with 3.25% Medicaid and Charity Care below 1% by the third year. Nearly 80% of their cases are covered by Medicare annually. The center is current with its SPARCS reporting.

Program Summary

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

Financial Summary

The project cost of \$119,141 will be met with equity from the existing operations of the current operator, North Country ED, LLC. The budget projects a net income of \$754,935 in year one and \$955,732 by year three.

Table with 3 columns: Budget, Year 1 (2023), Year 3 (2025). Rows include Revenues, Expenses, and Net Income.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. 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]

Approval conditional upon:

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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. 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]

Council Action Date

February 9, 2023

Need Analysis

Background and Analysis

The Center was approved under CON 112382 and began operations in August 2013 providing ophthalmology surgery services in three operating rooms. Under CON 181438, the center was granted permanent life. The Center has determined that it has the capacity to handle additional surgical cases and would like the flexibility to allow physicians in other specialties to use the center, already securing a commitment from a pain management specialist.

The primary service area consists of Warren County with Washington, Saratoga, Albany, and Montgomery counties included in the secondary service area. According to Data USA, in 2020, 95.8% of the population of Warren County had health coverage as follows:

Total Health Care Coverage	95.8%
Employer Plans	47.7%
Medicaid	15.2%
Medicare	16.9%
Non-Group Plans	14.7%
Military or VA	1.23%

The table below shows the number of patient visits for ASCs within a 25-mile radius of New York Eye Surgical Center for 2019 through 2021. 2020 visits were significantly impacted by the COVID-19 pandemic.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Ophthalmology	The New York Eye Surgical Center	3,665	3,200	4,503
Multi-Specialty	Center for Advanced Ambulatory Surgery (opened 3/15/21)	N/A	N/A	797
Multi-Specialty	OrthoNY Surgical Suites (opened 2/1/19) ¹	N/A	0	0
Pain Management	The Northway Surgery and Pain Center	12,281	10,326	10,686
Total Visits		15,936	13,526	15,986

¹ No data located for 2020 & 2021

The number of projected procedures is 4,804 in Year One and 5,040 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. A new physician has committed to performing approximately 204 pain management procedures at the center in the first year. These pain management procedures are currently being performed in a hospital or another ASC.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	775	16.13%	875	17.36%
Medicare FFS	1,899	39.53%	1,964	38.97%
Medicare MC	1,983	41.28%	2,025	40.18%
Medicaid FFS	15	0.31%	24	0.48%
Medicaid MC	120	2.50%	140	2.78%
Uninsured/Private Pay	12	0.25%	12	0.24%

The following table shows the Center's utilization for the last three years. Payor distribution reflects the disproportionate prevalence of ophthalmology surgery with Medicare eligible patients.

	2019	2020	2021
Visits	3,665	3,200	4,503
Medicare	79.21%	80.91%	81.61%
Medicaid	3.85%	4.09%	2.65%

The Center has Medicaid Managed Care contracts with the following: Amerigroup, Fidelis, CDPHP, MVP, Empire BCBS, and Blue Shield of Northeastern NY. The center estimates that approximately 40% of its patients are referred by providers affiliated with Hudson Headwaters Health Network, a Federally Qualified Health Center, based in Wilton, NY. The center's operating hours are Monday through Friday from 8 am until 5 pm. The center is current with its SPARCS reporting. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

Conclusion

Approval of this project will enhance access to multi-specialty surgery services for the residents of Warren County and the surrounding communities in Saratoga, Washington, Albany, and Montgomery Counties.

Program Analysis

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$119,141 and is distributed as follows:

Moveable Equipment	\$116,500
Application Fee	2,000
Processing Fee	641
Total Project Costs	\$119,141

The total project cost will be met with equity from operations.

Operating Budget

The applicant has submitted the 2021 current year budget and first and third years operating projected budget, in 2022 dollars, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial- FFS	\$985	\$690,371	\$1,005	\$778,642	\$1,024	\$896,070
Medicare- FFS	\$914	1,638,212	\$932	1,770,399	\$951	1,867,056
Medicare-MC	\$920	1,731,990	\$938	1,860,847	\$957	1,937,439
Medicaid-FFS	\$822	6,174	\$838	12,576	\$855	20,514
Medicaid-MC	\$828	110,891	\$845	101,347	\$862	120,666
Self-Pay/Uninsured	\$381	<u>3,050</u>	\$389	<u>4,663</u>	\$397	<u>4,761</u>
Total Revenues		\$4,180,688		\$4,528,474		\$4,846,506
Expenses:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Operating	\$727.18	\$3,274,490	\$725.04	\$3,483,126	\$712.05	\$3,588,745
Capital	<u>59.74</u>	<u>269,016</u>	<u>60.45</u>	<u>290,413</u>	<u>52.93</u>	<u>302,029</u>
Total Expenses	\$786.92	\$3,543,506	\$785.49	\$3,773,539	\$764.98	\$3,890,774
Net Income		<u>\$637,182</u>		<u>\$754,935</u>		<u>\$955,732</u>
Utilization: (Procedures/Visits)		4,503		4,804		5,040
Cost Per Procedure/Visit		\$786.92		\$785.49		\$764.98

The following is noted with respect to the submitted budget:

- Revenue, expense, and utilization assumptions are based on the combined current experience and current reimbursement rates received.
- A sliding fee scale is in place for those without insurance and provisions are made for those who cannot afford services.
- Utilization and associated revenues are expected to increase because a new physician is joining the practice and performing pain management procedures. This is reflected in the projected utilization of 204 and 390 pain management treatments during the first and third year, respectively.
- The Center covers areas with aging populations and the majority of the procedures with follow-up visits are for Medicare patients as shown in the budget above.

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

	<u>Current</u> <u>2021</u>	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Commercial FFS	15.57%	16.13%	17.36%
Medicare FFS	39.82%	39.53%	38.96%
Medicare MC	41.79%	41.28%	40.18%
Medicaid-FFS	.16%	.31%	.48%
Medicaid MC	2.49%	2.50%	2.78%
Uninsured/Private	<u>.18%</u>	<u>.25%</u>	<u>.24%</u>
Total	100%	100%	100%

Capability and Feasibility

Total project costs of \$119,141 will be met with equity from the current operator, North Country ED, LLC. BFA Attachment A, 2021-2020 Certified Financial Statements show the facility has maintained a positive working capital and net asset position for both periods. Additionally, the Center achieved a net income of \$738,556 and \$553,874, respectively. BFA Attachment B, The New York Eye Surgery Center 9/30/22 Internal financial Statement shows a positive working capital and net asset position. The Center also shows a net income of \$444,528 as of September 30, 2022.

The submitted budget indicates a net income for the first year of \$754,935 and a third-year net income of \$955,732. The working capital requirements for this project are estimated at \$628,924, representing two months of the first year's expenses to be covered through operations. Attachment A is the Center's 2021 certified financial statement which shows enough equity to cover the working capital position. The budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	North Country ED, LLC 2021-2020 Certified Financial Statements
BFA Attachment B	The New York Eye Surgery Center 9/30/22 Internal Financial Statement



Project # 222087-C
Mount Sinai Beth Israel

Program: Hospital
Purpose: Construction

County: New York
Acknowledged: October 7, 2022

Executive Summary

Description

Beth Israel Medical Center (BIMC), d/b/a Mount Sinai Beth Israel (MSBI), requests approval to certify The New York Eye and Ear Infirmary (NYEEI), d/b/a New York Eye and Ear Infirmary of Mount Sinai, as a new division of BIMC. Under the plan of merger, NYEEI will be merged into BIMC, with BIMC being the surviving corporation.

BIMC is a 696-bed not-for-profit teaching hospital at First Avenue at 16th Street on Manhattan's East Side which also operates a division, Mount Sinai Brooklyn, a 212-bed acute-care community hospital in the Midwood neighborhood of Brooklyn.

NYEEI is a 69-bed not-for-profit specialty care teaching hospital at 310 East 14th Street also located on Manhattan's East Side. NYEEI is certified for two (2) extension clinics at 230 Second Avenue and 380 Second Avenue, New York. BIMC will assume operation of NYEEI's existing extension clinics. The hospital site and two extension clinic sites will continue to use the name New York Eye and Ear Infirmary of Mount Sinai. MSBI and NYEEI are 0.2 miles and 5 minutes' walking time apart in the Gramercy neighborhood of Manhattan.

Mount Sinai Hospitals Group, Inc. (MSHG) is currently the sole member, active parent, and co-operator of BIMC and NYEEI and will continue in the same capacity with BIMC following the merger. MSHG will be disestablished from NYEEI as a result of the merger. No cash or other consideration will be paid or delivered in exchange for converting MSHG's membership interest in NYEEI. Mount

Sinai Health System, Inc. (MSHS) will remain the sole member and passive parent of MSHG following the merger. MSHS is also the sole member of the Icahn School of Medicine at Mount Sinai, which is not a part of the merger. There will be no change in authorized services or the number or type of beds as a result of the merger. There will also be no change to the board of trustees of BIMC.

The applicant indicated the purpose of the transaction is to further create an academically based integrated healthcare system, advancing high-quality care, increasing access, and lowering costs in the communities served by both BIMC and NYEEI.

Pre- and Post-Organization Charts as well as a listing of MSHGs New York State Affiliated Facilities are contained in BFA Attachment A.

OPCHSM Recommendation

Contingent Approval

Need Summary

Through this project, residents of New York County will retain access to valuable services. Visits for the first and third years are projected to be in line with volume experienced in 2021.

Program Summary

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. For 2021, MSHG's co-operated hospitals had an excess of revenue over expenses of \$260M and net assets of \$3.6B. The submitted budget for BIMC and NYEEI indicates a projected net loss of \$137,621,324 in years one and three. MSHG's Senior Vice President and Chief Financial Officer has submitted a letter indicating commitment to support projected losses at BIMC. Management is developing a financial plan to reduce costs, monetize certain assets, modernize BIMC's campus, and evaluate opportunities for synergies within MSHS.

<u>Budget:</u>	<u>First Year</u>	<u>Third Year</u>
	<u>2023</u>	<u>2025</u>
Revenues	\$1,111,124,143	\$1,111,124,143
Expenses	<u>1,248,745,467</u>	<u>1,248,745,467</u>
Gain/(Loss)	(\$137,621,324)	(\$137,621,324)

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 Amended and Restated Certificate of Incorporation of Beth Israel Medical Center, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed copy of the Merger Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed copy of the Merger Certificate, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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

February 9, 2023

Need Analysis

Background and Analysis

MSBI and NYEEI are located in the Gramercy neighborhood of Manhattan 0.2 miles and 5 minutes walking time apart. NYEEI, located at 310 East 14th Street, New York (New York County), New York 10003, is a 69-bed not-for-profit specialty care teaching hospital. NYEEI is certified for two extension clinics located at 230 Second Avenue, and 380 Second Avenue. BIMC will assume the operation of NYEEI's existing extension clinics. The hospital site and two extension clinics will continue to use the name New York Eye and Ear Infirmary of Mount Sinai. NYEEI provides the following services:

- Ambulatory Surgery – Multi-Specialty
- Audiology O/P
- Clinic Part Time Services
- Dental O/P
- Medical Services – Other Medical Specialties
- Medical Services – Primary Care
- Therapy – Speech Language Pathology O/P

New York Ear and Eye Visits by Service					
Service	2017	2018	2019	2020	2021
Inpatient	273	307	436	312	456
Outpatient	158,192	141,835	138,727	82,287	102,658
Ambulatory Surgery	25,568	22,943	21,710	13,594	16,778
Other Outpatient Visits	132,624	118,892	117,017	68,693	85,880

Source: SPARCS

The applicant anticipates volume similar to that of 2021 in Years One and Three.

Conclusion

There will be no change in beds or services as a result of the merger. Through this project, residents of New York County will retain access to valuable services.

Program Analysis

Program Description

Mount Sinai Beth Israel Medical Center (BIMC) is a 669 bed not for profit teaching hospital, located at First Avenue at 16th Street in New York (New York County) seeks approval to certify The New York Eye and Ear Infirmary d/b/a New York Infirmary of Mount Sinai, as a new division of Mount Sinai. Under the plan of merger, New York Eye and Ear Infirmary will be merged with and into BIMC, with BIMC being the surviving corporation. There will be no change to beds or services as a result of the merger.

New York Eye and Ear Infirmary (NYEEI) is a 69 bed not for profit specialty care teaching hospital located at 310 East 14th Street in New York (New York County). NYEEI is certified for two extension clinics located at 230 Second Avenue in New York (New York County) and 380 Second Avenue in New York (New York County). BIMC will assume operation of the clinics. The clinics will continue use the name New York Eye and Ear Infirmary.

Mount Sinai Hospitals Group, Inc is currently the sole member, active parent, and licensed co-operator of BIMC and NYEEI and will continue to be the sole member, active parent, and licensed co-operator of BIMC following the merger transaction. Mount Sinai Health System, Inc will remain the sole member and passive parent of Mount Sinai Hospitals Group, Inc. following the merger.

The Applicant reports the purpose of the transaction is to further create an academically based integrated healthcare system, with the objective of advancing a high-quality system of care, increasing access, and lowering the cost of healthcare in the community.

Staffing is expected to remain the same at 4926.20 FTEs through the third year of the completed project.

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.

- *The Department issued a Stipulation and Order (S&O) dated October 4, 2022, and fined Mount Sinai West \$10,000.00 based on deficiencies found during an inspection completed on June 15, 2020. Deficient practice was found in the area of Patient Rights.*
- *The Department issued a Stipulation and Order (S&O) dated May 5, 2017, and fined Mount Sinai Medical Center \$2,000.00 based in deficiencies found during an inspection completed on January 25, 2016. Deficient practice was found in the area of Patient Rights.*

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.

Financial Analysis

Operating Budget

The applicant has submitted the current year 2021 (BIMC) operating budget in 2023 dollars for years one and three (consolidating BIMC and NYEEI), as summarized below:

Revenues:	<u>Per Discharge Visit</u>	<u>Current Year 2021</u>	<u>Per Discharge Visit</u>	<u>First Year 2023</u>	<u>Per Discharge Visit</u>	<u>Third Year 2025</u>
<u>Inpatient</u>						
Medicaid-FFS	\$44,243	\$55,657,251	\$44,243	55,657,251	\$44,243	\$55,657,251
Medicaid-MC	\$10,561	51,550,246	\$11,620	59,376,698	\$11,620	59,376,698
Medicare-FFS	\$25,540	135,669,575	\$25,664	136,609,561	\$25,664	136,609,561
Medicare-MC	\$15,629	83,224,523	\$15,833	84,564,985	\$15,833	84,564,985
Commercial-FFS	\$59,502	9,758,306	\$52,829	14,052,480	\$52,829	14,052,480
Commercial-MC	\$25,017	70,397,542	\$26,322	76,886,419	\$26,322	76,886,419
Private Pay		-210,995	\$13,019	143,211	\$13,019	143,211
All Other		0		2,428,936		2,428,936
Bad Debt		<u>-5,307,091</u>		<u>-5,415,987</u>		<u>-5,415,987</u>
Subtotal-Inpatient		<u>\$400,739,357</u>		<u>\$424,303,554</u>		<u>\$424,303,554</u>
<u>Outpatient</u>						
Medicaid-FFS	\$110	\$1,411,600	\$230	\$3,622,906	\$230	\$3,622,906
Medicaid-MC	\$325	57,634,520	\$362	78,427,495	\$362	78,427,495
Medicare-FFS	\$537	51,087,175	\$599	67,597,192	\$599	67,597,192
Medicare-MC	\$408	51,252,944	\$443	67,604,385	\$443	67,604,385
Commercial-FFS	\$247	14,029,001	\$424	28,251,087	\$424	28,251,087
Commercial-MC	\$1,217	180,228,085	\$1305	218,601,713	\$1,305	218,601,713
Private Pay	\$20,086	4,117,534	\$884	4,875,292	\$884	4,875,292
All Other	\$78	35,400,341	\$77	35,098,293	\$77	35,098,293
Bad Debt		<u>-8,939,414</u>		<u>-20,302,774</u>		<u>-20,302,774</u>
Subtotal-Outpatient		<u>\$386,221,786</u>		<u>\$483,775,589</u>		<u>\$483,775,589</u>
Other Operating		\$155,851,000		\$166,422,000		\$166,422,000
Non-Operating		<u>5,464,000</u>		<u>36,623,000</u>		<u>36,623,000</u>
Total Revenues		<u>\$948,276,143</u> \$		<u>\$1,111,124,143</u> \$		<u>\$1,111,124,143</u>
Expenses						
Operating		\$994,757,836		\$1,129,073,726		\$1,129,073,726
Capital		<u>107,967,631</u>		<u>119,671,741</u>		<u>119,671,741</u>
Total Expenses		<u>\$1,102,725,467</u>		<u>\$1,248,745,467</u>		<u>\$1,248,745,467</u>
Net Income		(\$154,449,324)		(\$137,621,324)		(\$137,621,624)
Inpatient Visits		19,818		20,291		20,291
Outpatient Visits		1,084,663		1,209,565		1,209,565

The following is noted with respect to the submitted budget:

- Other operating revenue includes CARES Act funds of \$2.2M, investment income and net realized gains & losses of \$7.9M, net assets released from restrictions \$1.9M, HMO incentives \$16.9M, pharmacy 340B \$59.9M, rental income \$3.2M, joint venture \$3.7M, contracts revenue \$4.9M, FEMA disaster relief \$29.2M. and other \$26M. First and third years exclude CARES Act funding but includes NYEEI other income of \$12.8M (primarily rental income).
- Non-operating revenue includes the net change in unrealized gain & losses \$1.5M, net change in captive insurance program \$17.6M, gain on sale of joint venture interest \$7.9M, third-party settlements \$8.0M, impairment of construction costs (\$29.6M), change in estimated CARES Act (\$37.7M), and transfer from Mount Sinai Hospital (MSH) \$37.7M. First and third years include

NYEEI non-operating revenue of \$31.2M (primarily change in pension liability to be recognized in future periods \$26.3M).

- Current Year revenues and expenses are based on the BIMC 2021 certified financial statements
- The change in utilization and revenue is the result of consolidating BIMC and NYEEI.
 - Negative Inpatient private pay revenue of \$210,995 is due to the net impact of self-pay revenue offsets by refunds and write-offs.
 - Outpatient Private Pay rates decrease from \$20,086 in the current year to \$884 in the first and third years as a result of adding NYEEI's lower-acuity services to the mix.
 - BIMC expenses include NYEEI.

Utilization by payor for the BIMC is as follows:

<u>Inpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Payor:	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>
Medicaid FFS	1,258	6.35%	1,258	6.20%	1,258	6.20%
Medicaid MC	4,881	24.64%	5,110	25.19%	5,110	25.19%
Medicare FFS	5,312	26.80%	5,323	26.23%	5,323	26.23%
Medicare MC	5,325	26.87%	5,341	26.32%	5,341	26.32%
Commercial FFS	164	0.83%	266	1.31%	266	1.31%
Commercial MC	2,814	14.19%	2,921	14.40%	2,921	14.40%
Private Pay	4	0.02%	11	0.05%	11	0.05%
Charity	60	0.30%	61	0.30%	61	0.30%
All Other	<u>0</u>	<u>0%</u>	<u>0</u>	<u>0%</u>	<u>0</u>	<u>0%</u>
Total by Payor	19,818	100%	20,291	100%	20,291	100%

<u>Outpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Payor:	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	12,786	1.18%	15,781	1.30%	15,781	1.30%
Medicaid MC	177,362	16.35%	216,486	17.91%	216,486	17.91%
Medicare FFS	95,191	8.78%	112,891	9.33%	112,891	9.33%
Medicare MC	125,518	11.57%	152,634	12.62%	152,634	12.62%
Commercial FFS	56,896	5.25%	66,553	5.50%	66,553	5.50%
Commercial MC	148,070	13.65%	167,535	13.85%	167,535	13.85%
Private Pay	205	0.02%	5,517	0.46%	5,517	0.46%
Charity	12,351	1.14%	15,884	1.31%	15,884	1.31%
All Other	<u>456,284</u>	<u>42.06%</u>	<u>456,284</u>	<u>37.72%</u>	<u>456,284</u>	<u>37.72%</u>
Total by Payor	1,084,663	100%	1,209,565	100%	1,209,565	100%

Merger Agreement

The applicant has submitted a draft Merger Agreement between Beth Israel Medical Center (BIMC) and The New York Eye and Ear Infirmary (NYEEI). There will be no financial consideration for the Merger. The agreement terms are summarized below.

Merging Entities:	BIMC and NYEEI
Board of Directors:	The Boards of each entity has adopted and approved this Merger
Surviving Entity:	Beth Israel Medical Center (BIMC)
Terms and Conditions of the Merger:	NYEEI shall be merged with and into BIMC, with BIMC 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 under its certificate of need and licensure laws and approval of the New York State Attorney General in accordance with Section 907 of the New York Not-for-Profit Corporation Law (NPCL). The members of the Board of Trustees of Beth Israel Medical Center (BIMC) immediately prior to the

	Effective Date shall continue to be the Trustees of BIMC upon consummation of the Merger and duly elected or appointed and qualified in the manner provided in the BIMC Certificate of Incorporation and By-laws.
Purchase Price:	There will be no cash or other consideration paid in exchange for any membership interest.

Capability and Feasibility

There are no project costs associated with this application. NYEEI is merging with BIMC and becoming a division of BIMC. This transaction will not impact Mount Sinai Hospitals Group, Inc.(MSHG), as BIMC and NYEEI are already members of MSHG. BFA Attachment B, MSHG's 2021 Consolidated Report (supported by certified financial statements) shows \$1.74B in working capital. For 2021, MSHG's co-operated hospitals had \$90.4M in operating profits, \$260.0M in net revenue, and \$3.645B in net assets.

The submitted budget indicates a net loss of \$137,621,324 in Year One and Year Three. MSHG's Senior Vice President and Chief Financial Officer submitted a letter stating their commitment to financially support projected losses. Management is developing a financial plan to reduce costs, monetize certain assets, modernize BIMC's campus, and evaluate opportunities for synergies within MSHS. The budget appears reasonable.

BFA Attachment C, BIMC 2021 Certified Financial Statement shows positive working capital, a net loss of \$154,449 and net assets of \$17.93M. BFA Attachment D, NYEEI 2020-2021 Certified Financial Statement shows positive working capital, \$917K in net revenue, and \$138.5M in net assets.

Conclusion

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

Attachments

BFA Attachment A	Mount Sinai Hospitals Group, Inc.(MSHG) – Pre- and Post-Organization Chart and MSHG's New York State Affiliated Facilities
BFA Attachment B	Mount Sinai Hospitals Group, Inc. 2021 Consolidated Report
BFA Attachment C	Beth Israel Medical Center (BIMC), 2020-2021 Certified Financial Statement
BFA Attachment D	The New York Eye and Ear Infirmary (NYEEI), 2020-2021 Certified Financial Statement
BFA Attachment E	The Mount Sinai Hospital (MSH), 2020-2021 Certified Financial Statement
BFA Attachment F	South Nassau Communities Hospital and Subsidiaries (SNCH), 2020-2021 Certified Financial Statement
BFA Attachment G	The St. Luke's- Roosevelt Hospital Center and Affiliates (SLR), 2020-2021 Certified Financial Statement



Project # 221280-E
Specialists' One-Day Surgery Center, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Onondaga
Acknowledged: September 9, 2022

Executive Summary

Description

Specialists' One-Day Surgery Center, LLC (the Company), is seeking approval to restructure by transferring 100% of the Company's current membership interest to SOS ASC Holdings, LLC, which will be the sole member of the Company and comprised of all 34 former members of the Company as well as one new member. Immediately after the reorganization, ASC Holdings LLC will sell a 25% membership interest to St. Joseph's Hospital Health Center. Upon approval of this transaction, Specialists' One-Day Surgery, LLC will be owned by SOS ASC Holdings, LLC, and St. Joseph's Hospital Health Center. Through this sale, all current members will become indirect members of Specialists' One-Day Surgery Center, LLC.

BFA Attachment A shows the membership interests pre-and post-transaction.

Upon PHHPC approval, the Company will have seven board members, six of whom will be members of SOS ASC Holdings, LLC and one of whom will be appointed by St. Joseph's Hospital Health Center. This governance structure will allow the Hospital to participate from a strategic level. In addition, the Company has submitted an executed transfer agreement between St Joseph's Hospital Health Center and Specialists' One-day Surgery, LLC. J. Alan Lemley, M.D., will continue as the current medical director.

OPCHSM Recommendation

Approval

Need Summary

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

Program Summary

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

Financial Summary

The purchase price for St. Joseph's Hospital Health Center's 25% membership interest is \$25,175,000, which will be paid in equity through an intercompany transfer from Trinity Health System, the active parent of St. Joseph's Hospital Health Center. St Joseph's will hold the 25% membership interest. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no project costs or changes in services or location.

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

Council Action Date

February 9, 2023

Program Analysis

Character and Competence

The table below details the proposed changes in the proposed membership of Specialists' One-Day Surgery Center, LLC.

***Members Subject to Character and Competence

Member	Current Ownership in Specialists' One-Day Surgery, LLC	Membership % in SOS ASC Holdings, LLC Post-Transaction	Indirect Ownership in Specialists' One-Day Surgery, LLC Post-Transaction
Stephen P. Bogosian, M.D.	3.2258%	4.301%	3.2258%
John J. Cambareri, M.D.	3.2258%	4.301	3.2258
John F. Fatti, M.D.	3.2258%	4.301	3.2258
Glenn B. Axelrod, M.D.	3.2258%	4.301	3.2258
P. James Newman, M.D.	3.2258%	4.301	3.2258
Daniel C. Wnorowski, M.D.	3.2258%	4.301	3.2258
Timothy H. Izant, M.D.	3.2258%	4.301	3.2258
Daniel J. Murphy, M.D.	3.2258%	4.301	3.2258
Brett B. Greenky, M.D.	3.2258%	2.780	2.0847
Seth S. Greenky, M.D.	3.2258%	2.780	2.0847
Warren E. Wulff, M.D.	3.2258%	2.780	2.0847
Richard J. Distefano, M.D.	3.2258%	2.780	2.0847
John F. Parker, M.D.	3.2258%	2.780	2.0847
Michael T. Clarke, M.D.	3.2258%	2.780	2.0847
Frederick R. Lemley, M.D.	3.2258%	2.780	2.0847
Todd C. Battaglia, M.D.	3.2258%	2.780	2.0847
James Alan Lemley, M.D.	3.2258%	2.780	2.0847
Lawson R. Smart, M.D.	3.2258%	2.780	2.0847
Aaron J. Bianco, M.D.	3.2258%	2.780	2.0847
Bradley R. Raphael, M.D.	3.2258%	2.780	2.0847
Naven Duggal, M.D.	3.2258%	2.780	2.0847
Nathan G. Everding, M.D.	3.2258%	2.780	2.0847
Michael G. Fitzgerald, M.D.	3.2258%	2.780	2.0847
Justin A. Iorio, M.D.	3.2258%	2.780	2.0847
Kevin A. Kopko, M.D.	3.2258%	2.780	2.0847
Cassandra Riggs, M.D.	3.2258%	2.780	2.0847
Anthony M. Orio, M.D.	3.2258%	2.780	2.0847
Max Greenky, M.D. ***	-0-	2.780	2.0847
Robert L Tiso, M.D.	1.84320%	1.666	1.25
Joseph A. Catania, M.D.	1.84320%	1.666	1.25
Eric A. Tallarico, M.D.	1.84320%	1.666	1.25
Mary C. Trusilo, M.D.	1.84320%	1.666	1.25
Brendan T. McGinn, M.D.	1.84320%	1.666	1.25
Ryan D. McConn, M.D.	1.84320%	1.666	1.25
Jason Lok, M.D.	1.84320%	0	0
St Joseph's Hospital ***	0.00000%	0	25%
Totals	100%	100%	100%

Guha Bala is the President of Velan Studios, a video game developer and publisher, for six years. He was the President of Vicarious Visions, a video game developer and publisher, for 25 years. Mr. Bala declares membership interest in the following healthcare facilities:

<i>St. Peter's Health Partners</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>Eddy Home Care</i>	<i>09/2011-present</i>
<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>
<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>
<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

Kevin Barnett is a Senior Investigator at the Public Health Institute. He serves as Co-Director of the California Health Workforce Alliance and is on the Board of Directors of the Communities Joined in Action. He is a Member of the Board of Directors for Trinity Health Corporation.

Joseph Betancourt is an Assistant Attending Physician at Massachusetts General Hospital for 21 years. He is a Senior Scientist at the Mongan Institute for Health Policy for 21 years. He was an Assistant Attending Physician at New York Presbyterian. He is an Assistant Professor at Harvard Medical School for 21 years. He was an Instructor and Assistant Professor at Weill Cornell College of Cornell University for three years. He received his medical degree from New Jersey Medical School. He completed his Internal Medicine residency at New York Hospital-Cornell. He completed his Minority Health Policy Fellowship at Harvard Medical School.

Rita Brogley serves on the Board of Directors for Trinity Health Corporation for the Audit Committee for three years. She is on the first Independent Board Director of the Board of Directors of Narvar for three years. She is the Chair of the Compensation Committee of Strategic Education Inc. for four years. She was the Chair of the Nominating and Governance Committee and a Member of the Compensation Committee of Capella Education Company for four years. She was the Head of Product Growth and Partnerships of Business Messaging Platforms for three years at Facebook. She held multiple executive positions including CEO, President, Chief Customs Officer, and she was on the Board of Directors of MyBuys, Inc. for four (4) years. She developed new strategy and focus for the company, aligned with the core competencies, and product offerings. She transformed client success and professional services operations, new service delivery processes, and back-office systems designed to scale and improve customer satisfaction. She was the CEO of Amedesa for three years. She transformed the company's business from project-based services to a software company with recurring revenue. She restructured sales, product strategy, and product development processes. She was an Entrepreneur in Residence at V2 Capital for one year. She evaluated investment opportunities for angel investors. She was an Independent Consultant for four years. She advised consumer internet and technology clients on market entry opportunity, sales, and fundraising.

Linda Falquette was a Member of the Community Leadership Team of the Institute of the Sisters of Mercy of the Americas for seven years. She was on a five-member team responsible for canonical oversight and civil administration of all facets of the South-Central Community. She was the Tuition and Financial Aid Coordinator of Notre Dame Academy for three years. She created and implemented a tuition payment policy that improved cash flow and eliminated the need for a line of credit. She was the Executive Director of the Double ARC for nine years. She was responsible for carrying out the mission and vision of the organization. She developed and implemented the strategic plan, carried out administrative functions including human resources, finances, grant writing, fund raising, public relations, collaborations, and program development. She held various roles including Director of Planning, Director of Finance, and Financial Analyst of Mercy Health System for 12 years.

Sr. Mary Fanning is retired. She is a Board Member of Trinity Health System.

Dr. Max Greenky is an Orthopedic Surgeon at Syracuse Orthopedics for one year. He received his medical degree from Thomas Jefferson College. He completed his Orthopedic Residency at Thomas Jefferson University. He completed his Reconstructive Surgery Fellowship at Duke University.

Barry Hatches retired in May of 2022. He serves on the Board of Directors of Trinity Health Corporation. He is the Owner of Hatches Consulting, LLC. He focuses on leadership development, performance technology, organizational and professional development, community relations, and stakeholder management. He served as the President and CEO of Chicago Family Health Center. He previously held multiple executive positions including COO, Executive Vice President, and President/CEO within Swope Health Services. He provided services to 40,000 patients in primary care, behavioral health, dental, and outreach services. He was the previous President/CEO of Northern Indiana Public Services Co. while also serving as CEO of Northern Indiana Fuel and Light Co. and Kokomo Gas and Fuel Co. He was the President and CEO of ENSTAR Natural Gas. He served as Senior Management at SEMCO Energy and Western Resources Gas Service Division.

Daniel Isacksen is the Executive Vice President and CFO of Trinity Health for over one year. He leads all financial functions for the system and across the national organization's Health Ministries. He previously served as the Executive Vice President and Regional CFO of Loyola Medicine. He was responsible for operational improvements, financial turnaround, and stabilization of the regional ministry. He serves as an Officer on the Board of Directors of Trinity Health Corporation.

Kathleen Jimino is retired since 2018. She was the County Executive for Rensselaer County for over 16 years. As the County Executive, she led the organization that provided services to 160,000; oversaw a budget of \$330M and a workforce of 1,600; provided guidance to managers of 20 departments providing social services, criminal justice services, health services, real property services, highway maintenance, and economic development services. Mrs. Jimino declares membership interest in the following healthcare facilities:

<i>St. Peter's Health Partner</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>Eddy Home Care</i>	<i>09/2011-present</i>
<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>
<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>

<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

Courtney Lang is the Founder and Principal of Langco & Partners for 11 years. She provides leadership and solutions to stakeholders. She also creates sustained value, bridges relationships, and strategic communication for advocacy, issues outreach, and campaign advancement. She was the Senior Director of Alliance Development for Pfizer for four (4) years. She directed strategy and outreach for patient advocacy and alliance development partnerships in support of five (5) global business units. She led grassroots advocacy efforts with key third party groups, prioritizing proactive legislative and regulatory initiatives, and developing and executing best practices across the product lifestyle. She was the US Public Affairs Liaison for Eli Lilly & Co. for 10 years. She designed and executed national public affairs strategies leading federal, state, and local advocacy efforts, aligned, measured processes and outcomes with 12 state based public affairs liaisons, and implemented global and national partnerships to promote product marketing goals and successful chronic disease management. She was in Marketing and Community Relations for the NBA's Cleveland Cavaliers for one year. She assisted with media development, community relations, project implementation, corporate partnerships, and provided substantive private-public sector collaborations for healthcare partnerships in support of community-based outreach.

Sr. Mary Ann Logiudice is the Local Coordinator of the Sisters of Mercy in Albany for over seven years. She was the Executive Director of Community Maternity Services for 25 years. She was responsible for the overall administration and management of Community Maternity Services in accordance with agency policies and procedures and implemented the mission and philosophy of Catholic Charities. Specifically, she secured financial and personnel resources, represented the agency before various community, judicial, and governmental bodies, consulted with the agency Board of Directors, and discerned trends in needed services. She was the Associate Executive Director for Outreach Services for five years. She assisted the Executive Director in and with the supervision of the development, coordination, and implementation of the agency rural outreach, fiscal resources, and personnel programs throughout a nine-county region. She was the Program Director for Maternity Center and Branson Family Development Center for seven years. She was responsible for the general supervision of the Maternity Residency and non-residential program serving pregnant and parenting adolescents. She was the Executive Director of Arbor House, Inc. for two years. She was responsible for the overall management of a residential program for 11 women. She was responsible for fiscal management, recruitment and supervision of staff, fundraising, public relations, program development and implementation, house meetings, scheduling activities, crisis/conflict intervention, and serving as liaison to community agencies. Sr. Logiudice discloses membership interest in the following healthcare facilities:

<i>St. Peter's Health Partners</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>Eddy Home Care</i>	<i>09/2011-present</i>
<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>

<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>
<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

John Marshall is a Certified Public Accountant and Senior Counsel at Bonadio & Co., LLC for seven years. He is responsible for personal income tax and business consulting. He semi-retired in April 2017 and gave up his partnership in the company. He was previously a CPA/Partner of Testone, Marshall & Discenza, LLP for 38 years. He was responsible for business and personal financial statements, tax preparation, and business consulting. He was a CPA and Manager of Deloitte & Touche for five years. He managed the business and personal finance statements of clients, performed tax preparation, and business consulting.

Lee McEleroy is the Associate Vice President and Director of Athletics of RPI for eight years. He oversees RPI's men and women NCSS intercollegiate teams involving over 550 student athletes. He was the Vice President and Director of Athletics at SUNY Albany for 15 years. He oversaw the Athletic Department. Mr. McEleroy discloses membership interest in the following healthcare facilities:

<i>St. Peter's Health Partners</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
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<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>
<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>
<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

Michael Meath is the Principal of Fallingbrook Associates, LLC for eight years. He provides advice and guidance as a crisis communication and regulatory risk management consultant. He held multiple roles including Department Chair, Professor, Visiting Professor, and Adjunct Professor at Newhouse School of Public Communications for 14 years. He was the Founder and President of Strategic Communication, LLC for 10 years. He developed an integrated strategic planning, public relations, crisis management, and public affairs consulting firm that served businesses and non-profit organizations. He was the Vice President of Business Development & Public Affairs and the Director of Public/Legal Affairs & Regulatory Compliance for eight years. He had oversight of all public affairs and media relations issues associated

with \$700M energy business. He led new business strategies, including creation of a new business that grew to 80,000 customers and \$75M in sales.

Gina Myers is the Interim Director, Adjunct Faculty in Nursing, and Director of the Education in Executive Leadership Program for 17 years. She recruits new applicants, meets with current students regarding progress or concerns, organizes and coordinates the program milestones for students, collaborates to provide structure to dissertation process, recruits adjunct faculty, coordinates the student learning assessment, and engages with leaders in the community organizations to create partnerships. She was an Assistant and Adjunct Professor for eight (8) years. She taught undergraduate and graduate students online and in hybrid formats. She was a co-advisor and program mentor for students and provided academic advisement. She has held multiple roles at St. Joseph's Hospital for over 29 years including Staff Nurse, Clinical Coordinator, Clinical Nurse Specialist, Director, and Associate.

George Phillip retired in 2013. He was the President of SUNY Albany for four years. He served as the Interim President for 18 months. He previously served as the Executive Director of the New York State Teacher's Retirement System for 12 years. He was the Chief Investment Officer for three years.

Merriette Pollard is retired since 2002. She was a Social Work Field Instructor and Director of Peer Counseling and Tutorial Programs at Livingston College. She also served as Director of Minority Retention and Program Development at La Roche College. She served as the Program Associate to the Vice President of Academic Affairs and Assistant Professor of Sociology and Gerontology at Grambling State University. She served as Executive Director of the Dunbar Association. She Co-chaired the Mayor's Taskforce on Youth Violence. She served as Co-chair of the Community Development Committee of Syracuse's Twenty Twenty. She has served on numerous boards.

Lee Reed was the President and CEO of St. Peter's Health Partners for 12 years. He retired on January 1, 2023. He was directly involved in the creation of St. Peter's Health Partners from the original concept to all phases of negotiation, review, and board approval votes. He has created initiatives to create a common culture, increase system integration, pursue major physician group acquisition, and hit financial metrics. He was the President and CEO of Northeast Health for 12 years. He was responsible for the overall direction and leadership of the Northeast Health System including development of the organization's vision, culture, and values. He was the COO for four years. He was responsible for the administration of all systems operating activities with a particular focus on maximizing efficiencies, improving quality, and developing integration opportunities. He was the CMO for six years. He was responsible for all medical quality issues across the integrated system including physician strategies, information, technology, utilization review, development and implementation of medical staff bylaws, and supervision of the system's medical directors. He received his medical degree from Cornell University Medical College. He completed his Internal Medicine residency at St. Clare's Hospital. Dr. Reed discloses membership interest in the following healthcare facilities:

<i>St. Peter's Health Partners</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
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<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>
<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>

<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

Carrie Rich is the CEO and Co-founder of the Global Good Fund for 10 years. She was previously the Senior Director of Vision Translation an Inova Health System. She was an Adjunct Faculty Member at Georgetown University. She is a Board Member of Trinity Health Corporation.

Linda Ross is the Executive Vice President and Chief Legal Officer of Trinity Health. She is responsible for all legal matters across Trinity Health including canon law. She acts as counsel to the Trinity Health Board of Directors. She was the previous Senior Vice President, Mergers and Acquisition Counsel. She was responsible for systems and regional health care transactions including mergers, acquisitions, divestitures, joint operating agreements, joint ventures, partnerships, and affiliations. She was a Partner and served as the Chair of the Health Care Department and Leader of the Corporate Department Health Care Practice Group at Honigman Miller Schwartz and Cohn LLP. She was lead counsel in affiliations, acquisitions, divestitures, mergers, reorganizations, joint ventures, and other alignment transactions.

Michael Slubowski is the President and CEO of Trinity Health System. He provides leadership, and is accountable for, the overall achievement, advancement, and success of the Trinity Health System. Prior to his executive leadership role, he served as the system's President and COO of Trinity Health. He oversaw all operations. He previously served as President and CEO of Sister of Charity of Leavenworth Health System. He was the President of Health Networks for Trinity Health prior to its merger with Catholic Health. He has served in executive leadership positions in the Henry Ford Health System, Samaritan Health Services, and Providence Hospital.

David Southwell is retired since September 2011. He was the Group Vice President, Financial Officer, and Treasurer of Wellmark Blue Cross Blue Shield for 14 years. He was responsible for treasury, accounting, financial reporting, internal audit, underwriting, actuarial, capital and operating budgeting, facilities and facility construction, customer pricing, provider pricing and contracting, and merger and acquisition activities. He was the previous Senior associate Director and Hospitals Financial Officer at the University of Michigan Health System for 24 years. He was responsible for the financial operations of the University of Michigan Clinical Delivery System with assets of over \$1.4B and revenue of over \$900M. He has held many board memberships including Advanced Member Healthcare Financial Management Association, Board Member and Finance Committee Chair of Huron Services for Youth, Child, and Family Services; Board Member and Treasurer of MCare HMO; Board Member and Treasurer of Hospital and Health Services Credit Union.

Joan Steadman is the Executive Director of the LWCR National Board for seven years. She is a Sister of the Holy Cross of Notre Dame and was President of her community for five years. She previously served in community leadership for 10 years. She was the Associate Director of Healthcare Ethics at Santa Clara University, the Vice President for Mission at Holy Cross Hospital, Regional Executive team Member at Holy Cross Health Services, Pastoral Associate at St. Therese Parish, Novice Director for her Community, and Administrator and Teacher in several elementary and secondary schools. She is a Board Member of the Trinity Health Corporation.

Roberta Waite is The Dean of the School of Nursing at Georgetown University for two months. She was previously a Professor of Nursing and the Associate Dean of Community Centered Health & Wellness and Academic Integration at Drexel University for 20 years. She was a Psychiatric Mental Health Clinical Nurse Specialist at 11th Street, a Federally Qualified Health Center. She was a Director of Psychiatric Nursing at Hahnemann University Hospital.

Larry Warren retired in 2012. He serves as Vice Chair on the Board of Directors for Trinity Health. He was named the Interim CEO of Trinity Health System in 2013 and retired from this position on August 13,

2013. He was the former CEO, Interim Executive Director, and Associate Vice President of University of Michigan Health and Hospital System for over 24 years.

William Wildridge III is a Partner at Fust Charles Chambers LLP and the CEO and Managing Partner of MicroscopeHC, LLC. He provides accounting and audit services to many healthcare and not-for-profit clients of Fust Charles Chamber LLP. He is also a member of their Executive Committee and provides oversight of the Firm management. As CEO/Managing Partner of MicroscopeHC, he provides healthcare organizations guidance on strategic direction, conducts feasibility studies, performs forecasting studies, conduct due diligence procedures on mergers and acquisitions and debt capacity studies. He also performs service line analysis and corporate restructuring, addresses third party reimbursement issues, and recommends revenue cycle improvements.

Veronica Wiedower serves on the Board of Directors for Trinity Health Corporation. She has been President of the Sisters of the Holy Cross for eight (8) years. She was the Vice President for Missions of St. Mary's Hospital for three years. She was the Music and Liturgy Minister for two years. She was the Coordinator and Formation Director for the Sisters of the Holy Cross for eight years. She was the Director of the Office for Women Religious for the Diocese of San Diego for two years. She was a Councilor of General Team Leadership for Sisters of the Holy Cross for 10 years. She is a member of the Saint Mary College Board of Trustees, the International Union of Superiors General, the Leadership Conference of Women Religious, and the Liturgy Network at the University of Notre Dame.

Kerry Sweet Zavaglia is the Senior Vice President and US General Counsel of National Grid for three years. She is responsible for all aspects of the Company's legal affairs across its US territories including corporate governance, compliance, mergers and acquisitions, commercial, real estate, siting, Federal and state regulatory, litigation, environmental, and labor. She is the Incident Commander, Vaccine Mandate & Executive Sponsor, and Plan Forward for over one year. She leads the incident command structure for implementation of federal vaccine requirements across the US business. She is responsible for operations, logistics, procurement, union negotiations, change management, compliance, and change to a hybrid work environment. She is the Executive Sponsor of PRIDE for six months. She oversees employee resources on supporting LGBTQ colleagues and allies. She was the Executive Sponsor to Women in Non-traditional Roles for four years. She oversaw employee resource groups focused on supporting women in non-traditional roles and increasing awareness and participation in underrepresented areas of business. She was the Vice President and Deputy General Counsel for one year. She was accountable for corporate governance, mergers, and acquisitions, commercial, Federal and New York regulatory, and real estate practice groups. She was the Vice President of New York Performance and Strategy for three years. She was accountable for the overall performance of National Grid's three operating companies, including achieving financial, regulatory, operational, and customer satisfaction targets. She was the Acting Vice President of Upstate New York Gas Operations Maintenance and Construction for three years. She was accountable for all maintenance, construction, and damage prevention activities across National grid's Upstate New York gas business. She was the Assistant General Counsel and Director of New York Regulatory for over three years. She managed a team of eight lawyers responsible for New York electric regulatory matters. She was the Associate Attorney to Senior Counsel for over five (5) years. She was the Assistant District Attorney in Philadelphia for over three years.

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

Eddy Heritage House Nursing and Rehabilitation Center was fined \$10,000 pursuant to Stipulation and Order NH-21-038 dated February 11, 2021, for surveillance findings set forth in the reports of inspection dated December 2, 2020. Deficiencies were found under the areas of Infection Control-PPE, Sterilization, Hand Washing, and Infection Spread.

Eddy Heritage House Nursing and Rehabilitation Center was fined \$16,000 pursuant to Stipulation and Order NH-21-028 dated February 4, 2021, for surveillance findings set forth in the reports of inspection

dated November 12, 2020. Deficiencies were found under the areas of failing to notify the next of kin when a resident or staff member of the facility tested positive for COVID-19 or suffered a death related to COVID -19 pursuant to the Governor's Executive Order 202. 18.

Eddy Memorial Geriatric Center was fined \$12,000 pursuant to Stipulation and Order NH-20-074 dated December 1, 2020, for surveillance findings set forth in the reports of inspection dated August 27, 2020. Deficiencies were found under the areas of Infection Control-Facemask; Sterilization-Hand washing; and Infection Control- Facemask & Social Distancing.

Eddy Memorial Geriatric Center was fined \$4,000 pursuant to Stipulation and Order NH-20-049 dated September 25, 2020, for surveillance findings set forth in the reports of inspection dated May 14, 2020. Deficiencies were found under the area of Infection Control.

Eddy Village Green was fined \$10,000 pursuant to Stipulation and Order NH-22-060 dated May 4, 2022, for surveillance findings set forth in the reports of inspection dated February 2, 2022. Deficiencies were found under the area of Resident Assessment and Comprehensive Care Plan.

Eddy Village Green was fined \$16,000 pursuant to Stipulation and Order NH-21-069 dated April 15, 2021, for surveillance findings set forth in the reports of inspection dated December 1, 2020. Deficiencies were found under the area Infection Control- Social Distancing and PPE.

Eddy Village Green was fined \$2,000 pursuant to Stipulation and Order NH-21-010 dated January 21, 2021, for surveillance findings set forth in the reports of inspection dated December 22, 2020. Deficiencies were found under the area Infection Control-Social Distancing and PPE.

Eddy Village Green was fined \$2,000 pursuant to Stipulation and Order NH-17-025 dated March 27, 2017, for surveillance findings set forth in the reports of inspection dated August 17, 2016. Deficiencies were found under the area of Quality of Care-Highest Practicable Potential.

Eddy Village Green at Beverwyck was fined \$2,000 pursuant to Stipulation and Order NH-21-246 dated December 28, 2021, for surveillance findings set forth in the reports of inspection dated September 28, 2021. Deficiencies were found under the area of Resident Right's-Visitation.

Hawthorne Ridge was fined \$924.00 pursuant to Stipulation and Order ACF-18-070 dated August 22, 2018, for surveillance findings set forth in the reports of inspection dated November 23, 2016, and March 8, 2018. Deficiencies were found under the area of Late Review of Individualized Service Plan.

St. Peter's Hospital was fined \$2,000 pursuant to Stipulation and Order BHS-16-03 dated August 18, 2016, for surveillance findings set forth in the reports of inspection dated January 7, 2016. Deficiencies were found under the area Food Services violations.

In 2010, the U.S. Department of Justice served subpoenas on hospitals and health systems nationwide including St. Peter's Hospital, as part of a fraud investigation into whether hospitals billed Medicare for implantable cardioverter defibrillators (ICDs) for patients whose conditions did not satisfy coverage criteria in a CMS National Coverage Determination. St. Peter's Hospital settled the matter in August 2015.

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

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement for the proposed members, the terms of which are summarized below:

Date:	June 3, 2022
Description:	Purchase of 25% Membership interest of SOS ASC Holding, LLC
Seller:	SOS ASC Holdings, LLC
Buyer:	St. Joseph's Hospital Health Center
Purchase Price:	\$25,175,000
Percentage Interest:	25% Membership Interest
Transfer:	Upon PHHPC Approval within 10 business days following written notice from the Department of Health Approval.

Amended and Restated Administrative Service Agreement

The applicant has submitted an executed Administrative Services Agreement (ASA) updated and already in effect. The terms of the agreement are summarized below with no changes to the existing agreement.

Date:	January 1, 2021
Consultant:	Specialists' Operations Consulting Services, LLC
Licensed Operator:	Specialists One Day Surgery, LLC
Services Provided:	Administrative services; billing services; purchasing services; financial service preparation including accounts receivable; provide monthly reports to the operator on the bank account and other functions as agreed to.
Term:	One Year with automatic one-year renewals
Fee:	\$225,000 in monthly installments

The operator shall retain direct, independent authority over all the operations. The operator accepts responsibility for all oversight of all these provisions as agreed to.

Lease Agreement

The applicant has submitted an executed existing building lease and sublease for both locations with no changes in location and has already been subsequently approved by the Department. The sublease that was submitted has no changes to the original except for allowing the new member, SOS ASC Holdings, LLC to lease from the Company which is already currently under a lease agreement. It is a duplicate of the original. There will be no change in space, rent, or term.

Capability and Feasibility

BFA Attachment A shows the current and proposed membership change after PHHPC approval. No project costs are associated with this application; however, the total membership purchase price is \$25,175,000 for St. Joseph's Hospital Health Center, Inc.'s 25% membership interest. As the active parent, Trinity Health will provide the cash funding to St. Joseph's with no loans or reimbursement back. SOS ASC Holdings, LLC will distribute the funds to selected members that are diluting their membership interest. In addition, St. Joseph's Hospital Health Center, Inc. will fund the cost with equity at closing per the membership purchase transfer agreement.

Working capital requirements are estimated at \$2,814,255, based on two months of projected first-year expenses, and will be covered through existing operations. BFA Attachment C demonstrates sufficient resources for the equity requirement from Specialists' One-Day Surgery, LLC.

As shown in BFA Attachment B, St. Joseph's Health, Inc. maintained an average positive working capital and net asset position in 2020 and 2021. The hospital recorded a net loss of (\$47,383,000) in 2020. Operational losses were primarily a result of decreased surgeries and rising salary expenses due to the

COVID-19 Pandemic; however, the hospital rebounded in 2021 after achieving a net income of \$31,853,000. St. Joseph's Health, Inc.'s internal financial statement ending May 31, 2022, shows a positive working capital and net asset position and a net operating loss of (\$31,001,000) with operating revenue of \$617,843,000 and operating expenses of \$648,844,000. The hospital indicates that labor costs have increased due to staffing shortages and contract labor expense has increased. The Hospital has implemented and is actively working on initiatives to increase revenue and lower costs, including (i) profitable growth via partnering with outside facilities, (ii) revenue optimization, (iii) labor stabilization, (iv) clinical program optimization, (v) non-labor expense reduction, and (vi) management integration with St. Peter's Health Partners in Albany, NY.

Attachment C presents the certified financial statements for Specialists' One-Day Surgery, LLC, dated December 31, 2020, and 2021. As shown, the company had a positive working capital position and positive net asset in both years. The company also achieved net income of \$6,602,961 and \$11,709,178 in 2020 and 2021 respectively. The internal financial statements from January 1, 2022, thru August 31, 2022, show the facility had positive working capital and a negative equity position, with a net income to date of \$7,839,284. The negative equity position was due to accelerated depreciation which is a noncash expense associated with a buildout of the new surgery center in 2019. This accounting is on a cash basis and therefore does not count accounts receivable, and it is expected that when the year end 12/31/22 financials are presented on an accrual basis, they will have a positive equity position.

Attachment D presents the 2021 and 2022 certified financial statements for Trinity Health, the active parent of St. Joseph's Health, Inc. Trinity Health maintained a positive working capital position and net asset position. Trinity Health experienced an operating income of \$845,759,000 and (\$148,514,000) for 2021 and 2022, respectively. In fiscal year 2022, the estimated total operating revenue was \$19.9 Billion, resulting in a -.7% margin impact. The reason for the loss was contract labor resources, supply chain disruption, and COVID surges impacting volumes and labor costs. To offset future losses Trinity has focused on expedited cash reserves; clinical program optimization; access; revenue optimization; labor stabilization; non-labor expense reduction and focusing on administrative cost and support services.

Conclusion

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

Attachments

BFA Attachment A	Organizational Chart (Membership Interest)
BFA Attachment B	St. Joseph's Hospital Health Center, Inc Certified (Fiscal Year July 31 thru June 30, 2020-2021. (Internal 5/31/2022)
BFA Attachment C	Specialists' One-Day Surgery Center, LLC - Certified 2020-2021 (Internal 8/31/2022)
BFA Attachment D	Trinity Health (2021 – 2022) Fiscal Year Certified Financials

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% ownership interest to a new member LLC comprised of the current members and one new member, and then immediately transfer 25% ownership interest to a new not-for-profit corporation member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

221280 E

Specialists' One-Day Surgery Center, LLC

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

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



Department of Health **Public Health and Health Planning Council**

Project # 222011-B
Flushing Endoscopy Center, LLC

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment and Construction **Acknowledged:** September 8, 2022

Executive Summary

Description

Flushing Endoscopy Center, LLC (the Center), an existing Article 28 Diagnostic and Treatment Center (D&TC) at 136-02 Roosevelt Avenue, Flushing (Queens County) currently certified as a single-specialty (gastroenterology) freestanding ambulatory surgical center (FASC), is seeking approval to certify and construct a tri-single-specialty (gastroenterology, otolaryngology, and urology services) extension clinic to be located at 168 Centre Street (New York County), and to transfer a 38.65% membership interest from three members in the Center to two existing members, and four new members.

Upon approval of the proposed transaction, the new extension clinic will have four procedure rooms and will be named Soho Ambulatory Surgical Center (the "Soho Division"). The extension clinic will occupy 6,303 square feet of leased space in an existing building located at 168 Centre Street, New. The building is owned by Centre Court Holdings, LLC, an entity unrelated to the Center and its members.

Current and Proposed Membership Interest is as follows:

Member	Current	Proposed
Che-Nan Chuang, M.D.	16.67%	8.33%
King Chen Hon, M.D	19.70%	9.85%
Alan Yao, M.D.	40.91%	20.45%
Danny Chu, M.D.	11.36%	13.79%
Mark Chu, M.D.	11.36%	13.79%
Anthony Chan, D.O	0.00%	10.00 %
Alex Ky-Miyasaka, M.D	0.00%	10.00%
Anthony Ng, M.D.	0.00%	10.00%
Wallace Wang, M.D.	0.00%	3.79%
Total	100.00%	100.00%

Danny Chu, M.D., an existing member of the Center and existing Medical Director of the Flushing Division will serve as the Soho's Division's Medical Director.

The Center will have a transfer agreement with NYP Lower Manhattan Hospital 1.1 miles and 11 minutes away.

OPCHSM Recommendation

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

Need Summary

Approval of this project will increase access to outpatient gastroenterology, otolaryngology, and urology surgery services in New York County. The applicant projects 8,230 procedures in Year One and 8,395 in Year Three, with Medicaid at 36.64% and Charity Care at 2.01%.

Program Summary

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

Financial Summary

The Total Project Cost of \$3,452,058 will be funded via a construction loan of \$1,800,000, an equipment loan of \$675,000 with the remainder funded via the Center's and new members' cash. The purchase price for the 4 new members has already been paid and is being held in escrow pending approval of this project by the Public Health and Health Planning Council (PHHPC).

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$16,078,539	\$16,078,539
Expenses	<u>\$9,287,127</u>	<u>\$9,412,431</u>
Net Income	\$253,671	\$582,771

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

1. This project must be completed by **November 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 **August 15, 2023**, and construction must be completed by **August 15, 2024**, 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 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.p df](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of 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

February 9, 2023

Need Analysis

Background

The service area is New York County. The population of New York County in 2020 was 1,694,251 and is projected to increase slightly to 1,709,958 by 2025. According to Data USA, in 2019, 95.3% of the population of New York County had health coverage as follows:

Employer Plans	52.8%
Medicaid	19.6%
Medicare	10.2%
Non-Group Plans	12.4%
Military or VA	0.305%

The number of projected procedures is 8,230 in Year One and 8,395 in Year Three with Medicaid at 36.64% and Charity Care at 2.01%. These projections are based on the current practices of participating surgeons. The applicant states that all of the procedures moving to this center are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three for just the proposed extension clinic.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	2,670	32.44%	2,723	32.44%
Medicare FFS	618	7.51%	631	7.52%
Medicare MC	1,658	20.15%	1,691	20.14%
Medicaid MC	3,015	36.64%	3,076	36.64%
Private Pay	104	1.26%	106	1.26%
Charity Care	165	2.00%	169	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Emblem, Fidelis, Health First, Metroplus, UHC Community Plan, VNS, and WellCare. The center will work collaboratively with local Federally Qualified Health Centers such as Charles B. Wang Community Health Center and NYS Community Care s Program to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational. Flushing Endoscopy is current with their SPARCS reporting through September 2022.

The table below shows the number of patient visits for relevant ASCs in New York County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Gastroenterology	Carnegie Hill Endo, Inc.	13,862	9,581	12,943
Gastroenterology/ Pain Management	East Side Endoscopy & Pain Management Center	8,812	6,038	9,269
Multi	Fifth Avenue Surgery Center	3,936	3,464	3,637
Multi	Fifth Avenue Surgery Center (opened 7/20/21)	N/A	N/A	1,452
Gastroenterology	Gramercy Park Digestive Disease Center	12,335	8,616	7,989
Gastroenterology	Gramercy Park DDC- Bennett Ave (opened 4/8/20)	N/A	2,122	4,898
Multi	Gramercy Surgery Center	4,851	3,521	4,580
Multi	Hudson Surgery Center (opened 1/13/22)	N/A	N/A	N/A

Gastroenterology	Kipps Bay Endoscopy Center	10,051	6,431	9,480
Gastroenterology	Liberty Endoscopy Center	6,568	4,154	4,954
Gastroenterology	Manhattan Endoscopy Center	12,298	8,122	9,875
Multi	Manhattan Surgery Center	6,326	4,091	4,799
Multi	Midtown Surgery Center	3,749	2,449	1,765
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	480	939
Multi	Surgicare of Manhattan, LLC	4,257	2,878	2,665
Multi	Surgicare of Westside (opened 12/16/20)	N/A	N/A	156
Gastroenterology	The Endoscopy Center of New York	14,758	9,907	13,421
Multi	The Derfner Foundation ASC (opened 2/22/22)	N/A	N/A	N/A
Gastroenterology	Upper West Side Endoscopy (opened 7/21/21)	N/A	N/A	1,201
Gastroenterology	West Side GI	17,894	10,348	11,401
Total Visits		119,697	82,202	105,424

Conclusion

Approval of this project will provide increased access to gastroenterology, otolaryngology, and urology surgery services in an outpatient setting for the residents of New York County. From a need perspective, approval is recommended for a limited period of five years.

Program Analysis

Program Description

Flushing Endoscopy Center, LLC, an existing single specialty (gastroenterology_ freestanding Ambulatory Surgery Center (FASC) seeks approval to transfer 38.65% ownership interest from three (3) members to two (2) existing members and four (4) new members and certify and construct a three single specialties extension ASC with the specialties being gastroenterology, otolaryngology, and urology. The existing FASC is located at 136-02 Roosevelt Avenue in Flushing (Queens County). The extension clinic will be located at 168 Centre Street in New York (New York County).

Proposed Operator	Flushing Endoscopy Center, LLC
Doing Business As	Soho Ambulatory Surgical Center
Site Address	168 Centre Street New York, NY 10013 (New York County)
Shift/Hours/Schedule	Monday through Friday 7:30 am to 4:30 pm
Approved Services	Ambulatory Surgery-Single Specialty Gastroenterology Otolaryngology Urology
Operating Rooms	0
Procedure Rooms	4
Staffing (1st Year/3rd Year)	34.1 FTEs/34.1 FTEs
Medical Director	Danny Chu, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	New York Presbyterian Lower Manhattan 1.1 miles/11minutes
On-call Service	Patients who require assistance during off-hours will engage the 24-hour answering service to reach the on-call surgeon during hours when the facility is closed

Character and Competence

The proposed membership Flushing Endoscopy Center, LLC is provided in the chart below.

Member Name/Title	Current Ownership	Proposed Ownership
Che-Nan Chuang, M.D.	16.67%	8.33%
King Chen Hon, M.D	19.70%	9.85%
Alan Yao, M.D.	40.91%	20.45%
Danny Chu, M.D.	11.36%	13.79%
Mark Chu, M.D.	11.36%	13.79%
Anthony Chan, D.O**	0.00%	10.00 %
Alex Ky-Miyasaka, M.D**	0.00%	10.00%
Anthony Ng, M.D.**	0.00%	10.00%
Wallace Wang, M.D.**	0.00%	3.79%
Total	100.00%	100.00%

**Members Subject to Character and Competence

Dr. Anthony Chan is a Gastroenterologist and Internist at Anthony Chan MD PC for 23 years. He is affiliated Ney York Presbyterian for 23 years. He received his medical degree from Philadelphia College of Osteopathic Medicine. He completed his Internal Medicine residency at Maimonides Medical Center. He completed his Gastroenterology fellowship at Guthrie Healthcare System. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

Dr. Alex Ky-Miyasaka is an Attending of Surgery at Mount Sinai Hospital for 22 years. He has been an Assistant Professor, Associate Professor, and Professor at Mount Sinai School of Medicine for nine (9) years. He has been a Medical Director at Mount Sinai Downtown Office for 11 years. He received his medical degree from SUNY Stony Brook. He completed his General Surgery residency at Lenox Hill Hospital. He completed his Colon and Rectal Surgery fellowship at Mount Sinai Icahn School of Medicine. He is board certified in Colon and Rectal Surgery.

Dr. Anthony Ng is an Assistant Attending Gastroenterologist at NYU Downtown Hospital for over 20 years. He received his medical degree from SUNY Health Science Center in Syracuse. He completed his Internal Medicine residency at Harvard Medical School. He completed his Gastroenterology fellowship at Mount Sinai Medical Center. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

Dr Wallace Wang is an Attending Physician at Downtown Gastroenterology Associates for five (5) years. He is and Attending Physician at New York Presbyterian Queens for five years. He is an Attending Physician at Mount Sinai Beth Israel for five years. He is an Assistant Attending Physician at New York Presbyterian Lower Manhattan Hospital and Weill Cornell Medical Center for seven (7) years. He is a Clinical Assistant Professor of Medicine at Weill Cornell Medical College for five years. He was a previous Assistant Professor of Clinical Medicine at Weill Cornell Medical College for over one (1) year. He was a Clinical Instructor of Medicine at Albany Medical College for one (1) year. He received his medical degree from New York Medical College School of Medicine. He completed his Internal Medicine residency at Albany Medical Center. He completed his Gastroenterology fellowship at New York Presbyterian Queens. He completed his Advanced Therapeutic Endoscopy fellowship at Mount Sinai Beth Israel. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

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

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant will maintain a list of local primary care providers which it will refer any patient without a physician. The Applicant is committed to serving all persons in need without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristic. The Applicant reports that the proposed budget projects that 2% of all cases will be for persons requiring charity care. The Applicant also reports that a sliding scale fee will be applied to the extension clinic. The Proposed extension clinic is projected to provide approximately 37% Medicaid and Charity Care utilization to the underserved patient in the area. The main site Center has worked to become in-network with many Medicaid Managed Care plans including Emblem Medicaid, Fidelis Medicaid, Healthfirst Medicaid, Metroplus Medicaid, UHC Community Plan Medicaid, VNS Medicaid and Wellcare Medicaid. They are currently pursuing additional partnerships with the Charles B. Wang Community Health Center, a Federally Qualified Health Center, and will seek to partner the extension clinic with the FQHC as well. The main site receives many referrals from Charles B.

Wang however, the patients must travel many miles to receive services at the main site and once the extension clinic is operation it will reduce this burden on the patients.

The Center intends on using an Electronic Medical Record (EMR) program. The clinic will consider joining a RHIO and/or the Health Information Exchange when it commences operations. The Applicant will join an Accountable Care Organization (ACO) as the physicians who will be practicing at the extension clinic are already members of an ACO.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations, equipment and fees are estimated at \$3,452,058 with the following allocation:

Renovation & Demolition	\$2,029,300
Design Contingency	202,930
Construction Contingency	202,930
Architect/Engineering Fees	35,360
Other Fees	15,640
Movable Equipment	819,626
Telecommunications	10,400
Financing Costs	25,000
Interim Interest Expense	90,000
CON Fee	2,000
Additional Processing Fee	18,872
Total Project Cost	\$3,452,058

Total project costs of \$3,452,058 will be met via a construction loan of \$1,800,000, a \$675,000 equipment loan and the remaining \$977,058 will be funded via the Center's existing cash resources and via the cash resources of the new members of the Center. BFA Attachments A, the Net Worth Statements of the new members, and BFA attachment C, the Center's Internal Financial Statement as of September 30, 2022, both reveal sufficient liquid resources to cover the equity requirement for the construction. Chase for Business, a lending institution, has provided a letter of interest for both the construction and equipment loan at the stated terms at 7 years Treasury Constant Maturity Rate (TCM) +3%, for a seven-year term and a payout period of 20 years;

Operating Budget

The applicant has submitted their current year (2021) enterprise operating budget in 2022 dollars consisting of all services provided by Flushing Endoscopy Center, LLC, for the first and third years after occupancy in the new facility.

	Current Year <u>2021</u>		Year One <u>2024</u>		Year Three <u>2026</u>	
	Per <u>Procedure</u>	<u>Total</u>	Per <u>Procedure</u>	<u>Total</u>	Per <u>Procedure</u>	<u>Total</u>
Revenues:						
Medicaid FFS		\$0		\$0		\$0
Medicaid MC	\$533.52	\$2,098,867	\$708.10	\$4,747,126	\$708.10	\$4,747,126
Medicare FFS	\$409.77	\$343,794	\$786.33	\$1,124,446	\$786.33	\$1,124,446
Medicare MC	\$475.97	\$1,166,603	\$797.82	\$3,332,474	\$797.82	\$3,332,474
Commercial FFS	\$733.77	\$3,041,479	\$926.65	\$6,318,815	\$926.65	\$6,318,815
Commercial MC	\$596.20	\$106,720	\$813.73	\$248,188	\$813.73	\$248,188
Private Pay	\$1,577.85	\$214,588	\$1,325.39	\$307,490	\$1,325.39	\$307,490
Total Revenues		\$6,972,051		\$16,078,539		\$16,078,539
Expenses:						
Operating	\$241.12	\$2,817,935	\$391.39	\$7,795,414	\$397.03	\$7,907,726
Capital	\$53.04	\$619,872	\$74.90	\$1,491,713	\$75.55	\$1,504,705
Total Expenses	\$294.16	\$3,437,807	\$466.29	\$9,287,127	\$472.58	\$9,412,431
Net Income (Loss)		\$3,534,244		\$6,791,412		\$6,666,108
Procedures		11,687		19,917		19,917
Cost/Procedure		\$302.41		\$466.29		\$472.58

Utilization by payor source for the current year and projected first, and third years is distributed as follows:

	Current Year 2021	Year One 2024	Year Three 2026
Medicaid MC	33.66%	33.66%	33.66%
Medicare FFS	7.18%	7.18%	7.18%
Medicare MC	20.97%	20.97%	20.97%
Commercial FFS	35.47%	34.24%	34.24%
Commercial MC	1.53%	1.53%	1.53%
Private Pay	1.16%	1.16%	1.16%
Charity Care	0.03%	1.26%	1.26%
Total Utilization	100.00%	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The current year reflects the main site only (Flushing Division).
- Projected Years 1 & 3 reflect the main site and the proposed extension clinic
- The Center expects to receive Charity Care referrals to the Extension Clinic from the Charles B. Wang Community Clinic and the Gouverneur Clinic, both of which are located two blocks away from the proposed Extension Clinic site.
- The projected utilization is based on the experience of the participating physicians and their estimate of the number of cases they will bring to the center. The eight surgeons who will initially perform cases at the Soho Division extension clinic have provided letters of interest demonstrating their commitment to perform a total of 8,230 procedures in the first year of project implementation. All these additional projected procedures are currently being performed in the surgeons' private, office-based surgical practices, which are located within walking distance of the Soho Division; none of the projected procedures are currently being performed in hospitals or other FASCs.
- The operating expenses are based on the experience of the participating provider, as well as the projections and experience of other FASCs in New York State.
- Reimbursement rates reflect current and projected Federal and State government rates, with private payers reflecting adjustments based on experience in the region.
- Operating revenues are based on the experience of the participating providers, in accordance with the expected collection rate of the Center.

Purchase and Sale Agreement

The applicant has submitted an executed Purchase and Sale Agreement for the proposed members, the terms of which are summarized below:

Date:	12/21/2021
Company:	Flushing Endoscopy Center, LLC
Seller:	Danny Chu M.D. (2.50%), Mark Chu M.D. (2.50%)
Purchaser:	Wallace Wang M.D.
Purchase Price:	\$345,000
Payment of Purchase Price:	Upon PHHPC approval purchase agreement

BFA Attachment A, the net worth statements of the new members of the Center reveal Dr. Wang has sufficient resources available to fund the purchase price of the respective membership interest of the sellers.

Lease Agreement

Premises:	6,303 square feet located at 168 Centre Street, New York, NY 10013; 6 th Floor
Landlord:	Center Court Holdings, LLC
Tenant:	Flushing Endoscopy Center, LLC
Term:	15 years with a five-year renewal option
Rent:	\$412,500 in Year 1 incrementing 3% in successive years to Year 15 \$623,928
Provisions:	Tenant is responsible for insurance, maintenance, repairs, utilities, and real estate taxes.

The applicant has submitted an affidavit that the lease is an arm's length agreement, as there is a 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

Total project costs of \$3,452,058 will be met via a construction loan of \$1,800,000, a \$675,000 equipment loan and the remaining \$977,058 will be funded via the Center's existing cash resources and via the cash resources of the new members of the Center. BFA Attachments A, the Net Worth Statements of the new members, and BFA attachment C, the Center's Internal Financial Statement as of September 30, 2022, both reveal sufficient liquid resources to cover the equity requirement for the construction. Chase for Business, a lending institution, has provided a letter of interest for both the construction and equipment loan at the stated terms at 7 years Treasury Constant Maturity Rate (TCM) +3%, for a seven-year term and a payout period of 20 years;

BFA Attachment B shows Flushing Endoscopy Center's Certified Financial Statements as of December 31, 2021, and indicates that the entity had a positive working capital position, positive net asset position, and a net income of \$3,660,352. The Internal Financial Statement as of September 30, 2022 show that the Center continued to have positive working capital, a positive net asset position, and a net income of \$2,173,296.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statements of the new members of Flushing Endoscopy Center, LLC
BFA Attachment B	2021 Certified Financial Statements and September 2022 Internal Financial Statements of Flushing Endoscopy Center, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to certify a three-single-specialty ambulatory surgery center extension clinic for gastroenterology, otolaryngology, and urology at 168 Centre St, New York, and transfer 38.65% ownership interest from 3 members to 2 existing and 4 new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

222011 B

Flushing Endoscopy Center, LLC

APPROVAL CONTINGENT UPON:

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

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

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **November 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 **August 15, 2023**, and construction must be completed by **August 15, 2024**, 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 applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of 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]

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



Project # 222024-B
787 Ortho ASC LLC d/b/a Peakpoint Midtown West ASC

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** September 13, 2022

Executive Summary

Description

787 Ortho ASC, LLC d/b/a Peakpoint Midtown West ASC (Peakpoint Midtown West), a New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located at 787 11th Avenue, New York (New York County). The FASC will specialize in Orthopedic, Neuro and breast surgeries. The FASC will be housed in approximately 18,000 gross sq. ft. of space on the sixth floor of an existing eight story, multi-use building that will be renovated by the applicant. The applicant will sublease the space from Icahn School of Medicine at Mount Sinai. The FASC will consist of two operating rooms and two procedure rooms. Upon approval, the FASC will be known as Peakpoint Midtown West ASC.

Ownership of the operations is as follows:

Peakpoint Midtown West Members	% Operating Entity
Individual Members	43.20%
Edward Adler, M.D.	2.45%
Joseph Bax, M.D.	2.45%
Stephanie Bernik, M.D.	2.45%
Paul Cagle, M.D.	2.45%
Saad Chaudhary, M.D.	2.45%
Darwin Chen, M.D.	2.00%
Samuel Cho, M.D.	2.45%
Leesa Galatz, M.D.	2.45%
James Gladstone, M.D.	2.45%
Brett Hayden, M.D.	2.45%
Kazimierz Komperda, M.D.	2.45%
Nolan Maher, M.D.	2.00%
Calin Moucha, M.D.	2.45%

Bradford Parsons, M.D.	2.45%
Chanland Roonprapunt, M.D.	2.45%
Jeremy Steinberger, M.D.	2.45%
Sherwin Su, M.D.	2.45%
Douglas Unis, M.D.	2.45%
Peakpoint Partners, LLC (ownership below)	56.80%
William Mulhall	4.60%
Sarah Sanford	0.83%
Matthew Searles	6.67%
Richard Searles	4.60%
Mt. Sinai Ambulatory Ventures, Inc.	40.10%
TOTAL	100%

Dr. James Gladstone, who is Board Certified in orthopedic surgery, will be the ASC’s Medical Director. Mount Sinai Hospital will have a Board seat but will not have management authority or an active role in the operations of the proposed ASC. The applicant has a Transfer Agreement for backup and emergency services with St. Luke’s-Roosevelt Hospital ASC d/b/a Mount Sinai West, located 0.4 miles (5 minutes travel time) from the proposed ASC.

The physicians who will be using the ASC have provided letters demonstrating their commitment. Based on the volume estimates in these letters, 787 Ortho ASC, LLC expects to perform 2,544 procedures during the first year of operation.

OPCHSM Recommendation

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

Need Summary

The applicant projects 2,544 procedures in Year One and 2,699 in Year Three, with Medicaid at 3.0% and Charity Care at 2.0%.

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)(b).

Financial Summary

The total project costs of \$15,131,060 will be funded via \$1,932,620 in members' equity (\$49,700 in cash and \$1,882,920 in Landlord equity through tenant allowance), a 5-year

equipment loan for \$1,200,000 at 7.72% interest (3.72% swap rate plus 4.00% interest) and a ten-year self-amortizing mortgage loan with interest of 6% for \$11,998,440. Valley National Bank has provided a letter of interest for the mortgage loan and Dext Capital has provided a letter of interest for the equipment line of credit.

Budget:	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Revenues	\$17,371,813	\$18,421,260
Expenses:	<u>16,722,299</u>	<u>17,240,344</u>
Gain/(Loss)	\$659,514	\$1,180,916

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed construction loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA].
6. Submission of a photocopy of the amended and executed copy of the Master Lease between Georgetown Eleventh Avenue Owners, LLC and the ICAHN School of Medicine at Mr. Sinai, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Sub-Lease Agreement between the ICAHN School of Medicine at Mount Sinai and 787 Ortho ASC, LLC, acceptable to the Department [CSL]
8. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
9. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
10. Submission of an executed transfer and affiliation agreement, acceptable to the Department. [HSP]
11. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]

Approval conditional upon:

1. This project must be completed by **September 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 **August 1, 2023**, and construction must be completed by **June 1, 2024**, 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/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of 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

February 9, 2023

Need Analysis

Background

The service area is New York County. The population of New York County in 2020 was 1,694,251 and is projected to increase slightly to 1,709,958 by 2025. According to Data USA, in 2019, 95.3% of the population of New York County had health coverage as follows:

Employer Plans	52.8%
Medicaid	19.6%
Medicare	10.2%
Non-Group Plans	12.4%
Military or VA	0.305%

The applicant projects 2,544 procedures in Year One and 2,699 in Year Three, with Medicaid at 3.0% and Charity Care at 2.0%. These projections are based on the current practices of participating surgeons. The applicant states that 90.8% of the procedures moving to this center are currently being performed in a hospital and 9.2% are being performed in an ASC setting. According to the applicant, there are 18 physicians interested in performing procedures at the proposed center. The table below shows the projected payor mix for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	76	3.00%	81	3.00%
Medicare FFS	254	10.00%	270	10.00%
Medicare MC	51	2.00%	54	2.00%
Commercial FFS	865	34.00%	918	34.00%
Commercial MC	1,145	45.00%	1,215	45.00%
Other	102	4.00%	108	4.00%
Charity Care	51	2.00%	54	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Fidelis, Health First, AmicaCare, United Community Plan, and Empire HealthPlus. The center will work collaboratively with local Federally Qualified Health Centers such as the Institute for Family Health and Community Healthcare Network to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in New York County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	Fifth Avenue Surgery Center	3,936	3,464	3,637
Multi	Fifth Avenue Surgery Center (opened 7/20/21)	N/A	N/A	1,452
Multi	Gramercy Surgery Center	4,851	3,521	4,580
Orthopedics	HSS ASC of Manhattan	3,603	2,646	3,217
Orthopedics	HSS West Side ASC (opened 7/16/19)	N/A	1,593	1,845
Multi	Hudson Surgery Center (opened 1/13/22)	N/A	N/A	N/A
Multi	Manhattan Surgery Center	6,326	4,091	4,799
Multi	Midtown Surgery Center	3,749	2,449	1,765
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	480	939
Multi	Surgicare of Manhattan, LLC	4,257	2,878	2,665
Multi	Surgicare of Westside (opened 12/16/20)	N/A	N/A	156
Multi	The Derfner Foundation ASC (opened 2/22/22)	N/A	N/A	N/A
Total Visits		26,722	21,122	25,055

Conclusion

Approval of this project will provide increased access to orthopedic surgery, neurosurgery, and breast surgery in an outpatient setting for the residents of New York County.

Program Analysis

Program Description

787 Ortho ASC, LLC, d/b/a Peakpoint Midtown West ASC, an existing New York State limited liability company, seeks approval to establish and construct a multispecialty freestanding ambulatory surgery center specializing in Orthopedic Surgery, Neurosurgery, and Breast Surgery to be located at 787 11th Avenue in New York (New York County). Upon approval of the project, the name of the facility will be Peakpoint Midtown West.

Proposed Operator	787 Ortho SC, LLC
Doing Business As	Peakpoint Midtown West ASC
Site Address	787 11 th Avenue, New York, New York 10019 (New York County)
Surgical Specialties	Multispecialty ASC Orthopedic Surgery Neurosurgery Breast Surgery
Operating Rooms	2
Procedure Rooms	2
Hours of Operation	Monday through Friday 7:00 am to 5:00pm
Staffing (1st Year / 3rd Year)	27.15 FTEs / 27.15 FTEs
Medical Director(s)	James Gladstone, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Is expected to be provided by: Mount Sinai West 0.4 Miles / 5 minutes
On-call service	Patients who require assistance during off-hours will engage a 24-hour a day seven (7) day a week physician on-call service

Character and Competence

The ownership of 787 Ortho ASC, LLC is:

Member Name	Proposed Interest
Edward Adler, M.D.	2.45%
Joseph Bax, M.D.	2.45%
Stephanie Bernik, M.D.	2.45%
Paul Cagel, M.D.	2.45%
Saad Chaundry, M.D.	2.45%
Darwin Chen, M.D.	2.00%
Samuel Cho, M.D.	2.45%
Leesa Galatz, M.D.	2.45%
James Gladstone, M.D.	2.45%
Brett Hayden, M.D.	2.45%
Kazimierz Komperda, M.D.	2.45%
James Lin, M.D.	1.00%
Nolan Mahar, M.D.	2.00%

Calin Moucha, M.D.	2.45%
Bradford Parsons, M.D.	2.45%
Chanland Roonprapunt, M.D.	2.45%
Jeremy Steinberger, M.D.	2.45%
Sherwin Su, M.D.	2.45%
Douglas Unis, M.D.	2.45%
Peakpoint Partners, LLC Mount Sinai Ambulatory Ventures (39.39%) William Mulhall (4.52%) Sarah Sanford (0.82%) Matthew Searles (6.55%) Richard Searles (4.52%)	55.80%
TOTAL	100%

Mount Sinai Ambulatory Ventures, Inc. (MSAV) is an existing not for profit corporation whose sole passive member is the Mount Sinai Health System. MSAV has the following Board Members/Officers:

<i>Kelly Cassano</i>	<i>Board Member</i>
<i>Jodi Cohen</i>	<i>Board Member</i>
<i>Vicki LoPachin, M.D.</i>	<i>Board Member</i>
<i>Michael Pastier</i>	<i>Board Member</i>
<i>Denise Prince</i>	<i>Board Member</i>
<i>Brent Stackhouse</i>	<i>Board Member</i>

The managing members of Peakpoint Midtown West are:

Richard Searles
William Mulhall
Sarah Sanford

Dr. Edward Adler is a Physician and Partner of Madison Avenue Orthopedic Associates for 22 years. He is a Physician and Faculty Member of the Icahn School of Medicine for three (3) years. He was a Physician and Faculty Member of the NYU School of Medicine. He received his medical degree from Rutgers. He completed his General Surgery residency and Orthopedic Surgery fellowship at University Hospital. He is board certified in Orthopedic Surgery.

Jodi Cohen-Ansari is the System Senior Vice President of Business and Strategic Planning at Mount Sinai Health System for 14 years. She was the previous Vice President, Senior Director, and Director of Business Planning. She participates in the decision-making process with System Leadership through presentation of relevant financial and market analysis related to multimillion clinical investment and evaluates managed care strategy. She prepares business plans to evaluate physician recruitment and program development through collaboration with Hospital and Medical School/Departmental leadership. She created compensation structure relative to market data, MD experience, and productivity including individual and group models. She plans and tracks revenue improvement initiatives, reviews and approves and monitors hospital budgetary support of \$560M. She was the Vice President of Finance and Clinical Services at St. Vincent's for seven (7) years. She was the previous Administrative Director of Finance and Manager of Finance/Business Planning. She managed the development of \$550M hospital operating budget and worked with the Vice President of Budget and Reimbursement and directed departmental budgets. She led in the development of zero-based budgeting and institution wide Performance Initiative Committee charged with identifying cost reductions and revenue enhancements. She was a Senior Associate at Pricewaterhousecoopers, LLP for two (2) years, She performed revenue cycle diagnostics, accounts receivable reduction, interim managerial services, and system implementation. She facilitated problem resolution and implementation of recommended policy and procedure enhancements. She was the Assistant Manager of Patient Financial Services at Memorial Sloan Kettering for five (5) years. She provided leadership and operational management of the registration and cashiering units, planned and rolled out policies related to managed care patients, and monitored quality of services.

Dr. Joseph Bax is an Interventional Physiatrist at Mount Sinai Hospital for four (4) years. He was an Interventional Physiatrist at Comprehensive Pain Management Associates for over three (3) years. He was an Interventional Physiatrist at Korunda Pain Management for over two (2) years. He was an Interventional Physiatrist at Niagara Orthopedics for five (5) months. He received his medical degree from Chicago College of Osteopathic Medicine. He completed his Physical Medicine and Rehabilitation internship at Johns Hopkins University. He completed his Pain Management and Palliative Care fellowship at Beth Israel Medical Center. He is board certified in Physical Medicine and Rehabilitation with two sub-specialties, Interventional Pain Management and Hospice & Palliative Medicine.

Dr. Stephanie Bernik is the Chief of Breast Surgery at Mount Sinai West for four (4) years. She was the Chief of Surgical Oncology for eight (8) years at Lenox Hill Hospital. She was the Chief of Breast Surgery at The St. Vincent Comprehensive Cancer Center for five (5) years. She was the Associate Chief of Breast at The St. Vincent Comprehensive Cancer Center for one (1) year. She was an Attending Surgeon in Breast Oncology for 10 years at The St. Vincent Comprehensive Cancer Center. She received her medical degree from Yale University School of Medicine. She completed her General Surgery and Breast Surgery residency at St. Vincent's Hospital and Medical Center. She completed her Breast Surgery fellowship at Memorial Sloan Kettering Cancer Center. She is board certified in General Surgery.

Dr. Paul Cagle is an Associate Professor in the Orthopedic Surgery Department at Mount Sinai Hospital for five (5) years. He was an Assistant Professor in Orthopedic Surgery for three (3) years at Southern Illinois University School of Medicine. He completed his medical degree at Loyola University School of Medicine. He completed his Orthopedic residency at University of Minnesota. He completed his Shoulder and Elbow fellowship at Mount Sinai Hospital.

Dr. Kelly Cassano is the Chief Executive Officer of the Mount Sinai Doctors Faculty Practice for over one (1) year. She is the Senior Vice President of Ambulatory Operations for the Mount Sinai Health Systems for two (2) years. She is the Dean of Clinical Affairs at the Icahn School of Medicine for eight (8) years. She was the Chief of Ambulatory Surgery at Mount Sinai Downtown for six (6) years. She was the Senior Associate Dean of Clinical Affairs at the Icahn School of Medicine for three (3) years. She is an Internist at Mount Sinai Doctors for five (5) years. She is the Medical Director of Mount Sinai Doctors Downtown Union Square for eight (8) years. She was an Internist at Mount Sinai Doctors West Park Medical Group for eight (8) years. She was the Senior Medical Director at Continuum Medical Group for two (2) years. She was the Medical Director of West Park Medical Group for 14 years. She was the Chief Liaison at Beth Israel for two (2) years. She was an Internist at Daytop Village for five (5) years. She received her medical degree from the University of New England College of Osteopathic Medicine. She completed her Internal Medicine residency at St. Vincent's Hospital.

Dr. Saad Chaudhary is an Associate Professor in Orthopedic Surgery at the Mount Sinai Health System for two (2) years. He was an Assistant Professor in Orthopedic Surgery at the Mount Sinai Health System for six (6) years. He was an Assistant Professor in Orthopedic Surgery at Rutgers New Jersey Medical School for five (5) years. He was an Attending Spinal Surgeon for one (1) year at Orthopedics Institute Oklahoma City. He received his medical degree from Tufts University. He completed his Orthopedic Surgery residency at Rutgers New Jersey Medical School. He completed his AOSpine and Spine Surgery fellowship at Cleveland Clinic. He is board certified in Orthopedics.

Dr. Darwin Chen is an Associate Professor at The Mount Sinai Hospital for three (3) years. He was previously an Assistant Professor for seven (7) years. He is an Attending Physician at Mount Sinai South for two (2) years. He was an Attending Physician at Elmhurst Hospital Center for one (1) year. He was a Clinical Instructor at Rush University for one (1) year. He received his medical degree at Columbia University College of Physician and Surgeons. He completed his Orthopedic residency at Mount Sinai Hospital. He completed his Traveling Hip Surgery fellowship at St. John's Health Center, Washington University, Schulthess Klinik, and Inselspital. He completed his Adult Reconstruction and Joint Replacement fellowship at Rush University Medical Center.

Dr. Samuel Cho is a Professor at the Icahn School of Medicine at Mount Sinai in the Department of Orthopedics and Neurosurgery for 12 years and nine (9) years respectively. He is the Director of the Spinal Surgery Fellowship at the Icahn School of Medicine for five (5) years. He is Didactic Faculty of the Graduate School of Biomedical Sciences at Mount Sinai for four (4) years. He is an Attending Spinal

Surgeon in Orthopedic Surgery at Mount Sinai Hospital for 12 years. He is the Chief of Spine Surgery in Orthopedic and Neurosurgery for five (5) years. He received his medical degree from the Washington University School of Medicine. He completed his General Surgery and Orthopedic Surgery residency at Columbia University Medical Center. He completed his Adult and Pediatric Spinal Surgery fellowship at Washington University Medical Center. He is board certified in Orthopedic Surgery.

Dr. Leesa Galatz is a Consultant Physician for Shoulder and Elbow Surgery at John Cochrane Veteran's Administration for 23 years. She is the Professor and Systems Chair of Shoulder and Elbow Surgery at Icahn School of Medicine for seven (7) years. She was an Instructor in the Department of Orthopedic Surgery at the Washington University School of Medicine for three (3) years. She was an Assistant Professor and Professor in the Department of Surgery at Barnes Jewish Hospital for seven (7) years. She received her medical degree from George Washington School of Medicine in Washington DC. She completed her residency in Orthopedic Surgery at George Washington University Hospital. She completed her fellowship at the University of Pennsylvania. She is board certified in Orthopedic Surgery.

Dr. James Gladstone is the proposed Medical Director. He is an Attending Physician and Chief of the Division of Sports Medicine in the Department of Orthopedic Surgery of the Mount Sinai Health System for 26 years. He is an Associate Professor at the Icahn School of Medicine at Mount Sinai for 17 years. He was previously at Assistant Professor for nine (9) years. He received his medical degree from Tufts University School of Medicine. He completed his Orthopedic Surgery residency at The New York Orthopedic Hospital. He completed his Sports Medicine fellowship at the American Sports Medicine Institute. He is board certified in Orthopedic Surgery with a sub-specialty in Sports Medicine.

Dr. Brett Hayden is an Assistant Professor in the Department of Orthopedics at Icahn School of Medicine at Mount Sinai for three (3) years. He received his medical degree from Albany Medical Center in 2013. He completed his Orthopedic Surgery residency at Tufts University. He completed his Adult Reconstructive fellowship at Brigham and Women's Hospital. He completed his Musculoskeletal Oncology fellowship at UT Health Sciences.

Dr. James Lin is an Assistant Professor of Orthopedic Surgery in The Mount Sinai Spine center for three (3) years. He received his medical degree from Mount Sinai School of Medicine in 2012. He completed his Orthopedic Surgery residency at Columbia University Medical Center. He completed his Adult and Pediatric Comprehensive Spine fellowship at The Spine Hospital at Columbia University Medical Center.

Dr. Kazimierz Komperda is the Assistant Professor of Orthopedic Surgery at Mount Sinai for four (4) years. He was an Assistant Surgeon at Congress Orthopedic Associates for six (6) months. He was a per-diem Orthopedist at Main Line Health Orthopedics for 10 months. He received his medical degree from the University of Pennsylvania. He completed his General Surgery and Orthopedic Surgery residency at Temple University. He completed his Sports Medicine fellowship at Congress Orthopedic Associates. He is board certified in Orthopedic Surgery.

Dr. Vicki LoPachin is the Chief Medical Officer and Senior Vice President of Mount Sinai Health System for nine (9) years. She was the previous Medical Director of North Shore University Hospital for five (5) years. She was an Internal Medicine Physician in private practice for 10 years. She is an Assistant Professor at Mount Sinai School of Medicine for eight (8) years. She was an Assistant Professor at Hofstra North Shore LIJ School of Medicine for three (3) years. She was an Assistant Clinical Professor at the Mount Sinai School of Medicine for four (4) years. She was a Clinical Instructor at Mount Sinai School of Medicine for seven (7) years. She is an Attending Physician at Mount Sinai for 25 years. She was an Attending Physician at North Shore University Hospital for six (6) years. She was an Attending Physician at Jewish Home and Hospital for 11 years. She received her medical degree from SUNY Stony Brook. She completed her Internal Medicine residency at Mount Sinai Hospital. She is board certified in Internal Medicine. Dr. LoPachin discloses membership interest in the following healthcare facilities:

<i>Carnegie Hill Endoscopy</i>	<i>07/2017-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>07/2017-present</i>
<i>East Side Endoscopy</i>	<i>07/2017-present</i>
<i>Liberty Endoscopy Center</i>	<i>07/2017-present</i>
<i>Northern Westchester Facility Project</i>	<i>12/2018-present</i>
<i>Manhattan Surgery Center</i>	<i>07/2017-present</i>

West Side GI
The Endoscopy Center of New York

07/2017-present
12/2017-present

Dr. Nolan Maher is the Assistant Professor of Adult Reconstruction Surgery for over two (2) years. He completed his medical degree at Loyola University Chicago Stritch School of Medicine. He completed his Orthopedic Surgery residency at Mount Sinai Hospital. He completed his Adult Reconstruction Surgery fellowship at NYU Insall Scott Kelly Institute. He is board eligible.

Dr. Calin Moucha is the System Chief of Joint Replacement Surgery in the Department of Orthopedic Surgery at Mount Sinai for two (2) years. He is the Chief of the Division of Adult Reconstruction and Joint Replacement at Department of Orthopedic Surgery at Mount Sinai for three (3) years. He has previously been an Assistant Professor and Associate Professor at the Icahn School of Medicine for 13 years. He is the current Professor of the University at the Icahn School of Medicine. He was the previous Chief in the Division of Joint Replacement at the University of Medicine and Dentistry of New Jersey. He was the Assistant Professor at the University of Medicine and Dentistry of New Jersey for six (6) years. He received his medical degree from Mount Sinai School of Medicine. He completed his General Surgery and Orthopedic Surgery residency at Roosevelt Hospital Center. He completed his Orthopedic Oncology Service residency at Memorial Sloan-Kettering Cancer Center. He completed his Orthopedic Sports Surgery residency at Beth Israel Medical Center. He completed his Pediatric Orthopedic Surgery Service at the Alfred I. duPont Hospital for Children. He is board certified in Orthopedic Surgery.

William Mulhall is a Partner at Merritt Healthcare Holdings, LLC for 19 years. He is responsible for all clinical and operational activities of the organization. His areas of focus include facility design, development and construction, accreditation, clinical operations, regulatory compliance, equipment planning, staffing, and policy development. He was the Previous Director of Nursing of Wilton Surgery Center for five (5) years. He was responsible for managing, directing, and supervising all peri-anesthesia nursing and ancillary clinical services including central processing, materials management, and radiology services. He is responsible for drafting, implementing, and enforcing all standard operating procedures in conjunction with the Facility Administrator, staffing, and hiring of all clinical personnel, oversight, and maintenance of Quality Assessment, and Performance Improvement. He was the Chief Procedure Nurse of Pain Management Associates of Connecticut for three (3) years. He was a Special Care Unit Staff Nurse, Charge Nurse, and Cardiovascular Suite Nurse at The Stamford Hospital for two (2) years. He provided daily nursing care to patients on a monitored 20 bed cardio-respiratory/surgical step-down unit. He was responsible for staffing, shift coordination, delegation of duties to ancillary staff members, and interaction and coordination with interdisciplinary team members. He was the Operations Manager, Director of Volunteers and Director of Operation of Stamford EMS for six (6) years. He managed and directed all operations staff and functions of a 60 employee, 50 volunteer not for profit and regional emergency medical service serving a population of 120,000. Mr. Mulhall discloses ownership interest in the following healthcare facilities:

<i>River Valley ASC, LLC</i>	<i>2012-2016</i>
<i>Surgical Center of Connecticut, LLC</i>	<i>2013-2016</i>
<i>Western Connecticut Orthopedic Surgical Center</i>	<i>2013-2017</i>
<i>Ellicott City ASC</i>	<i>2013-2017</i>
<i>Bloomfield ASC LLC</i>	<i>2015-2021</i>
<i>Summer Street ASC LLC</i>	<i>2015-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Orthopedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Northern Westchester Facility Project LLC</i>	<i>2019-present</i>
<i>UWS ASC LLC</i>	<i>2021-present</i>

Dr. Bradford Parsons is an Attending Orthopedic Surgeon at Mount Sinai Hospital for 17 years. He is an Attending Orthopedic Surgeon at Elmhurst Hospital Center for 17 years. He was an Orthopedic Surgeon at North General Hospital for four (4) years. He was the Chief of Orthopedic Surgery for over two (2) years at North General Hospital. He is an Orthopedic Surgeon at Maimonides Medical Center for 11 years. He received his medical degree from the University of Vermont College of Medicine. He completed his Orthopedic Surgery residency at Mount Sinai Hospital. He completed his Shoulder and

Elbow Surgery fellowship at the Hospital of the University of Pennsylvania. He is board certified in Orthopedic Surgery. Dr. Parsons disclosed ownership in the following healthcare facilities:

Midtown Surgery Center

06/2013-present

New York Center for Ambulatory Care

06/2021-present

Michael Pastier is the Senior Vice President and CFO of the Mount Sinai Health System for seven (7) years. He was the Senior Vice President and CFO of Mount Sinai Hospital 12 years. He was also Vice president of Financial Planning and Reporting for three (3) years. And the Director of Finance for 13 years. He is responsible for financial management, planning, organization, direction, and control of the health system. He manages over 700 finance employees, oversees operating and capital budgeting processes, manages all cash and liquidity, and is responsible for preparation of monthly financial statements, determines revenue impact of new programs and program enhancements, and ensures the operation and liquidity supports the strategic mission of the institution. He also ensures efficient billing and collections for each hospital and standardized reporting from several different systems. He was a Senior Auditor at Deloitte & Touche for three (3) years. He managed several audits of hospitals ranging from 100-800 beds, consulted with several healthcare organizations on reimbursement issues and on maximizing revenue, and supervised and delegated assignments to staff. Mr. Pastier discloses membership interest in the following healthcare facility:

HealthFirst

12/2021-present

Denise Prince is the Senior Vice President of Population Health at Mount Sinai Health System for five (5) years. She is also the Chief Operating Officer, of Mount Sinai Health Partners, and New York Medical Partners ACO, LLC. She serves as a member of the population health leadership team and partners with the CMO for Population Health to innovate and transform clinical operations to create, maintain, and optimize population health infrastructure in support of value-based care principles. She builds, develops, and manages the clinical operations team to drive reliable outcomes on key performance indicators and value-based contracts. She was the System Vice President of Value based Care and Vice President of Population Health at Geisinger Health System five (5) years. She also held the roles of CEO Keystone ACO and CEO of Sun Home Health and Hospice. She co-led Geisinger's participation in Physician Group Practice Transition demonstration; partnered with CMS to refine key model attributes including benchmarking, data access, and quality measures. She spearheaded the creation of the Keystone ACO (KACO) joint venture to support population health, oversaw KACO joint venture governance and operations team, tracked and commented on CMS proposed rules and CMMI innovation models, negotiated data and analytics contracts with vendors in support of alternate payment models, and led CMMI Bundled Payment for Care Improvement Initiatives. She was the Founder, Managing Partner, COO, and CEO of Geisinger Ventures for eight (8) years. She proposed, founded, and implemented Geisinger Ventures to access outside capital and maximize the benefit of intellectual property, for profit businesses, and corporate relationships. Additionally, she vetted proposals, conducted due diligence, created business plans, and launched new businesses. The Geisinger Ventures team negotiated and implemented strategic partnerships. She led teams that raised more than \$22M from outside sources to support the system's innovation and mission. She was the Senior Vice President of Geisinger Diversified Services 12 years. She directed and managed all aspects of operations and strategy for a portfolio of for-profit and not for profit services in partnership with clinical enterprise and insurance leaders. She was a Director of Management Services of Geisinger Diversified Services for two (2) years. She directed all retail pharmacies, home infusion pharmacies, and emergency support services. She consulted to outside hospitals to align with system strategies. Mrs. Prince discloses membership interest in the following healthcare facilities:

New York Medical Partners ACO

05/2107-present

Dr. Chanland Roonparpant is an Assistant Professor of Neurological Surgery at Mount Sinai for eight (8) years. He was an Assistant Professor of Neurologic Surgery at Continuum Health Partners for six (6) years. He was an Attending Neurologist at North Shore-LIJ for two (2) years. He completed his medical degree at New York University School of Medicine. He completed his General Surgery and Neurological Surgery residency at Albert Einstein College of Medicine. He completed an Orthopedic Spine Surgery

fellowship at the Spine Institute at Beth Israel Medical Center. He is board certified in Neurological Surgery.

Sarah Sanford is the President of Finance of Merritt Healthcare for six (6) years. She is responsible for business operations of the affiliated ASCs. She was the Vice President of Firmwide Planning and Analysis of JP Morgan Chase for two years. She was responsible for consolidating firmwide results to senior management. She was the Manager of Financial Planning and Analysis at Moody's Corporation for two (2) years. She was responsible for financial analysis and budgeting for the corporate finance group. She was the Manager of Finance at Traveler's Insurance Company for seven (7) years. She was responsible for various financial reporting and budgeting roles for multiple lines of business.

Matthew Searles is the Founding Managing Director and Founding Partner of Merritt Healthcare Advisors for over 21 years. He is responsible for successfully completing over \$3B in healthcare transactions since 2001, spanning over 75 separate transactions. He is a leading developer and manager of ASCs in Eastern New York. He has developed 20 ASCs that perform over 75,000 annually. Mr. Searles discloses ownership information in the following healthcare facilities:

<i>River Valley ASC</i>	<i>2013-2016</i>
<i>Surgical Center of Connecticut, LLC</i>	<i>2013-2016</i>
<i>Western Connecticut Orthopedic Surgical Center</i>	<i>2013-2017</i>
<i>Ellicott City ASC</i>	<i>2013-2017</i>
<i>Bloomfield ASC, LLC</i>	<i>2015-2021</i>
<i>Summer Street ASC, LLC</i>	<i>2015-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Orthopedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Northern Westchester Facility Project, LLC</i>	<i>2019-present</i>
<i>UWS ASC, LLC</i>	<i>2021-present</i>

Richard Searles is a Partner and Chief Financial Officer at Merritt Healthcare for 14 years. He oversees business operations for Merritt's affiliated surgery center, including personal ownership in 12 ASCs in the Northeast. He has served as a Manager or Consultant for over 36 surgery centers. His duties include development, finance, and serving as a Board Member. He is a Partner in Merritt Healthcare Advisors for 14 years. He represents over 100 physicians, surgery centers, and surgical hospitals. He also provides analysis of operations and financials, as well as long term strategic planning. He is a Board Member and Treasurer of the Connecticut Associations of Ambulatory Surgery Centers for six (6) years. Mr. Searles discloses ownership interest in the following healthcare facilities:

<i>UWS ASC LLC</i>	<i>2021-present</i>
<i>Northern Westchester Facility Project LLC</i>	<i>2019-present</i>
<i>Orthopedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Summer Street ASC</i>	<i>2015-2021</i>
<i>Bloomfield ASC LLC</i>	<i>2015-2021</i>
<i>Ellicott City ASC LLC</i>	<i>2013-2017</i>
<i>Western Connecticut Orthopedic Surgery Center</i>	<i>2013-2017</i>
<i>Surgical Center of Connecticut LLC</i>	<i>2013-2016</i>
<i>River Valley ASC</i>	<i>2012-2016</i>

Brent Stackhouse is the Managing Director of Mount Sinai Ventures for eight (8) years. He is the head of subsidiary holding companies responsible for the development, acquisition, and management of ambulatory care delivery joint ventures. He is responsible for sourcing, diligence, and in NYS DOH licensed care delivery companies. He grew the portfolio from 14 to 20 joint ventures, with seven (7) exits, increasing investment returns by 270%. He was the Executive Director of Strategy for the Primary Care Information Project in the Health Care Access and Improvement Division of the New York City Department of Health and Mental Hygiene for five (5) years. He was responsible for overseeing 60 direct reports across six (6) teams responsible for finance, operations, business development, marketing, and

strategy. He turned around a failing \$23M federal grant program, improved deliverables 500%, elevated staff morale, and increased national ranking from 59th to 4th in 15 months. He secured \$50M in federal, states, and foundation funding within three years by developing new product lines, marketing strategies, metrics based tracking, and strategic partnerships. Mr. Stackhouse discloses membership interest in the following healthcare facilities:

Carnegie Hill Endoscopy	09/2013-present
South Brooklyn Endoscopy Center	09/2013-04/2021
East Side Endoscopy	09/2013-present
Liberty Endoscopy Center	01/2017-10/2021
Yorktown Center for Special Surgery	12/2018-present
Manhattan Surgery Center	09/2013-present
Upper West Side Endoscopy Center	07/2021-present
West Side GI	09/2013-present
The Endoscopy Center of New York	12/2017-present
Hudson Surgery Center	01/2022-present
Empire State ASC	04/2018-11/2019
North Queens Surgical Center	04/2016-11/2019
Island ASC	09/2013-present

Dr. Sherwin Su is an Attending Orthopedic Surgeon at Summit Health for one (1) year. He was an Attending Orthopedic Surgeon at High Mountain Orthopedics for four (4) years. He completed his medical degree at SUNY Downstate. . He was an Attending Physician at St. Luke's Roosevelt Hospital for 10 years. He was an Assistant Clinical Professor at Columbia College of Physician and Surgeons for 10 years. He received his medical degree from Case Western Reserve University. He completed his Orthopedic Surgery residency at Northwestern University. He completed his Adult Reconstruction fellowship at Rush University. He is board certified in Orthopedic Surgery.

Dr. Douglas Unis is the Founder and Chief Medical Officer of Monogram Orthopedics, Inc. for seven (7) years. He is a Professor at the Icahn School of Medicine for eight (8) years. He an Attending Physician at Mount Sinai Health System for eight (8) years

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

Dr. Adler disclosed multiple malpractice suits. The first malpractice suit was filed on April 13, 2016, by the patient against Dr. Adler, other providers, and the hospitals. The patient underwent a right total hip arthroplasty in another institution. Postoperatively, she developed a MRSA infection and had cement removal with an antibiotic spacer inserted followed by a six-week course of Vancomycin. She was referred to Dr. Adler for follow up. On November 11, 2013, Dr. Adler performed a revision total hip arthroplasty with antibiotic spacer insertion. The patient was transferred to the ICU post operatively for pain medication oversedation. On November 25, 2013, she began to complain of fullness in the left ear and a CT was performed. On return, she was noted to be vomiting, unable to hear out of the left ear, and a left beating nystagmus was noted. The stroke team was notified. Another CT was performed. On November 27, 2013, ENT was consulted and noted severe ototoxicity from Vancomycin. ENT ordered tests to evaluate hearing loss and Prednisone was ordered. On December 3, 2013, she was evaluated by ENT again who noted that Vancomycin was less like to be the reason for the hearing loss. The patient was discharged on December 23, 2013. Dr. Adler was dismissed from the case.

- The second malpractice case was filed on December 5, 2015, by the patient against Dr. Adler. The patient alleged improper surgery. Specifically, the patient presented to Dr. Adler with wear of hip replacement many years out from surgery. Dr. Adler performed the revision, and she was discharged. She developed pain at home and returned to the emergency room. An x-ray revealed

the revision component had shifted. Dr. Adler performed another revision surgery, and the patient was subsequently discharged from the hospital. Dr. Adler paid the patient \$200K.

- The next malpractice suit was filed on October 25, 2016, by the patient against Dr. Adler, the outpatient practice, and two hospitals. The patient alleged nerve injury during hip surgery. The patient had a total right hip replacement on September 27, 2014. The patient experienced a known complication, nerve injury. The hospital made the decision to settle the matter on Dr. Adler's behalf for \$290K with no admission of wrongdoing by Dr. Adler.
- The next malpractice suit was filed on August 26, 2019, by the family of the patient. The suit alleged death of the secondary to a C.diff infection six (6) days following bilateral knee replacement surgery. The patient had elective bilateral knee replacement surgery performed on January 5, 2018. She was transferred to rehab on January 8, 2018. While at rehab, she complained of acute abdominal pain, tachycardia, tachypnea, and altered mental status. The patient was transferred back to the hospital on January 10, 2018, after remaining tachycardic in the rehab overnight. A workup revealed that the patient had a partial bowel obstruction. She worsened over a 24-hour period was taken emergently to the OR for an exploratory laparotomy. She had a distended bowel with no evidence of necrosis or perforation and no gross peritonitis. Her abdomen was left open, and a vacuum dressing was applied. She was transported to the Surgical ICU, intubated, and on pressor support. She was transferred to the Tisch ICU because of her condition. She remained hypotensive, was found to be profoundly acidotic, and was positive for C-diff. A decision was made to perform a bedside abdominal exploratory surgery due to the patient's deteriorating condition. On January 11, 2018, the patient was taken back to the OR for exploratory laparotomy due to increased lactic acid, pressor requirements, and hemodynamic instability. She continued to remain hemodynamically unstable post-operatively and the family was consulted to make the patient a DNR. On January 12, 2018, the patient died. The case is currently in the discovery process.
- The last malpractice suit was filed on May 11, 2021, by the patient against Dr. Adler, the outpatient practice, and the hospitals. The patient alleged improper insertion of the hip replacement. The patient also alleges that they continue to be in pain following the hip replacement. The suit is currently in the discovery phase.
- Dr. Saad Chaudhary disclosed two malpractice lawsuits. The first suit occurred on August 25, 2014. The patient alleged inappropriate anticoagulation post-surgery. Dr. Chaudhary performed a multi-level thoraco-lumbar decompression and fusion on a morbidly obese male with spinal cord compression and an incomplete spinal cord injury. On August 25, 2016, the patient developed bilateral lower extremity DVTs that led to occlusion of his inferior vena cava under his IVC filter. This resulted in compartment syndrome and bilateral lower extremity amputation due to multi system organ failure. The claims were dismissed voluntarily on March 22, 2022.
- The second suit occurred on April 30, 2018. The patient alleged that further surgery needed to be performed, specifically a laminectomy. On April 30, 2018, a minimally invasive and indirect decompression and fusion was performed on the patient. A consent and detailed documentation exist in the chart. The patient and her husband claim that a laminectomy needed to be performed. The issues are currently pending a formal legal investigation. A motion for summary judgment and dismissal is also being considered.

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

- The Department issued a Stipulation and Order (S&O) dated October 4, 2022, and fined Mount Sinai West \$10,000.00 based on findings from a survey that was completed June 15, 2020. Deficient practice was cited in the area of Patient Rights.

- The Department issued a Stipulation and Order (S&O) dated May 15, 2017, and fined Mount Sinai \$2,000.00 based on findings from a survey that was completed on January 25, 2016. Deficient practice was cited in the area of Patient Rights.

Out of state facilities:

Connecticut:

- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Surgical Center of Connecticut, LLC on February 17, 2016. Deficient practice was cited in the area of Chief Executive Officer and/or Professional Staff and/or Records/Reports. Specifically, the facility failed to ensure that an unintended retention of a foreign object in a patient following surgery was reported and/or the surgical record was completed accurately. The foreign object retention not being retrieved was reflected in charting but was not reported to the Department per state statute. A review of the surgical count identified that all the instruments were accounted for, and the counts were correct however, this piece of equipment was not routinely included in equipment counts allowing it to be retained by the patient.
- The Facility of Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Surgical Center of Connecticut, LLC on May 19, 2016. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Records and Reports and/or Nursing Staff and/or General. Specifically, the facility failed to ensure that instruments are inspected for integrity prior to wound closure. The patient had surgery on December 29, 2015, and an x-ray on March 21, 2016, identified that a piece of guide wire pin had been left in the patient.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Naugatuck Valley Endoscopy Center, LLC on June 10, 2016. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Records and Reports and/or General. Specifically, the facility failed to ensure that the anesthesia consent and/or record was accurate and/or complete and/or the anesthesia provided was in accordance with facility policy. The facility policy for levels of sedation identified that no general anesthesia will be administered for endoscopic procedures. The records of six (6) patients recorded the administration of general anesthesia.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Guilford Surgery Center on January 24, 2018, and cited the facility under Ownership and Administration and/or Chief Executive Officer and/or Profession Staff. Specifically, Anesthesiologists #1, #2, #3 performed epidural steroid injections (ESI) on three patients. These Anesthesiologists were not credentialed to be performing ESI injections on the patients by the board. Additionally, the Facility Policy and Procedure manual that was reviewed and approved by the board on January 18, 2018, did not include pain injection procedures.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to the Naugatuck Valley Endoscopy Center, LLC on September 28, 2018. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Nursing Staff and/or General. Specifically, the facility failed to ensure the correct lens was implanted for one patient. A time out procedure was completed, and the error was not picked up.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Naugatuck Valley Endoscopy Center, LLC on September 10, 2019. Deficient practice was cited in the area of Ownership and Administration and/or Professional Staff and/or Nursing Staff and/or General. Specifically, the facility failed to ensure that the manufacturer recommendations were followed when drying endoscopes.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Summer Street ASC LLC on December 18, 2020. Deficient practice was cited in the area of Owner and Administration and/or Chief Executive Officer and/or Professional Staff. Specifically, the facility failed to ensure that the physician remained in the facility until the patient was awakened from anesthesia and transported to the PACU in stable condition. The facility also failed to ensure the procedure was performed as per the surgical consent.

- The Facility Licensing and Investing Section of the Department of Public Health made an unannounced visit to Bloomfield ASC on July 24, 2019. Deficient practice was cited for Surgical Services. Specifically, the Surgeon and CRNA failed to effectively communicate the timing of electrocautery and oxygen resulting in the concurrent use of the two. The combination of electrocautery in an oxygen rich environment area resulted in a fire and injury to the patient. Subsequent to the event, the facility failed to ensure all the surgical staff were educated on fire safety protocols and the safe use of electrocautery. During the period after the fire and staff not being educated, 81 surgeries were performed which resulted in an Immediate Jeopardy.
- During the above survey the facility also failed the Life Safety Code survey due to failure of the facility staff to execute the Fire Safety Plan. Specifically, the staff failed to activate the fire alarm to activate emergency services/personnel and to warn other building occupants.
- The Facility Licensure and Investigation Section of the Department of Public Health made an unannounced visit to Guilford ASC on January 28, 2020. Deficient practice was cited in the area of Chief Executive Office and/or Professional Staff. Specifically, the facility failed to ensure the quarterly reviews for radiology safety were being conducted by the Radiology Officer and the Radiology Physicist recommendations were evaluated or implemented from 2018. The facility's c-arm was not equipped with the proper required components with failure to do so leading to high x-ray exposure.
- The Facility Licensing and Investigating Section of the Department of Public Health made an unannounced visit to Bloomfield ASC on October 1, 2021. Deficient practice was cited in the area of failing to ensure an adverse event was reported to the state agency in a timely manner. Specifically, three patients had the wrong lens power implanted in their eye and one patient had the wrong lens implanted in their eye. The Officer Manager had reported the incident to the surgery center five days after the event and the state agency was not notified until 28 days after the event.

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center plans to work closely with patients to educate them regarding the availability of primary care services in the area offered by local providers, including the array of services offered by Mount Sinai West. Prior to leaving, each patient will be provided with information regarding the availability of local primary care services. The members of the Center are committed to serving all patients without regard to race, se, age, religion, creed, sexual orientation, source of payment, ability to pay or other personal characteristics. The operating budget projects includes 3% Medicaid and that 2% of procedures will be for charity care, reduced compensation, or uncompensated care. The Applicant is committed to the development of a formal outreach program directed to the members of the local community. The Applicant submitted letters of support from two FQHCs within the proposed catchment area. As any partnership with FQHCs and other providers, the Center will agree to waive all or a portion of its fees for the patients who qualify for charity care and will allow the physicians from these facilities to become credentialed at the Center. As part of the Center's commitment to enhance access for the underserved populations, the Center will contract with HealthFirst, Fidelis, United Community Plan, AmidaCare, and Empire Health Plus to provide ambulatory surgical services at the Center. . The Center also plans to coordinate its services with inpatient and or specialty ambulatory facilities to which a patient is referred. The Applicant will also develop a Quality Assurance Program that will include an analysis of the effectiveness of the coordination efforts.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification. The Applicant will not consider joining any Accountable Care Organization (ACO) at this time.

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)(b).

Financial Analysis

Total Project Cost and Financing

The total project cost for New Construction, fixed and movable equipment, is estimated at \$15,131,060, broken down as follows.

New Construction	\$7,197,706
Design Contingency	784,550
Construction Contingency	784,550
Architect/Engineering Fees	941,460
Other Fees	65,284
Movable Equipment	4,275,000
Financing Costs	50,000
Interim Interest Expense	299,961
Application Fees	2,000
Additional Processing Fees	<u>82,755</u>
Total Project Cost	\$15,131,060

Project costs are based on a construction start date of 4/1/2023, with an eight-month construction period.

The financing plan is as follows:

Equity- members*	\$1,932,620
Equipment loan (7.72%-3.72% swap rate as of 1/11/2023 plus 4.00% for 5 years)	\$1,200,000
Bank Loan (6.0 interest, 10-year term)	<u>\$11,998,440</u>
Total	\$15,131,060

*\$49,700 cash and \$1,882,920 in landlord equity through tenant allowance.

Valley National Bank has provided a letter of interest for the mortgage and Dext Capital has provided a letter of interest for the equipment loan. BFA Attachments A, Net Worth Summary of the Proposed Members, shows sufficient resources overall to meet the equity requirement for the project.

Operating Budget

The applicant has submitted the first (2023) and third year (2025) projected operating budgets, in 2022 dollars, as summarized below:

Revenues:	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure.</u>	<u>Total</u>	<u>Per Procedure.</u>	<u>Total</u>
Medicaid – MC	\$2,508	191,377	\$2,433	\$197,033
Medicare – FFS	\$5,169	1,314,958	\$5,168	\$1,394,838
Medicare – MC	\$4,394	223,543	\$4,393	237,123
Commercial - FFS	\$8,270	7,153,371	\$8,269	7,587,921
Commercial – MC	\$7,495	8,580,100	\$7,494	9,101,321
All Other	\$2,584	262,992	\$2,584	<u>278,968</u>
Bad Debt		<u>(354,527)</u>		<u>(375,944)</u>
Total Revenues:		\$17,371,813		\$18,421,260
Expenses:				
Operating	\$5,101	\$12,977,582	\$5,007	\$13,513,405
Capital	<u>\$1,472</u>	<u>3,744,717</u>	<u>\$1,381</u>	<u>3,726,939</u>
Total Expenses:	\$6,573	\$16,722,299	\$6,388	\$17,240,344
Net Income (Loss)		<u>\$649,514</u>		<u>\$1,180,916</u>
Procedures		2,544		2,699

The following is noted with respect to the submitted ASC budget.

- Expense assumptions are based upon similar size and type of ambulatory surgery ASCs as well as experience of proposed member in operating ASC.
- All reimbursement rates are based upon the CPT-4 codes provided in the MD volume letters of support. Each CPT-4 code is associated with a specific procedure and an analysis of CPT-4 code reimbursement was performed for both Medicare and Medicaid FFS, separately. Medicaid MC was estimated to be reimbursed at 85% of the Medicaid FFS rate. All other payers, including Medicare MC, Commercial FFS, Commercial MC and All Other payers are reimbursed based upon a percentage of the Medicare FFS rate.
- Utilization assumptions are supported by letters from the participating physicians who will be utilizing the ASC and is based on their current experience. The proposed operator is committed to providing 2% charity care to patients.
- Utilization by payer source for years one and three is summarized below:

Payor:	Year One (2023)		Year Three (2025)	
	Procedures	%	Procedures	%
Medicaid - MC	76	3.00%	81	3.00%
Medicare - FFS	254	10.00%	270	10.00%
Medicare -MC	51	2.00%	54	2.00%
Commercial-FFS	865	34.00%	918	34.00%
Commercial – MC	1,145	45.00%	1,215	45.00%
All Other	102	4.00%	108	4.00%
Charity Care	51	2.00%	54	2.00%
Total	2,544	100.00%	2,699	100.00%

Lease Rental Agreement

The applicant has submitted an executed Lease Agreement for the proposed site, the terms of which are summarized below:

Date:	March 1, 2021
Premises:	The entire 6 th floor, 7 th floor, and 8 th floor and portions of the ground floor, the 2 nd floor, the 4 th floor, and the 5 th floor of the building located at 787 11 th Avenue, New York, New York
Landlord:	Georgetown Eleventh Avenue Owners, LLC
Lessee:	Icahn School of Medicine at Mount Sinai
Term:	30 years
Rental:	\$10,787,882.15 1st year (\$898,990.18 per month); \$9,300,787.50 2 nd year (775,065.63 Monthly) with an annual 2.5% increase from years 3-31
Provisions:	Tenant is responsible for taxes, insurance, utilities, and maintenance.

The Mount Sinai School of Medicine of the City University of New York is currently known as Icahn School of Medicine at Mount Sinai.

Sub-Lease Agreement

The applicant has submitted a draft sub-lease rental agreement for the site to be occupied, summarized below:

Premises:	Approx. 19,826 sq. ft. located on 6 th floor at 787 11 th Avenue, New York, New York
Sub-Lessor:	Icahn School of Medicine at Mount Sinai
Sub-Lessee:	787 Ortho ASC, LLC
Term:	15 years with 2 additional 5-year options
Rental:	Base rent for total leased space is \$1,831,294 per year (\$152,607.83 per month) for the first year. Rent will increase by 2.5% of the base year rent beginning in year 2 and thereafter.
Provisions:	Tenant is responsible for utilities and maintenance.

An affidavit has been submitted from 787 Ortho, LLC confirming that the lease between Georgetown Eleven Avenue Owners, LLC and Icahn School of Medicine at Mount Sinai is an arm's length lease, and the Sublease is a non-arm's length agreement. The sublandlord and subtenant are related in that they are both corporately affiliated with Mount Sinai Health System, Inc.

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

Administrative Services Agreement

The applicant has provided a draft administrative services agreement, summarized below

Operator:	787 Ortho ASC, LLC
Contractor:	Merritt Healthcare Holdings, LLC
Term:	5 years with unlimited automatic 1-year renewals
Services of contractor:	Assistance to established Operator's administrator, consulting/advisory services related to administration and operational functions, regulatory monitoring, compliance and quality assurance, oversight of all functions related to accounts receivables, develop, and implement a marketing plan and operate, supervise, and oversee all functions related to billing and Preparation of health facility assessments, Review rate sheets and assisting with filing necessary appeals.
Compensation:	\$250,000 for year 1 with an annual 3% increase for every year thereafter

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant has submitted an executed 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.

Capability and Feasibility

Total project costs of \$15,131,060 will be funded via \$1,200,000 equipment loan at the previously stated terms, \$49,700 in members equity, \$1,882,920 In landlord equity through tenant allowance and a 10-year self-amortization loan for \$11,998,440 at the previously stated terms. Valley National Bank has provided a letter of interest for the mortgage loan and Dext Capital has provided a letter of interest for the equipment loan.

BFA Attachments A, B and C present the members' net worth summary, the 2020-2021 certified, and the Internal Financial as of 9/30/22 for Mount Sinai Health Care System and Affiliates, which show sufficient resources to meet the equity requirements. The applicant will sublease the space from Icahn School of Medicine at Mount Sinai via a non-arm's length lease arrangement. There is a relationship between the sublandlord and the proposed operator in that they have common membership.

The working capital requirement is estimated at \$2,873,391 based on two months of third-year expenses. BFA Attachments A, Net Worth of Proposed Members, shows sufficient resources to meet the working capital requirement.

BFA Attachment B presents the Mount Sinai Hospitals 2020-2021 certified financial statements, which show an average positive working capital position, a positive average net asset position, and an average net income of \$179,969,500 for 2020-2021. BFA Attachment C presents the Mount Sinai Hospitals internal financial statements through 9/30/2022, and shows a positive working capital position, a positive net asset position, and a net loss of \$168,437,000. The loss in 2022 was due to a \$319.2M unrealized loss on investments due to market declines in the first nine months of the year. The hospital also had to deal with increased staffing costs due to staffing shortages and higher costs associated with COVID-19 patients and inflationary pressures.

BFA Attachment D, 787 Ortho ASC, LLC's pro forma balance sheet shows the entity will have \$6,006,011 in equity as of the first day of operations. The budget appears reasonable.

Conclusion

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

Attachments

BHFP	Map
BFA Attachment A	Net Worth Summary of Proposed Members
BFA Attachment B	2021 Certified Financial Statement of Mt. Sinai Health Care system and Affiliates
BFA Attachment C	9/30/2022 Internal Financial Statement of Mt. Sinai Health Care system and Affiliates
BFA Attachment D	Pro Forma Balance Sheet of 787 Ortho ASC, LLC
BFA Attachment E	Organizational Chart of 787 Ortho ASC, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new multi-specialty ambulatory surgery center at 787 11th Avenue, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

222024 B

FACILITY/APPLICANT:

787 Ortho ASC LLC d/b/a Peakpoint Midtown
West ASC

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed construction loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA].
6. Submission of a photocopy of the amended and executed copy of the Master Lease between Georgetown Eleventh Avenue Owners, LLC and the ICAHN School of Medicine at Mr. Sinai, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Sub-Lease Agreement between the ICAHN School of Medicine at Mount Sinai and 787 Ortho ASC, LLC, acceptable to the Department [CSL]
8. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
9. Submission of a signed agreement with an outside, independent entity satisfactory to the Department
to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

10. Submission of an executed transfer and affiliation agreement, acceptable to the Department. [HSP]
11. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **September 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 **August 1, 2023**, and construction must be completed by **June 1, 2024**, 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/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of 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]

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



Project # 222036-B
**Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery
Center**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** October 6, 2022

Executive Summary

Description

Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery Center (Excelsior) is seeking to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC), as a multispecialty freestanding ambulatory surgery center (FASC). The proposed center will be in renovated space at 833 65th Street in Brooklyn providing ophthalmology and gastroenterology surgery services. Upon approval of this application, the center will be known as Excelsior Ambulatory Surgery Center.

The proposed operator members are part of the Excelsior Integrated Medical Group (EIMG) practice which has 49 primary care and physician extenders, 125 specialists, 19 divisions, 21 primary care sites, and 27 specialty sites.

Excelsior ASC, LLC has entered into a proposed lease agreement with Great Empire 65 Realty, LLC for site control of the facility.

The proposed members and their ownership percentages are as follows:

Excelsior ASC, LLC	
George Hall, M.D.	20.0%
Dashi Bao, M.D.	20.0%
Ann Long, M.D.	20.0%
Jiansheng Zhao, M.D.	20.0%
Yanfeng Chen, M.D.	20.0%
Total	100.0%

Kevin Tin, M.D., who is board-certified in Family Medicine, will serve as the ASC's Medical

Director. All proposed members will be practicing physicians at the Center and are Board-Certified in their respective specialties. NYU Langone Hospital – Brooklyn, 1.6 miles (7-minute travel time) from the proposed facility, has communicated support for the project and signed a transfer agreement.

OPCHSM Recommendation

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

Need Summary

The applicant projects 4,887 procedures in Year One and 7,638 in Year Three, with Medicaid 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 total project cost of \$9,165,990 will be met with \$7,587,412 of leasehold improvements, \$157,858 in members' equity, and a seven-year movable equipment loan for \$1,420,720 at 6% interest.

	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>2024</u>	<u>2026</u>
Revenues	\$2,908,640	\$4,822,344
Expenses	<u>\$2,890,141</u>	<u>\$3,884,422</u>
Net Income (Loss)	\$18,499	\$937,922

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

1. This project must be completed by **June 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 **September 1, 2023**, and construction must be completed by **March 1, 2024**, 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 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]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 9, 2023

Need Analysis

Background and Analysis

Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery Center is seeking approval to establish a multi-specialty ambulatory surgery center (ASC) to be located at 833 65th Street, Brooklyn, 11220 in Kings County. The center will provide ophthalmology and gastroenterology surgery services. The center will have two operating rooms and four procedure rooms.

The service area consists of Kings County. The population of Kings County in 2020 was 2,736,074 and is projected to increase slightly to 2,810,876 by 2025. According to Data USA, in 2019, 93.7% of the population of Kings County had health coverage as follows:

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

The number of projected procedures is 4,887 in Year One and 7,638 in Year Three with Medicaid at 40% and Charity Care at 2%. These projections are based on the current practices of participating surgeons. The applicant states that all procedures moving to this center are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	293	6.00%	458	6.00%
Commercial MC	195	3.99%	306	4.01%
Medicare FFS	977	19.99%	1,528	20.01%
Medicare MC	1,222	25.01%	1,909	24.99%
Medicaid FFS	49	1.00%	76	1.00%
Medicaid MC	1,906	39.00%	2,979	39.00%
Private Pay	147	3.01%	229	3.00%
Charity Care	98	2.00%	153	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans Affinity Health, Fidelis, Health First, MetroPlus, United Health Care, and Well Care. The center will work collaboratively with local Federally Qualified Health Centers such as Bedford Stuyvesant Family Health Center and Community Health Initiatives to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in Kings County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	All City Family Healthcare Center, Inc.	7,358	5,611	8,664
Multi	Bay Ridge Surgi-Center	1,184	1,336	2,780
Multi	Brook Plaza Ambulatory Surgery Center	12,421	7,980	10,871
Ophthalmology	Brooklyn Eye Surgery Center	6,695	5,145	7,093
Multi	Brooklyn Surgery Center	10,278	7,844	9,862
Gastroenterology	Endoscopic Ambulatory Specialty Center of Bay Ridge ¹	0	0	0
Gastroenterology	Endoscopic Diagnostic and Treatment Center	1,913	1,198	1,350
Gastroenterology	Gastroenterology Care, Inc.	2,510	1,686	2,481
Multi	GoldStep Ambulatory Surgery Center	1,848	1,340	1,489

Gastroenterology	Greater NY Endoscopy Surgical Center	7,270	6,482	9,205
Multi	Island Ambulatory Surgery Center	7,568	6,047	9,518
Multi	Millennium Ambulatory Surgery Center	371	531	436
Gastroenterology	Moshenyat Gastroenterology Center (opened 4/10/20) ²	N/A	0	0
Gastroenterology	South Brooklyn Endoscopy Center	14,629	11,532	14,271
Multi	Surgicare of Brooklyn	2,802	4,666	3,860
Total Visits		76,847	61,398	81,548

¹ No data for the years 2019, 2020, and 2021.

² No data for the years 2020 and 2021.

Conclusion

Approval of this project will provide increased access to ophthalmology and gastroenterology surgery services in an outpatient setting for the residents of Kings County.

Program Analysis

Project Proposal

Excelsior ASC, LLC d/b/a Excelsior Ambulatory Surgery Center, an existing limited liability company, seeks approval to establish and construct a multispecialty freestanding ambulatory surgery center specializing in Gastroenterology, and Ophthalmology to be located on the first floor of 833 65th Street in Brooklyn (Kings County).

Proposed Operator	Excelsior ASC, LLC
Doing Business As	Excelsior Ambulatory Surgery Center
Site Address	833 65 th Street Brooklyn, New York 11220 (Kings County)
Surgical Specialties	Multispecialty ASC Gastroenterology Ophthalmology
Operating Rooms	2
Procedure Rooms	4
Hours of Operation	Monday to Friday 8 am to 5 pm
Staffing (1st Year / 3rd Year)	12.25 FTEs / 18.25 FTEs
Medical Director(s)	Kevin Tin, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is provided by: NY Langone Lutheran Hospital 1.6 Miles / 7 minutes
On-call service	Patients who require assistance during off-hours will be provided a phone number for a 24-hour/day, seven (7) days/week on-call service to immediately refer the patient to the Center's on-call physician.

Character and Competence

The ownership of Excelsior ASC, LLC is:

Member Name	Proposed Interest
Dashi Bao, M.D.	20.00%
Yanfeng Chen, M.D.	20.00%
George Hall, M.D.	20.00%
Ann Long, M.D.	20.00%
Jiansheng Zhao, M.D.	20.00%
TOTAL	100%

Dr. Dashi Bao is the Division Head of Excelsior Integrated Medical Group for four years. He is the Director of East Sunrise Medical, PLLC for eight (8) years. He was an Attending Physician at Orange County Medical Center for one year. He was an Instructor in the Department of Neurology of Albert Einstein Medical College for over one year. He received his medical degree from Harbin Medical University. He completed his Internal Medicine residency at Jamaica Hospital Medical Center. He completed his Nephrology fellowship at Nassau University Medical Center.

Dr. Yanfeng Chen is the Treasurer of Excelsior Integrated Medical Group, P.C. for five years. He is the President and Physician of Yanfeng Chen Physician PC for 23 years. He was an Attending Physician in Hematology and Oncology at The Brooklyn Hospital Center for three years. He received his medical degree at Sun Yat-sen University of Medical Sciences. He completed his Internal Medicine residency at Brookdale Hospital Medical Center. He completed his Hematology and Oncology fellowship at NYU Medical Center. He is board certified in Internal Medicine with a sub-specialty in Oncology.

Dr. George Hall is the President of Excelsior Integrated Medical Group, PLLC for over eight years. He is the Medical Director of George Hall, MD, PC for 25 years. He received his medical degree from Sun Yat-sen University. He was a Physician in clinical research at Guangdong Provincial Occupational Hospital in China for four years. He worked in the Environmental and Occupational Laboratory of WPK Laboratory for four years in Monitoring and Testing. He completed his Internal Medicine residency at Flushing Hospital and St. Barnabas Hospital. He is board certified in Internal Medicine.

Dr. Ann Long is an Aesthetics Physician at Live Long Cosmetics private practice for 23 years. She received her medical degree from the Sun Yat-sen University of Medical Sciences. She completed her Medical and Dermatology residency at The Sun Yat-sen University of Medical Sciences.

Dr. Kevin Tin is the proposed Medical Director. He is the Division Director of Healthier Gastroenterology and Hepatology Division of Excelsior Integrated Medical Group, PLLC for over three years. He is an Attending Internal Medicine Physician at Boro Park Center for Nursing and Rehabilitation for over seven years. He was an Attending Gastroenterologist at Gastroenterology Associates of Brooklyn for one year. He was a Faculty Attending in the Division of Gastroenterology at Maimonides Medical Center for one year. He is the President of Fujianese Medical Associates of America for four (4) years. He received his medical degree from the American University of Antigua. He completed his Internal Medicine and Gastroenterology residency at Maimonides Medical Center. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

Dr. Jiansheng Zhao is an Attending Physician in private practice for 23 years. He is an Attending Physician at North Shore University Hospital in the Department of Medicine for 25 years. He is an Attending Physician at New York Presbyterian Department of Medicine for 16 years. He received his medical degree from Zhongshan Medical College and Sun Yat-sen University of Medicine in China. He completed his Head and Neck Surgery residency at Sun Yat-sen University in China and his Internal Medicine residency at Woodhull Medical and Mental Health Center. He is board certified in Internal Medicine.

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

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center, who are also owners of a large multi-specialty medical group including primary care, will provide the patients with access to primary and specialty care services as needed. The Applicant plans to outreach to the following FQHCs, Bedford Stuyvesant Family Health Center and Community Health Initiatives, Inc. Upon approval, the efforts will be expanded upon.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification. The Applicant will consider joining any Accountable Care Organization (ACO).

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$9,165,990 and is distributed as follows:

New Construction	\$5,508,955
Design Contingency	550,896
Construction Contingency	550,896
Planning Consultant Fees	25,000
Architect/Engineering Fees	440,716
Other Fees	100,000
Movable Equipment	1,578,578
Financing Costs	215,294
Interim Interest Expense	143,529
Application Fee	2,000
Additional Processing Fee	<u>50,126</u>
Total Project Cost	\$9,165,990

The financing for this project will be as follows:

Landlord Leasehold Improvements	\$7,587,412
Cash from Members Equity	157,858
Moveable Equipment Loan (7 years, 6% interest)	<u>1,420,720</u>
Total	\$9,165,990

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$949.85	\$278,307	\$1,007.46	\$461,416
Commercial MC	\$875.36	170,695	\$924.84	283,002
Medicare FFS	\$612.60	598,510	\$649.41	992,293
Medicare MC	\$563.25	688,287	\$597.77	1,141,136
Medicaid FFS	\$549.65	26,933	\$587.54	44,653
Medicaid MC	\$507.01	966,355	\$537.82	1,602,156
Private Pay	\$1,221.45	<u>179,553</u>	\$1,299.95	<u>297,688</u>
Total Revenue		\$2,908,640		\$4,822,344
Expenses:				
Operating	\$295.45	\$1,443,894	\$331.22	\$2,529,841
Capital	<u>295.94</u>	<u>1,446,247</u>	<u>177.35</u>	<u>1,354,581</u>
Total	\$591.39	\$2,890,141	\$508.57	\$3,884,422
Net Income / (Loss)		<u>\$18,499</u>		<u>\$937,922</u>
Total Visits		4,887		7,638
Cost per Visit		\$591.39		\$508.57

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

<u>Payor:</u>	<u>Years One</u>	<u>Year Three</u>
Commercial FFS	6.00%	6.00%
Commercial MC	3.99%	4.01%
Medicare FFS	19.99%	20.01%
Medicare M/C	25.01%	24.99%
Medicaid FFS	1.00%	1.00%
Medicaid M/C	39.00%	39.00%
Private Pay	3.01%	3.00%
Charity	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The basis for utilization, revenue, and payor mix is based on the surgical volume being performed by proposed member physicians. The increase in utilization between Years One and Three is based on the expanded growth of the existing population served by both Excelsior Integrated Medical Group and the proposed FASC.
- Payor sources are based on the actual experience of the existing medical practice.
- Medicare Fee for Service and Medicaid Fee for Service revenue is based on the Current Procedural Terminology (CPT) codes.
- Commercial rates are projected based on a percentage of the 2022 Medicare fee for service (FFS) rate, ranging from 150% for Commercial FFS payors down to 90% for Commercial managed care payors.
- Private Pay rate is based on 200% of the 2022 Medicare Rate.
- Expenses are based predominantly on the labor costs for the staffing model that includes Registered Nurses (8.00 FTE by year three), Technicians and Specialists (at 5.20 FTEs by year three), Clerical and Other Administrative staff (3.00 FTEs by year three) Management and Supervision (5.20 FTEs by year three), as well as medical supplies, other direct expenses and rent expense as documented per the lease assignment agreement.

The applicant indicated they are committed to serving underinsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The center developed a sliding fee scale as well as policies and procedures for serving the uninsured and persons without ability to pay.

Draft Lease Agreement

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

Date:	April 1, 2023 - Commencement Date
Premises:	Approx. 12,000 sq. ft. in building located at 833 65 th Street, Brooklyn, New York, 11220
Landlord:	Great Empire 65 Realty, LLC
Tenant:	Excelsior Ambulatory Surgery Center, LLC
Term:	5-year term with an option to renew for an additional five (5) years.
Rental:	Year 1 - \$0 Year 2 - \$900,000 (\$75,000/monthly) Year 3 - \$936,000 (\$78,000/monthly) Year 4 - \$973,440 (\$81,120/monthly) Year 5 - \$1,012,377.60 (\$84,364.80/month) Security deposit \$87,739.39. Rent will increase by 4%
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, and maintenance

The applicant submitted an affidavit stating the lease agreement between the property owner and the lessee is an arm's length arrangement. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental.

Capability and Feasibility

The total project cost of \$9,165,990 will be met with \$7,587,412 of leasehold improvements completed by the current landlord, \$157,858 in members' equity and a seven-year moveable equipment loan for \$1,420,720 at 6% interest. Working capital requirements are estimated at \$647,404 based on two months of third year expenses. The working capital will be funded with members' equity of \$323,702 and a bank loan of \$323,702 for a three-year term at 6% interest. Hudson Shine Capital has provided a letter of interest for the respective loans at the stated terms. BFA Attachment A presents the member's personal net worth statement, which indicates sufficient resources overall to fund the equity requirements. BFA Attachment D is the Pro-Forma balance sheet for Excelsior, which shows the operation will start with \$435,582 in members' equity.

The submitted budget projects a net income of \$18,499 and \$937,922 during Years One and Three of operations, respectively. Revenue growth is based on growth in utilization between Years One and Three driven by an increase of the existing population served by the proposed FASC. Jiansheng Zhao, M.D. and Dashi Bao, M.D. will contribute a disproportionate share for the equity requirement. The budget appears reasonable.

Conclusion

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

Attachments

BHFP	Map
BFA Attachment A	Net Worth Statement of Proposed Member of Excelsior Ambulatory Surgery Center
BFA Attachment B	Proposed Member Equity Analysis
BFA Attachment C	Organization Chart
BFA Attachment D	Pro-Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new multi-specialty ambulatory surgery center at 833 65th Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

222036 B

FACILITY/APPLICANT:

Excelsior ASC LLC d/b/a Excelsior
Ambulatory Surgery Center

APPROVAL CONTINGENT UPON:

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

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

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **June 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 **September 1, 2023**, and construction must be completed by **March 1, 2024**, 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 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]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

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



Project # 222089-B
**Peakpoint Flatiron LLC d/b/a New York Eye and Ear of
 Mount Sinai Surgery Center**

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** October 14, 2022

Executive Summary

Description

Peakpoint Flatiron LLC (the "Center"), a Delaware limited liability company registered to do business in New York State, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC). The Center will be certified as a dual single-specialty FASC specializing in ophthalmology and otolaryngology, head and neck surgical services. The applicant will lease 16,672 square feet on the second floor in an existing building at 1115 Broadway, New York (New York County) 10010. The site will include two operating rooms, four procedure rooms, and requisite support areas.

The Center's proposed ownership structure is shown below:

Members	% Operating Entity
Individual Physicians	49.00%
Maria Basile, M.D.	1.44%
Brian Campolattaro, M.D.	1.59%
Courtney Chou, M.D.	1.59%
Christopher Coad, M.D.	1.59%
Charles Cole, M.D.	1.59%
Maura Cosetti, M.D.	1.59%
Mark Courey, M.D.	1.00%
Alan Dayan, M.D.	1.59%
Anthony Del Signore, M.D.	1.59%
Jay Dolitsky, M.D.	1.59%
David Godin, M.D.	1.59%
Satish Govindaraj, M.D.	1.59%
Mingyang Gray, M.D.	1.59%
Anita Gupta, M.D.	1.00%

Gregory Harmon, M.D.	1.59%
Juan Horta-Santini, M.D.	1.59%
Gregory Levitin, M.D.	1.44%
Fred Lin, M.D.	1.59%
Bruce Moskowitz, M.D.	1.00%
Richard Najac, M.D.	1.59%
Andrew Nightingale, M.D.	1.59%
Enrique Perez, M.D.	0.67%
Roheen Raithatha, M.D.	1.59%
Joshua Rosenberg, M.D.	1.59%
Valeria Rubinstein, M.D.	1.59%
Madeleine Schaberg, M.D.	1.00%
Edward Shin, M.D.	1.44%
Eric Smouha, M.D.	1.00%
Mark Speaker, M.D.	1.44%
Tak Yee Tania Tai, M.D.	1.59%
Gregory Tsai, M.D.	1.59%
Calvin Wei, M.D.	1.59%
Dina Weintraub, M.D.	1.00%
Herbert Jay Wisnicki, M.D.	1.59%
Peakpoint Partners, LLC. (Ownership % detailed below)	51.00%
Mount Sinai Ambulatory Ventures, Inc. (MSAV)	36.01%
William Mulhall	4.13%
Sarah Sanford	0.75%
Matthew Searles	5.98%
Richard Searles	4.13%
Total Operating Entity	100.00%

Mount Sinai Ambulatory Ventures, Inc. (MSAV) is an existing, not-for-profit corporation whose sole passive member is the Mount Sinai Health System. The applicant members have an ownership interest in various New York State

and out-of-state FASCs (refer to BFA Attachment E.)

Richard Najac, M.D., is board certified in Ophthalmology and will serve as the Center's Medical Director. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services with Mount Sinai Beth Israel, 2 miles (16 minutes travel time) from the Center.

The 34 physicians that will have ownership in the proposed Center have provided a letter of interest in performing procedures at the proposed Center. Collectively, this represents 8,345 cases translating to 9,180 procedures that are projected to be performed at the Center during the first year of operation. All of the proposed surgical cases will originate from Mount Sinai facilities.

OPCHSM Recommendation

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

Need Summary

The applicant projects 9,180 procedures in Year One and 9,738 in Year Three with Medicaid at 20.0% and Charity Care at 2.0%.

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)(b).

Financial Summary

Total project costs of \$12,989,358 will be met through equity of \$1,312,814 (\$1,200,250 from the landlord and \$112,564 from members), with the remaining \$11,676,544 financed through two loans (project loan and equipment loan). The \$10,176,544 project loan is for ten years at a 6% interest rate; Valley National Bank has provided a letter of interest. The \$1,500,000 equipment loan is for five years at 7.91% interest. Dext Capital has provided a letter of interest.

Budget:	<u>Year One</u>	<u>Year Three</u>
	<u>2023</u>	<u>2025</u>
Revenues	\$18,165,858	\$19,045,635
Expenses:	<u>17,510,050</u>	<u>18,194,265</u>
Gain/(Loss)	\$655,808	\$851,370

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed project loan commitment acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment loan commitment acceptable to the Department of Health. [BFA]
6. Submission of an executed administrative services agreement acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the executed Operating Agreement for Peakpoint Flatiron, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Administrative Services Agreement with Merritt Healthcare Holdings, LLC, acceptable to the Department [CSL]
9. Submission of a photocopy of the amended and executed copy of the Lease agreement, acceptable to the Department. [CSL]
10. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]

Approval conditional upon:

1. This project must be completed by **July 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 **August 15, 2023**, and construction must be completed by **April 15, 2024**, 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 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]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 9, 2023

Need Analysis

Proposal

Peakpoint Flatiron LLC is seeking approval to establish a dual single-specialty ambulatory surgery center (ASC) to be located at 1115 Broadway, New York, 10010 in New York County. The center will provide ophthalmology and otolaryngology head and neck surgery services and have two operating rooms and four procedure rooms.

Background and Analysis

The service area is New York County. The population of New York County in 2020 was 1,694,251 and is projected to increase slightly to 1,709,958 by 2025. According to Data USA, in 2019, 95.3% of the population of New York County had health coverage as follows:

Employer Plans	52.8%
Medicaid	19.6%
Medicare	10.2%
Non-Group Plans	12.4%
Military or VA	0.305%

The number of projected procedures is 9,180 in Year One and 9,738 in Year Three with Medicaid at 20.0% and Charity Care at 2.0%. These projections are based on the current practices of participating surgeons. The applicant states that 96% of procedures moving to this center are currently being performed in a hospital setting, and the remaining 4% are being performed in other ASCs settings. According to the applicant, there are 34 physicians interested in performing procedures at the proposed center. The table below shows the projected payor mix for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid	1,836	20.00%	1,948	20.00%
Medicare FFS	2,754	30.00%	2,920	29.99%
Medicare MC	505	5.50%	536	5.50%
Commercial FFS	1,303	14.19%	1,383	14.20%
Commercial MC	2,570	28.00%	2,727	28.00%
Other	28	0.31%	29	0.31%
Charity Care	184	2.00%	195	2.00%

The Center plans to obtain contracts with the following Medicaid Managed Care plans Fidelis, Health First, Amida Care, United Community Plan, and Empire HealthPlus. The Center will work collaboratively with local Federally Qualified Health Centers such as the Institute for Family Health and Community Healthcare Network to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in New York County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	Fifth Avenue Surgery Center	3,936	3,464	3,637
Multi	Fifth Avenue Surgery Center LLC (opened 7/20/21)	N/A	N/A	1,452
Multi	Gramercy Surgery Center	4,851	3,521	4,580
Ophthalmology	Hudson Specialty Surgery Center (opened 6/30/20)	N/A	27	1,183
Multi	Hudson Surgery Center (opened 1/13/22)	N/A	N/A	N/A
Multi	Manhattan Surgery Center	6,326	4,091	4,799
Multi	Midtown Surgery Center	3,749	2,449	1,765
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	480	939
Ophthalmology	Retinal Ambulatory Surgery Center of NY Inc.	4,882	3,142	4,529
Multi	Surgicare of Manhattan, LLC	4,257	2,878	2,665
Multi	Surgicare of Westside (opened 12/16/20)	N/A	N/A	156
Multi	The Derfner Foundation ASC (opened 2/22/22)	N/A	N/A	N/A
Total Visits		28,001	20,052	25,705

The applicant describes the need for bringing surgical cases from Mount Sinai facilities to the proposed center to provide needed services in the community in a cost-effective manner and provide a single center of excellence for surgical services in a convenient location. This will also allow for additional capacity for Mount Sinai facilities to serve more difficult surgical cases.

Conclusion

Approval of this project will increase access to ophthalmology and otolaryngology head and neck surgery services in an outpatient setting for the residents of New York County.

Program Analysis

Project Proposal

Peakpoint Flatiron LLC, an existing New York State limited liability company, seeks approval to establish and construct a dual single specialty freestanding ambulatory surgery center specializing in Ophthalmology and Otolaryngology to be located at 1115 Broadway 2nd floor in New York (New York County).

Proposed Operator	Peakpoint Flatiron, LLC
Doing Business As	Peakpoint Flatiron
Site Address	1115 Broadway 2 nd Floor New York, New York 10010 (New York County)
Surgical Specialties	Single Specialty (Dual) Ophthalmology Otolaryngology
Operating Rooms	2
Procedure Rooms	4
Hours of Operation	Monday through Friday, 7:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	30.14 FTEs / 30.14 FTEs
Medical Director(s)	Richard Najac, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Is expected to be provided by: Mount Sinai Beth Israel 2.0 Miles / 16 minutes
On-call service	Patients who require assistance during off-hours will engage a 24-hour a day seven (7) day a week physician on-call service

Character and Competence

The ownership of Peakpoint Flatiron, LLC is:

Member Name	Proposed Interest
Maria Basile, M.D.	1.44%
Brian Campolattaro, M.D.	1.59%
Courtney Chou, M.D.	1.59%
Christopher Coad, M.D.	1.59%
Charles Cole, M.D.	1.59%
Maura Cosetti, M.D.	1.59%
Mark Couray, M.D.	1.00%
Alan Dayan, M.D.	1.59%
Anthony Del Signore, M.D.	1.59%
Jay Dolitsky, M.D.	1.59%
David Godin, M.D.	1.59%
Satish Govindaraj, M.D.	1.59%
Mingyang Gray, M.D.	1.59%
Anita Gupta, M.D.	1.00%
Gregory Harmon, M.D.	1.59%
Juan Horta-Santini, M.D.	1.59%
Gregory Levitin, M.D.	1.44%
Fred Lin, M.D.	1.59%
Bruce Moskwitz, M.D.	1.00%
Richard Najac, M.D.	1.59%
Andrew Nightengale, M.D.	1.59%
Enrique Perez, M.D.	0.67%

Roheen Raithatha, M.D.	1.59%
Joshua Rosenburg, M.D.	1.59%
Valeria Rubenstein, M.D.	1.59%
Madeleine Schaberg, M.D.	1.00%
Edward Shin, M.D.	1.44%
Eric Smouha, M.D.	1.00%
Mark Speaker, M.D.	1.44%
Tak Yee Tania Tay, M.D.	1.59%
Gregory Tsai, M.D.	1.59%
Calvin Wei, M.D.	1.59%
Dina Weintraub, M.D.	1.00%
H. Jay Wisnicki, M.D.	1.59%
Peakpoint Partners, LLC <i>Mount Sinai Ambulatory Ventures (36.01%)</i> <i>William Mulhall (4.13%)</i> <i>Sarah Sanford (0.75%)</i> <i>Matthew Searles (5.98%)</i> <i>Richard Searles (4.13%)</i>	51.00%
TOTAL	100%

Mount Sinai Ambulatory Ventures, Inc. (MSAV) is an existing not-for-profit corporation whose sole passive member is the Mount Sinai Health System. MSAV has the following Board Members/Officers:

<i>Kelly Cassano</i>	<i>Board Member</i>
<i>Jodi Cohen</i>	<i>Board Member</i>
<i>Vicki LoPachin, M.D.</i>	<i>Board Member</i>
<i>Michael Pastier</i>	<i>Board Member</i>
<i>Denise Prince</i>	<i>Board Member</i>
<i>Brent Stackhouse</i>	<i>Board Member</i>

The managing members of Peakpoint Flatiron, LLC are:

<i>Richard Searles</i>	<i>Managing Member</i>
<i>William Mulhall</i>	<i>Managing Member</i>
<i>Sarah Sanford</i>	<i>Managing Member</i>

Jodi Cohen-Ansari is the System Senior Vice President of Business and Strategic Planning at Mount Sinai Health System for 14 years. She was the previous Vice President, Senior Director, and Director of Business Planning. She participates in the decision-making process with System Leadership through presentation of relevant financial and market analysis related to multimillion clinical investment and evaluates managed care strategy. She prepares business plans to evaluate physician recruitment and program development through collaboration with Hospital and Medical School/Departmental leadership. She created a compensation structure relative to market data, MD experience, and productivity, including individual and group models. She plans and tracks revenue improvement initiatives and reviews, approves, and monitors hospital budgetary support of \$560M. She was the Vice President of Finance and Clinical Services at St. Vincent's for seven (7) years. She was the previous Administrative Director of Finance and Manager of Finance/Business Planning. She managed the development of a \$550M hospital operating budget and worked with the Vice President of Budget and Reimbursement, and directed departmental budgets. She led in the development of zero-based budgeting and institution-wide Performance Initiative Committee charged with identifying cost reductions and revenue enhancements. She was a Senior Associate at Pricewatercoopers, LLP for two (2) years, where she performed revenue cycle diagnostics, accounts receivable reduction, interim managerial services, and system implementation. She facilitated problem resolution and implementation of recommended policy and procedure enhancements. She was the Assistant Manager of Patient Financial Services at Memorial Sloan Kettering for five (5) years. She provided leadership and operational management of the registration and cashiering units, planned and rolled out policies related to managed care patients, and monitored the quality of services.

Dr. Maria Basile is an Assistant Professor of the New York Ear and Eye Infirmary of Mount Sinai Department of Ophthalmology for 14 years. She was the previous Assistant Professor of Beth Israel Medical Center's Department of Ophthalmology for two (2) years. She received her medical degree from SUNY Downstate. She completed her Ophthalmology residency and Glaucoma fellowship at Mount Sinai School of Medicine. She is board certified in Ophthalmology.

Dr. Kelly Cassano is the Chief Executive Officer of the Mount Sinai Doctors Faculty Practice for over one (1) year. She is the Senior Vice President of Ambulatory Operations for the Mount Sinai Health Systems for two (2) years. She is the Dean of Clinical Affairs at the Icahn School of Medicine for eight (8) years. She was the Chief of Ambulatory Surgery at Mount Sinai Downtown for six (6) years. She was the Senior Associate Dean of Clinical Affairs at the Icahn School of Medicine for three (3) years. She is an Internist at Mount Sinai Doctors for five (5) years. She is the Medical Director of Mount Sinai Doctors Downtown Union Square for eight (8) years. She was an Internist at Mount Sinai Doctors West Park Medical Group for eight (8) years. She was the Senior Medical Director at Continuum Medical Group for two (2) years. She was the Medical Director of West Park Medical Group for 14 years. She was the Chief Liaison at Beth Israel for two (2) years. She was an Internist at Daytop Village for five (5) years. She received her medical degree from the University of New England College of Osteopathic Medicine. She completed her Internal Medicine residency at St. Vincent's Hospital. She is board certified in Internal and Osteopathic Medicine.

Dr. Brian Campolattaro is an Ophthalmologist at Pediatric Ophthalmology of N.Y., P.C. for over 27 years. He received his medical degree from New Jersey Medical School. He completed his Ophthalmology residency at The New York Eye and Ear Infirmary. He completed his Pediatric Ophthalmology fellowship at Washington University Medical Center. He is board certified in Ophthalmology.

Dr. Courtney Chou is an Assistant Professor of Sleep Surgery at the Icahn School of Medicine for three (3) months. She was a Clinical Instructor in Comprehensive Otolaryngology for one (1) year. She received her medical degree from the University of Virginia School of Medicine. She completed her Otolaryngology Head and Neck Surgery residency at the University of Pittsburgh Medical Center. She completed her Sleep Medicine and Sleep Surgery fellowship at Stanford University. She is board certified in Otolaryngology and Sleep Medicine.

Dr. Christopher Coad is the Founding Surgeon and Medical Director of Chelsea Eye Ophthalmology for 32 years. He is an Associate Adjunct Professor in Otolaryngology for 32 years. He is an Associate Ophthalmologist at The Mackod Eye Institute for 32 years. He was an Attending Physician at Cabrini Medical Center for 19 years. He was an Attending Physician at St. Vincent's Hospital and Medical Center for 21 years. He was a Research Assistant and a Teaching Assistant at the University of California, San Diego School of Medicine for one (1) year. He received his medical degree from Baylor College of Medicine. He completed his Ophthalmology residency at New York Eye and Ear Infirmary. He completed his Staff Ophthalmology and International Ophthalmology fellowship at Project ORBIS. He is board certified in Ophthalmology.

Dr. Charles Cole is a Physician at Eye Surgeon PC for 19 years. He is the Director of the Glaucoma Clinic at New York Hospital Queens for over 20 years. He is a Clinical Assistant Professor of Ophthalmology at Weill Cornell Medical Center for over 21 years. He was an Assistant Professor for two (2) years. He is an Attending Ophthalmologist at New York Presbyterian Hospital for over 21 years. He is an Attending Physician at New York Eye and Ear Infirmary for over 15 years. He received his medical degree from Columbia University College of Physicians and Surgeons. He completed his Ophthalmology residency at Mount Sinai and NYU Medical Center. He completed his Glaucoma fellowship at Cornell University. He is board certified in Ophthalmology.

Dr. Maura Cosetti is the Fellowship Director of Neurotology Fellowship for one (1) year. She is the Director of the Ear Institute at New York Eye and Ear Infirmary for three (3) years. She is an Associate Professor at Icahn School of Medicine for three (3) years. She is a Faculty Surgeon in Otolaryngology and Neurotology at New York Eye and Ear Infirmary for six (6) years. She is a Director of the Cochlear Implant Program at the New York Eye and Ear Infirmary for six (6) years. She was an Assistant

Professor at the Icahn School of Medicine for three (3) years. She was the Associate Residency Program Director and the Co-Director of Otolaryngology of the Department of Otolaryngology at Louisiana State University Health Sciences Center for four (4) years. She was the Course Director of Head and Neck Neurosciences for first-year medical students at Louisiana State University for one (1) year. She was the Clerkship Director of the fourth-year medical students at Louisiana State University for three (3) years. She was the Medical Director of the Ambulatory Care Clinic's Department of Otolaryngology for four (4) years. She was the Assistant Professor of the Department of Otolaryngology at New York University for two (2) years. She received her medical degree from the University of Pittsburgh. She completed her Otolaryngology residency at New York Eye and Ear Infirmary. She completed her Neurotology fellowship at New York University. She is board certified in Otolaryngology with a sub-certification in Neurotology.

Dr. Mark Courey is the Vice Chairman of Quality, a Professor of Otolaryngology, the Director in the Division of Laryngology, the Medical Director in Speech-Language Pathology, the Director at Grapscheid Voice and Swallowing Center, and the Director of the Laryngology Fellowship Program at Mount Sinai for over six (6) years. He was the Lewis Francis Morrison, MD Endowed Chair in Laryngology at San Francisco School of Medicine for nine (9) months. He was a Professor in Clinical Otolaryngology, the Director in the Division of Laryngology, and the Medical Director in Speech-Language Pathology at San Francisco School of Medicine for over ten (10) years. He was an Adjunct Instructor in Music at Belmont University for four (4) years. He was an Associate Professor in Otolaryngology at Vanderbilt University for five (5) years. He was the Acting Director of OHNS Associates at St. Thomas Hospital for five (5) years. He was the Medical Director of Vanderbilt Voice Center at Vanderbilt University Medical Center for six (6) years. He was an Instructor in Otolaryngology at Vanderbilt University Medical Center for one (1) year. He received his medical degree from SUNY Buffalo. He completed his General Surgery residency at Beth Israel Hospital. He completed his Otolaryngology residency at SUNY Buffalo. He completed his Laryngology fellowship at Vanderbilt University Medical Center.

Dr. Alan Dayan is the Founder and Managing Partner of New York Retina Consultants, PLLC for five (5) years. He is an Attending Surgeon at New York Eye and Ear Infirmary for 21 years. He is an Attending Physician in private practice for 24 years. He was a Physician at Retina Consultants of NY for 13 years. He received his medical degree from Mount Sinai School of Medicine. He completed his Ophthalmology residency at New York Eye and Ear Infirmary. He completed his Vitreoretinal fellowship at the University of Tennessee.

Dr. Anthony Del Signore is an Assistant Professor, the Director of Sinus and Endoscopic Skull Base Surgery, Assistant Residency Program Director, Resident and Faculty Wellbeing Champion, and Social Media Ambassador in Otolaryngology at Mount Sinai Beth Israel and the Icahn School of Medicine for over seven (7) years. He was a Clinical Instructor in Otolaryngology at the University of North Carolina Chapel Hill for one (1) year. He received his medical degree from Warren Alpert School of Medicine at Brown University. He completed his Otolaryngology residency at the Icahn School of Medicine. He completed his Rhinology and Endoscopic Skull Base fellowship at University of North Carolina at Chapel Hill. He is board certified in Otolaryngology.

Dr. Jay Dorlitsky is an Otolaryngologist at ENT and Allergy Associates, LLP for 18 years. He was an Otolaryngologist at New York Eye and Ear Infirmary for over 12 years. He is an Attending Physician at New York Eye and Ear for 30 years. He is an Attending Physician at Beth Israel Medical Center for five (5) years and previously for over 17 years. He was an Attending Physician at St. Vincent's Hospital and Medical Center for 18 years. He received his medical degree for SUNY Downstate. He completed his residency and his General Surgery Internship at Bellevue Hospital Center. He completed his Otolaryngology clinical fellowship and residency at Manhattan Eye, Ear & Throat. He completed his Pediatric Otolaryngology fellowship at Children's Hospital of Pittsburgh. He is board certified in Otolaryngology.

Dr. David Godin is a Clinical Assistant Professor in Otolaryngology at Mount Sinai School of Medicine for 12 years. He is a Faculty Adjunct Professor at Touro College for 12 years. He received his medical degree from SUNY Upstate Medical Center. He completed his General Surgery and Otolaryngology residency at Tulane University School of Medicine.

Dr. Satish Govindaraj is the Director of the Division of Rhinology for over seven (7) years. He is also the Vice Chairman of Clinical Affairs in the Department of Otolaryngology for over eight (8) years. He is an Associate Professor in the Department of Otolaryngology for over nine (9) years. He received his medical degree from Northwestern Ohio Medical University. He completed his Otolaryngology residency and fellowship at the Icahn School of Medicine at Mount Sinai. He is board certified in Otolaryngology.

Dr. Mingyang Gray is the Assistant Professor of the Division of Facial Plastic and Reconstructive Surgery in the Department of Otolaryngology Head and Neck Surgery for over two (2) years. He received his medical degree from Tulane University. He completed his Otolaryngology residency at the Icahn School of Medicine at Mount Sinai. He is completing his Facial Plastic and Reconstructive Surgery fellowship at Johns Hopkins University School of Medicine.

Dr. Anita Gupta is a Professor at the Icahn School of Medicine at Mount Sinai for four (4) years. She was an Assistant Professor of Ophthalmology at New York Medical College for over one (1) year. She was an Assistant Professor of Clinical Ophthalmology at the Bascom Palmer Eye Institute for over two (2) years. She was an Instructor of Ophthalmology for over one (1) year. She is the Vice Chair of Professional Development and Director of Cornea Services at New York Eye and Ear Infirmary for over two (2) years. She was the Director of the Ophthalmology Residency Program, Director of the Comprehensive Ophthalmology Service, Director of the Medical Student Education, and Assistant Director of the Comprehensive Ophthalmology Service at New York Eye and Ear Infirmary. She received her medical degree from University of California, San Francisco School of Medicine. She completed her Ophthalmology residency at the Wilmer Eye Institute at Johns Hopkins University. She completed her Cornea, External Disease, and Refractory Surgery fellowship at the Bascom Palmer Eye Institute at the University of Miami. She is board certified in Ophthalmology.

Dr. Gregory Harmon is the Owner and Attending Physician at Harmon Ophthalmology for over 15 years. He is a Clinical Associate Professor of Ophthalmology at Weill Cornell Medical College for over 15 years. He is an Associate Adjunct Surgeon at New York Eye and Ear Infirmary for over 15 years. He is an Assistant Medical Staff at Manhattan Eye, Ear & Throat Hospital for over 15 years. He is an Associate Professor of Ophthalmology and Director of Glaucoma Services at the New York Hospital for over 15 years. He was the Residency/Coordinator at The New York Hospital Cornell Medical Center for two (2) years. He was an Instructor of Ophthalmology for one (1) year. He received his medical degree from Mount Sinai School of Medicine. He completed his Internal Medicine residency at St. Luke's Roosevelt Hospital. He completed his Ophthalmology residency and Glaucoma fellowship at The New York Hospital. He is a Board Member of The Glaucoma Foundation for 29 years and the Chairman for 23 years. He is board certified in Ophthalmology.

Dr. Juan Horta-Santini is the President, General Ophthalmologist, and Glaucoma Specialist at Horta-Santini Eye Care for over five (5) years. He was a General Ophthalmologist and Glaucoma Specialist at Union Square Eye Care for over two (2) years. He was a General Ophthalmologist and Glaucoma Specialist at New York Eye Surgery Center for over one (1) year. He received his medical degree from the University of Puerto Rico School of Medicine. He completed his Ophthalmology residency at the University of Puerto Rico School of Medicine. He completed his Glaucoma fellowship at Tufts University New England Eye Center and Ophthalmologic Consultants of Boston.

Dr. Gregory Levitin is the Director of the Vascular Birthmarks and Malformations Program and an Associate Clinical Professor in Otolaryngology for over six (6) years. He is the Director of the Vascular Birthmark Center of New York for over 13 years. He was the Co-Director of Surgical Services at the Vascular Birthmark Center for two (2) years. He was an Associate Physician in the Head and Neck Surgical Group at St. Luke's Roosevelt Hospital for over one (1) year. He was an Associate Physician at ENT and Allergy Associates, LLP for over two (2) years. He received his medical degree from the University of North Carolina School of Medicine. He completed his Otolaryngology Head and Neck Surgery residency at the Mount Sinai Medical Center. He is board certified in Otolaryngology.

Dr. Fred Lin is an Assistant Professor of Otolaryngology-Head and Neck Surgery at The Mount Sinai Spine Center for 11 years. He is the Director of The Mount Sinai Sleep Surgery Program, the Division Chief of Sleep Surgery, and an Attending Physician at the Mount Sinai Hospital for over 11 years. He is an Attending Physician at The New York Eye and Ear Infirmary of Mount Sinai for over eight (8) years.

He was an Attending Physician at Beth Israel Hospital for over one (1) year. He was an Attending Physician at Richmond University Medical Center for over three (3) years. He was a Clinical Instructor at Stanford University Medical Center for one (1) year. He received his medical degree from the University of Louisville School of Medicine. He completed his residency in General Surgery and Otolaryngology-Head and Neck at Mount Sinai Hospital. He completed his Sleep Surgery fellowship at Stanford University Medical Center. He is board certified in Otolaryngology.

Dr. Vicki LoPachin is the Chief Medical Officer and Senior Vice President of Mount Sinai Health System for nine (9) years. She was the previous Medical Director of North Shore University Hospital for five (5) years. She was an Internal Medicine Physician in private practice for ten (10) years. She is an Assistant Professor at Mount Sinai School of Medicine for eight (8) years. She was an Assistant Professor at Hofstra North Shore LIJ School of Medicine for three (3) years. She was an Assistant Clinical Professor at the Mount Sinai School of Medicine for four (4) years. She was a Clinical Instructor at Mount Sinai School of Medicine for seven (7) years. She is an Attending Physician at Mount Sinai for 25 years. She was an Attending Physician at North Shore University Hospital for six (6) years. She was an Attending Physician at Jewish Home and Hospital for 11 years. She received her medical degree from SUNY Stony Brook. She completed her Internal Medicine residency at Mount Sinai Hospital. She is board certified in Internal Medicine. Dr. LoPachin discloses membership interest in the following healthcare facilities:

<i>Carnegie Hill Endoscopy</i>	<i>07/2017-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>07/2017-present</i>
<i>East Side Endoscopy</i>	<i>07/2017-present</i>
<i>Liberty Endoscopy Center</i>	<i>07/2017-present</i>
<i>Northern Westchester Facility Project</i>	<i>12/2018-present</i>
<i>Manhattan Surgery Center</i>	<i>07/2017-present</i>
<i>West Side GI</i>	<i>07/2017-present</i>
<i>The Endoscopy Center of New York</i>	<i>12/2017-present</i>

Dr. Bruce Moskowitz is an Assistant Professor in Ophthalmology at The New York Medical College for 24 years. He is an Attending Physician at Oculoplastic and Reconstructive Service at New York Eye and Ear Infirmary for 27 years. He is the Associate Clinical Director at New York Eye and Ear Infirmary for 29 years. He was a Clinical Instructor of Ophthalmology at SUNY Downstate for one (1) year. He was the Director of Ambulatory Ophthalmology at Lutheran Medical Center for two (2) years. He was the Assistant Professor of Ophthalmology at SUNY Downstate for two (2) years. He received his medical degree from SUNY Downstate. He completed his Ophthalmology residency at SUNY Downstate. He completed his Neuro-Ophthalmology fellowship at Kingsbrook Jewish Medical Center. He is board certified in Ophthalmology.

William Mulhall is a Partner at Merritt Healthcare Holdings, LLC for 19 years. He is responsible for all clinical and operational activities of the organization. His areas of focus include facility design, development and construction, accreditation, clinical operations, regulatory compliance, equipment planning, staffing, and policy development. He was the Previous Director of Nursing of Wilton Surgery Center for five (5) years. He was responsible for managing, directing, and supervising all peri-anesthesia nursing and ancillary clinical services, including central processing, materials management, and radiology services. He is responsible for drafting, implementing, and enforcing all standard operating procedures in conjunction with the Facility Administrator, staffing, and hiring of all clinical personnel, oversight, and maintenance of Quality Assessment, and Performance Improvement. He was the Chief Procedure Nurse of Pain Management Associates of Connecticut for three (3) years. He was a Special Care Unit Staff Nurse, Charge Nurse, and Cardiovascular Suite Nurse at The Stamford Hospital for two (2) years. He provided daily nursing care to patients on a monitored 20-bed cardio-respiratory/surgical step-down unit. He was responsible for staffing, shift coordination, delegation of duties to ancillary staff members, and interaction and coordination with interdisciplinary team members. He was the Operations Manager, Director of Volunteers, and Director of Operation of Stamford EMS for six (6) years. He managed and directed all operations staff and functions of a 60-employee, 50-volunteer not-for-profit and regional emergency medical service serving a population of 120,000. Mr. Mulhall discloses ownership interest in the following healthcare facilities:

<i>River Valley ASC, LLC</i>	<i>2012-2016</i>
<i>Surgical Center of Connecticut, LLC</i>	<i>2013-2016</i>
<i>Western Connecticut Orthopaedic Surgical Center</i>	<i>2013-2017</i>

<i>Ellicott City ASC</i>	<i>2013-2017</i>
<i>Bloomfield ASC LLC</i>	<i>2015-2021</i>
<i>Summer Street ASC LLC</i>	<i>2015-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Orthopaedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Northern Westchester Facility Project LLC</i>	<i>2019-present</i>
<i>UWS ASC LLC</i>	<i>2021-present</i>

Dr. Richard Najac is the President and CEO of Najac Vision for over 22 years. He is an Associate Attending in Ophthalmology at New York Eye and Ear Infirmary for 29 years. He was a Member of the Eye Bank for Sight Restoration for nine (9) years. He received his medical from Weill Cornell Medical College. He completed his Ophthalmic residency and Cornea fellowship at New York Eye and Ear Infirmary. He is board certified in Ophthalmology.

Dr. Andrew Nightingale is the Owner of Nightingale Eye Associates for over seven (7) years. He is an Attending Physician at New York Eye and Ear Infirmary, Mount Sinai St Luke's Roosevelt, and Mount Sinai Hospitals for over seven (7) years. He was a Summer Analyst at Citigroup Global Markets for three (3) months. He was a Research Scientist at Liem Lab in Columbia University for one (1) year. He was an Investment Banking Analyst at Citigroup Global Markets for eight (8) months. He was an Analyst at Commercial Industrial Finance Corporation for six (6) months. He received his medical degree from Columbia University College of Physicians and Surgeons. He completed his Ophthalmology residency at New York Eye and Ear Infirmary of Mount Sinai. He is board certified in Ophthalmology.

Michael Pastier is the Senior Vice President and CFO of the Mount Sinai Health System for seven (7) years. He was the Senior Vice President and CFO of Mount Sinai Hospital for 12 years. He was also Vice President of Financial Planning and Reporting for three (3) years. He was also the Director of Finance for 13 years. He is responsible for financial management, planning, organization, direction, and control of the health system. He manages over 700 finance employees, oversees operating and capital budgeting processes, manages all cash and liquidity, and is responsible for the preparation of monthly financial statements, determines revenue impact of new programs and program enhancements, and ensures the operation and liquidity supports the strategic mission of the institution. He also ensures efficient billing and collections for each hospital and standardized reporting from several different systems. He was a Senior Auditor at Deloitte & Touche for three (3) years. He managed several audits of hospitals ranging from 100-800 beds, consulted with several healthcare organizations on reimbursement issues and on maximizing revenue, and supervised and delegated assignments to staff. He is a member of the Board of Trustees of Hemophilia Services Consortium, Inc., Healthfirst, Inc., and LiveOnNY, Inc.

Dr. Enrique Perez is an Assistant Professor of Otolaryngology for three (3) years. He received his medical degree from the University of Miami Miller School of Medicine. He completed his Otolaryngology residency at Mount Sinai School of Medicine. He completed his Neurotology fellowship at the University of Miami Miller School of Medicine. He is board certified in Otolaryngology with a sup-certification on Neurotology.

Denise Prince is the Senior Vice President of Population Health at Mount Sinai Health System for five (5) years. She is also the Chief Operating Officer, of Mount Sinai Health Partners, and New York Medical Partners ACO, LLC. She serves as a member of the population health leadership team and partners with the CMO for Population Health to innovate and transform clinical operations to create, maintain, and optimize population health infrastructure in support of value-based care principles. She builds, develops, and manages the clinical operations team to drive reliable outcomes on key performance indicators and value-based contracts. She was the System Vice President of Value-based Care and Vice President of Population Health at Geisinger Health System for five (5) years. She also held the roles of CEO of Keystone ACO and CEO of Sun Home Health and Hospice. She co-led Geisinger's participation in Physician Group Practice Transition demonstration; partnered with CMS to refine key model attributes including benchmarking, data access, and quality measures. She spearheaded the creation of the Keystone ACO (KACO) joint venture to support population health, oversaw KACO joint venture governance and operations team, tracked and commented on CMS proposed rules and CMMI innovation

models, negotiated data and analytics contracts with vendors in support of alternate payment models, and led CMMI Bundled Payment for Care Improvement Initiatives. She was the Founder, Managing Partner, COO, and CEO of Geisinger Ventures for eight (8) years. She proposed, founded, and implemented Geisinger Ventures to access outside capital and maximize the benefit of intellectual property, for-profit businesses, and corporate relationships. Additionally, she vetted proposals, conducted due diligence, created business plans, and launched new businesses. The Geisinger Ventures team negotiated and implemented strategic partnerships. She led teams that raised more than \$22M from outside sources to support the system's innovation and mission. She was the Senior Vice President of Geisinger Diversified Services for 12 years. She directed and managed all aspects of operations and strategy for a portfolio of for-profit and not-for-profit services in partnership with clinical enterprise and insurance leaders. She was a Director of Management Services of Geisinger Diversified Services for two (2) years. She directed all retail pharmacies, home infusion pharmacies, and emergency support services. She consulted to outside hospitals to align with system strategies. Mrs. Prince discloses membership interest in the following healthcare facilities:

New York Medical Partners ACO

05/2107-present

Dr. Roheen Rainthatha is a Partner at ENT & Allergy Associates for over three (3) years. He was previously an Associate Physician at ENT & Allergy Associates for six (6) years. He is a Clinical Instructor in the Department of Otolaryngology at the Icahn School of Medicine at Mount Sinai for eight (8) years. He is a Reviewer for Allergy and Rhinology for seven (7) years. He is the Co-Chairman of Rhinology and Office-based Sinus Committee ENT & Allergy Associates for seven (7) years. He is a Member of OASIS Risk Management Committee for four (4) years. He is a Member of the Physician Recruitment Committee for three (3) years. He received his medical degree from Tufts University School of Medicine. He completed his Otolaryngology residency at New York Presbyterian Hospital Columbia and Cornell Campus. He completed his Advanced Rhinology and Endoscopic Skull Base Surgery fellowship at Weill Cornell Medical College. He is board certified in Otolaryngology.

Dr. Joshua Rosenberg is the Co-Chief of the Division of Facial Plastic and Reconstructive Surgery in the Department of Otolaryngology for over five (5) years. He is an Attending Physician and Assistant Professor in the Department of Otolaryngology for over 11 years. He was an Attending Physician at the Miami VA, the University of Miami Medical Group, Jackson Memorial Hospital, and the Miller School of Medicine for one (1) year. He received his medical degree from Albert Einstein College of Medicine. He completed his Otolaryngology residency at Albert Einstein College of Medicine. He completed his Facial Plastic and Reconstructive Surgery fellowship at Stanford University. He completed his Microvascular Reconstruction and Head and Neck Surgical Oncology fellowship at Miller School of Medicine at the University of Miami. He is board certified in Otolaryngology and Facial Plastic and Reconstructive Surgery.

Dr. Valeria Rubinstein is an Ophthalmologist at NY Medical & Surgical Eye Care for over 12 years. She is an Associate Adjunct Surgeon and Clinical Instructor at the New York Eye and Ear Infirmary for 15 years. She was an Assistant Professor at Albert Einstein School of Medicine for over two (2) years. She was an Instructor in Clinical Ophthalmology at College of Physicians and Surgeons of Columbia University for over two (2) years. She was a Clinical Instructor at Manhattan Eye, Ear, and Throat Hospital for over two (2) years. She received her medical degree from Northwestern University. She completed her Ophthalmology residency at Yale University. She completed her Glaucoma fellowship at Columbia University. She is board certified in Ophthalmology.

Sarah Sanford is the President of Finance of Merritt Healthcare for six (6) years. She is responsible for business operations of the affiliated ASCs. She was the Vice President of Firmwide Planning and Analysis of JP Morgan Chase for two years. She was responsible for consolidating firmwide results to senior management. She was the Manager of Financial Planning and Analysis at Moody's Corporation for two (2) years. She was responsible for financial analysis and budgeting for the corporate finance group. She was the Manager of Finance at Traveler's Insurance Company for seven (7) years. She was responsible for various financial reporting and budgeting roles for multiple lines of business.

Dr. Madeleine Schaberg is the Director of Rhinology and Endoscopic Sinus Surgery at New York Eye and Ear Infirmary of Mount Sinai for over 11 years. She was the Assistant Professor and Attending Surgeon at Thomas Jefferson University for 11 years. She is the Assistant Professor of Otolaryngology of

Head and Neck Surgery for over eight (8) years. She was the Assistant Professor of Otolaryngology of Head and Neck Surgery at New York Medical College for over two (2) years. She was the Assistant Professor of Otorhinolaryngology of Head and Neck Surgery for one (1) year. She was the Assistant Clinical Professor of Otorhinolaryngology for one (1) year. She received her medical degree from Tulane University School of Medicine. She completed her General Surgery Internship and Otolaryngology residency at Mount Sinai School of Medicine. She completed her Rhinology and Skull base Surgery fellowship at Weill Cornell Medical College of Cornell University. She is board certified in Otolaryngology Head and Neck.

Matthew Searles is the Founding Managing Director and Founding Partner of Merritt Healthcare Advisors for over 21 years. He is responsible for successfully completing over \$3B in healthcare transactions since 2001, spanning over 75 separate transactions. He is a leading developer and manager of ASCs in Eastern New York. He has developed 20 ASCs that perform over 75,000 annually. Mr. Searles discloses ownership information in the following healthcare facilities:

<i>River Valley ASC</i>	<i>2013-2016</i>
<i>Surgical Center of Connecticut, LLC</i>	<i>2013-2016</i>
<i>Western Connecticut Orthopaedic Surgical Center</i>	<i>2013-2017</i>
<i>Ellicott City ASC</i>	<i>2013-2017</i>
<i>Bloomfield ASC, LLC</i>	<i>2015-2021</i>
<i>Summer Street ASC, LLC</i>	<i>2015-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Orthopaedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Northern Westchester Facility Project, LLC</i>	<i>2019-present</i>
<i>UWS ASC, LLC</i>	<i>2021-present</i>

Richard Searles is a Partner and Chief Financial Officer at Merritt Healthcare for 14 years. He oversees business operations for Merritt's affiliated surgery center, including personal ownership in 12 ASCs in the Northeast. He has served as a Manager or Consultant for over 36 surgery centers. His duties include development, finance, and serving as a Board Member. He is a Partner in Merritt Healthcare Advisors for 14 years. He represents over 100 physicians, surgery centers, and surgical hospitals. He also provides analysis of operations and financials, as well as long-term strategic planning. He is a Board Member and Treasurer of the Connecticut Associations of Ambulatory Surgery Centers for six (6) years. Mr. Searles discloses ownership interest in the following healthcare facilities:

<i>UWS ASC LLC</i>	<i>2021-present</i>
<i>Northern Westchester Facility Project LLC</i>	<i>2019-present</i>
<i>Orthopaedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Summer Street ASC</i>	<i>2015-2021</i>
<i>Bloomfield ASC LLC</i>	<i>2015-2021</i>
<i>Ellicott City ASC LLC</i>	<i>2013-2017</i>
<i>Western Connecticut Orthopaedic Surgery Center</i>	<i>2013-2017</i>
<i>Surgical Center of Connecticut LLC</i>	<i>2013-2016</i>
<i>River Valley ASC</i>	<i>2012-2016</i>

Dr. Edward Shin is an Attending Physician at Beth Israel Medical Center for over 12 years. He is an Associate Attending in Otolaryngology at New York Eye and Ear Infirmary for over 14 years. He is the Vice Site Chair of Otolaryngology and Mount Sinai Downtown Campus for over five (5) years. He is a Professor of Clinical Otolaryngology at Icahn School of Medicine for over eight (8) years. He was the Interim Vice Chair of Otolaryngology at Mount Sinai Beth Israel for over two (2) years. He was the Chair of Otolaryngology at New York Eye and Ear Infirmary for four (4) years. He was the Chair of Otolaryngology for New York Medical College for over one (1) year. He was the Acting Chair in Otolaryngology at New York Medical College for over one (1) year. He was the Program Director in Otolaryngology at New York Eye and Ear Infirmary for over (2) years. He was an Assistant Professor and Professor of Otolaryngology at New York Medical College for four (4) years. He was a Clinical Instructor and Assistant Professor at Mount Sinai School of Medicine for over five (5) years. He was the Regional Director of Otolaryngology at Elmhurst Hospital Center and Queens Hospital Center for over four (4)

years. He was the Clinical Assistant at Elmhurst Hospital Center and Queens Hospital Center for over five (5) years. He received his medical degree from Stanford School of Medicine. He completed his Otolaryngology residency at the University of California, San Francisco. He is board certified in Otolaryngology.

Dr. Mark Speaker is the Medical Director of TLC Laser Eye Centers for 25 years. He is also an Attending Ophthalmologist at Lasix NYC for 25 years. He has held multiple roles at New York Eye and Ear Infirmary for over 37 years, including Resident Director, Chair of Infection Control Committee, Cornea Fellowship Director, and Director of Cornea Service. He received his medical degree from Albert Einstein College of Medicine. He completed his Ophthalmology residency at New York Eye and Ear Infirmary. He completed his Cornea External Disease fellowship at Wills Eye Hospital.

Dr. Eric Smouha is an Attending Physician at Long Island Jewish Hospital for over four (4) years. He is an Attending Physician at New York Eye and Ear Infirmary for over eight (8) years. He is an Attending Physician at Mount Sinai Hospital for over 17 years. He was an Attending Physician at Elmhurst Hospital Center for 12 years. He was an Attending Physician at Winthrop University Hospital for 10 years. He was an Attending Physician at Stony Brook University Hospital and Medical Center for five (5) years. He was an Attending Physician at Boston University Hospital, Boston City Hospital, Boston VA Hospital, Boston Children's Hospital, Waltham Weston Hospital, Melrose Wakefield Hospital, and Malden Hospital for two (2) years. He was an Attending Physician at Sarasota Memorial Hospital, HCA Doctor's Hospital of Sarasota, and Rehabilitation Institute of Sarasota for two (2) years. He received his medical degree from McGill University Faculty of Medicine. He completed his General Surgery residency at St. Vincent's Hospital. He completed his Otolaryngology residency at Manhattan Eye, Ear, and Throat Hospital. He completed his Otology-Neurotology fellowship at the Ear Research Foundation. He is board certified in Otolaryngology with a sub-certification in Neurotology.

Brent Stackhouse is the Managing Director of Mount Sinai Ventures for eight (8) years. He is the head of subsidiary holding companies responsible for the development, acquisition, and management of ambulatory care delivery joint ventures. He is responsible for sourcing, diligence, and in NYS DOH licensed care delivery companies. He grew the portfolio from 14 to 20 joint ventures, with seven (7) exits, increasing investment returns by 270%. He was the Executive Director of Strategy for the Primary Care Information Project in the Health Care Access and Improvement Division of the New York City Department of Health and Mental Hygiene for five (5) years. He was responsible for overseeing 60 direct reports across six (6) teams responsible for finance, operations, business development, marketing, and strategy. He turned around a failing \$23M federal grant program, improved deliverables by 500%, elevated staff morale, and increased national ranking from 59th to 4th in 15 months. He secured \$50M in federal, state, and foundation funding within three years by developing new product lines, marketing strategies, metrics-based tracking, and strategic partnerships. Mr. Stackhouse discloses membership interest in the following healthcare facilities:

<i>Carnegie Hill Endoscopy</i>	<i>09/2013-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>09/2013-04/2021</i>
<i>East Side Endoscopy</i>	<i>09/2013-present</i>
<i>Liberty Endoscopy Center</i>	<i>01/2017-10/2021</i>
<i>Yorktown Center for Special Surgery</i>	<i>12/2018-present</i>
<i>Manhattan Surgery Center</i>	<i>09/2013-present</i>
<i>Upper West Side Endoscopy Center</i>	<i>07/2021-present</i>
<i>West Side GI</i>	<i>09/2013-present</i>
<i>The Endoscopy Center of New York</i>	<i>12/2017-present</i>
<i>Hudson Surgery Center</i>	<i>01/2022-present</i>
<i>Empire State ASC</i>	<i>04/2018-11/2019</i>
<i>North Queens Surgical Center</i>	<i>04/2016-11/2019</i>
<i>Island ASC</i>	<i>09/2013-present</i>

Dr. Tai Tak Yee Tania is a Professor of Ophthalmology at the Icahn School of Medicine at Mount Sinai for over nine (9) years. She was the Assistant Professor of New York Medical College for three (3) years. She is an Attending Ophthalmologist at New York Eye and Ear Infirmary for over 12 years. She is also an Attending Physician at Mount Sinai Beth Israel for over nine (9) years. She received her medical degree from University of Pennsylvania School of Medicine. She completed her Ophthalmology residency at

Jules Stein Eye Institute at UCLA. She completed her Glaucoma fellowship at the Wills Eye Institute at Jefferson University Health System. She is board certified in Ophthalmology. She is the Chair of the Pharmaceuticals and Therapeutics Committee of New York Eye and Ear Infirmary. She is the Glaucoma Clinic Director, Clinic Co-Director, and Director of Microsurgical Laboratory of New York Eye and Ear Infirmary.

Dr. Gregory Tsai is the Assistant Professor and Attending Physician at Mount Sinai West Department of Otolaryngology for over four (4) years. He was previously a Partner at Head & Neck Surgical Group for over 10 years. He was previously a Partner at The Otolaryngology and Facial Plastics Center for seven (7) years. He is an Attending Physician at Mount Sinai West, Morningside Division, Mount Sinai Hospital, and New York Eye and Ear Infirmary of Mount Sinai for over 14 years. He received his medical degree from Baylor College of Medicine. He completed his General Surgery and Otolaryngology residency at Mount Sinai Hospital. He is board certified in Otolaryngology and Sleep Medicine.

Dr. Calvin Wei is an Assistant Professor in the Department of Otolaryngology at Mount Sinai West. He was an Attending Physician at the Department of Otolaryngology for six (6) years. He received his medical degree from Baylor College of Medicine. He completed his residency in Otolaryngology at New York University School of Medicine Affiliated Hospitals. He completed his Rhinology and Skull Base Surgery fellowship at the University of Pennsylvania School of Medicine. He is board certified in Otolaryngology.

Dr. Dina Weintraub is an Attending Physician in Private Practice for over 17 years. She was an Ophthalmologist at Beth Israel Medical Group for over eight (8) years. She received her medical degree from Albert Einstein College of Medicine. She completed her Ophthalmology residency and Glaucoma fellowship at Albert Einstein College of Medicine/Montefiore Medical Center. She is board certified in Ophthalmology.

Dr. Herbert Wisnicki is a Clinical Professor of Ophthalmology and Pediatrics at Mount Sinai School of Medicine for over eight (8) years. He is an Adjunct Professor of Clinical Ophthalmology & Visual Sciences and Pediatrics at Albert Einstein College of Medicine for over eight (8) years. He is an Adjunct Professor of Ophthalmology at New York University for over 11 years. He is the Medical Director of Union Square Eye Care for over 12 years. He is an Associate Attending Surgeon at the New York Eye and Ear Infirmary for over 26 years. He is an Attending Physician in Ophthalmology and Pediatrics at Beth Israel Medical Center for over 26 years. He was the Deputy Assistant Director of Ophthalmology for the Eye Clinic and Resident Training in Pediatric Ophthalmology at Beth Israel Medical Center for over two (2) years. He was an Assistant Attending and Assistant Professor in Ophthalmology at Mount Sinai Hospital, Mount Sinai School of Medicine, and Elmhurst Hospital for over five (5) years. He was a Consultant Attending at the Bronx VA Medical Center. He was an Associate Adjunct Attending Physician at New York Eye and Ear Infirmary for five (5) years. He was the Acting Chairman of Ophthalmology at Beth Israel Medical Center for 12 years. He was an Adjunct Attending at The New York Eye and Ear Infirmary for five (5) years. He received his medical degree from SUNY Upstate Medical Center. He completed his Ophthalmology residency at Mount Sinai Hospital. He completed a Flexible residency (Internal Medicine, Surgery, ICU, CCU, ER, and Pediatrics) at Framingham Union Hospital. He completed a Neuro-Ophthalmology Research fellowship at the National Eye Institute at the National Institute of Health. He completed a Neurosurgery Research fellowship at SUNY Upstate. He is board certified in Ophthalmology.

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

Mr. Stackhouse disclosed that in October 2016, Empire State Ambulatory Surgery Center was found to be non-compliant with the Conditions of Participation related to Surgical Services and was at risk of having its Medicare participation agreement terminated. The facility submitted an acceptable plan of correction and remained a participating supplier of services in the Medicare program.

- *Dr. Harmon disclosed one malpractice lawsuit. The suit was filed on November 25, 2015 by the patient. The patient alleged negligent performance of cataract surgery resulting in loss of vision. She had cataract procedures performed on August 24, 2015, September 14, 2015, and November 11, 2015. The patient was referred to another ophthalmologist, transferred her care, and did not return. The malpractice suit is pending.*
- *Dr. Horta-Santini disclosed on malpractice lawsuit. The suit was filed on August 25, 2015 by the patient and alleged negligent care and treatment. Specifically, the patient had a floppy iris from Fosamax and was treated for a cataract. The posterior capsule ruptured and caused mechanical anterior vitrectomy. The wound gape required two sutures. The post-operative cornea wound caused astigmatism and suboptimal visual acuity. A settlement in the amount of \$500,000 was reached out of court.*

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

- *The Department issued a Stipulation and Order (S&O) dated October 4, 2022, and fined Mount Sinai West \$10,000.00 based on findings from a survey that was completed June 15, 2020. Deficient practice was cited in the area of Patient Rights.*
- *The Department issued a Stipulation and Order (S&O) dated May 15, 2017, and fined Mount Sinai \$2,000.00 based on findings from a survey that was completed on January 25, 2016. Deficient practice was cited in the area of Patient Rights.*

Out of state facilities:

Connecticut:

- *The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Surgical Center of Connecticut, LLC on February 17, 2016. Deficient practice was cited in the area of Chief Executive Officer and/or Professional Staff and/or Records/Reports. Specifically, the facility failed to ensure that an unintended retention of a foreign object in a patient following surgery was reported and/or the surgical record was completed accurately. The foreign object retention not being retrieved was reflected in charting but was not reported to the Department per state statute. A review of the surgical count identified that all the instruments were accounted for, and the counts were correct however, this piece of equipment was not routinely included in equipment counts allowing it to be retained by the patient.*
- *The Facility of Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Surgical Center of Connecticut, LLC on May 19, 2016. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Records and Reports and/or Nursing Staff and/or General. Specifically, the facility failed to ensure that instruments are inspected for integrity prior to wound closure. The patient had surgery on December 29, 2015, and an x-ray on March 21, 2016, identified that a piece of guide wire pin had been left in the patient.*
- *The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Naugatuck Valley Endoscopy Center, LLC on June 10, 2016. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Records and Reports and/or General. Specifically, the facility failed to ensure that the anesthesia consent and/or record was accurate and/or complete and/or the anesthesia provided was in accordance with facility policy. The facility policy for levels of sedation identified that no general anesthesia will be administered for endoscopic procedures. The records of six (6) patients recorded the administration of general anesthesia.*
- *The Facility Licensing And Investigation Section of the Department of Public Health made an unannounced visit to Guilford Surgery Center on January 24, 2018, and cited the facility under Ownership and Administration and/or Chief Executive Officer and/or Profession Staff. Specifically, Anesthesiologists #1, #2, and #3 performed epidural steroid injections (ESI) on three patients.*

These Anesthesiologists were not credentialed to be performing ESI injections on the patients by the board. Additionally, the Facility Policy and Procedure manual that was reviewed and approved by the board on January 18, 2018, did not include pain injection procedures.

- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to the Naugatuck Valley Endoscopy Center, LLC on September 28, 2018. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Nursing Staff and/or General. Specifically, the facility failed to ensure the correct lens was implanted for one patient. A time-out procedure was completed and the error was not picked up.*
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Naugatuck Valley Endoscopy Center, LLC on September 10, 2019. Deficient practice was cited in the area of Ownership and Administration and/or Professional Staff and/or Nursing Staff and/or General. Specifically, the facility failed to ensure that the manufacturer's recommendations were followed when drying endoscopes.*
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Summer Street ASC LLC on December 18, 2020. Deficient practice was cited in the area of Owner and Administration and/or Chief Executive Officer and/or Professional Staff. Specifically, the facility failed to ensure that the physician remained in the facility until the patient was awakened from anesthesia and transported to the PACU in stable condition. The facility also failed to ensure the procedure was performed as per the surgical consent.*
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Bloomfield ASC on July 24, 2019. Deficient practice was cited for Surgical Services. Specifically, the Surgeon and CRNA failed to effectively communicate the timing of electrocautery and oxygen resulting in the concurrent use of the two. The combination of electrocautery in an oxygen-rich environment area resulted in a fire and injury to the patient. Subsequent to the event, the facility failed to ensure all the surgical staff were educated on fire safety protocols and the safe use of electrocautery. During the period after the fire and staff not being educated, 81 surgeries were performed which resulted in an Immediate Jeopardy.*
- During the above survey, the facility also failed the Life Safety Code survey due to failure of the facility staff to execute the Fire Safety Plan. Specifically, the staff failed to activate the fire alarm to activate emergency services/personnel and to warn other building occupants.*
- The Facility Licensure and Investigation Section of the Department of Public Health made an unannounced visit to Guilford ASC on January 28, 2020. Deficient practice was cited in the area of Chief Executive Office and/or Professional Staff. Specifically, the facility failed to ensure the quarterly reviews for radiology safety were being conducted by the Radiology Officer and the Radiology Physicist recommendations were evaluated or implemented from 2018. The facility's c-arm was not equipped with the proper required components with failure to do so leading to high x-ray exposure.*
- The Facility Licensing and Investigating Section of the Department of Public Health made an unannounced visit to Bloomfield ASC on October 1, 2021. Deficient practice was cited in the area of failing to ensure an adverse event was reported to the state agency in a timely manner. Specifically, three patients had the wrong lens power implanted in their eye and one patient had the wrong lens implanted in their eye. The Office Manager had reported the incident to the surgery center five days after the event and the state agency was not notified until 28 days after the event.*

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center plans to work closely with patients to educate them regarding the availability of primary care services in the area offered by local providers, including the array of services offered by Mount Sinai Beth Israel. Prior to leaving, each patient will be provided with information regarding the availability of local primary care services. The members of the Center are committed to serving all patients without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay or other personal characteristics. The operating budget projects include 20% Medicaid and that 2% of procedures will be for charity care, reduced compensation, or uncompensated care. The Applicant is committed to the development of a formal outreach program directed to the members of the local community. The Applicant is supported by the Institute for Family Health and Community Healthcare Network, both FQHCs. The Center will work

with these two FQHCs to reach out to underserved populations. The Center will also reach out to a number of affiliates of the Mount Sinai Health System to promote enhanced access to surgical services offered by the Center. As part of the Center's commitment to enhance access for underserved populations, the Center will contract with HealthFirst, Fidelis, United Community Plan, AmidaCare, and Empire Health Plus to provide ambulatory surgical services at the Center. The Center also plans to coordinate its services with inpatient and or specialty ambulatory facilities to which a patient is referred. The Applicant will also develop a Quality Assurance Program that will include an analysis of the effectiveness of the coordination efforts.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification. The Applicant will consider joining any Accountable Care Organization (ACO).

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$12,989,358, broken down as follows:

Renovation & Demolition	\$6,366,937
Design Contingency	636,694
Construction Contingency	636,694
Architect/Engineering Fees	764,033
Other Fees	222,547
Movable Equipment	3,985,000
Financing Costs	50,000
Interim Interest Expense	254,413
CON Application Fee	2,000
CON Processing Fee	<u>71,040</u>
Total Project Cost	\$12,989,358

The applicant's financing plan appears as follows:

Cash Equity (Members)	\$112,564
Cash Equity (Landlord)	1,200,250
Project Loan (6%, 10-year term)	10,176,544
Equipment Loan (7.91% swap 3.91% plus 4.00%), 5-year term)	<u>1,500,000</u>
Total	\$12,989,358

Valley National Bank has provided a letter of interest for the \$10,176,544, and Dext Capital has provided a letter of interest for the \$1,500,000 equipment loan.

BFA Attachments A and B present the members' net worth summaries and Mount Sinai Hospital's (MSH) 2021 certified financial statement, which show sufficient resources to meet the equity requirements. MSH will be the source of the Mount Sinai Ambulatory Ventures, Inc. (MSAV) equity contribution documented in a letter from the chief financial officer of Mount Sinai Health System.

Operating Budget

The applicant has submitted their first and third years' operating budgets in 2023 dollars, as summarized below:

	<u>Year One</u> <u>2023</u>		<u>Year Three</u> <u>2025</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues				
Medicaid Managed Care	\$1,253.96	\$2,302,263	\$1,249.35	\$2,433,733
Medicare Fee-For-Service	\$1,950.04	5,370,419	\$1,951.14	5,697,342
Medicare Managed Care	\$1,657.21	836,890	\$1,656.41	887,836
Commercial Fee-For-Service	\$2,828.78	3,685,897	\$2,665.15	3,685,897
Commercial Managed Care	\$2,535.45	6,516,108	\$2,534.94	6,912,775
All Other	\$575.43	16,112	\$589.38	17,092
Bad Debt		<u>-561,831</u>		<u>-589,040</u>
Total Revenues		\$18,165,858		\$19,045,635
Expenses:				
Operating	\$1,588.23	\$14,579,953	\$1,569.15	\$15,280,427
Capital	<u>\$319.18</u>	<u>2,930,097</u>	<u>299.22</u>	<u>2,913,838</u>
Total Expenses	\$1,907.41	\$17,510,050	\$1,868.37	\$18,194,265
Net Income or (Loss)		<u>\$655,808</u>		<u>\$851,370</u>
Utilization (procedures)		9,180		9,738
Cost Per Procedure		\$1,907.41		\$1,868.37

Utilization by the payor for the first and third years is summarized below:

Payor:	<u>Year One</u> <u>2023</u>		<u>Year Three</u> <u>2025</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid MC	1,836	20.00%	1,948	20.00%
Medicare FFS	2,754	30.00%	2,920	29.99%
Medicare MC	505	5.50%	536	5.50%
Commercial FFS	1,303	14.19%	1,383	14.20%
Commercial MC	2,570	28.00%	2,727	28.00%
Other	28	0.31%	29	0.31%
Charity	<u>184</u>	<u>2.00%</u>	<u>195</u>	<u>2.00%</u>
Total	9,180	100%	9,738	100%

Breakeven utilization is 8,849 procedures or approximately 96.4% of the first-year projected volume.

The following is noted concerning the submitted FASC budget:

- Reimbursement rates reflect current and projected Federal and State government reimbursement methodologies, with commercial and private payers reflecting adjustments based on experience in the region.
- Operating revenues by payor are based on the experience of the participating providers in accordance with the expected Center's collection rate.
- Utilization is based on 34 physicians' letters of interest in performing procedures at the Center.
- The number and mix of staff were determined by the experience of the participating physicians, Mount Sinai, and industry norms for freestanding ambulatory surgery centers.
- Expense assumptions are based on the experience of the participating providers, the experience of Mount Sinai, and other New York State FASCs.

Lease Rental Agreement

The applicant has submitted an executed lease agreement; the terms are summarized below:

Date:	July 27, 2021
Premises:	16,672 square feet located at 1115 Broadway, New York 10010
Landlord:	16 Madison Square West Associates
Lessee:	Peakpoint Flatiron, LLC.
Term:	20 years (rent abated for 1st 19 months unless operating sooner). Rent at \$1,300,000 (\$77.98 per sq. ft.) with 3% yearly increases
Improvement Allowance	Landlord agrees to reimburse the tenant up to \$1,200,250 in improvements.
Provisions:	Utilities, Maintenance, Insurance and Taxes

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

Administrative Service Agreement

The applicant has submitted a draft administrative services agreement; the terms are summarized below:

Facility:	Peakpoint Flatiron, LLC.
Contractor:	Merritt Healthcare Holdings Peakpoint, LLC.
Services Provided:	Advise on day-to-day operations in coordination with the Board of Managers and Administrator; make recommendations regarding the procurement of capital equipment, supplies, and IT; negotiate with vendors; assist with the implementation of billing and other IT systems; assist with financial management and bookkeeping; assist with the annual business plan and annual capital and operating budgets; assist with the financing of debt, and assist with recruitment and training of staff, oversee accreditation; assist in purchasing insurance and legal services, and assist in billing and collections.
Term:	5 years with automatic five (5) year renewals
Fee:	\$250,000 per year – adjusted by lesser of the Consumer Price Index (CPI) or 3%

Four (4) members of Peakpoint Partners LLC (member of the operating company) William Mulhall, Sarah Sanford, Matthew Searles, and Richard Searles are associated with Merritt Healthcare Holdings, LLC. The applicant has submitted an executed 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.

Capability and Feasibility

Total project costs of \$12,989,358 will be met through equity of \$1,312,814 (\$1,200,250 from the landlord and \$112,564 from members), with the remaining \$11,676,544 financed through two loans (project loan and equipment loan). The \$10,176,544 project loan is for ten years at a 6% interest rate; Valley National Bank has provided a letter of interest. The \$1,500,000 equipment loan is for five years at a 7.91% interest rate (swap rate of 3.91% plus 4.00%); Dext Capital has provided a letter of interest.

The working capital requirement is estimated at \$3,032,378 based on two months of third-year expenses. Funding will be met entirely through member equity. A review of BFA Attachments A and B, the members' net worth summaries, and Mount Sinai Hospital 2021 Certified Financial Statements reveal sufficient resources to meet all the equity requirements. BFA Attachment D presents the Center's pro forma balance sheet that shows operations will start with \$4,345,192 in positive equity.

A review of Attachment B, The Mount Sinai Hospital's 2020-2021 certified financial statements show positive working capital, positive net assets, and excess revenue over expenses of \$223.4 million in 2020 and \$396.4 million in 2021. Peakpoint Flatiron, LLC. projects an operating surplus of \$655,808 and \$851,370 in the first and third years of operation. The budget appears reasonable.

BFA Attachment E presents the members' New York State and out-of-state affiliated FASCs'.

Conclusion

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

Attachments

BHFP	Map
BFA Attachment A	Peakpoint Flatiron, LLC members' net worth summaries
BFA Attachment B	The Mount Sinai Hospital 2020-2021 Certified Financial Statement
BFA Attachment C	Peakpoint Flatiron, LLC Organizational Chart
BFA Attachment D	Pro Forma Balance Sheet of Peakpoint Flatiron, LLC
BFA Attachment E	Proposed members' ownership interest in NYS and Out of State Affiliated FASCs

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a dual single-specialty ambulatory surgery center at 1115 Broadway, New York for ophthalmology and otolaryngology/head and neck surgical services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

222089 B

Peakpoint Flatiron LLC

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed project loan commitment acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment loan commitment acceptable to the Department of Health. [BFA]
6. Submission of an executed administrative services agreement acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the executed Operating Agreement for Peakpoint Flatiron, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Administrative Services Agreement with Merritt Healthcare Holdings, LLC, acceptable to the Department [CSL]
9. Submission of a photocopy of the amended and executed copy of the Lease agreement, acceptable to the Department. [CSL]

10. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **July 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 **August 15, 2023**, and construction must be completed by **April 15, 2024**, 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 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]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

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



Project # 221281-B Integrity Care Services

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: August 22, 2022

Executive Summary

Description

Integrity Care Services, Inc. (Integrity or the Center), an existing not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment (D&TC) center in the Borough Park section of Brooklyn. Integrity currently operates an Article 31 Mental Health Clinic at 1426 39th Street, Brooklyn, New York. Once approved, this project would establish and construct an Article 28 D&TC on another floor of the same building to complement the Article 31 services.

Integrity intends to co-locate primary care and other medical specialties with their current mental health services with the ultimate goal of becoming a Federally Qualified Health Center (FQHC).

OPCHSM Recommendation

Contingent Approval is recommended.

Need Summary

The applicant projects 15,106 visits in Year One and 20,914 in Year Three with 63% Medicaid utilization and 9% Charity Care.

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 \$1,220,814, will be met through \$140,814 in equity from the operations of Integrity Care and \$1,080,000 borrowed by the landlord from Carver Federal Savings Bank (4.25% interest for a five-year term) that will be reimbursed by the applicant through rent payments.

Table with 3 columns: Budget, Year One (2023), Year Three (2025). Rows include Revenues, Expenses, and Net Income.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. 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 a bank loan commitment that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **May 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 **August 15, 2023**, and construction must be completed by **February 15, 2024**, 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 applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 9, 2023

Need Analysis

Background and Analysis

Integrity Care Services Inc., an existing Not-for-Profit Corporation, is seeking approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) in the Borough Park neighborhood in Brooklyn that is a HRSA designated Health Professional Shortage Area and Medically Underserved Area.

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 shows that the PQI rate for Kings County is slightly lower than the Rest of the State.

Hospital Admissions per 100,000 Adults for Overall PQIs		
PQI Rates: 2017	Kings County	New York State
All PQI's	1,407	1,431

According to Data USA, in 2019 93.7% of the population in Kings County had health coverage as follows:

Employer Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-Group Plans	10.5%
Military or VA	0.2%

Projected Payor Mix		
Insurance Type	Year One	Year Three
Commercial	14%	14%
Medicare	14%	14%
Medicaid	63%	63%
Charity Care	9%	9%

Through this project, Integrity intends to provide Article 28 services to its current mental health patient base to provide more integrated care. Integrity's ultimate plan is to become a Federally Qualified Health Center (FQHC) providing comprehensive service to its existing patients. Their goals are to hire new physicians and collaborate with the local community to provide education, testing, and screening to prevent chronic illness.

Conclusion

The new center will provide primary care and other medical specialty services in an area that has been designated as having a shortage of primary care providers.

Program Analysis

Project Proposal

Integrity Care Services Inc. (Integrity), an existing New York State Not for Profit Corporation, seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 1426 39th Street in Brooklyn (Kings County). The proposed Article 28 diagnostic and treatment center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties including Neurology, Cardiology, and Radiology. Integrity is an existing Article 31 mental health care provider that operates an Article 31 mental health clinic in good standing with the Office of Mental Health.

Proposed Operator	Integrity Care Services Inc.
To Be Known As	Integrity Care Services
Site Address	1426 39 th Street Brooklyn, New York 11218 (Kings County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Neurology Cardiology Radiology
Hours of Operation	Monday through Thursday 9 am to 8 pm Friday 9 am to 4 pm Sunday 9 am to 3 pm
Staffing (1st Year / 3rd Year)	11.49 FTEs / 17.02 FTEs
Medical Director(s)	Naftoli Neuberger, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by New York Presbyterian-Brooklyn Methodist 2.6 miles / 14 minutes away

Character and Competence

The members of Integrity Care Services Inc. are:

Name	Membership Interest
<i>Joel Follman</i>	President/Chairman
<i>Raizel Follman</i>	Secretary/Director
<i>Howard Becker, Psy.D</i>	Director
<i>Yahuda Schonblum</i>	Director
<i>Issac Sternhill</i>	Director

Dr. Naftoli Neuberger is the proposed Medical Director. He has been in private practice for approximately 40 years. He was a Research Assistant for two (2) years at the Hospital for Sick Children. He was the Director of the Cardiac Exercise Laboratory at Lutheran Medical Center for two (2) years. He was a Physician in Electrocardiogram Services at Long Island College Hospital for three (3) years. He was the Director of the Cardiac Catheterization Laboratory of Jamaica Hospital for two (2) years. He was an Instructor at Cornell Medical School for seven (7) years. He received his medical degree from the University of Toronto. He completed his residency in Internal Medicine and his fellowship in Cardiology at Montefiore Hospital. He is board certified in Internal Medicine and Cardiology.

Howard "Hillel" Becker is the Clinical Director of Integrity Care Services for seven (7) years. He is responsible for co-planning, developing, implementing, and overseeing the clinical operations of the organization. He assists in budgeting, policy development, supervision, and general oversight of operations. He held various roles at the Bronx Veteran Affairs Medical Center for 16 years. Most recently he was the Chief Psychologist and Director of training. He was responsible for planning, developing, implementing, and overseeing all aspects of the psychology program. He hired staff, oversaw the interview process, interfaced with hospital administration and other agencies, completed the program

evaluation, collected statistical data on the program, evaluated treatment protocols, and implemented new treatments. He was the Evidence-Based Treatment Coordinator. In this role, he was responsible for ensuring psychological staff training, education, and proper application of up-to-date research-based treatment modalities for the mental health treatment of veterans. He was a Clinical Psychologist who treated patients in group, individual, couple, and family processes. He was the Director of the Mental Health Intake Clinic where he supervised the organization and coordination of the intake program in the mental health outpatient clinic. He supervised over 1700 psychiatric intakes per year and provided supervision to intake professionals. He was the Assistant Clinical Professor of Psychiatry at Mount Sinai School of Medicine for 16 years. He was a Clinical Supervisor at Ferkauf Graduate School of Psychology for eight (8) years. He was a Clinical Adjunct at New School for Social Research for 16 years. He was a Faculty Member in Geriatric Research Education and Clinical Center at Mount Sinai School of Medicine for three (3) years. He received his Doctorate in Psychology from the Ferkauf Graduate School of Psychology. He completed his externship in Psychology at Long Island Jewish Medical Center. He completed his internship in Psychiatry at the Bronx VA Medical Center. He completed his fellowship in Substance Recovery Services at the Bronx VA Medical Center.

Joel Follman is the President and CEO of Integrity Care Services for over nine (9) years. He is responsible for the oversight, development, and advancement of the organization. He oversees the strategic direction of the company including monitoring the quality of care, staff development, financial performance, business development, and continuous performance improvement. He provides leadership to the members of the board, facilitates regularly scheduled meetings, guides the establishment of policies and procedures, discusses and plans financial matters, plans facility upkeep and expansion, and develops organization goals while helping guide the decision-making process. He was the President of Congregation Emek Hatalmud for seven (7) years. He established and operated the religious not-for-profit.

Raizel Follman is the Case Manager and Family Counselor for over nine (9) years. She is the Secretary of the Board of Integrity Care Services of six (6) months. She is responsible for assisting the President/CEO in the daily functioning of the organization, facilitating the board meetings, implementing board decisions, and developing policies and procedures. She also ensures that individuals with mental illness receive comprehensive care by coordinating patient services, liaising with doctors and therapists, ensuring patient compliance with medication, coordinating with primary care providers, and maintaining contact with family members. She was a Special Education Specialist at Ohr Halimud School for Special Education for over one (1) year. She specialized in meeting the educational and developmental needs of children with dyslexia and other learning and language disorders.

Yehuda Schonblum is a Community Habilitation at Hamaspik of King County for 13 years. He helps individuals with developmental and mental disabilities learn life skills and integrate into society. He is an Intensive Case Manager at Integrity Care Services for 10 years. He is responsible for ensuring that individuals with mental illness receive care and he coordinates their services by liaising with doctors and therapists. He is a member of the board of Integrity Care Services for 10 years. He helps run the organizational activities including planning and managing the budget, reviewing policies and procedures, and helping the organization maintain fiscal stability. He is an Officer on the Board of Directors of Integrity Care Services for

Isaac Sternhill is the President of 1152 Expediting Inc. for over eight (8) years. He is the manager of the company, and advocates on behalf of the clients to help them get the services they are eligible for. He is a Board Member of Integrity Care Services for six (6) months.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint

investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,220,814 with the following distribution of costs:

Renovation and Demolition	\$665,995
Design Contingency	66,600
Construction Contingency	66,600
Architect/Engineering Fees	66,600
Construction Manager Fees	16,652
Other Fees (Consultant)	20,000
Moveable Equipment	289,000
CON Fee	2,000
Additional Processing Fee	<u>6,667</u>
Total Project Cost	\$1,220,814

Project costs are based on a July 1, 2023, construction start date and a six-month construction period.

The applicant's financing plan appears as follows:

Equity (from Integrity operations)	\$140,814
Bank Loan (4.25% for 5 years)	\$1,080,000
Total	\$1,220,814

Operating Budget

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

	<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2025)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$147.70	\$312,380	\$147.72	\$432,531
Medicare FFS	\$98.46	208,253	98.48	288,354
Medicaid FFS	\$169.08	76,591	169.14	106,052
Medicaid Managed Care	\$182.62	<u>1,655,054</u>	182.62	<u>2,291,657</u>
Total Revenues		\$2,252,278		\$3,118,594
Expenses:				
Operating	\$123.51	\$1,865,615	\$125.87	\$2,632,675
Capital	<u>23.02</u>	347,726	<u>16.63</u>	347,726
Total Expenses	\$146.53	<u>\$2,213,341</u>	\$142.50	<u>\$2,980,401</u>
Net Income		\$38,937		\$138,193
Utilization: (Visits)		15,105		20,915

The following is noted with respect to the submitted operating budget:

- The overall projected utilization for the Center was based on a conservative number of visits per square foot, discounted at a rate to account for the need to ramp up the Center over the first few years of operation. The number and mix of staff and operating expenses were determined based on a combination of the projected utilization, experience of the applicant, industry standards, and the experience of similar D&TCs in New York State.
- Reimbursement rates (non-Medicaid) were based on a percentage of Medicare rates for each type of office visit for each payer. Medicaid rates were based on the Downstate Medicaid APG rate calculation (inclusive of case mix, discounts for managed care negotiations, and capital expenses). These conservative rates were applied to the utilization projections to calculate overall revenue for the Center.

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

	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Commercial FFS	14.00%	14.00%
Medicare FFS	14.00%	14.00%
Medicaid FFS	3.00%	3.00%
Medicaid MC	60.00%	60.00%
Charity Care	<u>9.00%</u>	<u>9.00%</u>
Total	100.00%	100.00%

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	Premises located at 1426 30 th Street, Brooklyn, New York.
Lessor	1426-1428 39 th Street, LLC
Lessee	Integrity Care Services, Inc.
Term	30 years
Rental	\$270,000 annually year one with annual increases not exceeding 5% per year.
Provisions	The lessee shall be responsible for real estate taxes, insurance, and utilities.

The proposed Center will be constructed on the first floor of a building located at 1426 39th Street, Brooklyn (Kings County), New York 11218. The building is owned by 1426-1428 39th Street, LLC, which leases space in the building to Integrity. Mr. Joel Follman, President and Board Chairman of Integrity, is the sole member of 1426-1428 39th Street, LLC; the lease is not an arm's length agreement. The applicant submitted real estate letters attesting to the reasonableness of the per-square-foot rental.

Capability and Feasibility

The total project cost of \$1,220,814 will be met as follows: Equity of \$140,814 via operations of Integrity Care Services, Inc. and a bank loan of \$1,080,000 at an interest rate of 4.25% for a five-year term. The applicant submitted a letter of interest for the financing.

Working capital requirements are estimated at \$496,734, equivalent to two months of third-year expenses. The applicant will provide equity from Integrity Care Services operations. Presented as BFA Attachment A, the internal financial statements of Integrity Care Services, Inc., dated September 30, 2022, indicates the availability of sufficient funds for the equity contribution. Presented as BFA Attachment B, the pro forma balance sheet of Integrity Care Services, Inc. on the first day of operations, indicates a positive net asset position of \$637,548. The submitted budget reflects net income of \$38,937 and \$138,193 during the first and third years, respectively. Revenue assumptions 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	Map
BFA Attachment A	September 30, 2022, internal financial statements of Integrity Care Services, Inc
BFA Attachment B	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new diagnostic and treatment center at 1426 39th Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

221281 B

Integrity Care Services

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **May 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 **August 15, 2023**, and construction must be completed by **February 15, 2024**, 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 applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

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



Project # 222032-B
Mount Valley Care LLC

Program: Diagnostic and Treatment Center County: Rockland
Purpose: Establishment and Construction Acknowledged: October 6, 2022

Executive Summary

Description

Mount Valley Care, LLC (The Center), an existing Limited Liability Company requests approval to establish and construct an article 28 Diagnostic & Treatment Center (D&TC) for Primary Care and Medical Services and Other Medical Services that would include but are not limited to infectious disease, pulmonary care, endocrinology, and cardiology services.

The sole member of the proposed operator is Meir Oster. Binyomin Nemon, M.D. will serve as the Medical Director.

The proposed center is negotiating a Transfer and Affiliation Agreement with Good Samaritan Hospital which has expressed support for this project and is approximately 4.8 miles away.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 6,402 visits in Year One and 7,200 in Year Three with Medicaid at 40.00% and Charity Care at 2.00% for both years.

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 \$220,125 will be met with equity from the proposed sole member.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows: Revenues (\$1,024,833 vs \$1,171,473), Expenses (996,127 vs 1,117,777), Net Income (\$28,406 vs \$53,696).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. 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 **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 **August 15, 2023**, 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. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 9, 2023

Need Analysis

Background and Analysis

The primary service area is Spring Valley within Rockland County. The proposed address is not within a Health Professional Shortage Area; however, the applicant has expressed plans to focus on underserved and minority populations.

The center will provide primary care services and other medical specialty services including pulmonology, infectious disease, endocrinology, and cardiology. Hours of operation will be Monday-Friday, 8:00 am to 6:00 pm; with the ability to expand to include Sunday, 8:30 am to 6:00 pm if needed. The number of projected visits is 6,402 in Year One and 7,200 in Year Three.

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.

Hospital Admissions per 100,000 Adults for Overall PQIs			
PQI Rates: 2017	Zip Code (10977) Spring Valley	Rockland County	New York State
All PQI's	957	1,033	1,431

According to Data USA, in 2019 95.3% of the population in Rockland County had health coverage as follows.

Employer Plans	45.8%
Medicaid	26.7%
Medicare	11.6%
Non-Group Plans	11%
Military or VA	0.226%

Current and Projected Payor Mix		
Payor	Year One	Year Three
Commercial	27.99%	28.00%
Medicare	24.99%	25.00%
Medicaid	39.99%	40.00%
Private Pay	5.00%	5.00%
Charity Care	2.03%	2.00%
Other	0.00%	0.00%

Conclusion

The proposed center will improve access to primary care services and other medical specialty services including pulmonology, infectious disease, endocrinology, and cardiology, to residents in Spring Valley and the surrounding areas of Rockland County.

Program Analysis

Project Proposal

Mount Valley Care LLC seeks approval to establish and construct an article 28 diagnostic and treatment center to be located at 290 Route 59 in Spring Valley (Rockland County). The proposed Article 28 diagnostic and treatment center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties including Pulmonology, Pediatric Pulmonology, Infectious Disease, Endocrinology, and Cardiology.

Proposed Operator	Mount Valley Care LLC
To Be Known As	Mount Valley Care
Site Address	290 Route 59 New York 10977 (Rockland County) Spring Valley,
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Pulmonology/Pediatric Pulmonology Infectious Disease Endocrinology Cardiology
Hours of Operation	Monday to Friday 8:00 am to 6:00 pm Sunday 8:30 am to 6:00 pm as needed
Staffing (1st Year / 3rd Year)	4.75 FTEs / 6.05 FTEs
Medical Director(s)	Binyomin Nemon, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by: Good Samaritan Hospital 4.8 miles / 16 minutes away

Character and Competence

The members of Mount Valley Care LLC are:

Name	Ownership Interest
Meir Oster	100.00 %
Total	100.00%

Dr. Binyomin Nemon is the proposed Medical Director. He is the Medical Supervisor for COVID Testing at Express Health NYC for two (2) years. He was a locum tenens Physician at various urgent care locations in the Greater NYC area for one (1) year. He was a locum tenens Occupational Medicine Physician at MTA/NYC Transit MAC for four (4) months. He was a Primary Care/Adult Medicine Physician at the Damian Family Care Center for six (6) months. He was a Primary Care Physician at Adaptation Medical for over six (6) years. He was a Medical and Laboratory Director at Community Urgent Care for over four (4) years. He was a Primary Care Physician for Physician's Medical Group for over 14 years. He was the Medical Director of Express Medical for over three (3) years. He was the Medical Director of Bath Medical for one (1) year. He was a Primary Care Physician and Osteopathic Manipulative Treatment Physician at Care for You Medical for over one (1) year. He was Volunteer Attending Staff at Maimonides Medical Center for three (3) years. He was the Medical Director and Owner of Chai Care Urgent Care for five (5) months. He was a Family Practice and Urgent Care Physician for six (6) years. He was a Physician at Enta Medical for one (1) year. He was Emergency Room Physician for three (3) months. He received his medical degree from the New York College of Osteopathic Medicine. He completed his Family Practice Rural track residency at Colorado Springs Osteopathic Foundation/Western University of Health Sciences. He completed his Family Practice Residency at Mercy Hospital/UPMC. He is board certified in the Osteopathic Board of Family Physicians.

Meir Oster is the Director of Social Work services at Rayim for three (3) years. He was the Director of Case Management Services at Attentive Behavior Care for over two (2) years. He oversaw case

management services for the patients. He was a School Social Worker at United Talmudic Academy for seven (7) months. He provided social work management services. He was a School Social Worker at Yeshiva Vinitz for over three (3) years. He provided social work management services. He was an Assistant to Social Work Staff at the Community Outreach Center for one (1) year. He worked with school children in basic educational skills.

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

- Dr. Nemon disclosed being sued by Chase bank in 2021. In October 2017, Dr. Nemon entered into a Term Note and Credit Agreement for \$180k with JP Morgan Chase Bank. He defaulted on the loan in 2019 with the loan in the amount of \$140k. Chase Bank sued Dr. Nemon in 2021 and won a judgement in the amount of \$157k. In 2022, Dr. Nemon entered into a new payment agreement with Chase Bank and is presently in compliance with his payments.

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

Conclusion

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

Financial Analysis

Total Project Costs and Financing

The total project cost for leasehold improvements, renovations, and moveable equipment is distributed as follows:

Renovation & Demolition	\$75,059
Design Contingency	1,501
Construction Contingency	3,753
Architect /Engineering Fees	5,916
Other Fees	75,000
Moveable Equipment	55,703
CON Fee	2,000
Additional Processing Fee	<u>1,193</u>
Total Project Cost	\$220,125

Total project costs will be met with equity from the proposed sole member, shown on Attachment A personal net worth statement shows sufficient resources to cover this cost.

Operating Budget

The applicant has submitted their first and third-year operating budget, in 2023 dollars, as shown below:

Revenues:	<u>Year One-2024</u>		<u>Year Three-2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$166.50	\$298,368	\$169.83	\$342,377
Medicare FFS	\$185.00	59,200	\$188.70	67,932
Medicaid MC	\$165.50	213,120	\$169.83	244,555
Medicaid FFS	\$160.57	205,530	\$160.57	231,221
Medicaid MC	\$160.57	205,530	\$163.78	235,855
Private Pay	\$200.00	64,000	\$204.00	73,440
Bad Debt		(\$20,915)		<u>(23,907)</u>
Total Revenue		\$1,024,833		\$1,171,463
 Expenses:				
Operating	\$143.85	\$920,865	\$144.51	\$1,040,499
Capital	<u>\$11.02</u>	<u>75,562</u>	<u>\$10.74</u>	<u>77,278</u>
Total Expenses	<u>\$155.07</u>	\$996,127	\$155.25	\$1,117,777
 Net Income				
		<u>\$28,406</u>		<u>\$53,696</u>
 Visits				
		6,402		7,200
Cost/Visit		\$155.07		\$155.25

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

	<u>Year One-2024</u>		<u>Year Three-2026</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	1,792	27.99%	2,016	28.00%
Medicare FFS	320	5.00%	360	5.00%
Medicare MC	1,280	19.99%	1,440	20.00%
Medicaid FFS	1,280	19.99%	1,440	20.00%
Medicaid MC	1,280	19.99%	1,440	20.00%
Private Pay	320	5.00%	360	5.00%
Charity Care	<u>130</u>	<u>2.03%</u>	<u>144</u>	<u>2.00%</u>
Total	6,402	100%	7,200	100%

The following is noted concerning the submitted revenues/expense budgets and utilization:

- The applicant plans to reach an underserved population with a growing minority population and ensure that services are sensitive to the needs of the population in a centralized location.
- Year One and Year Three project 5,122 and 5,760 visits for primary care visits, respectively.
- Year One and Year Three project 1,280 and 1,440 in other medical specialties, respectively, treating Infectious Diseases, Pulmonology, Endocrinology, and Cardiology.
- Commercial insurance is negotiated and Medicare FFS is based on the (Part B) fee schedule.
- Medicaid rates are based on actual rates expected for services performed using the APG rates published by the Department for freestanding clinics.
- Expenses in Year One and Year Three, including salaries and administrative costs, project a 6.00% inflation factor based on input from the Medical Director and prior experience operating a D&TC.

Lease Agreement

The applicant has submitted a draft lease agreement for the site that Mount Valley Care, LLC will occupy, summarized below:

Data:	December 20, 2022
Premises:	290 Rt. 59 Spring Valley, NY 10977 (Suite 101 & 102)
Landlord:	59 & Cole, LLC
Tenant:	Mount Valley Care, LLC
Term:	5-year term and a renewal option schedule have been sent in with the dates and amounts for a renewal option once exercised by both parties.
Rent:	May 1, 2021, thru April 30, 2022, Rent is \$38,400 annually. May 1, 2022, thru April 30, 2023, Rent is \$39,552 annually. May 1, 2023, thru April 30, 2024, Rent is \$40,738 annually. May 1, 2024, thru April 30, 2024, Rent is \$41,960 annually. May 1, 2025, thru April 30, 2026, Rent is \$43,219 annually. May 1, 2026, thru April 30, 2027, Rent is \$44,516 annually. May 1, 2027, thru April 30, 2028, Rent is \$45,851 annually. May 1, 2028, thru April 30, 2029, Rent is \$47,227 annually. May 1, 2029, thru April 30, 2030, Rent is \$48,643 annually. May 1, 2030, thru April 30, 2031, Rent is \$50,103 annually. May 1, 2031, Thru April 30, 2032, Rent is \$51,606 annually.
Provisions:	The tenant is responsible for cleaning for office, damage, and trash removal. The tenant will pay an additional 28% of total utility bills for the entire floor occupied and space not utilized on the floor will be billed at 90% of the utility bill.

The lease space is an arm's length agreement as stated in the landlord-tenant affidavit submitted. The affidavit states there is no common ownership between the landlord or the tenants, LLC. The applicant has submitted two letters of rent reasonableness as they are related by family.

Capability and Feasibility

Total project costs of \$220,125 will be met via equity from the applicant's net worth statement. Attachment A shows the applicant has sufficient funds to meet the total project cost requirements.

Working capital requirements are estimated at \$186,297 based on two months of third-year expenses and will be used via the ongoing operations. Attachment A shows the applicant's net worth indicating sufficient equity to cover the working capital need. Attachment B is the Pro Forma Balance sheet as of the first day of operations indicating a members' equity of \$406,422 for the first day of operations.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	New Worth Statement (Sole Member)
BFA Attachment B	Pro Forma – Mount Valley Care, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new diagnostic and treatment center at 290 Route 59, Spring Valley, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

222032 B

Mount Valley Care LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. 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 **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 **August 15, 2023**, 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. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

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



Project # 222123-E
The Knolls at Goshen, Inc.

Program: Residential Health Care Facility
Purpose: Establishment

County: Orange
Acknowledged: October 11, 2022

Executive Summary

Description

The Knolls at Goshen, Inc., a New York State not-for-profit corporation, is seeking approval to be established as the new operator of a 40-bed residential health care facility operated as part of a Continuing Care Retirement Community (CCRC) known as Glen Arden Inc. Currently, Glen Arden Inc, is operated by two entities, Glen Arden, Inc, and Elant Inc., both Voluntary, not-for-profit corporations. The CCRC also includes 148 independent living units and 28 enriched housing program beds, all of which are located at 214 Harriman Drive, Goshen, New York. Upon approval of this transaction, the applicant will operate the facility under the name The Knolls at Goshen.

On January 24, 2022, Glen Arden, Inc. and Elant, Inc. entered an Asst Purchase Agreement (APA) with The Knolls at Goshen, Inc. whereby The Knolls at Goshen, Inc. will purchase the operating assets of the CCRC from Glen Arden, Inc. and Elant, Inc. The applicant will enter into an Administrative Services Agreement with Bethel Communities Management I, LLC (BCM).

OPCHSM/OALTC Recommendation
Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

There are no projects costs associated with this application. However, the purchase price of the APA is \$41,073,64, and will be met as follows: \$13,570,000 for the assumption of the Bond Debt, \$24,000,000 of refund obligations pursuant to the Assumed Resident Contracts, \$2,500,000 on account of the Assumed Liabilities, \$741,000 for the Assumed Pension Liabilities, \$212,642 for Assumed Liabilities and \$50,000 for Administrative Services to be provided after the Closing Date.

Table with 3 columns: Budget, Year One 2023, Year Three 2025. Rows include Revenues, Expenses, and Excess of Revenues.

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment)

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 bond resolution, acceptable to the Department. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of a photocopy of an executed copy of the proposed Certificate of Amendment to its Certificate of Incorporation or Certificate of Dissolution of Glen Arden, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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. Submission of documentation of approval by the Continuing Care Retirement Community Council of the full certificate authority application and issuance of a certificate of authority to operate the continuing care retirement community. [BFA]

Council Action Date

February 9, 2023

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Glen Arden Inc.	The Knolls at Goshen
Address	214 Harriman Drive Goshen, NY 10924	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Corporation	Same
Class of Operator	Voluntary Not for Profit	Same
Operator	Glen Arden, Inc. Co-Operator: Elant Inc.	The Knolls at Goshen, Inc Board Membership: James Campbell Rev. Dr. John Carrington Robert Elliott Rev. Kevan Thomas Hitch Margaret McGarrity Richard Merbaum Andrew Samalin

Character and Competence - Assessment

James Campbell is currently retired and has been so since 2009. Prior to retirement James Campbell was the executive director of Leake and Watts Services, Inc, which is a not-for-profit social services agency providing services for children and families located in Yonkers, NY since 1976. James Campbell holds a master's degree in Social Work from Fordham University. James Campbell discloses the following interests in health facilities:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2012 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2012 to present

End Dated Facilities

Amsterdam Nursing Home (Board Member)	06/2009 to 07/2022
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CCRC

The Knolls (Board Member)	11/2016 to present
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Rev. Dr. John Carrington is currently retired and has been so since 2018. Prior to retirement Rev. Dr. John Carrington was the Pastor at St. Mark's United Methodist Church located in New York, NY since 2015. Rev. Dr. John Carrington holds a doctorate degree in Ministry from New York Theological Seminary. Rev. Dr. John Carrington discloses the following interests in health facilities:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/1976 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/1976 to present

CCRC

The Knolls (Board Member)	11/2016 to present
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End Dated Facilities

New York Presbyterian Brooklyn Methodist Hospital (Board Member)	12/1968 to 9/2022
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Robert Elliott is currently retired and has been so since January 2022. Before retirement Robert Elliott was a contracted Director at New York Municipal Energy Program an energy aggregator business located in New York, NY since January of 2020. Prior to that Robert Elliott was an Executive Director at Sustainable Westchester, Inc. a nonprofit that business that provided energy programs and education to municipalities and residents of Westchester County located in Mt. Kisco, NY from June 2016 to January 2020. Robert Elliott holds a Master of Business Administration degree from George Washington University School of Government and Business. Robert Elliott discloses the following health facility interests:

End Dated Facilities

Bethel Nursing Home Company Inc. (Board Member)	06/2000 to 06/2022
Bethel Nursing & Rehabilitation Center (Board Member)	06/2000 to 06/2022

CCRC

The Knolls (Board Member)	11/2016 to 06/2022
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Rev. Kevan Thomas Hitch lists employment at: Valhalla United Methodist Church as Pastor located in Valhalla, NY since 2003. Rev. Kevan Thomas Hitch holds a Master of Divinity degree from Princeton Theological Seminary and discloses the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2006 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2006 to present

CCRC

The Knolls (Board Member)	11/2016 to present
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Margaret McGarrity is currently retired and has been so since 2010. Prior to retirement Margaret McGarrity was the Director of Physical Therapy at Maryknoll Sister's Nursing Home and Assisted Living since 1984 and concurrently worked as a physical therapist for the Visiting Nurse Association and the Visiting Nurse Service since 1977. Margaret McGarrity holds a master's degree in Physical therapy from New York University and disclosed the following health facility interests

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2016 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2016 to present

CCRC

The Knolls (Board Member)	11/2016 to present
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Richard Merbaum is currently retired and has been so since March 2022. Prior to retirement Richard Merbaum worked for Willis Group Holdings Limited an insurance brokerage firm located in New York , NY for 35 years. Richard Merbaum holds an insurance broker license in the state of New York that is in good standing and a Master of Business Administration degree from Columbia University. Richard Merbaum discloses the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2002 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2002 to present

CCRC

The Knolls (Board Member)	11/2016 to present
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Andrew Samalin lists employment at: Samalin Investment Counsel, LLC an investment advisory practice as principal located in Chappaqua, NY since 2007. Andrew Samalin holds an active Enrolled Agent license with the IRS and is a licensed Certified Financial Planner in good standing. Andrew Samalin holds

a master's degree from New York University. Andrew Samalin discloses the following health facility interests:

End Dated Facilities

Bethel Nursing Home Company Inc. (Board Member) 06/2007 to 06/2022
 Bethel Nursing & Rehabilitation Center (Board Member) 06/2007 to 06/2022

CCRC

The Knolls (Board Member) 11/2016 to 06/2022

The proposed applicants have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
< 48 Months					
48 months or more					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
James Campbell	2	1	100%	1	0%
Rev. Dr. John Carrington	2	0	0%	2	50%
Robert Elliott	0	NA	NA	NA	NA
Rev. Kevan Thomas Hitch	2	0	0%	2	50%
Margaret McGarrity	2	0	0%	2	50%
Richard Merbaum	2	0	0%	2	50%
Andrew Samalin	0	NA	NA	NA	NA

DURATION OF OWNERSHIP AS OF 2/9/2023

Data date: 11/2022

New York. The proposed applicant's portfolio currently includes two New York facilities. The first facility Bethel Nursing Home Company Inc. has a CMS overall quality rating of average with a three-star rating. The second facility Bethel Nursing & Rehabilitation Center has a CMS overall rating of below average with a two-star rating. When asked to explain the low overall CMS rating for Bethel Nursing & Rehabilitation Center the applicants indicated the following.

The facility's overall rating was impacted by the health inspection rating of two stars, which was the result of a health inspection that was conducted in October of 2020. Most of the negative findings relating to that health inspection were the result of facility staff not responding quickly enough to resident needs in regard to mealtimes and lack of adequate supervision of those residents who require supervision while eating, as well as several deficiencies relating to the cleanliness of the facility's kitchen. The facility has already addressed all of these deficiencies via a completed plan of correction and the facility continues to monitor these areas periodically via random internal audits to assure that these changes are being sustained. There is now stable leadership at the facility and they have incorporated the following initiatives: all disciplines participate in the quality assurance and performance improvement program, the facility is ensuring on a daily basis that staffing levels meet the minimum requirements, the facility conducts interdisciplinary team meetings to discover potential issues or areas of concern in regard to residents' health and includes an in-depth analysis each week to keep facility staff focused on methods to improve resident outcomes, the facility utilizes a Minimum Data Set (MDS) program called Point Right, which is utilized to monitor any potential resident issues that affect Quality Measures and resident care, and the facility has contracted with an after-hours telehealth service that provides on-site medical assessments to

residents. As a result of these initiatives, the facility expects to improve the overall CMS quality rating at the facility.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Glen Arden Inc.	Subject Facility	****	***	*****	****
	Current	***	***	****	****
Bethel Nursing Home Company Inc.	06/1976* Data Date 01/2009	****	***	***	****
	Current	**	**	***	***
Bethel Nursing & Rehabilitation Center	06/1976* Data Date 01/2009	****	***	**	****

Data date: 11/2022

Quality Review – End Dated Nursing Home

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Amsterdam Nursing Home Corp (1992)	07/2022	***	**	*****	**
	06/2009	****	****	****	****

Enforcement History

A review of operations of Bethel Nursing Home Company Inc., NY for the period identified above reveals no enforcements:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-171 issued for surveillance findings on July 27, 2021, under 10 NYCRR 415.19(b)(4) Infection Control.

A review of operations of Bethel Nursing & Rehabilitation Center, NY for the period identified above reveals no enforcements.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized below:

	Current 2021		Year One 2023		Year Three 2025	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicare FFS	\$721.45	\$1,464,545	\$721.30	\$1,589,031	\$721.30	\$1,589,031
Medicaid FFS	\$268.04	\$170,203	\$268.03	\$184,670	\$268.03	\$184,670
Private Pay	\$173.91	\$1,761,834	\$350.00	\$3,847,247	\$350.00	3,847,247
Independent Living		\$6,077,076		\$6,077,076		\$6,077,076
Adult Care Facility		<u>\$556,785</u>		<u>\$960,483</u>		<u>\$960,483</u>
Total		\$10,030,443		\$12,658,507		\$12,658,507
Expenses:						
Operating	\$730.30	\$9,344,978	\$750.94	\$10,426,070	\$752.86	\$10,452,698
Capital	<u>\$142.79</u>	<u>\$1,827,170</u>	<u>\$131.60</u>	<u>\$1,827,170</u>	<u>\$131.60</u>	<u>\$1,827,170</u>
Total Expenses	\$873.10	\$11,172,148	\$882.54	\$12,253,240	\$884.46	\$12,279,868
Excess/						
Loss of Revenues		(\$1,141,705)		\$405,267		\$378,639
Patient days		12,796		13,884		13,884
Occupancy		87.64%		95.10%		95.10%

The following is noted with respect to the operating budget:

- The increase in private pay rates is based on the fact that currently Glen Arden does not admit residents to skilled nursing facility directly from the external community thus all skilled nursing facility residents have transferred from other Independent Living or Enriched Housing settings, as such, the facility's current Private Pay rates as shown in the facility's Cost Report are artificially low.
- The applicant has indicated that the increase in projected utilization in year one and year three is due to the following: plans to implement a modest renovation plan to resident housing units as they become unoccupied (similar to what was done by an affiliate entity at The Knolls, located in Valhalla, New York), rebrand the campus and invest heavily in marketing (at levels consistent with a startup community).
- Operating expenses are based on current year operating expenses, increased accordingly for inflation for most items and certain operating costs, such as professional fees and purchased services, are expected to be reduced in year One and year Three due to planned administrative efficiencies.
- Medicare FFS and Medicaid FFS reimbursement rates are projected to remain the same from the 2021 levels.

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

	<u>Current</u> <u>2021</u>	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Medicare FFS	15.87%	15.87%	15.87%
Medicaid FFS	4.96%	4.96%	4.96%
Private Pay	79.17%	79.17%	79.17%

Administrative Services Agreement

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

Facility	The Knolls at Goshen, Inc.
Contractor	Bethel Communities Management 1, LLC
Term	This agreement may be terminated by either party upon giving notice 30 days prior to the termination date.
Services Provided	The Contractor shall provide the following services: establish case mix goals, and operating budgets with monthly review as to budget variances, hire, pay, supervise and discharge the personnel necessary to properly manage and maintain the facility, developed operating procedures, systems and controls, together with associated forms, for the purpose of providing effective management techniques and functions, maintain the quality of resident services, resident care and to maintain the efficient administration of the facility, within the guidelines of Federal and State regulations, establish all rates and rate increases and request demand, collect and receive any and all changes and payments from Medicare, Medicaid, Insurance Companies, HMOs, private or other sources of payments, as they become due.
Fee	\$801,000

Lease Rental Agreement

The applicant has submitted an executed lease assignment for the site that they will occupy. The applicant will occupy the site under the following terms:

Premises	6 Harriman Drive, Goshen, New York
Lessor	Garnet Health Medical Center
Lessee	Glen Arden, Inc.
Term	99 years
Rental	\$50,000 for the first year beginning with the date the first resident moves into the Glen Arden Facility.
	\$75,000 for each of the second, third, fourth and fifth years.
	\$95,000 for the sixth year
	\$105,000 for each of the seventh and eight years.
	\$112,000 for the ninth and tenth year.
	Thereafter, the Base Rent shall be established annually by landlord, but never more than 105% of the Base Rent for the immediately preceding year.
Provisions	The lessee shall be responsible for real estate taxes, maintenance and utilities.

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, which is summarized below:

Purpose	The sale of 40 licensed and Medicare certified skilled nursing beds, 148 independent living units and 28 enriched housing units located in Orange County, New York at 214 Harriman Drive, Goshen, New York.
Seller	Glen Arden, Inc. and Elant Inc.
Purchaser	The Knolls at Goshen, Inc.
Assets Acquired	The Buyer shall purchase from the Seller the following Assets: the leasehold interest, the improvements and the equipment, all of Seller's accounts receivable arising out of the ownership and operation of the facility and outstanding as of the Closing Date, all other tangible assets used in the Business, whether owned or leased, including, all inventory, instruments, tools, vehicles, furniture, articles of personal property, office equipment and all fixtures, bank accounts, working capital assets, all cash, cash equivalents, bank deposits or similar items of Glen Arden or related to the Business or Facility, all of Seller's rights in deposits arising and of ownership and operation of the Facility and relating to the prepayments and prepaid expenses and claims for refund, personnel and payroll records, refunds,

	settlements and retroactive adjustments from goods of services provided by Seller In connection with the Facility prior to, on or after the Closing Date and all of Seller's books and records, all resident funds held in trust and goodwill and going concern value of the Business.
Excluded Assets	All contracts of Seller that are not Assumed and Assigned Contracts and any personnel files for employees of Seller who are not Transferred Employees.
Assumed Liabilities	All of the liabilities and obligations of Glen Arden arising under the Assumed and Assigned Contracts, all liabilities associated with the Elant, Inc. (403(b) Plan related to that portion of the 403(b) plan that is spun off, the Bond Debt and all Medicare and Medicaid Liabilities arising under Glen Arden's Medicare and Medicaid provider numbers.
Purchase Price	\$41,073,642.33
Payment of Purchase Price	\$13,570,000 on account of the assumption of the Bond Debt, \$24,000,000 on account of refund obligations pursuant to the Assumed Resident Contracts, \$2,500,000 on account of the Assumed Liabilities, \$741,000 on account of the Assumed Pension Liabilities, \$212,642.33 on account of the Assumed Liabilities and \$50,000 on account of the value of the Administration Services to be provided after the Closing Date.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 December 21, 2022, the applicant has outstanding liabilities of \$53,849.

Capability and Feasibility

The purchase price of \$41,073,642.33 will be met as follows: \$13,570,000 on account of the assumption of the Bond Debt, \$24,000,000 on account of refund obligations pursuant to the Assumed Resident Contracts, \$2,500,000 on account of the Assumed Liabilities, \$741,000 on account of the Assumed Pension Liabilities, \$212,642.33 on account of the Assumed Liabilities and \$50,000 on account of the value of the Administrative Services to be provided after the Closing Date.

Working capital requirements are estimated at \$2,046,644, which is equivalent to two months of third year expenses. The applicant will finance \$1,023,322 via 2022 Revenue Bonds at an interest rate of 8% for a 19-year term. The remainder, \$1,023,322, will be provided as equity via the applicant. The applicant provided documentation of the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$405,267 and \$378,639 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

Presented as BFA Attachment A are the financial summary for the period 2020 and 2021 of Glen Arden, Inc. As shown, the applicant had a negative working capital position which was due to the fact that the Series 1998 Bonds are being shown on the facility's financial statements as a current liability as a result of the facility being in violation of various bond covenants. However, upon the closing of this transaction and upon assumption of these bonds by The Knolls at Goshen, Inc., these covenant violations, and defaults will be waived by the bond issuer and The Knolls at Goshen, Inc. will then show the bonds as a Long-Term Liability. The entity had a negative net asset position and incurred historical losses because of lower-than-expected level of occupancy at the facility over the past couple years. The applicant has indicated that the increase in projected utilization for the facility will be achieved through plans to implement a modest renovation plan to resident housing units as they become unoccupied (similar to what was done by an affiliate entity at The Knolls, located in Valhalla, New York), rebrand the campus and invest heavily in marketing (at levels consistent with a startup community).

Conclusion

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

Attachments

LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Financial Summary- 2020 and 2021 certified financial statements of Glen Arden, Inc

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish The Knolls at Goshen, Inc. as the new operator of the 40-bed residential health care facility which is part of a Continuing Care Retirement Community at 214 Harriman Drive, Goshen currently operated by Glen Arden, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

222123 E

The Knolls at Goshen, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a bond resolution, acceptable to the Department. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of a photocopy of an executed copy of the proposed Certificate of Amendment to its Certificate of Incorporation or Certificate of Dissolution of Glen Arden, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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. Submission of documentation of approval by the Continuing Care Retirement Community Council of the full certificate authority application and issuance of a certificate of authority to operate the continuing care retirement community. [BFA]

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



Project # 221252-B
**Upstate Endoscopy Associates, LLC d/b/a Upstate
Endoscopy Center**

Program: Diagnostic and Treatment Center **County:** Rensselaer
Purpose: Establishment and Construction **Acknowledged:** July 12, 2022

Executive Summary

Description

Upstate Endoscopy Associates, LLC d/b/a Upstate Endoscopy Center, an existing LLC, requests approval to establish and construct a single specialty (gastroenterology) ambulatory surgery center. The proposed center will have three procedure rooms at 112 McChesney Ave., Suite 100, Troy, New York. The sublessor, Practice Support Services, LLC, will finance the portion of the leasehold improvements.

The service area will center on Rensselaer County, but also include Albany, Saratoga and Greene Counties, covering the catchment area for the applicant's members' medical practice. There are currently no ASCs in Rensselaer county and all of the gastroenterology cases projected in this application are currently being performed in a hospital setting.

Ownership of Upstate Endoscopy Associates, LLC is as follows:

Richard Eslow, MD	25%
William Robinson, Sr. MD	25%
Barry Pronold, MD	25%
William Robinson Jr. MD	25%

The proposed Medical Director will be William Robinson Sr. MD.

OPCHSM Recommendation

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

Need Summary

Upstate Endoscopy Associates, LLC proposes to establish a single-specialty ambulatory surgery center (ASC) providing gastroenterology surgery services in Rensselaer County. This will be the first ASC in Rensselaer County. The applicant projects 6,786 procedures in the first year and 6,988 by the third with Medicaid at 4% and Charity Care at 2% each year.

Program Summary

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

Financial Summary

Total project costs of \$3,636,925 will be met with a bank loan of \$2,414,910 at an interest rate of 7.5% for a 15-year term, equity of \$120,368 from proposed members personal resources, an equipment lease of \$986,647, and a loan of \$115,000 at an interest rate of 5% for a five-year term.

Budget	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Revenues	\$3,709,915	\$3,819,870
Expenses	<u>3,415,066</u>	<u>3,485,245</u>
Net Income	\$294,849	\$334,625

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

1. This project must be completed by **July 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 **August 15, 2023**, and construction must be completed by **April 15, 2024**, 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/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of 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

February 9, 2023

Need Analysis

Background and Analysis

The proposed service area centers on Rensselaer County but includes Albany, Saratoga and Greene Counties, which represent the catchment area for the applicant's medical practice. The proposed Upstate Endoscopy Center will be the first ASC in Rensselaer county. The population of Rensselaer County in 2020 was 161,130 and is estimated to increase slightly to 161,987 by 2025.

According to Data USA, in 2019, 96.3% of the population of Rensselaer County has health coverage as follows:

Employer Plans	55.9%
Medicaid	15.9%
Medicare	12.9%
Non-Group Plans	10.6%
Military or VA	0.982%

The applicant projects 6,786 procedures in Year One and 6,988 in Year Three with Medicaid at 4.01% and Charity Care at 2.00% each year. These projections are based on the current practices of participating surgeons. The applicant states that all of the projected procedures are currently being performed at Samaritan Hospital, in Troy. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	3,189	46.99%	3,284	46.99%
Commercial MC	1,153	16.99%	1,188	17.00%
Medicare FFS	1,425	21.00%	1,467	20.99%
Medicare MC	611	9.00%	629	9.00%
Medicaid FFS	68	1.00%	70	1.00%
Medicaid MC	204	3.01%	210	3.01%
Charity Care	136	2.00%	140	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans Fidelis Care, CDPHP, MVP, United Healthcare, and WellCare. The center will work collaboratively with local Federally Qualified Health Centers such as Whitney M. Young Jr. Health Center to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational. The operating hours will be Monday through Friday from 7 am until 4 pm. Weekend or evening hours will be available, if needed, to accommodate scheduling issues.

While there are no other ASCs in Rensselaer County, there are ASCs in the surrounding counties of Albany and Saratoga within 15 miles, however, none are gastroenterology centers. The closest single-specialty gastroenterology ASC is in Ballston Spa, NY, 23 miles and 33 minutes away.

Facility	Specialty Type	Distance/Time
New England Laser & Cosmetic Surgery Center	Multi-Specialty	10 miles/17 minutes
Everett Road Surgery Center	Multi-Specialty	10.5 miles/19 minutes
St. Peter's Surgery And Endoscopy Center	Multi-Specialty	14.1 miles/20 minutes
OrthoNY Surgical Suites	Multi-Specialty	14.5 miles/22 minutes
The Northway Surgery and Pain Center	Multi-Specialty	14.8 miles/21 minutes

Opposition

Samaritan Hospital, a 277-bed community hospital in Troy, opposes the application, citing the negative impact the creation of this ASC would have on its operations and its ability to continue supporting health care services to the community.

In 2018, St. Peter's Health Partners invested \$5.2M to create the current Samaritan Endoscopy Center. Per Samaritan Hospital their endoscopy center performed 9,718 cases in the fiscal year ending June 2022 with 53.5% of procedures being completed by the physicians of Upstate Endoscopy Associates LLC. The proposed ASC is two miles from the hospital.

Samaritan submitted financial information showing that outpatient endoscopy is their largest source of outpatient revenue and that approval of this proposed ASC would lead to \$10.8M in lost revenue annually to their hospital.

Conclusion

While the Department has concluded that the creation of this ASC will have a significant impact on Samaritan Hospital, since Samaritan is not a Critical Access Hospital or a Sole Community Hospital and will be able to continue operations, the Department is prioritizing access to cheaper and more convenient outpatient care in this instance.

Program Analysis

Project Proposal

Upstate Endoscopy Center, LLC d/b/a Upstate Endoscopy Center an existing New York State limited liability company, seeks approval to establish and construct a single-specialty freestanding ambulatory surgery center specializing in Gastroenterology to be located at 112 McChesney Avenue, Suite 100 in Troy (Rensselaer County).

Proposed Operator	Upstate Endoscopy Center, LLC
Doing Business As	Upstate Endoscopy Center
Site Address	112 McChesney Avenue, Suite 100, Troy, New York 12180 (Rensselaer County)
Surgical Specialties	Single-Specialty-Gastroenterology
Operating Rooms	0
Procedure Rooms	3
Hours of Operation	Monday to Friday 7:00 am to 4:00 pm
Staffing (1st Year / 3rd Year)	20.0 FTEs / 20.0 FTEs
Medical Director(s)	William T. Robinson, Sr., M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Samaritan Hospital 2.2 Miles / 6 minutes
On-call service	Patients who require assistance during off-hours will engage the 24-hour answering service to reach the on-call surgeon during hours when the facility is closed

Character and Competences

The ownership of Upstate Endoscopy Center, LLC is:

Member Name	Proposed Interest
William Robinson, Sr., M.D.	25.00%
Richard Eglow, M.D.	25.00%
Barry Pronold, M.D.	25.00%
William Robinson, Jr., M.D.	25.00%
TOTAL	100.00%

Dr. Richard Eglow is a Gastroenterologist and Vice President at Upstate Gastroenterology Associates for approximately 30 years. He was the previous Director of the GI Endoscopy unit at Winthrop University Hospital for over one (1) year. He received his medical degree from The Chicago Medical School. He completed his residency in Internal Medicine at University Hospital. He completed his fellowship in Gastroenterology at Boston University School of Medicine. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

Dr. Barry Pronold is. He is a Gastroenterologist at Upstate Gastroenterology Associates for over nine (9) years. He received his medical degree from the Medical College of Wisconsin. He completed his residency in Internal Medicine and fellowship in Gastroenterology at The Ohio State University Medical Center.

Dr. William Robinson, Jr. is a Gastroenterologist with Upstate Gastroenterology Associates for over nine (9) years. He received his medical degree from Albany Medical Center. He completed his residency in Internal Medicine at Rhode Island Hospital and his fellowship in Gastroenterology at Ohio State University Hospital. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

Dr. William Robinson, Sr. is a Gastroenterologist and President at Upstate Gastroenterology Associates for 34 years. He is a Gastroenterologist at Upstate Gastroenterology Associates, P.C. for 26 years. He was a Gastroenterologist at William T. Robinson, M.D. and Frederick Braunstein, M.D., PC for approximately 10 years. He was a Clinical Assistant Professor at Albany Medical College for approximately five (5) years. He was a Gastroenterologist at Internal Medicine/Gastroenterology Associates, PC for approximately one (1) year. He received his medical degree from SUNY Downstate Medical College. He completed his residency in Internal Medicine at Kings County Hospital Center. He completed his fellowship in Gastroenterology at Boston University Medical Center. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

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

Dr. Robinson Jr. and Dr. Pronold disclosed one malpractice suit. The malpractice suit was filed on July 26, 2017 arising from an incident on February 6, 2015. The suit was filed by the patient alleging negligence during sigmoidoscopy resulting in colon perforation. This led to colostomy and ileostomy placement. The case was closed on March 23, 2020.

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant will encourage the establishment of one and will provide the patient with a list of primary care providers in the area. The Center does not discriminate regardless of payer and currently performs all procedures in the hospital setting. These procedures will be performed in the outpatient Center once completed regardless of ability to pay. The Center will adopt a financial assistance policy with a sliding scale fee schedule. The Applicant will promote the financial assistance policy by informing the patient of its existence through the website, an information packet, and through Upstate Gastroenterology P.C. The Applicant will encourage patients who express hardship or concern for paying balances to apply for financial assistance and assist those patients in applying for financial assistance. The Applicant will also advise the clinics and other referral sources of the financial assistance policy. The Center will notify Whitney Young Health Clinic, an FQHC, that it is being constructed and when it is opened. The Center will participate in traditional fee-for-service Medicaid and with area Medicaid Managed Care Plans including CDPHP, Wellcare, Fidelis, United Healthcare, and MVP.

The Center intends on using an Electronic Medical Record (EMR) program. The EMR platform the Applicant will consider participating in a RHIO or HIE. The Applicant will become members of Innovative Health Alliance of New York, LLC.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$3,636,925, broken down as follows:

New Construction	\$1,976,551
Construction Contingency	100,000
Architect/Engineering Fees	200,000
Construction Manager Fees	138,359
Other Fees (Consultant)	20,000
Moveable Equipment	1,180,132
CON Fee	2,000
Additional Processing Fee	<u>19,883</u>
Total Project Cost	<u>\$3,636,925</u>

The applicant's financing plan appears as follows:

Bank Loan (7.5% interest rate for a 15-year term) (Sublessor)	\$2,414,910
Equity (Applicant)	120,368
Equipment Lease (5% interest rate for a five-year term)	986,647
Loan (Applicant) (5% interest rate for a five-year term)	115,000
Total	<u>\$3,636,925</u>

The sublessor, Practice Support Services, LLC will finance \$2,414,910 of the total project cost via a bank loan. The applicant will finance via a bank loan a portion of the total project cost.

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$622.74	\$1,985,910	\$622.74	\$2,045,070
Commercial MC	\$623.28	\$718,639	\$622.74	\$739,812
Medicare FFS	\$444.68	\$633,662	\$444.67	\$652,338
Medicare MC	\$444.67	\$271,696	\$444.68	\$279,701
Medicaid FFS	\$367.68	\$25,002	\$367.67	\$25,737
Medicaid MC	\$367.68	<u>\$75,006</u>	\$367.68	<u>\$77,212</u>
Total Revenues		\$3,709,915		\$3,819,870
Expenses:				
Operating	\$395.29	\$2,682,428	\$395.38	\$2,762,901
Capital	<u>\$107.96</u>	\$732,638	<u>\$103.37</u>	\$722,344
Total Expenses	\$503.25	<u>\$3,415,066</u>	\$498.75	<u>\$3,485,245</u>
Net Income		\$294,849		\$334,625
Utilization: (Procedures)		6,786		6,988

The following is noted with respect to the operating budget:

- The Center will participate with traditional fee-for-service Medicaid and with area Medicaid Managed Care Plans including CDPHP, Wellcare, Fidelis, United Healthcare and MVP.
- Utilization assumptions are based on the current case volume of the four members and are accurately being performed by these physicians in a hospital setting.
- The applicant has submitted letters from physicians in support of utilization projections.
- Expense assumptions are based on the historical experience of ambulatory surgery centers.

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

	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Commercial FFS	46.99%	46.99%
Commercial MC	16.99%	17.00%
Medicare FFS	21.00%	20.99%
Medicare MC	9.00%	9.00%
Medicaid FFS	1.00%	1.00%
Medicaid MC	3.01%	3.01%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Sublease Rental Agreement

The applicant has submitted a draft sublease agreement for the site that Upstate Endoscopy Associates, LLC will occupy, which is summarized below:

Premises	12,179 square feet located at 112 McChesney Ave, Troy, New York.
Sublessor	Practice Support Services, LLC
Sublessee	Upstate Endoscopy Associates, LLC
Term	15 years with two five-year renewal options.
Rental	\$290,305.50 annually (\$23.84 per sq.ft.)
Provisions	The sublessee shall be responsible for real estate taxes and utilities.

The Applicant entered into a Sublease Agreement with Practice Support Services, LLC (Landlord), in which the Landlord will lease the property from 112 McChesney Real Estate Group, LLC (Prime Landlord). The Prime Landlord will construct approximately 12,179 rentable square feet of unimproved space and all tenant improvements necessary to fulfill the tenant's requirements for an Article 28 single-specialty (gastroenterology) ambulatory surgery center. The initial term of the Sublease will be 15 years, and the Tenant will have the right to extend the Sublease.

Upstate Endoscopy Associates, LLC will pay supplemental rent, an additional annual expense of \$290,305.50 on top of the lease, equal to the actual design and construction costs incurred by Practice Support Services, LLC.. The Applicant has indicated that the sublease agreement will be an arm's length lease arrangement and has submitted two real estate letters attesting to the reasonableness of the per square foot rental.

Capability and Feasibility

Total project costs of \$3,636,925 will be met through a \$2,414,910 bank loan at an interest rate of 7.5% for a 15-year term by the sublessor, \$120,368 in equity from the proposed members' resources, an equipment lease of \$986,647, and a bank loan of \$115,000.

Working capital requirements are estimated at \$580,874, equivalent to two months of third-year expenses. The applicant will finance with a loan of \$290,437 at an interest rate of 5% for a five-year term. The remaining \$290,437 will be provided with equity from the personal resources of the proposed members. BFA Attachment A, Personal Net Worth Statements - Proposed Members, indicates the

availability of sufficient funds for the equity contribution. BFA Attachment B, Pro Forma Balance Sheet shows a positive net asset position of \$483,922 on the first day of operations.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statements - Proposed Members
BFA Attachment B	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty ambulatory surgery center for gastroenterology at 112 McChesney Avenue, Troy, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

212252 B

Upstate Endoscopy Associates, LLC d/b/a
Upstate Endoscopy Center

APPROVAL CONTINGENT UPON:

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

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

12. Submission of a copy of the Operator's Operating Agreement that is acceptable to the Department. [CSL]
13. Submission of a copy of the Sublease Agreement that is acceptable to the Department. [CSL]
14. Submission of a copy of the Lease Agreement that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **July 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 **August 15, 2023**, and construction must be completed by **April 15, 2024**, 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/hospitals/docs/hcs_access_forms_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of 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]

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



**Project # 202086-B
Coit House, LLC**

Program: Midwifery Birth Center **County:** Erie
Purpose: Establishment and Construction **Acknowledged:** October 2, 2020

Executive Summary

Description

The Coit House LLC (Coit House), an existing limited liability company, requests approval for the establishment and construction of an Article 28 midwifery birth center at 414 Virginia Street, Buffalo, NY. The building is owned by Winkler Properties LLC, which will lease the space to Coit House. The proposed operator of Coit House will be Maura Winkler, a Certified Nurse-Midwife, who is the Director of Midwifery at Fika Midwifery, PLLC (Fika Midwifery), a private home birth practice currently operated at the proposed address. Fika Midwifery is the only independent, midwife-owned homebirth practice in Buffalo. Founded by Ms. Winkler in 2017, the practice currently employs three full-time midwives, ten birth assistants, and two administrative staff.

Coit House's preferred hospital for antepartum, intrapartum, or postpartum care is Mercy Hospital of Buffalo, 6 miles and 12 minutes from Coit House. A relationship with Mercy Hospital has been established for consultation, collaboration, and transfer of care. The preferred transfer hospital for neonatal transfer is Oishei Children's Hospital due to the presence of a Level III NICU.

OPCHSM Recommendation

Disapproval is recommended.

Need Summary

The Coit House LLC Midwifery Birth Center proposes to provide Birthing Service O/P. The applicant projects 876 visits and 133 births in the first year and 1,250 visits and 199 births in the third, with 27.61% Medicaid and 1.33% Charity Care.

Program Summary

The individual background review indicates the proposed member has not met the standard for approval as set forth in Public Health Law §2801-a (3)(b).

Financial Summary

The total project cost of \$2,022 will be met via equity from Maura Winkler, the proposed operator of The Coit House, LLC.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Disapproval is recommended.

Council Action Date

February 9, 2023

Need and Program Analysis

Project Proposal

The Coit House, LLC, seeks approval to establish and certify an Article 28 Midwifery Birthing Center to be located at 414 Virginia Street in Buffalo (Erie County). Upon licensure as a midwifery birth center, The Coit House proposes to provide Birthing Center O/P in the same location where Maura Winkler, CNM, operates Fika Midwifery, an independent, midwife-owned home birth practice.

Proposed Operator	The Coit House, LLC
Doing Business As	The Coit House
Site Address	414 Virginia Street Buffalo, New York 14201
Shift/Hours/Schedule	24 hours/7 days per week
Services	Birthing Center O/P
Staffing (1st Year / 3rd Year)	8.5 FTEs / 10.5 FTEs
Medical Director(s)	Maura Winkler, CNM
Emergency, In-Patient, and Backup Support Services Agreement and Distance and Time	Mercy Hospital of Buffalo 6.2 miles / 12 minutes away Oishei Children's Hospital 1 mile/4 minutes

Background and Analysis

The primary service area is Erie County. Approximately 85% of current and past clients live in Erie County. The population of females of reproductive age in Erie County is estimated at 208,962 by the U.S. Census. The Cornell Program on Applied Demographics projects this same population to decrease slightly to 206,380 by 2025.

The facility is located in a Health Professional Shortage Area for primary care, dental health, and mental health and is designated within a Medically Underserved Population.

According to Data USA, in 2020, 96.97% of the population in Erie County had health coverage as follows:

Employer Plans	51.20%
Medicaid	19.80%
Medicare	13.70%
Non-Group Plans	11.30%
Military or VA	0.97%

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	57.67%	60.00%
Medicaid	34.60%	32.00%
Private Pay/Other	5.76%	6.00%
Charity Care	1.97%	2.00%

Based on their private practice experience, the applicant projects 867 visits and 133 births in Year One and 1,250 visits and 199 births in Year Three.

Fika Midwifery reports having a comprehensive and established consultation, collaboration, and referral system for patients requiring emergency and non-emergency transfers. This includes Mercy Hospital of Buffalo, 6 miles/12 minutes away for transfers with continued midwifery care, and Oishei Children's Hospital, 1 mile/4 minutes from the Coit House, which has a Level III NICU.

Character and Competence

The sole membership of The Coit House, LLC is:

Name	Ownership Interest
Maura Winkler	100.00%

Maura Winkler is a Certified Nurse Midwife and Owner of Fika Midwifery. She has owned Fika Midwifery for approximately five (5) years, where she currently provides prenatal care, home birth, well-woman care, and directs practice activities. Ms. Winkler has been a Registered Nurse since June 21, 2017, and also previously worked as a Doula.

Staff from the Division of Certification & Surveillance reviewed Ms. Winkler's disclosures regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, legal actions, and ownership interests in other healthcare facilities. Staff also canvassed the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases, as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database for any references to Ms. Winkler.

At the prompting of the Department, Ms. Winkler disclosed that she was being investigated by the State Education Department's Office of Professional Discipline since August 9, 2019. Ms. Winkler had not disclosed on her initial Schedule 2A application submitted on August 13, 2020 that she was being investigated, and after requests for additional information, Ms. Winkler and her counsel failed to provide the Department with details of the investigation.

Additionally, after the Department's inquiry about the State Education Department Office of Professional Discipline investigation, Ms. Winkler disclosed being named in two malpractice suits. The first suit was filed on February 11, 2022, in Erie County Supreme Court by the patient. The patient alleges that negligent care and treatment was a contributing cause of the delivery of a stillborn infant. The patient was initially treated by Ms. Winkler on March 18, 2019, and it was found that she was 14 weeks pregnant by in vitro fertilization. The patient requested not to have an ultrasound but was informed that an ultrasound was necessary if she wanted to give birth outside of the hospital. An ultrasound was performed on April 8, 2019, and the results were significant for bilateral small (3-5mm) choroid plexus cysts (buildup of fluid on the baby's brain). The patient had her last appointment with Ms. Winkler on June 3, 2019; Group Beta Streptococcus (GBS) was discussed, and the patient stated she wanted a screening for it because she had tested positive in a prior pregnancy. The patient later tested positive for GBS on August 5, 2019, and it is documented by another midwife, Carolyn Protter, CNM (CNM Protter), that she wanted standard IV medication treatment. Documentation of the patient's desire to receive GBS treatment and refusal to receive erythromycin and Vitamin K after delivery occurred on August 14, 2019.

On September 7, 2019, time unknown, the patient contacted CNM Protter, informing that she had clear, odorless fluid leaking but had good fetal movement and the patient was instructed to come to Fika Midwifery at 10 pm if she had not started labor to assess for rupture of membranes. It is unclear what time the patient arrived, but it is noted at 9:30 pm that gross rupture of membranes had occurred (the patient's water broke), and the patient refused to do a sterile speculum exam, which is needed to determine whether dilation is occurring appropriately. On September 8, 2019, time unknown, the patient informed CNM Protter that she had irregular contractions throughout the night, but they eventually regulated. The patient and CNM Protter returned to Fika Midwifery and an IV access was attempted for GBS prophylaxis medication. The IV was successfully placed but IV access was lost after the initial saline flush and the patient declined a second IV attempt. The patient was informed that without the use of the IV, she would not receive GBS treatment (as she had originally requested and is required when a patient has tested positive for GBS). The patient was offered the option of hospital transfer and declined.

In the late evening of September 8, 2019, while the patient was still at Fika Midwifery, the baby began crowning and thick meconium was noted, whereby the baby had a bowel movement while still in the patient's womb, which is a very dangerous occurrence. Eventually, delivery occurred where the baby's body followed before the nuchal cord could be reduced and the baby was apneic (the umbilical cord was around the baby's neck) with no audible heart rate upon delivery. Neonatal resuscitation began, breaths

were delivered, and suction was attempted. The ambulance was called, and the baby was transported to Oishei Children's Hospital, where the baby was pronounced dead. The cause of death was determined to be complications from prolonged rupture of membranes with acute necrotizing chorioamnionitis. The case remains pending.

The second case was filed in Erie County Supreme Court on April 12, 2022, by the patient. The patient alleges negligent, careless, and unskilled care and treatment, causing her to suffer severe injury on February 24, 2020. The patient was treated by Ms. Winkler as a non-medical consult and given a tour of Fika Midwifery. The patient was treated by CNM Protter as a new patient on August 12, 2019. The patient had a past medical history that was significant for a previous Cesarean section in August 2017. CNM Protter discussed the benefits and risks of an out-of-hospital birth, including the risk of morbidity and mortality. Thereafter, the patient was seen again at Fika Midwifery on January 24, 2020, by a different midwife, Lydia Doublestein, CNM, CLC, and the risks of emergent care and the option for transfer to a different practice for elective C-section were discussed. On February 24, 2020, the patient called CNM Protter and indicated she was in labor. The patient was instructed to go to Fika Midwifery where she labored for seventeen (17) hours. At some point during the evening of February 24, the fetal heart rate was unable to be heard and unable to be visualized with a sonogram. The ambulance was called, and the patient was transferred to Oishei Children's Hospital where an emergency C-section was performed. The baby was stillborn and unable to be resuscitated. The case remains pending.

Ms. Winkler was asked to provide patient selection criteria, risk criteria, and selection criteria for Coit House. Ms. Winkler stated that all risk criteria and transfer protocols for the Coit House will be in accordance with standards for Birth Centers and that patients will remain low risk throughout the course of their care. Further, Ms. Winkler stated that if a patient has a chronic medical condition, develops a complication of pregnancy that requires hospital care, or Coit House is unable to comply with the patient requirements, they will transfer the patient to a provider/birth facility that can meet the patient's needs. The transfer indication and guidelines dictated by the Commission for Accreditation of Birth Centers accreditation (CABC) are proposed to be implemented at Coit House. As indicated in the malpractice lawsuits, both patients had chronic medical conditions or developed complications of pregnancy that would not classify them as a low-risk pregnancy, such that Fika Midwifery (or Coit House) would not be the appropriate facility for the patients to have their diagnoses treated.

Ms. Winkler was asked to provide information on the Continuous Quality Improvement (CQI) that was conducted by Fika Midwifery/Coit House before and as a result of the prior adverse events that took place. Ms. Winkler stated that CQI was implemented in 2020 after and for purposes of pursuing CABC accreditation but did not provide evidence of any previous CQI activity. Ms. Winkler disclosed that the baby deaths resulting in the malpractice lawsuits were reviewed by the CABC using root cause analysis methodology but did not provide evidence of the CABC review and its outcome. Ms. Winkler provided a chart of a breakdown of data from years 2017 through 2022 but did not include audits, quality minutes, or data on how the practice changed or evolved to achieve lower percentages of poor outcomes. Ms. Winkler also did not provide evidence that the sentinel events were reviewed prior to or after pursuing CABC accreditation for auditing of practice purposes.

When asked to provide evidence of how the sentinel events changed Fika Midwifery/Coit House policies, procedures, and practice, Ms. Winkler responded that she pursued CABC accreditation. CABC accreditation requires policies and procedures that are supported by evidence-based practice. Ms. Winkler did not provide evidence of changes to policies and procedures due to the sentinel events, due to any independent audit of the events, or produce evidence of changes that were made that would support documented efforts to ensure safe patient care. The changes at Fika Midwifery/Coit House that were revealed and reported to have been implemented by Ms. Winkler upon pursuing CABC accreditation included increased access to educational resources, updates to policies and procedures to include a risk assessment including evaluation throughout care from prepartum through postpartum, a chart review mechanism where postpartum charts are reviewed to assess compliance with practice policies, an updated policy that emphasizes chain of command when the Director of Midwifery is absent, and staff attended a drill to role-play how to manage a difficult client and family members. Although the staff is provided with neonatal resuscitation training bi-annually and was trained in 2019 and 2021, Ms. Winkler did not provide review of the neonatal resuscitation or any drills after the sentinel events occurred for

additional training opportunities for staff. Based on the foregoing representations by Ms. Winkler, Fika Midwifery/Coit House received accreditation by CABC in September 2021. Finally, Ms. Winkler was asked, based on the submitted risk criteria, how it would be decided when/if to consult a physician, transfer care, decide where the patient would be treated or give birth, identification of the patient's primary provider, and what input the patient had in the decision-making process. Ms. Winkler provided a general overview stating the answers are dependent on the patient diagnosis and that some clients will risk out-of-birth center care based on the provider's initial assessment and will need to birth in the hospital setting while others remain in midwifery and community birth center care with modifications.

The staff from the Division of Certification & Surveillance also review the ten-year surveillance history of all associated licensed facilities. There are no known associated licensed facilities for the applicant.

Physical Environment

The proposed site is an existing 3-story residential, historic building consisting of (2) birth rooms on the 2nd floor and (2) gynecological exam rooms on the 3rd floor. As submitted, the proposed space is not compliant with Life Safety Code (NFPA 101), Facility Guidelines Institute, and Americans with Disabilities Act (ADA) as required for Article 28 Licensed facilities.

The physical environment issues remain unresolved with the applicant due to the Department's recommendation of disapproval on the basis of character and competence.

The major areas that require review are egress, infection control, and accessibility:

- 1) The single exit stair for the 3-story building contains multiple egress deficiencies and requires further review to determine if modifications could achieve a nontraditional code path toward compliance.
- 2) Hand-washing sinks, required for infection control in rooms where hands-on patient care is provided, are not provided in the gynecological exam rooms.
- 3) As a place of business for public accommodation and access to healthcare, no provisions for ADA accessibility are provided for patients, staff, or visitors. Provisions for accessibility should be provided to the maximum extent feasible.

Verification of other Life Safety Code and Facility Guidelines Institute standards, including emergency lighting, exit signage, basement and attic fire protection, and secure medication storage are outstanding.

Conclusion

Disapproval is recommended as the applicant member has not met the standard for approval as set forth in Public Health Law §2801-a (3)(b).

Financial Analysis

Total Project Cost and Financing

The project costs are for moveable equipment and CON Fees and are estimated at \$2,022, detailed as follows.

Moveable Equipment	\$22
CON Fees	<u>2,000</u>
Total Project Cost	\$2,022

The proposed member of Coit House, LLC will provide equity through her personal resources to meet the total project cost.

Lease Rental Agreement

The applicant has provided an executed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	4,398 square feet located at 412 Virginia Street, Buffalo, New York
Lessor	Winkler Properties, LLC
Lessee	The Coit House LLC
Term	5-year term
Rental	Year One \$61,500 annually (\$13.98 per sq. Ft.) with a 2.5% increase thereafter.
Provisions	The lessee shall be responsible for maintenance, utilities, repairs, and real estate taxes.

The applicant has indicated that the lease arrangement will be a non-arm's length lease arrangement in that Maura Winkler and her husband are members of the realty company. The applicant submitted two real estate broker letters attesting to the reasonableness of the per-square-foot rental.

Capability

Project costs of \$2,022 will be met via equity from the proposed member's personal resources. Presented as BFA Attachment A is the personal net worth statement of the proposed member of Coit House, LLC, indicating the availability of sufficient funds for the equity contribution.

Conclusion

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

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the Public Health and Health Planning Council, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to disapprove the application referenced below to establish and construct a Midwifery Birth Center to be located at 414 Virginia Street, Buffalo, and be it further

RESOLVED, that the Public Health and Health Planning Council hereby directs that the Executive Secretary to the Public Health and Health Planning Council serve notice upon the applicants or their attorneys that the Council is considering disapproving the following application for establishment, as proposed, and that disapproval shall become final unless the applicants request a hearing, in writing, of the Executive Secretary concerning such proposed disapproval within 20 days of receipt of this Council's notification:

NUMBER

APPLICANT/FACILITY

202086

Coit House, LLC



Project # 192237-E
JAG Operating LLC d/b/a
FoltsBrook Center for Nursing and Rehabilitation

Program: Residential Health Care Facility
Purpose: Establishment

County: Herkimer
Acknowledged: November 8, 2019

Executive Summary

Description

JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation, a New York limited liability company, requests approval to be established as the new operator of FoltsBrook Center for Nursing and Rehabilitation (f/k/a Folts Home), a 163-bed, voluntary, Article 28 residential health care facility (RHCF) located at 104 North Washington Street, Herkimer (Herkimer County). The facility operates an on-site, 15-slot adult day health care program (ADHCP) and is certified for outpatient therapy services (physical, speech, and occupational), which are included in this application request. The RHCF has been operating under various receiverships since October 1, 2013. On July 1, 2018, FoltsCare LLC, which has common members to the applicant entity, became the current receiver of the RHCF. Folts Adult Home, Inc., a related 80-bed adult care facility (ACF) located on the RHCF premises, is also in receivership. An application for the establishment of a new operator of the ACF is concurrently under review by the Department's Division of Adult Care Facility and Assisted Living Surveillance (Project # 200002).

On February 16, 2017, Folts Home, Inc. and Folts Adult Home, Inc. entered Chapter 11 Bankruptcy in the United States District Court for the Northern District of New York. In July 2017, the Court approved Cedarcare Holdings LLC's \$16,600,000 bid for the purchase of the operations and real estate of the RHCF and ACF. Cedarcare Holdings LLC is a related entity to the applicant through family membership. Per the applicant, \$13,900,000 of

the total purchase price was allocated to the RHCF, and \$2,700,000 was allocated to the ACF.

On June 1, 2017, Cedarcare Holdings LLC entered into a Purchase Agreement (PA) with Folts Home and Folts Adult Home, Inc. for the sale and acquisition of the personal property and real estate associated with the RHCF and Adult Home. The RHCF transaction will close upon Public Health and Health Planning Council (PHHPC) approval of this application. The applicant will lease the RHCF premises from Cedarcare Holdings LLC.

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

Table with 2 columns: Member Name, Percentage. Title: Current Operator. Content: FoltsCare LLC (Receiver), Aryeh Grinspan 65%, Gedaliah Wielgus 15%, Joshua Peckman 10%, Menachem Yifat 5%, Yosef Farkas 5%.

Table with 2 columns: Member Name, Percentage. Title: Proposed Operator JAG Operating LLC. Content: Aryeh Grinspan* 45%, Gedaliah Wielgus* 45%, Joshua Peckman 5%, Yosef Farkas 5%.

*Managing members of the facility

The proposed members have an ownership interest in New York State RHCfs.

OPCHSM/OALTC Recommendation

Contingent Approval is recommended.

Need Summary

There will be no changes to beds or services as a result of this application. Based upon weekly census data, current occupancy, as of November 16, 2022, was 87.7% for the facility and 86.2% for Herkimer County.

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 \$16,600,000 purchase price was allocated as follows: \$13,900,000 for the personal property and real property of Folts Home and \$2,700,000 for the personal property and real property of Folts Adult Home, Inc. Per the closing statement dated September 7, 2018, Cedarcare Holdings LLC contributed \$1,660,000 in equity and financed \$14,704,200 via a two-year mortgage with two six-month extension options from Capital Funding LLC. The remaining \$235,800 balance due was contributed by the members of Cedarcare Holdings LLC as additional equity. On August

25, 2021, the loan was amended for the fourth time adding two six-month extensions, ending on September 7, 2022, and March 7, 2023 (5.84% as of May 18, 2022, with principal due at the end of the term). While it was not required, Cedarcare Holdings, LLC paid an additional \$305,100 in principal payments. On December 21, 2022, Capital Funding, LLC., provided a new Letter of Interest (LOI) for a one-year loan of \$14,399,100 with two, one-year extension options. The interest rate is 9.86% as of January 3, 2023, based on One-Month CME Term LIBOR plus a margin of 550 Basis Points and amortization at \$20,000 per month. The applicant intends to secure a HUD loan. There are no project costs associated with this application.

In February 2019, the real property owner of the Adult Home took out a \$2,700,000 five-year loan from Metropolitan Commercial Bank with interest based on the five-year US Treasury rate plus 2.75% with a fixed floor of 5.25% and a 25-year amortization schedule.

	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>2023</u>	<u>2025</u>
Revenues:	\$14,955,900	\$15,040,600
Expenses:	<u>14,257,550</u>	<u>14,295,769</u>
Net Income:	\$698,350	\$744,831

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Assignment Agreement for the skilled nursing facility operations transfer, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's executed Operating Agreement, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's second-level member's executed Restated Articles of Organization, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's second-level member's executed Operating Agreement, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Lease Agreement between Cedarcare Holdings, LLC, and the applicant, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Assignment between Cedarcare Holdings LLC and JAG Operating LLC, which is acceptable to the Department. [CSL]
9. Submission of an updated Schedule 14B reflecting the correct membership in Section VIII of Folts SNF Partners, LLC. [CSL]

Council Action Date

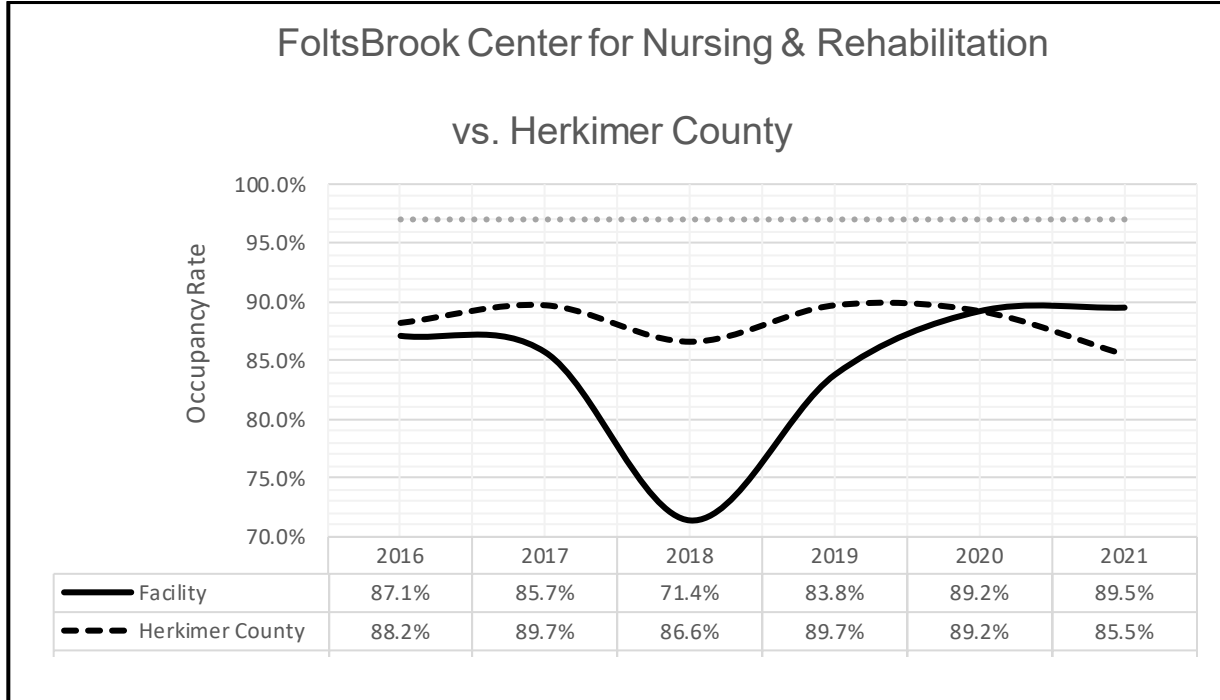
February 9, 2023

Need Analysis

Project Description

JAG Operating, LLC is requesting approval to become the established operator of Foltbrook Center for Nursing & Rehabilitation, a 163-bed Article 28 residential health care facility (RHCF) located at 104 North Washington Street, Herkimer, 13350 in Herkimer County.

Analysis



Occupancy, as of November 16, 2022, was 87.7% for the facility and 86.2% for Herkimer County.

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate has been above the threshold of 75% of the Herkimer County rate.

Medicaid Access	2019	2020	2021
Herkimer County Total	43.8%	40.2%	41.5%
Herkimer Threshold Value	32.9%	30.2%	31.1%
Foltsbrook Center for Nursing & Rehab	37.6%	31.7%	35.3%

Conclusion

There will be no changes to beds or services as a result of this project. Based upon weekly census data, current occupancy, as of November 16, 2022, was 87.7% for the facility and 86.2% for Herkimer County.

Program Analysis

Program Description

This application proposes to establish JAG Operating LLC as the new operator of Foltsbrook Center for Nursing and Rehabilitation Center, a 163-bed residential healthcare facility located at 104 North Washington Street Herkimer.

Facility Information

	Existing	Proposed
Facility Name	Foltsbrook Center for Nursing and Rehabilitation Center	Same
Address	104 North Washington St Herkimer, NY 13350	Same
RHCF Capacity	163	Same
ADHC Program Capacity	15	Same
Type of Operator	Limited Liability Company/ Voluntary Receivership	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	FoltsCare, LLC Membership: Aryeh Grinspan 65% Gedaliah Wielgus 15% Joshua Peckman 5% Menachem Yifat 5% Yosef Farkas 5%	JAG Operating LLC Membership: *Aryeh Grinspan 45.0% *Gedaliah Wielgus 45.0% Joshua Peckman 5.0% Yosef Farkas 5.0% *Managing Member

Character and Competence – Assessment

Experience

Aryeh Grinspan is the Administrator of Record at ILF Operating LLC/LFG Operating LLC d/b/a Elm Manor Nursing and Rehabilitation Center, as well as the Chief Executive Officer at Foltsbrook Center for Nursing and Rehabilitation. Mr. Grinspan is a New York State licensed nursing home administrator in good standing. Mr. Grinspan holds degrees in Accounting and Business Management from CUNY Brooklyn. Mr. Grinspan discloses the following health facility interests:

Elm Manor Nursing and Rehabilitation Center (15%)	12/2017 to present
Wedgewood Nursing and Rehabilitation Center (15%)	12/2017 to present
The Brook at High Falls Nursing and Rehabilitation (25%)	10/2018 to present
Collar City Nursing and Rehabilitation Wesley Gardens	09/2020 to present

Receivership

Foltsbrook Center for Nursing and Rehabilitation (60%)	07/2018 to present
Foltsbrook Center for Senior Living (5%)	07/2018 to present

Pending

Embassy of Loyalsock (PA)
Rolling Meadows Healthcare Center (PA)

Gedaliah Wielgus lists employment as the Chief Financial Officer / Chief Operating Officer of FoltsCare, LLC which operates Foltsbrook Center for Nursing and Rehabilitation located in Herkimer, NY since July 2018. He also reports his current employment as Chief Financial Officer with Elm Manor

New York facility owned by the applicants, has 1-star CMS ratings in all domains (Health Inspection, Quality, Staffing) and is a 1-star overall rated facility.

The applicants have acted as receivers for Foltbrook, the facility, which is the subject of this application, since July 2018. In April and July of 2019, the facility had complaint and recertification health inspection surveys which resulted in 20 health deficiencies, including one scope and severity at the "G" level, and a CMS CMP of \$84,903.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Foltbrook Center for Nursing and Rehabilitation	Subject Facility	*	*	**	*
Wedgewood Nursing and Rehab	Current	****	****	**	****
	12/1/2017	**	***	****	*
Elm Manor Nursing and Rehab	Current	*	**	**	*
	12/1/2017	**	***	**	*
The Brook at High Falls Nursing and Rehab	Current	*	**	*****	*
	10/1/2019	*	*	**	***
Foltbrook Center for Nursing and Rehabilitation* (Receivers)	Current	*	*	**	*
	7/1/2018	*	*	****	***
Collar City Nursing and Rehabilitation	Current	*	*	*	*
	9/1/2020	****	***	*****	***
Westchester Center for Rehab & Nursing	5/1/2013	****	**	*****	****
	End of Ownership 2/1/2019	**	**	*****	*
Green Meadows Nursing and Rehab	2/1/2015	*	*	**	***
	End of Ownership 2/1/2019	**	*	*****	***

Data date: 11/2022

*SFF Candidate

Enforcement History

A review of the operations of Elm Manor Nursing and Rehabilitation Center for the time period indicated above revealed the following:

- The facility was fined \$2,000 for surveillance findings on 10/24/2022. Deficiencies were found under 415.19a Infection Control.

A review of the operations of Foltbrook Center for Nursing and Rehabilitation for the time period indicated above revealed the following:

- The facility was fined \$10,000 for surveillance findings on 10/18/2021. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

- The facility was fined \$10,000 for surveillance findings on 06/09/2021. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-023 for surveillance findings on 2/21/19. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- A federal CMP in the amount of \$84,903 was assessed for the surveillance findings above. CMS has granted the facility the ability to make payments on this CMP over an extended time period.

Project Review

This application proposes to establish JAG Operating LLC as the new operator of FoltsBrook Center for Nursing and Rehabilitation. No changes in the program or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements.

Conclusion

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

Financial Analysis

Purchase Agreement (PA)

The applicant submitted an executed PA to acquire the personal property and real property associated with the RHCF and Adult Home. The sale associated with the RHCF will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 1, 2017
Seller/Debtors:	Folts Home and Folts Adult Home, Inc.
Buyer:	Cedarcare Holdings LLC
Asset Acquired:	Rights, title, and interest in and to the real estate, business, and operations of the facilities as approved by the order of the Bankruptcy Court. Includes Leases, tangible property, contracts, accounts receivables, universal settlement, names Folts Home & Folts Adult Home, licenses, records, computer applications, phone numbers, e-mail addresses, insurance proceeds, warranties, deposits, Medicare and Medicaid provider agreements.
Excluded Assets:	Accounts receivable from services provided by the Current Receivers, funds left at the end of the current receivership, personal items, tax refunds, and funds deposited with the US District Court.
Assumption of Liabilities:	Cure obligations, liabilities, and obligations arising with respect to the operation of the Facility after the Closing Date;
Excluded Liabilities:	Free and clear of any liabilities, Liens, Claims against, or Obligations of, Sellers, Current Receivers, or of any predecessor or other affiliate of Sellers or Current Receivers.
Purchase Price	\$16,600,000
Allocation of Purchase Price:	Folts Home: \$13,900,000 (personal and real property) Folts Adult Home: \$2,700,000 (personal and real property)
Payment of the Purchase Price	\$1,660,000 deposit paid \$14,940,000 due at closing Plus, the assumption of \$1,115,496 in Accounts Payables, \$279,000 in accrued payroll, and \$267,000 in accrued expenses offset by \$3,450,000 in accounts receivables.

The purchase price for the personal property and real property associated with Folts Home and Folts Adult Home, Inc. was satisfied as follows:

Equity - Cedarcare Holdings LLC	\$1,660,000
Additional Equity – provided by the members of Cedarcare Holdings LLC	\$235,800
Additional Equity - Cedarcare Holdings LLC provided periodic principal payments.	305,100
Mortgage (1-year loan -2 (1) year extension -interest is 9.86% as of January 3, 2023, based on One-Month CME Term LIBOR plus a margin of 550 Basis Points and amortization at \$20,000 a month (LOI from Capital Funding LLC)	<u>14,399,100</u>
Total	\$16,600,000

BFA Attachment A2 presents the net worth summary for two of the members of Cedarcare Holdings LLC, which reveals sufficient resources to cover the balloon payment. Stephen Werdiger and Jonathan Bleier have each provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in the reality entity to cover the balloon payment, should the need arise.

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 December 22, 2022, the facility no had outstanding Medicaid liabilities.

Assignment Agreement Operations Transfer Agreement

The applicant has submitted a draft assignment agreement transferring the RHCf's operations, as summarized below:

Assignor:	Cedarcare Holdings, LLC
Assignee:	JAG Operating LLC
Assigned Rights:	All the assignor's rights, title, and interest in and to (a) All permits, licenses, approvals, franchises, notices, registrations, and authorizations issued by any governmental authority necessary or desirable to operate the skilled nursing facility known as Folts Home. (b) Copies of all books and records. (c) All computer applications, software, electronic medical records programs, and website. (d) All telephone and fax numbers, email addresses, and internet domain names. (d) Resident records and employee personnel records.
Consideration	\$10 (cash at closing)

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	A 163-bed RHCf located at 104 North Washington Street, Herkimer, New York.
Landlord/Lessor:	Cedarcare Holdings LLC
Lessee:	JAG Operating LLC
Term:	10 years, (4) additional terms of five (5) years each
Rent:	\$1,463,650 for 1 st Yr.; and then a 1% increase over the previous year's annual Base Rent plus real estate taxes and insurance of approximately \$130,000 per year
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant attests to a pre-existing business relationship as landlord and tenant between the managers/members of Cedarcare Holdings LLC as landlord and JAG Operating as a tenant.

Operating Budget

The applicant has provided the current year 2021 and the first- and third-year operating budgets after the change in ownership, in 2023 dollars, summarized as follows:

	<u>Current Year</u> <u>2021</u>		<u>First Year</u> <u>2023</u>		<u>Third Year</u> <u>2025</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues RHCf:						
Medicaid-FFS	\$170.19	\$6,563,360	\$180.07	\$6,350,213	\$180.05	\$6,349,513
Medicaid-MC	\$182.11	780,523	\$182.11	1,455,787	\$182.11	1,455,787
Medicare-FFS	\$699.84	2,908,539	\$667.16	3,016,900	\$674.68	3,050,900
Medicare-MC	\$500.00	1,032,500	\$500.00	849,500	\$500.00	849,500
Commercial-FFS	\$485.65	101,986	\$308.04	949,700	\$313.72	967,200
Private	\$370.27	1,478,480	\$357.13	1,412,800	\$360.92	1,427,800
All Other		0		1,200		1,200
Non-Operating*		<u>2,253,598</u>		<u>0</u>		<u>0</u>
Sub-Total RHCf		\$15,118,986		\$14,036,100		\$14,101,900
ADHCP/Therapies:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-ADHCP	\$114.45	\$193,762	\$61.11	\$144,900	\$62.59	\$148,400
Medicare-Therapy	\$34.13	<u>778,552</u>	\$34.15	<u>774,900</u>	\$36.23	<u>790,300</u>
Sub-Total		\$972,314		\$919,800		\$938,700
Total Revenues		\$16,091,300		\$14,955,900		\$15,040,600
Expenses:						
Operating		\$12,300,452		\$12,652,600		\$12,656,200
Capital		<u>1,544,055</u>		<u>1,604,950</u>		<u>1,639,569</u>
Total Expenses		\$13,844,507		\$14,257,550		\$14,295,769

Net Income (Loss)	<u>\$2,246,793</u>	<u>\$698,350</u>	<u>\$744,831</u>
Patient Days	53,274	56,520	56,520
Utilization %	89.54%	95.0%	95.0%
ADCHP Visits	1,693	2,371	2,371
Outpatient Visits	22,812	22,691	21,813
* COVID Provider Relief Funds			

The following is noted with respect to the submitted RHCF operating budget:

- The current year reflects 2021 audited revenue and expenses.
- Medicaid revenue is based on the reimbursement methodology under statewide pricing. Medicare rates are projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2018 plus a 1% per annum increase. Private and Other rates are projected based on similar facilities in the same geographical area plus a 1% per annum increase.
- Expenses are based on historical data adjusted by inflation, utilization, and New York State staffing and regulations.
- RHCF utilization under the current receiver and proposed operator was 83.8% in 2019, 89.2% in 2020, 89.5% in 2021, and 88.3% on November 30, 2022, under self-reporting.
- Utilization by the payor for the first and third years after the change in ownership is summarized below:

RHCF	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Medicaid-FFS	38,564	72.38%	35,266	62.40%	35,266	62.40%
Medicaid-MC	4,286	8.05%	7,994	14.14%	7,994	14.14%
Medicare-FFS	4,156	7.80%	4,522	8.00%	4,522	8.00%
Medicare-MC	2,065	3.88%	1,699	3.01%	1,699	3.01%
Commercial-FFS	210	.39%	3,083	5.45%	3,083	5.45%
Private Pay	<u>3,993</u>	<u>7.50%</u>	<u>3,956</u>	<u>7.00%</u>	<u>3,956</u>	<u>7.00%</u>
Total RHCF	53,274	100%	56,520	100%	56,520	100%

ADHCP & Therapy	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Medicaid-FFS	1,693	6.91%	2,371	9.46%	2,371	9.80%
Medicare-FFS	<u>22,812</u>	<u>93.09%</u>	<u>22,691</u>	<u>90.54%</u>	<u>21,813</u>	<u>90.20%</u>
Total Outpatient	24,505	100%	25,062	100%	24,184	100%

- The facility's Medicaid admissions of 37.6% in 2019 and 31.7% in 2020 were above Herkimer County's 75% threshold rate of 32.9% and 30.2% in 2019 and 2020.
- The RHCF breakeven utilization is projected at 90.56% in the first year.

Capability and Feasibility

The \$16,600,000 purchase price was allocated as follows: \$13,900,000 for the personal property and real property of Folts Home and \$2,700,000 for the personal property and real property of Folts Adult Home, Inc. Per the closing statement dated September 7, 2018, Cedarcare Holdings LLC contributed \$1,660,000 in equity and financed \$14,704,200 via a two-year mortgage with two (2) six-month extension options from Capital Funding LLC. The remaining \$235,800 balance due was contributed by the members of Cedarcare Holdings LLC as additional equity. On August 25, 2021, the loan was amended for the fourth time adding two (2) six-month extensions, ending on September 7, 2022, and March 7, 2023 (5.84% as of May 18, 2022, with principal due at the end of the term). On December 21, 2022, Capital Funding, LLC provided a new Letter of Interest (LOI) for a one-year loan of \$14,399,100 with two (1) year extension options. The interest rate is 9.86% as of January 3, 2023, based on One-Month CME Term LIBOR plus a margin of 550 Basis Points and amortization at \$20,000 per month. The applicant intends to secure a HUD loan. There are no project costs associated with this application.

In February 2019 the real property owner of the Adult Home took out a \$2,700,000 five-year loan from Metropolitan Commercial Bank with interest based on the five-year US Treasury rate plus 2.75% with a fixed floor of 5.25% and a 25-year amortization schedule.

The working capital requirement is estimated at \$587,754 based on two months of first-year expenses of approximately \$2,370,158 plus \$1,661,496 in assumed liabilities (accounts payable \$1,115,496, accrued payroll \$279,000, and accrued expenses \$267,000) offset by \$3,450,000 in assumed accounts receivables. The applicant will fund the working capital requirement with existing members' equity. BFA Attachment A1 presents the net worth summary for JAG Operating LLC members, which reveals sufficient resources to meet the equity requirements.

The submitted budget projects a first- and third-year profit of \$698,350 and \$744,831. Revenues are expected to increase by \$1,118,198, primarily due to an increase in occupancy. Overall expenses are expected to increase by \$413,043 coming from a \$352,148 increase in operating expenses and a \$60,895 increase in capital expenses (primarily from rent). The increase in operating expenses comes mainly from wages, supplies, utilities, and other direct expenses. Employee benefits decreased going from 17.5% to 16%. BFA Attachment B presents JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation pro forma balance sheet, which shows the entity will start with \$4,660,003 in members' equity (which includes \$1,661,496 in assumed liability). The budget appears reasonable.

BFA Attachment C presents the Financial Summary of FoltsCare LLC for 2019 through 2021. The RHCFC has maintained positive assets, positive working capital, and generated an operating surplus each year.

BFA Attachment D presents the proposed members' ownership interest in the affiliated RHCFCs and their financial summaries. Two of four RHCFCs were acquired in late 2017, one in late 2019, and one in March 2020. By 2021 all the RHCFCs had positive net income. Three of the four had positive net assets and positive working capital.

- ILF Operating, LLC d/b/a Elm Manor Nursing and Rehabilitation Center showed small negative assets of \$53,032.
- Troy Diamond Operations, LLC d/b/a Collar Center Nursing & Rehabilitation Center showed small negative working capital of \$73,038.

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

Attachments

LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
OALTC Attachment	Nursing Homes Within 10 Miles and Occupancy
BFA Attachment A1	Net Worth of Proposed Members of JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation
BFA Attachment A2	Net Worth for members of Cedarcare Holdings, LLC contributing equity
BFA Attachment B	Pro Forma Balance Sheet, JAG Operating, LLC
BFA Attachment C	Financial Summary FoltsCare LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation (current receiver) 2020 – 2021 certified financial statement.
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCFCs and Financial Summary
BFA Attachment E	Members of Landlord, Cedarcare Holdings LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish JAG Operating LLC as the new operator of Foltsbrook Center for Nursing and Rehabilitation, a 163 bed skilled nursing facility located at 104 North Washington Street, Herkimer, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

192237 E

JAG Operating LLC d/b/a FoltsBrook Center
for Nursing and Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Assignment Agreement for the skilled nursing facility operations transfer, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's executed Operating Agreement, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's second-level member's executed Restated Articles of Organization, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's second-level member's executed Operating Agreement, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Lease Agreement between Cedarcare Holdings, LLC, and the applicant, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Assignment between Cedarcare Holdings LLC and JAG Operating LLC, which is acceptable to the Department. [CSL]
9. Submission of an updated Schedule 14B reflecting the correct membership in Section VIII of Folts SNF Partners, LLC. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

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



Project # 212117-E
Livingston Hills Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Columbia
Acknowledged: October 21, 2021

Executive Summary

Description

Livingston Two Operations, LLC, is proposing to be established as the operator of the current Livingston Hills Nursing and Rehabilitation Center, as operated by Livingston S and V Operations, LLC, an existing, for-profit, 120-bed residential health care facility (RHCF), located at 2781 Route 9, Hudson (Columbia County) New York. Upon approval of the change in ownership, the facility will continue to be known as Livingston Hills Nursing and Rehabilitation Center.

On September 1, 2021, Livingston S and V Operations, LLC, entered into an Asset Purchase/Operations Transfer Agreement with Livingston Two Operations for the sale and acquisition of the operating interests of the Livingston Hills Nursing and Rehabilitation Center effective upon approval by the Public Health and Health Planning Council.

The landlord, KR Livingston Realty, LLC, and the tenant, Livingston Two Operations, LLC, entered into a proposed lease agreement for site control of the facility. The applicant acknowledges there a relationship between the entities in that the individuals have an ownership interest in both the operating entity and the real estate entity.

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

Table with 2 columns: Name, Percentage. Rows include Current Operator Livingston S and V Operations, LLC and members: Daniella Schwartz (42%), Illana Lowy (28%), Barry Weiss (5%), Mark Weis (5%), Elaine Zinberg (5%), Jeffrey Vegh (15%), Total 100%.

Table with 2 columns: Name, Percentage. Rows include Proposed Operator Livingston Two Operations LLC and members: Jack Koschitzki (50%), Pincus Rand (50%), Total 100%.

Livingston Two Operations, LLC will be managed by its members. Presented as Attachment B is the Organizational Chart of the proposed members.

OPCHSM/OALTC Recommendation
Contingent Approval is recommended.

Need Summary

There will be no changes to beds or services as a result of this project. As of November 16, 2022, occupancy was 95.8% for the facility and 93.6% for Columbia County.

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).

rate of 5% for a three-year term. The loan is proposed to go to HUD within three years. The applicant has indicated that the bank will agree to extend the loan in the unlikely event that HUD financing is not achieved.

Financial Summary

There is no purchase price for the operations except for the current union obligations, estimated at \$1,000,000. The terms for the repayment of the union obligations are pending. The purchase of the real estate is \$14,000,000 and will be met as follows: A deposit of \$1,000,000 in escrow, a promissory note of \$2,000,000 for four years with an interest rate of 6% for two years, and 7.5% for last two (2) years and a bank loan of \$11,000,000 at an interest

	Year One	Year Three
Budget:	2023	2025
Revenues	\$11,303,675	\$12,179,761
Expenses	9,935,000	9,935,000
Net Income	\$1,368,675	\$2,244,761

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
5. Submission of an executed real estate purchase and sale agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an executed Certificate of Discontinuance of the Assumed Name of Livingston S and V Operations, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Livingston Two Operations LLC, acceptable to the Department. [CSL]
8. Submission of photocopy of an amended and executed Restated Operating Agreement of Livingston Two Operations LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Lease Agreement between Two Operations LLC and KR Livingston Realty LLC, acceptable to the Department. [CSL]

Council Action Date

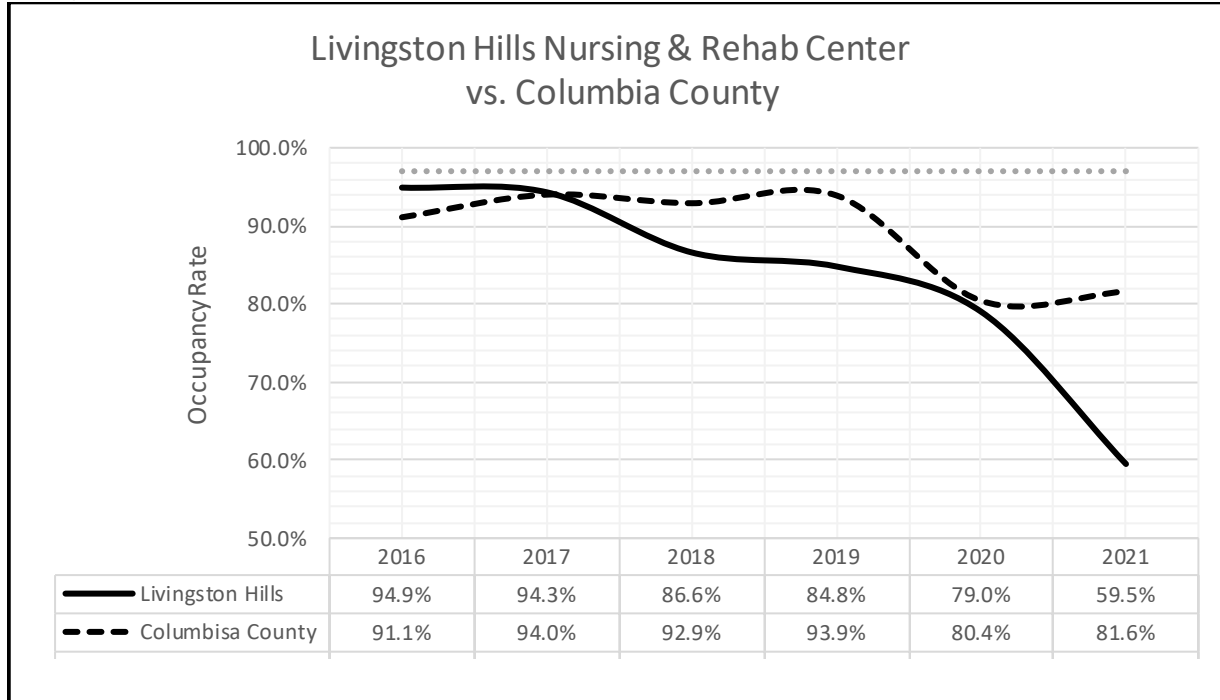
February 9, 2023

Need Analysis

Project Description

Livingston Two Operations LLC d/b/a Livingston Hills Nursing & Rehabilitation Center is requesting approval to become the established operator of Livingston Hills Nursing and Rehabilitation Center, a 120-bed Article 28 residential health care facility (RHCF) located at 2781 Route 9, Livingston, 12541 in Columbia County.

Analysis



Historical occupancy data shows declining numbers since 2016, predating the COVID-19 pandemic. However, recent self-reported occupancy numbers, as of November 16, 2022, indicate a dramatic increase to 95.8%. As part of the agreement between the buyer and seller, Jack Koschitzki (member of proposed new operator) was named Chief Executive Officer in September 2021. He hired a new administrator, director of nursing, and other staff which has resulted in increases in the daily census and the overall stability of the operations of the facility.

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;

- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate has exceeded the threshold of 75% of the Columbia County rate, as demonstrated in the table below.

Medicaid Access	2019	2020	2021
Columbia County Total	42.5%	50.7%	50.4%
Columbia Threshold Value	31.8%	38.0%	37.8%
Livingston Hills Nursing	37.2%	43.3%	47.4%

Conclusion

There will be no change in beds or services as a result of this application. Based upon weekly census data, current occupancy, as of November 16, 2022, was 95.8% for the facility and 93.6% for Columbia County.

Program Analysis

Program Description

This application proposes to establish Livingston Two Operations LLC as the new operator of Livingston Hills Nursing and Rehabilitation Center, a 120-bed skilled nursing facility at 2781 Route 9, Livingston.

Facility Information

	Existing	Proposed
Facility Name	Livingston Hills Nursing and Rehabilitation Center	Same
Address	2781 Route 9 P.O. Box 95 Livingston, NY 12541	Same
RHCF Capacity	120	Same
ADHC Program Capacity	NA	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Livingston S and V Operations LLC Members: Jeffrey Vegh 15% Daniella Schwartz 42% Elaine Zinberg 5% *LowCo/Livingston Hills LLC 28% Members: Ilana Lowy (1%) Lauren Lowy (99%) *Marbar Capital I, LLC 10% Members: Barry Weiss (50%) Mark Weiss (50%)	Livingston Two Operations LLC Members: Jack Koschizki 50% Pincus Rand 50%

Character and Competence – Assessment

Experience

Jack Koschizki discloses employment at Livingston Hills Nursing and Rehabilitation Center, as the CEO since 2021 and is concurrently employed at Renaissance Rehabilitation & Nursing Care Center as an operator since 2015. Prior to that Jack Koschizki worked at Palm Gardens Nursing Center as the Administrator / Regional Director / Project Manager from 2006 until 2015. Jack Koschizki holds a bachelor's degree from Torah OHR Seminary and discloses the following health care facility interests:

Nursing Homes

Renaissance Rehabilitation & Nursing Care Center (50%)	05/2015-present
The Eleanor Care Center (100%)	12/2016-present

Pincus Rand discloses employment at Y&S Handbags, Inc an import company as the President since 1983. Pincus Rand holds a Rabbinical degree from St. Louis Rabbinical College and discloses the following health facility interests:

Nursing Homes

Renaissance Rehabilitation & Nursing Care Center (50%)	05/2015-present
--	-----------------

End Dated Ownership

Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
< 48 Months					
48 months or more					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Jack Koschizki	2	0	0.0%	2	100%
Pincus Rand	1	0	0.0%	1	100%

DURATION OF OWNERSHIP AS OF 2/9/2023**Data date: 11/2022**

New York. The proposed owner's portfolio includes ownership in two New York facilities. The two facilities Renaissance Rehabilitation and Nursing Care Center has a CMS overall quality rating of below average and The Eleanor Care Center has a CMS overall quality rating of much below average. When asked to explain the low overall CMS ratings for Renaissance Rehabilitation and Nursing Care Center and The Eleanor Care Center the applicants indicated the following.

At The Eleanor Care Center improvements to the physical plant and changes in leadership with the hiring of a new administrator and director of nursing have been made to improve the star ratings at the facility.

At Renaissance Rehabilitation and Nursing Care Center the PBJ upload of incomplete staffing reports in July of 2021 and nursing and administrative turnover has played a significant role in the current overall rating which had decreased from a five star overall rating at the beginning of 2021 down to a two star overall rating currently. The facility has hired a new Administrator as of 7/15/2022 and a new Director of Nursing was retained on 10/18/2021.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Livingston Hills Nursing and Rehabilitation Center	Subject Facility	*	*	**	*
Renaissance Rehabilitation and Nursing Care Center	Current	**	***	***	*
	02/2015	**	***	*	***
The Eleanor Care Center	Current	*	*	***	*
	12/2016	*	*	***	***

Data date: 11/2022

Quality Review – End Dated Nursing Home

<i>Facility</i>	<i>Ownership Since</i>	<i>Overall</i>	<i>Health Inspection</i>	<i>Quality Measure</i>	<i>Staffing</i>
New Jersey					
Country Manor Rehabilitation & HCC	08/2017	***	**	*	*
	09/2001*	***	**	*****	**

*Earliest Data Available 1/2009

Enforcement History

A review of Renaissance Rehabilitation and Nursing Care Center for the period specified above reveals no enforcements.

A review of The Eleanor Care Center for the period specified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-22-142 issued on September 14, 2022, for surveillance findings on August 2, 2022. Deficiencies were found under 10 NYCRR 415.19(a), Infection Control for failure to ensure oxygen tubing is changed in a timely manner.
- The facility was fined \$8,652 pursuant to a civil monetary penalty issued on November 09, 2020, which has been paid and closed. Deficiencies were found under F678-H, Cardio Pulmonary Resuscitation.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-107 issued on May 18, 2021, for surveillance findings on November 09, 2020. Deficiencies were found under 10 NYCRR 415.3(f)(1)(i), Resident’s Rights, and failure to provide CPR.
- The facility was assessed federal CMPs of \$650 on June 8, 2020, \$975 on June 15, 2020, and \$1,310 on November 16, 2020, for failure to report COVID data.

Project Review

Livingston Two Operations, LLC doing business as Livingston Hills Nursing and Rehabilitation Center, is proposing to be established as the operator of the current Livingston Hills Nursing and Rehabilitation Center, as operated by Livingston S and V Operations, LLC, an existing, for-profit, 120-bed residential health care facility (RHCF), located at 2781 Route 9, Livingston (Columbia County) New York. Upon approval of the change in ownership, the facility will continue to be known as Livingston Hills Nursing and Rehabilitation Center and there will be no changes in the beds, program, or physical environment.

The current operators of Livingston Hills Nursing and Rehabilitation Center, Livingston S and V Operations, LLC have entered into an Asset Purchase / Operations Transfer Agreement dated September 1, 2021, for the sale and acquisition, respectively, of the operating interests of the Livingston Hills Nursing and Rehabilitation Center upon approval by the Public Health and Health Planning Council. The members of Livingston Two Operations LLC are as follows: Jack Koschitzki, 50.00% membership interest, and Pincus Rand, 50.00% membership interest. The LLC will be managed by its members.

KR Livingston Realty, LLC as landlord, and Livingston Two Operations, LLC, as tenant, have entered into a proposed lease agreement for site control of the facility. There is a relationship between the entities which is being acknowledged in this application, in that the individuals have ownership interest in both the operating entity and the real estate entity.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted RHCF's operating budget, in 2022 dollars, for the current year, first year and the third year after the merger, summarized below:

	<u>Current</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Revenues:	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Comm FFS	\$286.07	\$340,428	\$253.00	\$987,965	\$253.00	\$1,066,395
Medicare FFS	\$485.06	\$1,714,701	\$508.00	\$2,725,420	\$508.00	\$2,942,336
Medicare MC	\$0	\$0	\$493.62	\$1,204,440	\$484.96	\$1,277,384
Medicaid FFS	\$257.56	\$3,936,547	\$228.00	\$5,005,740	\$228.00	\$5,403,828
Medicaid MC	\$247.52	\$394,299	\$269.00	\$918,635	\$269.00	991,803
Private Pay	\$315.05	<u>290,161</u>	\$315.05	<u>436,974</u>	\$315.00	<u>498,015</u>
Total Revenues		\$6,676,136		\$11,074,609		\$12,179,761
 Expenses:						
Operating	\$367.99	\$8,288,143	\$221.33	\$8,531,000	\$221.33	\$8,531,000
Capital	<u>63.52</u>	<u>1,430,691</u>	<u>\$36.42</u>	<u>1,404,000</u>	<u>36.42</u>	<u>1,404,000</u>
Total Expenses:	\$431.51	\$9,718,834	\$260.91	\$9,935,000	\$257.75	\$9,935,000
 Net Income		<u>(3,042,698)</u>		<u>\$1,368,675</u>		<u>\$2,244,761</u>
 Patient Days		22,523		38,545		41,610
 Occupancy		51.42%		88.00%		95.00%

The following is noted with respect to the submitted budget:

- The Medicare and Private Pay rates are projected from the current market rates.
- Expense and utilization assumptions are based on current rates.
- The projections have been based on the 2020 calendar year. The shifts in utilization, as well as expenses, have been normalized for the effects of COVID-19.
- In September of 2021, a new Chief Executive Officer was hired as well as a new Administrator, Director of Nursing and other staff to manage and grow the organization. The applicant has indicated that the projected increase in patient days from the current year to the first and third year is based on the census for the first 10 months of calendar year 2022 when occupancy averaged 96.21%.

Utilization by payor source for the current, first and third year (no changes) is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
	<u>2021</u>	<u>2023</u>	<u>2025</u>
Commercial FFS	5.28%	10.13%	10.13%
Medicare FFS	15.70%	13.92%	13.92%
Medicare MC	0.00%	6.33%	6.33%
Medicaid FFS	67.86%	57.06%	56.96%
Medicaid MC	7.07%	8.76%	8.86%
Private Pay	<u>4.09%</u>	<u>3.80%</u>	<u>3.80%</u>
Total	100%	100%	100%

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement of the operation, summarized below:

Purpose	Seller desires to sell, and Buyer desires to purchase, certain assets of Seller relate to the Facility.
Seller	Livingston S and V Operations, LLC
Purchaser	Livingston Two Operations, LLC
Assets Acquired	Transfer of resident trust funds to the New Operator, employee records for all hired employees in the existing Operator's possession, all inventory and supplies of the Existing Operator, assume existing Operator's Medicare and Medicaid provider numbers and Medicare and Medicaid provider reimbursement agreements and all patient records, resident records, and clinical patient trust account records for the period prior to the Transfer Date become property of the New Operator.
Excluded Assets	Existing Operator will retain its right, title and interest in and to all accounts receivable relating to the operation of the business conducted at the Facility before the Employment Date.
Assumed Liabilities	New Operator shall not assume any liabilities or obligations of Existing Operator, except New Operator assume full responsibility for Medicaid audit liabilities and the liabilities owed to the 1199 SEIU Greater New York Pension Funds.
Purchase Price	\$0

The applicant has submitted an original affidavit, 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 time before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of February 10, 2022, the facility had no outstanding Medicaid overpayment liabilities.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	2781 US Route 9, Hudson, NY
Landlord:	KR Livingston Realty LLC
Tenant:	Livingston Two Operations
Terms:	10 years
Rental:	Annual rent \$652,800 with an annual 3% increase
Provisions	The lessee shall be responsible for maintenance, real estate taxes and insurance.

The lease arrangement is a non-arm's length transaction. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Real Purchase and Sale Agreement (PSA)

The applicant has submitted a draft PSA for the sale of the RHCF's real property. The terms are summarized below:

Property Purchased:	Located at 2781 US Route 9 Hudson, NY
Seller:	Livingston Hills Realty LLC
Purchaser:	KR Livingston Realty LLC
Purchase Price:	\$14,000,000
Payment of purchase price:	Deposit of \$1,000,000 to escrow, Promissory note of \$2,000,000 for four years with an interest rate of 6% for two years, and 7.5% for last two (2) years and the remaining \$11,000,000 via a loan at an interest rate of 5% for a three-year term.

The members of the KR Livingston Realty, LLC are as follows:

US Nine Realty, LLC	46%
JFK Livingston Acquisition, LLC	46%
Avraham Berns	8%

- The members of US Nine Realty, LLC are as follows: Pinchas Rand 43%, Charles Rand 19%, Louis Rand 19%, and Ali Rand 19%.
- The members of JFK Livingston Acquisitions LLC are as follows: Jack Koschitzki 81% and Faige Koschitzki 19%.

Capability and Feasibility

There is no cost for the sale of the operation except for the current union obligations estimated to be \$1,000,000. The terms for repayment of the union obligation are pending. The real property purchase price is \$14,000,000 and will be met with a deposit of \$1,000,000 in escrow, a promissory note of \$2,000,000 for four years with an interest rate of 6% for two years, and 7.5% for the last two years and a bank loan of \$11,000,000 at an interest rate of 5% for a three-year term. The loan is proposed to go to HUD within three years. The applicant has indicated that the bank will agree to extend the loan in the unlikely event that HUD financing is not achieved.

The working capital requirement of \$1,655,833 is based on two months of the first year's expenses. The applicant will provide equity to meet the working capital requirement. Presented as BFA Attachment A are the net worth statements for proposed members, indicating sufficient availability to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$1,368,675 and \$2,244,761 during the first and third years. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment C, the financial summary of Livingston Hills Nursing and Rehabilitation, LLC, indicates the facility has experienced negative working capital and equity position and generated an average annual net loss of \$925,168 for 2019-2021. The applicant has indicated that the loss in revenue was directly a result of low occupancy. The average occupancy for the facility from 2019 through 2021 was 71.82%. To address the low occupancy, the current operator began negotiations to sell the facility, and as part of the agreement with the proposed operator, Jack Koschitzki, one of the proposed members of the applicant would become an employee of the existing Livingston Hills Nursing & Rehabilitation Center as Chief Executive Officer. Jack's employment started in September 2021. As part of the CEO's responsibility, the applicant was able to retain a new Administrator, the Director of Nursing, and other staff necessary to stabilize and grow the operation resulting in a significant increase in the census that averaged 96.21% occupancy during the first 10 months of calendar year 2022.

BFA Attachment D, a financial summary of Related Facilities, indicates the following:

- Eleanor Nursing Center has experienced average positive working capital and an average positive net asset position and generated a net operating loss of \$978,857 for 2020. The reason for loss was attributable to covid 19 pandemic.
- Renaissance Rehabilitation and Nursing Center has experienced negative working capital in 2019 and 2021, maintained positive equity position and operating income from 2019-2021.

Conclusion

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

Attachments

LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Statements of Livingston Hills Nursing and Rehabilitation, LLC
BFA Attachment B	Organizational Chart Proposed Members
BFA Attachment C	Financial Summary of Livingston Hills Nursing and Rehabilitation, LLC
BFA Attachment D	Financial Summary of Related Facilities

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Livingston Two Operations LLC as the new operator of Livingston Hills Nursing and Rehabilitation Center, a 120-bed residential health care facility at 2781 Route 9, Livingston, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

212117 E

FACILITY/APPLICANT:

Livingston Two Operations LLC d/b/a
Livingston Hills Nursing and Rehabilitation
Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
5. Submission of an executed real estate purchase and sale agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an executed Certificate of Discontinuance of the Assumed Name of Livingston S and V Operations, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Livingston Two Operations LLC, acceptable to the Department. [CSL]
8. Submission of photocopy of an amended and executed Restated Operating Agreement of Livingston Two Operations LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Lease Agreement between Two Operations LLC and KR Livingston Realty LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

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



Project # 222124-E
Woodcrest Rehabilitation & Residential Health Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: November 4, 2022

Executive Summary

Description

Woodcrest Rehabilitation and Residential Health Care Center, LLC (Facility), a 200-bed proprietary residential health care facility, requests approval to transfer 20% stock interest in the facility as a gift, to her adult son, and the facility's Comptroller. The facility is located at 119-09 26th Avenue, College Point (Queens County). There will be no change in beds or services provided.

On April 12, 2022, Elizabeth Goldbaum entered into a Deed of Gift, Acceptance, and Assumption with Saul Elliot Goldbaum for her 20% ownership interest in the facility. There is no compensation.

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

Table with 3 columns: Members, Current, Proposed. Rows include Elizabeth Goldbaum, Saul Elliot Goldbaum, Esther Friedman, Esther Solomon, Gloria Lieberman, Jack Deutsch, and Total.

OPCHSM/OALTC Recommendation

Approval

Need Summary

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

Program Summary

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

Financial Summary

Woodcrest Rehabilitation and Residential Health Care Center, LLC's shareholder, Elizabeth Goldbaum, is gifting 20% interest to her adult son, Saul Elliot Goldbaum. There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price or changes in services, location, or its business model.

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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

February 9, 2023

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Woodcrest Rehabilitation and Nursing Center., LLC	Same
Address	119-09 26 th Avenue College Point, NY 11354	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Woodcrest Rehabilitation & Residential Health Care Center, LLC	Woodcrest Rehabilitation & Residential Health Care Center, LLC
	Elizabeth Goldbaum 20.0%	Saul Goldbaum 20.0%
	Esther Friedman 20.0%	Esther Friedman 20.0%
	Esther Solomon 20.0%	Esther Solomon 20.0%
	Gloria Lieberman 20.0%	Gloria Lieberman 20.0%
	Jack Deutsch 20.0%	Jack Deutsch* 20.0%
		*Managing Member

Character and Competence – Assessment

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

Forest View Nursing Home Inc. (12.5%)	03/2022- Current
Centers Plan for Healthy Living, LLC (7.8%)	08/2017- Current

Quality Review

The proposed owner has been evaluated, on the distribution of CMS star ratings. The applicant has owned one facility less than forty-eight months; therefore the applicant meets the standards described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
< 48 Months			48 months or more		
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes with a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes with a Below Average Rating</u>
Saul Goldbaum	1	1	0	n/a	n/a

Duration of Ownership as of 2/9/2023

Data date: 11/2022

CMS Star Ratings

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Woodcrest Rehabilitation & Residential Health Care Center, LLC	Subject Facility	**	**	**	**
Forest View Center for Rehabilitation & Nursing	Current	****	****	****	**
	03/2022	****	****	****	***

Data date: 11/2022

Enforcement History

A review of the operations of Forest View Center for Rehabilitation & Nursing for the time period indicated above reveals no enforcements.

Conclusion

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

Financial Analysis

Deed of Gift, Acceptance, and Assumption Agreement

The applicant has submitted an executed Deed of Gift, Acceptance, and Assumption Agreement which will be effectuated by the Public Health and Health Planning Council (PHHCP). The terms are summarized below:

Date:	April 12, 2022
Donor:	Elizabeth Goldbaum (Donor), a member of Woodcrest Rehabilitation and Residential Health Care Center, LLC (Facility), holding a 20% interest in the facility.
Donee:	Saul Elliot Goldbaum - Adult Son
Action:	The Donor gives, assigns, and transfer to the Donee all her right, title, interest, and obligations of every kind with respect to the Membership Interest as a gift. The Donee accepts the Gift, duties, restrictions, liabilities, and obligations relating to the membership interest.
Payment:	No compensation.

Lease Agreement

The applicant submitted an executed Lease Agreement; the terms are summarized below:

Date:	March 7, 2022
Premises:	A 200-bed RHCF, located at 119-09 26 th Avenue, College Point, NY 11354
Lessor:	Woodcrest Property, LLC
Lessee:	Woodcrest Rehabilitation and Residential Health Care Center, LLC
Term:	Ten Years
Rental:	\$3,116,666, which includes debt service (principal and interest)
Provisions:	Triple Net

The lease is a non-arm's length arrangement as Woodcrest Property LLC in that members are either the same as the current operator or control their interest through a trust. On January 5, 2022, under the Public Health Sections 2808(5) and 2803-x(4), Woodcrest Rehabilitation and Residential Health Care Center, LLC notified the Department of Health that they would be entering into a new lease with a new landlord that is intending to purchase the real property.

Capability and Feasibility

Woodcrest Rehabilitation and Residential Health Care Center, LLC's shareholder, Elizabeth Goldbaum, is gifting 20% interest to her adult son, Saul Elliot Goldbaum. There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price or changes in services, location, or its business model

BFA Attachment A presents Woodcrest Rehabilitation and Residential Health Care Center, LLC's 2021 Certified Financial Statement showing positive working capital, positive net assets, and a \$4,781,001 net income from operations. BFA Attachment B presents the facility's September 30, 2022, an internal financial statement showing \$8,497,261 in working capital, \$9,126,132 in net assets, and \$1,812,014 net income from operations.

Conclusion

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

Attachments

LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	2021 Certified Financial Statements - Woodcrest Rehabilitation and Residential Health Care Center, LLC
BFA Attachment B	September 30, 2022, Internal Financial Statements - Woodcrest Rehabilitation and Residential Health Care Center, LLC
BFA Attachment C	Organization Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 20% ownership interest from one withdrawing member to one new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

222124 E

FACILITY/APPLICANT:

Woodcrest Rehabilitation & Residential Health
Care Center

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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]

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

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy S. Marks, General Counsel

Date: December 16, 2022

Subject: Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, Inc.

Beth Israel Medical Center, Inc. (“BIMC”) requests Public Health and Health Planning Council (“PHHPC”) approval of a proposed Certificate of Amendment of its Certificate of Incorporation.

BIMC is a New York not-for-profit corporation incorporated on June 18, 1946, under the name of “Beth Israel Hospital Association and Jewish Maternity Hospital” pursuant to Section 50 of the New York Membership Corporations Law. On February 12, 2016, PHHPC approved an amendment to the purposes of the Certificate of Incorporation of BIMC, to include a training program for nursing leading to an associate in applied science (A.A.S.) or bachelor of science (B.S.) degree at the Phillips Beth Israel School of Nursing.

BIMC wishes to further amend the purposes in its Certificate of Incorporation to include a Master of Science degree its training program for nurses at the Phillips Beth Israel School of Nursing. The Certificate of Amendment of the Certificate of Incorporation seeks to reference this new degree by clarifying the purpose “...(b) to operate a program for the training of nurses leading to degrees of associate in applied science (A.A.S.), Bachelor of Science (B.S.), and Master of Science (M.S.); to engage, in conjunction with universities, colleges, and professional schools, in programs related to the training of other health care professionals.”

This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation, Mount Sinai Hospitals Group, Inc., at a meeting of the sole member held on March 21, 2022.

Attached is a March 24, 2022, request Letter from Executive Vice President of Mount Sinai Jeremy Boal, M.D. on behalf of BIMC to the Department, the Bylaws of BIMC, the Resolutions of the Board of Trustees of BIMC from March 21, 2022, the original Certificate of Incorporation of BIMC as well as the proposed Certificate of Amendment of the Certificate of Incorporation of BIMC.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation.

Attachments

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy S. Marks, General Counsel *KSM*

Date: December 16, 2022

Subject: Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, Inc.

Beth Israel Medical Center, Inc. (“BIMC”) requests Public Health and Health Planning Council (“PHHPC”) approval of a proposed Certificate of Amendment of its Certificate of Incorporation.

BIMC is a New York not-for-profit corporation incorporated on June 18, 1946, under the name of “Beth Israel Hospital Association and Jewish Maternity Hospital” pursuant to Section 50 of the New York Membership Corporations Law. On February 12, 2016, PHHPC approved an amendment to the purposes of the Certificate of Incorporation of BIMC, to include a training program for nursing leading to an associate in applied science (A.A.S.) or bachelor of science (B.S.) degree at the Phillips Beth Israel School of Nursing.

BIMC wishes to further amend the purposes in its Certificate of Incorporation to include a Master of Science degree in its training program for nurses at the Phillips Beth Israel School of Nursing. The Certificate of Amendment of the Certificate of Incorporation seeks to reference this new degree by clarifying the purpose “...(b) to operate a program for the training of nurses leading to degrees of associate in applied science (A.A.S.), Bachelor of Science (B.S.), and Master of Science (M.S.); to engage, in conjunction with universities, colleges, and professional schools, in programs related to the training of other health care professionals.”

This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation, Mount Sinai Hospitals Group, Inc., at a meeting of the sole member held on March 21, 2022.

Attached is a March 24, 2022, request Letter from Executive Vice President of Mount Sinai Jeremy Boal, M.D. on behalf of BIMC to the Department, the Bylaws of BIMC, the Resolutions of the Board of Trustees of BIMC from March 21, 2022, the original Certificate of Incorporation of BIMC as well as the proposed Certificate of Amendment of the Certificate of Incorporation of BIMC.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation.

Attachments



Jeremy Boal, M.D.
Executive Vice President, Chief Clinical Officer
Mount Sinai Health System

T. 212-420-2520
F. 212-420-2881
Email: Jeremy.Boal@mssm.edu

President, Mount Sinai Beth Israel and Downtown
10 Nathan D. Perlman Place
New York, NY 10003

March 24, 2022

By Overnight Delivery

Attn: Barbara DelCogliano, Deputy Director
NYS Department of Health
Division of Planning and Licensure
Corning Tower, Room 1842
Empire State Plaza
Albany, NY 12237

Re: Approval of Amending Certificate of Incorporation of the Beth Israel Medical Center

Dear Ms. DelCogliano:

We write on behalf of Beth Israel Medical Center ("Beth Israel") to request approval to amend the charitable purposes and powers stated in its Certificate of Incorporation in order to add the granting of a Master of Science degree under its training program for nurses at the Phillips School of Nursing.

Beth Israel, part of the Mount Sinai Health System, looks forward to supporting the education of nurses in the State of New York through this expansion in its training program.

For your review, we have attached:

A copy of the proposed Certificate of Amendment of the Certificate of Incorporation to be filed with the New York State Department of State.

Please let us know if you have any questions or require further information. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy Boal".

Jeremy Boal, M.D.
Executive Vice President and President

cc: Brad Beckstrom

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER**

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

The undersigned, being the Chairman of the Board of Trustees of Beth Israel Medical Center (the "Corporation"), does hereby certify:

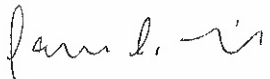
1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the New York Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law.
4. 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 the Secretary of State is: Attn: Legal Department, 150 E. 42nd Street, New York, NY 10017.
5. The Corporation's Certificate of Incorporation is hereby amended as follows:

Article THIRD of the Certificate of Incorporation of the Corporation, which specifies the purposes for which the Corporation is organized, is hereby amended by modifying paragraph (b) thereof, which provides for the conduct of certain training programs for nurses and other health care professionals, to include a reference to master of science degrees in connection with nurse training programs, and said paragraph (b) shall, as amended, read in its entirety as follows:

“(b) to operate a program for the training of nurses leading to degrees of associate in applied science (A.A.S.), bachelor of science (B.S.), and master of science (M.S.); to engage, in conjunction with universities, colleges, and professional schools, in programs related to the training of other health care professionals;”

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on March 21, 2022.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment
this 21st day of March, 2022.

By: 
Name: James S. Tisch
Title: Co-Chairman, Boards of Trustees
Mount Sinai Health System

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER

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

Filed by:

Name: Suzette Lawrence

Address: Mount Sinai Health System

Legal Department

150 E42nd Street, Suite 2-B.17

New York, NY 10017

**RESOLUTIONS OF
THE BOARD OF TRUSTEES OF
BETH ISRAEL MEDICAL CENTER**

Re: Master's Degree at Phillips School of Nursing

March 21, 2022

WHEREAS, Beth Israel Medical Center (the "Corporation") operates a program for the training of nurses at the Phillips School of Nursing;

WHEREAS, the Board of Trustees of the Corporation (the "Board") has determined that it furthers the Corporation's charitable purposes and is in the Corporation's best interests to expand the training program for nurses to offer a Master of Science degree;

WHEREAS, the Corporation desires to amend its Certificate of Incorporation to add the granting of a Master of Science degree to its corporate purposes pursuant to the proposed Certificate of Amendment attached hereto.

NOW, THEREFORE, BE IT:

RESOLVED, the Board hereby approves the filing of the Certificate of Amendment of the Certificate of Incorporation of the Corporation, substantially in the form attached hereto, subject to the approval of the State Education Department, the Department of Health, the Attorney General, and such other regulatory agencies as may be required; and be it further

RESOLVED, that the officers of the Corporation are authorized to take all such further action, including submitting or modifying documents, as any of the officers may consider necessary or appropriate in furtherance of these resolutions, the execution and delivery thereof to be conclusive evidence of the approval of such officer; and be it further

RESOLVED, that any actions previously taken by any officers of the Corporation in furtherance of these resolutions be, and hereby are, in all respects, approved, ratified, confirmed and adopted on behalf of the Board of the Corporation.

**RESOLUTIONS OF
THE BOARD OF TRUSTEES OF
MOUNT SINAI HOSPITALS GROUP, INC.**

Re: Master's Degree at Phillips School of Nursing

March 21, 2022

WHEREAS, Mount Sinai Hospitals Group, Inc. (the "Corporation") is the sole member of Beth Israel Medical Center ("BIMC");

WHEREAS, BIMC operates a program for the training of nurses at the Phillips School of Nursing;

WHEREAS, the Corporation, acting as the sole member of BIMC, has determined that it furthers BIMC's charitable purposes and is in BIMC's best interests to expand the training program for nurses to offer a Master of Science degree;

WHEREAS, BIMC desires to amend its Certificate of Incorporation to add the granting of a Master of Science degree to its corporate purposes pursuant to the proposed Certificate of Amendment attached hereto.

NOW, THEREFORE, BE IT:

RESOLVED, the Board of Trustees of the Corporation (the "Board") hereby approves the filing of the Certificate of Amendment of the Certificate of Incorporation of BIMC, substantially in the form attached hereto, subject to the approval of the State Education Department, the Department of Health, the Attorney General, and such other regulatory agencies as may be required; and be it further

RESOLVED, that the officers of the Corporation and BIMC are authorized to take all such further action, including submitting or modifying documents, as any of the officers may consider necessary or appropriate in furtherance of these resolutions, the execution and delivery thereof to be conclusive evidence of the approval of such officer; and be it further

RESOLVED, that any actions previously taken by any officers of the Corporation or BIMC in furtherance of these resolutions be, and hereby are, in all respects, approved, ratified, confirmed and adopted on behalf of the Board of the Corporation.

BETH ISRAEL MEDICAL CENTER

CORPORATE BYLAWS

Amended and Restated
September 16, 2019

ARTICLE I

Purpose

The purposes for which Beth Israel Medical Center (the “Corporation,” and sometimes the “Hospital”) is formed are set forth in its Certificate of Incorporation.

ARTICLE II

The Member

2.01. Member. The member of the Corporation shall be Mount Sinai Hospitals Group, Inc. (the “Member”).

2.02. Annual Meeting. Each year at the annual meeting of the Member, which shall be held at such place and time as shall be fixed by the Chairman of the board of trustees or the board of trustees of the Member from time to time, the class of the Board of Trustees whose term expires that year shall be elected by the Member at the annual meeting of the Member in accordance with the terms of Section 3.04.

2.03. Action. The Member may take any action permitted by law in accordance with the certificate of incorporation, the bylaws or the policies and procedures of the Member.

2.04. Active Parent Powers. In addition to such other powers, authority, rights and responsibilities vested in the Member in its capacity as the sole member of the Corporation by law or as may be set forth in the Certificate of Incorporation or Bylaws of the Corporation, the Member shall have the power and authority to adopt and approve the Corporation’s operating policies and procedures as may be established by the Corporation or as may be proposed or recommended by the Board of Trustees of the Corporation and approve certificate of need applications to be filed by or on behalf of the Corporation.

ARTICLE III

Board of Trustees

3.01. Powers. The activities of the Corporation shall be governed by the Board of Trustees, except as otherwise provided by law or by these Bylaws (the “Bylaws”). The Board of Trustees may adopt such rules and regulations for the conduct of its meetings, the exercise of its powers and the management of the affairs and property of the Corporation as it may deem proper, not inconsistent with the laws of the State of New York, the Certificate of Incorporation or these Bylaws.

3.02. Number of Trustees. The Board of Trustees shall consist of 45 trustees.

3.03. Qualification of Trustees. All trustees shall be selected for their ability to serve effectively in fulfilling the Board of Trustees’ responsibilities and the purposes of the Corporation. Trustees shall have such other qualifications as the Trustees Committee may deem appropriate to assure that the Board of Trustees represents a broad range of community interests.

3.04. Term of Office; Election.

3.04.1. General. The trustees shall be divided into three classes, designated Class I, Class II and Class III, for purposes of staggering their terms of office. All classes shall be as nearly equal in number as possible. In order to effectuate the staggering of the terms of office of each class of trustees, Class I trustees have been elected for a term expiring at the time of the annual meeting of the Member in the year 2020 or until the successors to such Class I trustees are elected and qualify; Class II trustees have been elected for a term expiring at the time of the annual meeting of the Member for the year 2021 or until the successors to such Class II trustees are elected and qualify; and Class III trustees have been elected for a term expiring at the time of the annual meeting of the Member for the year 2019 or until the successors to such Class III trustees are elected and qualify. Thereafter, except as provided in Sections 3.04.2, 3.06, 5.03

and 5.04, upon the expiration of the terms of office as provided above, trustees shall be elected to each such Class at the annual meeting of the Member for a term of three years or until their successors are elected and qualify.

3.04.2. Chairman of the Board; Ex Officio Trustees. The Board of Trustees may elect either a single individual to serve as Chairman of the Board or two individuals to serve as Co-Chairmen. The term “Chairman” as used in these Bylaws shall refer to (a) if the Board of Trustees has elected a single individual to serve as Chairman, that individual, or (b) if the Board of Trustees has elected two individuals to serve as Co-Chairmen, to both or one of the Co-Chairmen. Notwithstanding Section 3.04.1, (A) the Chairman of the Board of Trustees shall serve as Chairman of the Board of Trustees for a term consistent with his or her term in office as Chairman as provided in Section 5.03, and (B) the Board may designate and elect up to two ex officio trustees to serve on the Board of Trustees for a duration determined by the Board of Trustees or until the expiration of their terms in the office on which their ex officio status is based; however, ex officio trustees shall not be entitled to vote and shall not be counted for purposes of determining a quorum.

3.04.3. Chairman Emeritus of the Board. Notwithstanding Section 3.04.1, a former Chairman of the Board may be elected to serve as Emeritus Chair. The Emeritus Chair shall be elected by the Board of Trustees and shall have all of the powers and duties of a trustee.

3.04.4. Emeritus Trustees. The Board of Trustees may in its sole discretion designate and elect emeritus trustees to serve on the Board of Trustees for such terms as the Board of Trustees shall determine; however, emeritus trustees shall be invited to attend only the Annual Meeting, shall not be entitled to vote and shall not be counted for purposes of determining a quorum.

3.05. Resignation; Removal. Any trustee may resign at any time by giving written notice of such resignation to the Board of Trustees, the Chairman of the Board of Trustees or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon receipt thereof by the Board of Trustees, the Chairman of the Board of Trustees or the Secretary, as the case may be. Any trustee may be removed from the Board of Trustees by the Member with or without cause at any time.

3.06. Vacancies. Vacancies in the membership of the Board of Trustees may be filled at any time as follows:

In the event of a vacancy on the Board of Trustees for any reason, a replacement trustee shall be recommended to the Board of Trustees by the Trustees Committee (or any such committee that may be authorized to recommend candidates to the Board of Trustees) and such replacement trustee shall be elected by the Member or by a vote of a majority of the remaining trustees, though less than a quorum of the Board of Trustees and shall hold office for a term expiring at the annual meeting of the Member at which the term of office of the class to which such trustee has been elected expires and such trustee's successor shall have been duly elected and qualified.

ARTICLE IV

Meetings of the Board

4.01. Annual Meeting. The annual meeting of the Board of Trustees for the election of officers of the Corporation and for the transaction of such other business as may properly come before the meeting shall be held at 5 p.m. at the principal office of the Member on the anniversary of the Closing or at such place and time as shall be fixed by the Chairman of the Board of Trustees or the Board of Trustees from time to time upon notice in the manner prescribed in Section 4.04.

4.02. Regular Meetings. Regular meetings of the Board of Trustees, which including the Annual Meeting, shall convene no less than four times annually, and shall be held at the principal office of the Corporation at such time as shall be determined from time to time by the Chairman of the Board of Trustees or the Board of Trustees.

4.03. Special Meetings. Special meetings of the Board of Trustees shall be held at the offices of the Corporation or at such other place in the City of New York as the Chairman of the Board of Trustees, the Board of Trustees or the Chief Executive Officer may designate in the notice of meeting and may be called at any time by the Chairman of the Board of Trustees, or the Chief Executive Officer, at the time and date specified in the notice of the meeting pursuant to Section 4.04 or in the waiver of notice thereof.

4.04. Notice of Meetings; Changes in Date, Time and Place of Meetings; Adjourned Meetings. The annual meeting and regular meetings of the Board of Trustees may be held without notice at the date, time and place specified in Sections 4.01 and 4.02; all annual meetings not held on the anniversary of the Closing and special meetings of the Board of Trustees shall be held upon notice in the manner prescribed in this Section 4.04. The Board of Trustees or the Chairman of the Board of Trustees may change the date, time and/or place of the previously-scheduled annual meeting and any regular or special meeting, provided that notice is given as prescribed in this Section 4.04. All notices of meetings required to be given shall be by mail, by facsimile transmission or by such electronic means of communication for which written confirmation of the electronic communication is available, at least four (4) but not more than thirty (30) days before the meeting to each trustee addressed to such trustee at such trustee's address as it appears in the records of the Corporation or delivered to such trustee personally not less than two (2) nor more than thirty (30) days before the day of such meeting. The Chairman

of the Board of Trustees or, in his absence, the Chief Executive Officer, may adjourn any meeting of trustees at which a quorum does not exist or for any other reason. No notice need be given of any adjourned meeting, provided that the time, date and place to which the meeting is adjourned is announced at the meeting at which the adjournment is taken. The attendance of a trustee at any meeting of the Board of Trustees shall constitute a waiver of notice thereof.

4.05. Quorum. Except as may be otherwise expressly required by law, at all meetings of the Board of Trustees the presence of five trustees plus one additional trustee for every ten trustees (or fraction thereof) in excess of fifteen then in office shall be necessary and sufficient to constitute a quorum for the transaction of business. Notwithstanding the foregoing, any appointments to the Hospital Staff pursuant to Section 8.04 by the Board of Trustees, shall require the presence of at least one trustee for every ten trustees (or fraction thereof) then in office to be necessary and sufficient to constitute a quorum. In the absence of a quorum, a majority of the trustees present may adjourn the meeting to another date, time and place. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

4.06. Voting. Each trustee shall be entitled to one vote on each matter submitted to a vote of trustees. At all meetings of the Board of Trustees, all matters shall be decided by the vote of a majority of the trustees present at the meeting entitled to vote thereon, except as at the time otherwise expressly required by law or by these Bylaws.

4.07. Action by Board of Trustees Without Meeting. Any action required or permitted to be taken by the Board of Trustees may be taken without a meeting if all the members of the Board of Trustees give their written or electronic consent to the adoption of a resolution authorizing the action to the extent permitted by law. The resolution and the written or

electronic consents thereto shall be filed with the minutes of the proceedings of the Board of Trustees.

4.08. Telephone Participation in Meetings. Any one or more members of the Board of Trustees may participate in a meeting of the Board of Trustees by means of a conference telephone or similar communications equipment allowing all trustees participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

4.09. Minutes. Minutes of all meetings shall be taken and shall reflect all business conducted, including findings, conclusions and recommendations, which shall be maintained in the Corporation's official corporate records.

4.10. Representation of the Hospital Staff. The Hospital Staff shall have the right to be represented at meetings of the Board of Trustees (through attendance and participation, but not vote) by one member of the Hospital Staff selected by the Hospital Staff and approved by the Board of Trustees, except that this provision shall not apply to executive sessions where attendance of all non-trustees shall be at the discretion of the Board of Trustees.

ARTICLE V

Officers

5.01. Number of Officers. The officers of the Corporation shall be the Chairman of the Board of Trustees, the Chief Executive Officer, a Treasurer and a Secretary. The Board of Trustees may appoint such additional officers as it shall deem necessary or appropriate, including one or more Senior Vice Chairmen of the Board of Trustees, one or more Vice Chairmen of the Board of Trustees, a President, one or more Executive Vice Presidents and one or more Senior Vice Presidents. The Board of Trustees may also appoint administrative officers to non-policy

setting roles (including Vice Presidents, Associate and Assistant Secretaries and Associate and Assistant Treasurers) and agents as it shall deem necessary or appropriate.

5.02. Qualification of Officers. The Chairman of the Board of Trustees, the Treasurer and the Secretary shall be trustees and shall have such additional qualifications as shall be recommended by the Trustees Committee and approved by the Board of Trustees. The Senior Vice Chairman and Vice Chairmen of the Board of Trustees shall be trustees of at least one of the following entities: the Corporation, Mount Sinai Health System, Inc., Mount Sinai Hospitals Group, Inc., The Mount Sinai Hospital, The St. Luke's-Roosevelt Hospital Center, The New York Eye and Ear Infirmary, Icahn School of Medicine at Mount Sinai and The Mount Sinai Medical Center, Inc., and have such additional qualifications as shall be recommended by the Trustees Committee and approved by the Board of Trustees. All other officers may, but need not, be trustees and shall have such additional qualifications as shall be recommended by the Chief Executive Officer and approved by the Board of Trustees.

5.03. Chairman of the Board of Trustees. The election, term of office and succession of the Chairman of the Board of Trustees and related provisions shall be governed by this Section 5.03 as follows:

5.03.1. Election; Term of Office; Selection of Successor Chairman. The Chairman of the Board of Trustees shall serve for an initial term expiring at the time of the annual meeting of the Board of Trustees in the year 2016, and thereafter, a trustee may serve as Chairman of the Board of Trustees for a maximum of four successive terms, each of which shall be three years. In all cases, the Chairman shall hold office until the annual meeting of the Board of Trustees in the final year of each term or until the Chairman's successor shall have been elected and shall have qualified. Reasonably in advance of the expiration of any such three-year

term of office, the Trustees Committee, and such additional trustees (if any) as the Executive Committee may appoint, shall constitute an ad hoc committee which shall recommend a candidate or candidates (which, subject to the limitation in the first sentence of this Section 5.03.1, could include the incumbent Chairman) for the position of Chairman for consideration by the Board of Trustees for a three-year term of office, with the election to be held prior to the expiration of the then current term of office.

5.03.2. Temporary Inability of Chairman of the Board to Serve. In the event of the temporary absence or temporary incapacity of the Chairman of the Board of Trustees, the duties of the Office of Chairman of the Board of Trustees shall be performed by the Senior Vice Chairman of the Board of Trustees designated to act during such period by the Chairman of the Board of Trustees; provided that if there are Co-Chairmen of the Board of Trustees and both Co-Chairmen are not temporarily absent or incapacitated at the time of such temporary absence or incapacity, the duties of the Office of the Chairman of the Board of Trustees shall be performed by the Co-Chairman that is not temporarily absent or incapacitated. In the event that the Chairman of the Board of Trustees does not so designate a Senior Vice Chairman of the Board of Trustees, a Senior Vice Chairman of the Board of Trustees shall be designated by the Executive Committee to act during such period.

5.03.3. Permanent Inability of Chairman of the Board to Serve. In the event of the death, resignation, removal or permanent incapacity of the Chairman of the Board of Trustees, a meeting of the Executive Committee or the full Board of Trustees shall be called by any Senior Vice Chairman of the Board of Trustees, the Chief Executive Officer or the Secretary, and the Executive Committee or the full Board of Trustees shall thereupon immediately meet to designate from among the Senior Vice Chairmen of the Board of Trustees

an acting Chairman of the Board of Trustees; provided that if there are Co-Chairmen of the Board of Trustees and one of the Co-Chairmen remains able to serve as Chairman at the time that the other Co-Chairman is permanently unable to serve as Chairman, the duties of the Office of the Chairman of the Board of Trustees shall be performed by the remaining Co-Chairman until such time as the Board of Trustees decides to appoint a Co-Chairman in accordance with the terms of these Bylaws. The Trustees Committee, together with such additional trustees as the Executive Committee may appoint, or the full Board of Trustees shall determine the manner in which a succeeding Chairman of the Board of Trustees shall be selected.

5.04. Election; Term of Office for Officers Other than the Chairman of the Board of Trustees. Subject to Section 5.06 relating to vacancies, all officers other than the Chairman of the Board of Trustees shall be elected at the annual meeting of the Board of Trustees and shall hold office until the next annual meeting of the Board of Trustees or until their successors shall have been elected and shall have qualified.

5.05. Resignation; Removal. Any officer may resign at any time by giving written notice of such resignation to the Board of Trustees, the Chairman of the Board of Trustees, the Chief Executive Officer, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon receipt thereof by the Board of Trustees, the Chairman of the Board of Trustees, the Chief Executive Officer, the President or the Secretary, as the case may be. Any officer may be removed with or without cause at any time by the Board of Trustees.

5.06. Vacancies. If any office becomes or is declared vacant for any reason, the vacancy may be filled at any time by the Board of Trustees.

5.07. Honorary Officers. The Board of Trustees may from time to time appoint such honorary officers as it deems appropriate to serve for such period of time as the Board of Trustees deems appropriate.

5.08. Powers and Duties. The powers and duties of the officers shall be those usually appertaining to their respective offices and such other powers and duties as may be prescribed by these Bylaws or from time to time by the Board of Trustees, or the Chairman of the Board of Trustees in the case of offices held only by trustees, or by the Chief Executive Officer in the case of all other offices and all powers and duties incidental to the carrying out of such additional designated powers and duties.

5.08.1. Chairman of the Board of Trustees. The Chairman of the Board of Trustees shall preside at and shall set the agenda for all meetings of the Board of Trustees and shall serve as an ex officio member of all committees. The Chairman shall have such powers and duties as may be assigned to the Chairman from time to time by the Board of Trustees.

5.08.2. Senior Vice Chairman of the Board of Trustees. The Senior Vice Chairman of the Board of Trustees shall have such powers and duties as may be assigned to the Senior Vice Chairman from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

5.08.3. Vice Chairmen of the Board of Trustees. The Vice Chairmen of the Board of Trustees shall have such powers and duties as may be assigned to them from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

5.08.4. Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have such powers and duties as may be assigned to the Chief Executive Officer from time to time by the Board of Trustees or the

Chairman of the Board of Trustees. The Chief Executive Officer shall set the agenda for all meetings of the Board of Trustees at which the Chairman of the Board of Trustees is not present. The Chief Executive Officer shall have the authority and responsibility necessary to operate the Corporation and all of its activities and departments. The Chief Executive Officer shall be responsible for the development, submission and implementation of all plans to maintain the Corporation's compliance with statutory and regulatory requirements. The Chief Executive Officer shall be responsible to the Board of Trustees for the management of the Corporation. The Chairman of the Board of Trustees, together with such other trustees as he deems appropriate, shall be responsible for assuring the Chief Executive Officer's effective performance through ongoing documented monitoring and evaluation of the performance of the Chief Executive Officer against criteria which include the Corporation's compliance with statutory and regulatory requirements, the corrective actions required and taken to achieve such compliance, and the maintenance of corrective actions to achieve continued compliance in previously deficient areas.

5.08.5. President. The President shall be the Chief Operating Officer of the Corporation and shall have such powers and duties as may be assigned to him from time to time by the Chief Executive Officer.

5.08.6. Executive Vice Presidents. Executive Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

5.08.7. Senior Vice Presidents. Senior Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

5.08.8. Vice Presidents. Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

5.08.9. Treasurer. The Treasurer shall have the care and custody of all the funds and securities of the Corporation. The Treasurer shall keep a full and accurate account of all moneys received and paid on account of the Corporation and shall render a statement of accounts whenever the Board of Trustees shall require. The Treasurer shall have such other powers and duties as may be assigned to the Treasurer from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

5.08.10. Secretary. The Secretary shall record all votes and the minutes of all proceedings of the Board of Trustees in a minute book to be kept permanently for that purpose. The Secretary shall give or cause to be given all notices required by law or by these Bylaws. The Secretary shall have custody of the corporate seal and shall have authority to affix the same to any obligation, instrument or contract executed on behalf of the Corporation and, when so affixed, to attest the same by the Secretary's signature. The Secretary shall keep and account for all books, documents, papers and records of the Corporation, except those for which some other officer or agent is properly accountable, and shall have such other powers and duties as may be assigned to the Secretary from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

ARTICLE VI

Committees

6.01. Appointment of Committees. The standing committees of the Board of Trustees shall consist of the committees listed in Section 6.09 hereof and the standing committees of the

Corporation shall consist of the committees listed in Section 6.10 hereof. The Board of Trustees may from time to time establish such other standing or special committees of the Board of Trustees and such other standing or special committees of the Corporation as it deems necessary or appropriate. Such standing and special committees shall have such powers, duties and responsibilities as may be prescribed by these Bylaws or from time to time by the Board of Trustees.

6.02. Membership; Chairmen of Committees; Etc. Each standing or special committee shall consist of three or more persons to be designated by the Chairman of the Board of Trustees and approved by the Board of Trustees. Standing and special committees of the Board of Trustees shall consist exclusively of members of the Board of Trustees; standing and special committees of the Corporation may consist of trustees and persons who are not trustees. Except as provided below, committee members on all committees may serve for two three-year terms or until their successors are elected and qualify, except that in the case of any such member who has specific expertise essential to a particular committee as determined by the Chairman of the Board of Trustees, such member may serve for additional three-year terms or until his or her successor is elected and qualifies. All committee members, including members of the Executive Committee, shall be elected by the Board of Trustees at the annual meeting of the Board of Trustees for the terms provided above. The Chairman of the Board of Trustees and the Chairman Emeritus shall be ex officio members of all committees. Additional ex officio memberships on any committee may be established by the Board of Trustees or by these Bylaws. All committee members, including members of the Executive Committee, shall serve at the pleasure of the Board of Trustees and the Board of Trustees shall have the power at any time, on the recommendation of the Chairman of the Board of Trustees, to fill vacancies in, change the

membership of, or dissolve any such committee. Each committee shall have a chairman or co-chairmen and may have one or more vice chairmen who, except as provided below, shall be elected by the Board of Trustees from among the committee's members on the recommendation of the Chairman of the Board of Trustees for three-year terms or until their successors are elected and qualify. All committee chairmen, co-chairmen and vice chairmen shall serve at the pleasure of the Board of Trustees and the Board of Trustees shall have the power at any time, on the recommendation of the Chairman of the Board of Trustees, to fill vacant chairmanships or to remove any chairman from office with or without cause.

6.03. Meetings of Committees. Committees established by the Board of Trustees may meet either regularly at stated times or specially on notice given at least 24 hours in advance by the Chairman, a Co-Chairman or any Vice Chairman of the committee, the Chairman of the Board of Trustees or not less than one-third of the members thereof (but in any case no less than two members) by mail, telephone or in person or by such electronic means of communication for which written confirmation is available to all other members thereof, but no notice of any regular meeting need be given, and no notice of any special meeting need be given at which all members are present or notice of which has been waived by all absent members before or after such meeting.

6.04. Vacancies. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Trustees to act at the meeting in the place of any such absent or disqualified member.

6.05. Quorum. Except as may be otherwise required by law, at any meeting of a committee, the presence of one-third of the members of such a committee (but in any case not less than two

members) shall be necessary and sufficient to constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the committee members present at such meeting may adjourn the meeting to another date, time and place.

6.06. Action of Committee Members; Operating Procedures; Subcommittees. At any meeting of a committee, each committee member present shall be entitled to one vote. Except as otherwise provided by law or by these Bylaws, the vote of a majority of committee members present and entitled to vote, if a quorum is present at such time, shall be the act of such committee. Each committee shall have authority to adopt and revise from time to time guidelines and operating procedures or bylaws pursuant to which the committee will discharge and implement its responsibilities. Committees or the Board of Trustees may make rules for the holding and conduct of their meetings and may appoint such subcommittees and staff as they from time to time may deem necessary or appropriate.

6.07. Action by Committees Without a Meeting. Any action required or permitted to be taken by any committee may be taken without a meeting if all the members of the committee give their written or electronic consent to the adoption of a resolution authorizing the action to the extent permitted by law. The resolution and the written or electronic consents thereto shall be filed with the minutes of the committee.

6.08. Telephone Participation in Meeting. Any one or more of the members of a committee may participate in a meeting of such committee by means of a conference telephone or similar communications equipment allowing all members participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

6.09. Standing Committees of the Board of Trustees. The standing committees of the Board of Trustees shall be as follows (subject to the authority of the Board of Trustees to establish additional standing committees set forth in Section 6.01):

6.09.1 Executive Committee. The Executive Committee shall have all the powers of the Board of Trustees between meetings of the Board of Trustees to the extent permitted by law.*

6.09.2. The Ad Hoc Executive Committee. In the event of exigent circumstances, the Ad Hoc Executive Committee (consisting of the Chairman, the Chairman Emeritus, and such other Members of the Executive Committee as the Chairman determine are appropriate with respect to the matter under consideration) shall be authorized to act on behalf of the Executive Committee. Any formal actions taken by the Ad Hoc Executive Committee shall be presented to the Executive Committee at its next regular meeting.

6.10. Standing Committees of the Corporation. The standing committees of the Corporation shall be as follows (subject to the authority of the Board of Trustees to establish additional standing committees as set forth in Section 6.01):

6.10.1. Audit and Compliance Committee. The Audit and Compliance Committee shall monitor (1) the integrity of the Corporation's financial statements; (2) the Corporation's financial reporting process and system of internal controls; (3) the Corporation's

* Section 712 of the New York Not-for-Profit Corporation Law (the "NPCL") provides that the Executive Committee does not have authority as to the following matters: (1) the filling of vacancies in the Board of Trustees or in any committee; (2) the fixing of compensation of the trustees for serving on the Board of Trustees or on any committee; (3) the amendment or repeal of the Bylaws or the adoption of the new Bylaws; and (4) the amendment or repeal of any resolution of the Board of Trustees which by its terms shall not be so amendable or repealable. Section 509 of the NPCL provides that certain real estate transactions, including the purchase and sale of real property, can be approved only by the vote of the entire Board of Trustees.

compliance with legal and regulatory requirements and with standards of ethical conduct established by management or the Board of Trustees; (4) the qualifications, independence and performance of the Corporation's independent auditors; and (5) the performance of the Corporation's internal audit and compliance functions. The Audit and Compliance Committee shall have authority to require such reports and other information from management and the independent auditors and obtain (at the Corporation's expense) such outside expert advice as the Audit and Compliance Committee deems necessary to discharge its responsibilities.

6.10.2. Community and Government Affairs Committee. The Community and Government Affairs Committee shall monitor matters relating to the Corporation's relationships with the various communities which it serves and to local and community leaders and matters relating to the Corporation's relationships to federal, state, and/or local governmental agencies.

6.10.3. Compensation and Employee Benefits Committee. The Compensation and Employee Benefits Committee shall (1) review and approve matters relating to personnel, labor relations, collective bargaining and compensation and fringe benefits of Corporation employees; (2) have the responsibility and authority to establish and fix the compensation and fringe benefits of all Executives¹ and it shall also review the compensation and fringe benefits of other senior and/or highly compensated personnel; and (3) have the authority to serve as, or delegate and appoint, fiduciaries with respect to the Corporation's employee benefit plans.

¹ Executives shall be those individuals who are "Disqualified Persons" under Treas. Reg. 53.4598-3T and those who, post-recruitment, will be "Disqualified Persons") in accordance with those procedures and requirements set forth in the Operating Procedures of the Committee.

6.10.4. Development and Campaign Steering Committee. The Development and Campaign Steering Committee shall monitor matters relating to philanthropic fundraising, donations and testamentary and deferred gifts to the Corporation.

6.10.5. Education Committee. The Education Committee shall monitor (1) matters relating to undergraduate medical education and training conducted at or under the auspices of the Corporation, as well as the Corporation's medical residency and continuing medical education and training programs, and matters relating to the housing and other prerequisites of undergraduate students and medical residents and (2) matters relating to the Graduate School of Biological Sciences, including its doctoral programs, master's programs and MD/PhD programs, as well as matters relating to the housing and other prerequisites of students in the foregoing programs.

6.10.6. Finance Committee. The Finance Committee (1) shall monitor matters relating to the finances of the Corporation, including the preparation by management of the annual budget of revenues and expenses and the annual budget of capital expenditures; and (2) shall monitor, establish and fix appropriate levels of general and professional liability, property and other types of insurance.

6.10.7. Human Capital Management Committee. The Human Capital Management Committee shall monitor matters related to workforce development and planning, workforce diversity and inclusion, workforce professionalism, employee training development and learning, and employee health and safety.

6.10.8. Information Technology Committee. The Information Technology Committee shall monitor the Corporation's information systems, including management information systems, data processing, clinical technology, and computer technology.

6.10.9. Innovations Committee. The Innovations Committee shall monitor matters relating to patents, licensing and other activities related thereto, and the Corporation's intellectual property portfolio and any related transactions.

6.10.10. Investment Committee. The Investment Committee shall supervise the investment of the Corporation's endowment and other funds and accounts. Unless otherwise limited by the Board of Trustees, it shall have the authority to make investment decisions with respect to, and to authorize and effect investment transactions in, any and all such funds and accounts and to select and employ investment advisors. It shall also exercise any other investment supervisory power the Board of Trustees may have, subject to the approval of the Board of Trustees.

6.10.11. Legal Committee. The Legal Committee shall monitor the legal affairs of the Corporation. It shall monitor the selection of outside counsel and the terms of their retention.

6.10.12. Committee on Quality. The Committee on Quality shall: (1) review and monitor the provision of patient care and quality assurance activities at or under the auspices of the Corporation; (2) oversee and coordinate the patient safety, malpractice prevention and quality assurance plans and programs at or under the auspices of the Corporation and insure that information gathered pursuant to those programs/plans will be utilized to review and to revise Corporation policies and procedures; (3) review and monitor matters related to professional staff

development; and (4) comply with other applicable legal requirements, including guidelines issued by regulatory bodies.

6.10.13. Real Estate and Facilities Committee. The Real Estate and Facilities Committee shall monitor matters relating to the real estate and facilities owned or leased by the Corporation, including the management of such properties and the maintenance and renovation of such properties, the acquisition of new properties, the sale or transfer of existing properties and construction and renovation of new and existing properties.

6.10.14. Research Committee. The Research Committee shall monitor matters relating to research conducted at or under the auspices of the Corporation, including matters relating to grants from the National Institutes of Health and other funding sources, the activities of the Institutional Review Board and other internal research-related committees, and the Corporation's policies and procedures relating to human subject safety.

6.10.15. Strategic Planning Committee. The Strategic Planning Committee shall be responsible for developing, and recommending to the full Board of Trustees or the Executive Committee for approval, strategic plans for the Corporation as part of an institution-wide strategic planning process. The strategic plans shall: (1) set forth criteria for the selection of primary areas of focus for programmatic growth and investment; and (2) establish priorities among the primary areas of focus, taking into account the missions of patient care, teaching and research of the Corporation.

6.10.16. Trustees Committee. The Trustees Committee shall recommend candidates to the Board of Trustees for vacancies in the Board of Trustees and in the offices of the Board of Trustees, including a candidate or candidates for the Office of Chairman of the

Board in conjunction with the Executive Committee as required by Section 5.03, whether occurring by reason of the expiration of the term of office or otherwise. It shall also make recommendations to the Chairman of the Board of Trustees with respect to the chairmanship and membership of each committee, identify potential new trustees, review the performance of sitting trustees and officers of the Board of Trustees, oversee the Board of Trustees' self-assessment, new trustee orientation and ongoing trustee education, and identify governance issues.

6.10.17. The Trustee Conflicts of Interest Review Committee. The Trustee Conflicts of Interest Review Committee shall, in accordance with the terms of Section 11.01, monitor and implement compliance with the Corporation's conflicts of interest policies for trustees, officers and key employees, including by exercising decision-making authority assigned to the Committee under such policies.

6.11. Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board of Trustees when required and all such minutes shall be filed with the records of such committee.

ARTICLE VII

Medical Director

7.01. Appointment. After consultation with the Hospital Staff in such manner as the Board of Trustees may deem appropriate, the Board of Trustees shall appoint a physician qualified for membership on the Hospital Staff as the Medical Director of the Hospital.

7.02. Duties. The Medical Director shall be responsible for directing the Hospital Staff in accordance with applicable provisions of law and regulations and shall perform such other duties as may be required by law and regulations and such further duties as may be specified by the

Board of Trustees or the Chief Executive Officer. The Medical Director shall be responsible to the Chief Executive Officer and to the Board of Trustees.

ARTICLE VIII

Hospital Staff

8.01. Membership. The Hospital Staff shall consist of all physicians, dentists and other health care professionals who are appointed to the Hospital Staff pursuant to and in accordance with the Hospital Staff Bylaws (as defined below). The Hospital Staff shall consist of all physicians and dentists who, having received a concurrent appointment to the Faculty of the Icahn School of Medicine at Mount Sinai, have been granted privileges in accordance with these Bylaws and the Hospital Staff Bylaws.

8.02. Hospital Staff Bylaws. There shall be bylaws of the Hospital Staff (the “Hospital Staff Bylaws”) which set forth (a) its specific purposes and powers, (b) its organization and the organization of the clinical departments of the Hospital, (c) the rights, duties and obligations of Hospital Staff members and of each category of Hospital Staff membership, (d) the qualifications and performance standards to be met, and specific procedures for appointment and reappointment to and suspension and removal from the Hospital Staff and the delineation of clinical privileges, (e) the specific rights of candidates for appointment and of Hospital Staff members who have been suspended or removed or who have not been reappointed, including fair hearing procedures, (f) the organization of the quality assurance activities of the Hospital Staff as well as the mechanism used to conduct, evaluate and revise such activities, (g) the mechanism for the approval of such policies, rules and regulations as may be necessary for the governance of the Hospital Staff and the furtherance of its purposes, provided that such Hospital Staff Bylaws shall not be inconsistent with and shall be subject to the provisions of these Bylaws, and (h) such

other provisions as shall be required by law and regulations. The Hospital Staff Bylaws, and any amendments thereto, shall not be effective unless and until approved by the Board of Trustees.

The Hospital Staff Bylaws shall further provide appropriate procedures, including, when appropriate, a hearing before the Executive Committee of the Medical Board or an ad hoc committee thereof, and, when appropriate, the right of appeal to the Board of Trustees or a committee thereof, to ensure due process in the case of non-appointment and non-reappointment to the Hospital Staff, curtailment of privileges and suspension, dismissal or other disciplinary action.

8.03. Medical Board. The Medical Board shall be the governing body of the Hospital Staff and shall have the responsibility for carrying out its purposes. The Medical Board shall adopt such policies, rules and regulations consistent with the Hospital Staff Bylaws, applicable legal requirements, and these Bylaws as it deems necessary for the governance of the Hospital Staff and the furtherance of its purposes and as shall be required by law and regulations.

8.04. Appointment. The Board of Trustees shall appoint to the Hospital Staff, in numbers not exceeding the Hospital's needs, physicians, dentists and other health care professionals who meet the qualifications for membership as set forth in the Hospital Staff Bylaws. Each member of the Hospital Staff shall have appropriate authority and responsibility for the care of that member's patients, within the scope of each member's privileges, subject to any limitations in these Bylaws and the Hospital Staff Bylaws, rules, and regulations of the Hospital Staff and subject, further, to any limitations on that member's appointment. All applications shall be processed in accordance with the Hospital Staff Bylaws. All appointments to the Hospital Staff shall be for a period not to exceed two years, subject to prior removal.

8.05. Department Directors, Other Appointments to Administrative Positions, Etc.

Appointments as department directors and as physicians and dentists to administrative positions may be by the Board of Trustees. All department directors, physicians, dentists and other health care professionals in administrative positions (whether employed or voluntary) shall serve at the pleasure of the Board of Trustees, and provided, further, that, notwithstanding any provision of these Bylaws or the Hospital Staff Bylaws to the contrary, any physician, dentist or other health care professional whose engagement by the Hospital requires membership on the Hospital Staff shall have the same due process rights as any member of the Hospital Staff only insofar as termination of that member's Hospital Staff privileges are concerned and such due process rights shall not apply insofar as appointments (whether employed or voluntary) to administrative positions are concerned. The duties and responsibilities of directors of clinical departments shall be set forth in the Hospital Staff Bylaws. Directors of clinical departments shall be required to maintain their qualifications for Hospital Staff membership and privileges appropriate to their assignments.

ARTICLE IX

Board of the Phillips Beth Israel School of Nursing

9.01. Board of The Phillips Beth Israel School of Nursing. The Board of The Phillips Beth Israel School of Nursing (the 'Nursing School Board') shall be responsible to the Board of Trustees of the Corporation for the operation of the Phillips Beth Israel School of Nursing (the 'School'). The Nursing School Board shall appoint the President and Dean for the School of Nursing. The Nursing School Board shall be an independent, policy making body responsible for the quality and integrity of the School of Nursing and for ensuring that the School of Nursing's mission is carried out and that the School of Nursing meets all accrediting standards.

The Nursing School Board will be responsible for the following matters: all financial matters concerning the School of Nursing; all budgetary requests as presented by the Dean in concert with the faculty of the School of Nursing; recommendations of the faculty for those students who have met the stated criteria to be awarded the AAS degree; and any further matters relevant to the operation of the School of Nursing. The number of members of the Nursing School Board shall be determined by the Nursing School Board. The Nursing School Board shall adopt bylaws which set forth (a) the rights, duties and obligation of, and criteria for, membership on the Nursing School Board; and (b) the organization and governance of the Nursing School. Such bylaws and any amendments thereto shall be consistent with these Bylaws and shall not be effective unless and until approved by the Member or the Board of Trustees of the Corporation.

9.02. Membership; Chairmen of the Nursing School Board; Etc. Candidates for membership on the Nursing School Board shall be nominated by the Nursing School Board, shall be appointed by the Member or the Board of Trustees of the Corporation from such nominees and shall serve for a term of three years or until their successors are elected and qualify. The Dean of the School of Nursing and the President of the Corporation shall be ex officio members of the Nursing School Board, with the right to vote. The Chairman of the Nursing School Board shall be elected from among the Nursing School Board's members by members of the Nursing School Board. The Member or the Board of Trustees of the Corporation shall not have the power to remove members of the Nursing School Board without cause.

ARTICLE X

Indemnification

10.01. Limitation of Liability. Except as otherwise provided by law, no trustee or officer of the Corporation shall be liable to any person other than the Corporation based solely on such

trustee's or officer's conduct in the execution of such office unless such conduct with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting liability.

10.02. Indemnity. The Corporation shall, to the fullest extent permitted by applicable law, indemnify any person made, or threatened to be made, a party to any action or proceeding, whether criminal or civil, including an action by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that such person, or such person's testator or intestate, is or was a trustee or officer of the Corporation or a member of a committee established under Article VI, including also an action by or in the right of any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in which such trustee, officer or Article VI committee member served in any capacity at the request of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein.

10.03. Reimbursement or Advancement of Funds. The Corporation shall, from time to time, reimburse or advance to any person referred to in Section 10.02 the funds necessary for payment of expenses incurred by such person in connection with any action or proceeding, or threatened action or proceeding, or appeal referred to in Section 10.02 upon receipt, if required by the New York Not-For-Profit Corporation Law or deemed appropriate by the Board of Trustees, of a written undertaking by or on behalf of such person to repay such amount(s) if it is ultimately determined that such person is not entitled to indemnification under this Article X or otherwise.

10.03.1. No Rights Hereunder in Certain Cases. Notwithstanding anything in this Article X to the contrary, no person referred to in Section 10.02 shall be entitled to

indemnification, or reimbursement or advancement of funds, in connection with (1) any claim initiated by such person unless the Board of Trustees or the Executive Committee thereof has authorized or consented to the initiation of such claim (except as otherwise provided in Section 10.07 with respect to a claim by such person to enforce his rights under this Article X) or (2) any claim by the Corporation against such person if such person was an officer of the Corporation whose employment by the Corporation has terminated and such claim by the Corporation is to recover funds and/or property improperly taken by or paid to such person.

10.04. Indemnity, Reimbursement and Advancement to Fullest Extent of Law. The Corporation, by resolution adopted by its Board of Trustees or the Executive Committee thereof, may indemnify and reimburse or advance expenses to any person to whom the Corporation is permitted to provide indemnification or the reimbursement or advancement of expenses to the fullest extent permitted by applicable law, as it may exist from time to time, whether pursuant to rights granted pursuant to, or provided by, the New York Not-For-Profit Corporation Law or other rights created by (1) a resolution of Trustees or (2) an agreement approved by the Board or such Committee providing for such indemnification or reimbursement or advancement of expenses, it being expressly intended that this Article X authorizes the creation of such other rights in any such manner. Any such indemnification and any such reimbursement or advancement of expenses may, in the Board's or such Committee's discretion and to the extent permitted by law, be retroactive and be available with respect to events occurring prior to the adoption hereof and prior to any such resolution or agreement.

10.05. Interpretation. Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Article X may elect to have the right to indemnification (or reimbursement or advancement of expenses) interpreted on the basis

of the applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification (or reimbursement or advancement of expenses) is sought.

10.06. Contract Right. The right to be indemnified or to the reimbursement or advancement of expenses pursuant to Sections 10.02 or 10.03 or a resolution authorized pursuant to Section 10.04 (A) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof (or of any such resolution) were set forth in a separate written contract between the Corporation and such person, (B) is intended to be retroactive and shall, to the extent permitted by law, be available with respect to events occurring prior to the adoption hereof or of any such resolution, and (C) shall continue to exist after any rescission or restrictive modification hereof or of any such resolution with respect to events occurring prior thereto. The Corporation shall not be obligated under this Article X (including any resolution or agreement authorized by Section 10.04) to make any payment hereunder (or under any such resolution or agreement) to the extent the person seeking indemnification hereunder (or under any such resolution or agreement) has actually received payment (under any insurance policy, resolution, agreement or otherwise) of the amount otherwise indemnifiable hereunder (or under any such resolution or agreement).

10.07. Right to Sue. If a request to be indemnified or for the reimbursement or advancement of expenses pursuant to this Article X (including any resolution or agreement authorized by Section 10.04) is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses of prosecuting such claim. Neither the

failure of the Corporation (including its Board of Trustees or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement of expenses to the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Trustees or independent legal counsel) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

10.08. Binding on Successors. For purposes of this Article, the term “Corporation” shall include any legal successor to the Corporation, including any corporation which acquires all or substantially all of the assets of the Corporation in one or more transactions.

10.09. Rights Not Exclusive. The rights granted pursuant to or provided by the foregoing provisions of this Article X shall be in addition to and shall not be exclusive of any other rights to indemnification and expenses to which such person may otherwise be entitled by law, contract or otherwise.

10.10. Indemnity Applicable to Service on Related Entities. Without limitation of any indemnification provided by Section 10.02, any trustee or officer of the Corporation serving (i) another corporation, partnership, joint venture, trust or other enterprise of which 50% or more of the voting power or economic interest is held, directly or indirectly by the Corporation, or (ii) any employee benefit plan of the Corporation or any entity referred to in clause (i), in any capacity shall be deemed to be doing so at the request of the Corporation.

10.11. Insurance. The Corporation is not required to purchase directors’ and officers’ liability insurance, but the Corporation may purchase such insurance if authorized and approved by the Board of Trustees or the Executive Committee thereof. To the extent permitted by law, such

insurance may insure the Corporation for any obligation it incurs as a result of this Article X or by operation of law, and it may insure directly the trustees, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article X as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

ARTICLE XI

Conflict of Interest; Compliance With Laws

11.01. Conflict of Interest. All trustees, employees, members and Hospital Staff (voluntary and full-time) of the Corporation shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. Trustees, employees, members and Hospital Staff (voluntary and full-time) of the Corporation should not use their positions, or confidential information gained therefrom, to their personal advantage. Furthermore, the judgment and independence of trustees, employees, members and Hospital Staff (voluntary and full-time) of the Corporation should not be impaired or appear to be impaired in the discharge of their duties and responsibilities on behalf of the Corporation because of any activity in which they may engage or any personal or financial interest or relationship they may have. A “Conflict of Interest” is defined to be any activity that violates, or could potentially violate, the foregoing standard. The Board of Trustees shall adopt such policies and procedures as may be necessary or appropriate with respect to the further definition of Conflict of Interest and the procedures for disclosing, managing and resolving Conflicts of Interest.

11.02. Compliance With Laws. The Board of Trustees shall also adopt policies and procedures intended to promote compliance by trustees, employees, members and Hospital Staff

(voluntary and full-time) of the Corporation with ethical standards of behavior and with applicable laws and regulations.

ARTICLE XII

Budget

12.01. Adoption of Budget. The Board of Trustees shall adopt an operating and capital budget for the Corporation, showing the anticipated receipts and expenditures in the operation of the Corporation for the next succeeding fiscal year.

12.02. Adjustments. The Board of Trustees may, during the year, make necessary adjustments to the budget for such year. The Board of Trustees may authorize expenditures not included in the Corporation's annual budget.

ARTICLE XIII

Corporate Seal

The corporate seal of the Corporation shall be in such form as may be approved by the Board of Trustees.

ARTICLE XIV

Office

The principal office of the Corporation shall be located at One Gustave L. Levy Place, New York, New York 10029.

ARTICLE XV

Amendments

Except as otherwise provided by law, these Bylaws may be amended or repealed, and new bylaws may be adopted by the affirmative vote of a majority of the trustees then in office or

by the Member; provided, however, that the Board of Trustees may not amend these Bylaws to remove any powers of the Member provided by these Bylaws.

ARTICLE XVI

Review of Bylaws

These Bylaws shall be revised as necessary and shall be reviewed at least once every two years. These Bylaws shall be dated to specify the date of the last such review.



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

(518) 402-0964
PHHPC@health.state.ny.us

April 13, 2022

Jeremy Boal, M.D.
Executive Vice President, Chief Clinical Officer
Mount Sinai Health System
President, Mount Sinai Beth Israel and Downtown
10 Nathan D. Perlman Place
New York, NY 10003

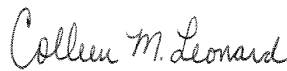
RE: Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

Dear Dr. Boal:

I have received your letter dated March 24, 2022, requesting approval of the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center under Section 803 of the Not-for-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

You will be notified when this request has been approved, or if additional information is required. Division of Legal Affairs staff may be reached at (518) 473-3303 if you have any questions.

Sincerely,


Colleen M. Leonard
Executive Secretary

cc: DLA

/ms

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 30, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State



State of New York, Department of Social Welfare
State Board of Social Welfare

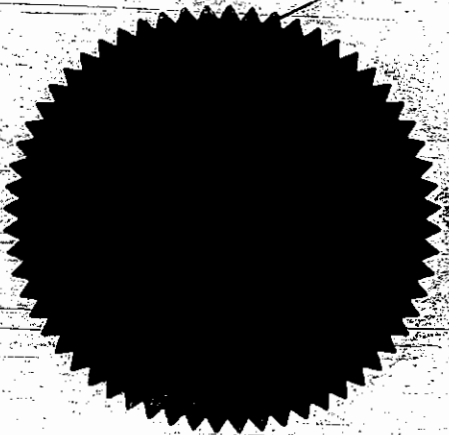
Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on
the eighteenth day of June, 1946, due inquiry and investiga-
tion having been made, the Board approved the consolidation of BETH ISRAEL
HOSPITAL ASSOCIATION and JEWISH MATERNITY HOSPITAL forming the new corporation
BETH ISRAEL HOSPITAL ASSOCIATION, pursuant to Section 50 of the Membership
Corporations Law of the State of New York.

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In Witness Whereof, the State Board of
Social Welfare has caused these presents to be
signed in accordance with the provisions of the
statutes and its by-laws, and the official seal of
the Board and of the Department to be here-
unto affixed, this twenty-seventh day of
June, in the year one thousand
nine hundred and forty-six.



Joseph J. [Signature]

Secretary

4699-106-1

CERTIFICATE OF CONSOLIDATION FORMING BETH
ISRAEL HOSPITAL ASSOCIATION, PURSUANT TO
SECTION FIFTY OF THE MEMBERSHIP CORPORATIONS

LAW.

WE, CHARLES H. SILVER, SAMUEL HAUSMAN, LOUIS SATENSTEIN and
NATHAN RATNOFF, being respectively a Vice-President and the Secretary of
BETH ISRAEL HOSPITAL ASSOCIATION, and the President and Secretary of
JEWISH MATERNITY HOSPITAL, do CERTIFY:

1. BETH ISRAEL HOSPITAL ASSOCIATION, whose certificate of
incorporation was filed in the office of the Secretary of State on the
28th day of May, 1890, and JEWISH MATERNITY HOSPITAL, whose certificate
of incorporation was filed in the office of the Secretary of State on
the 27th day of April, 1906, are the corporations to be included in this
consolidation.

2. The name of the new corporation is BETH ISRAEL HOSPITAL
ASSOCIATION.

3. The territory in which its operations are to be prin-
cipally conducted is the City of New York, New York.

4. The office of the corporation shall be located in the
and County
City of New York, New York.

5. The number of its directors shall be not less than
thirty-five (35) nor more than forty (40).

6. The names and residences of the directors of the cor-
poration until the first annual meeting, with the street and number of
the residence of each director residing in a city, are as follows:

<u>NAMES</u>	<u>RESIDENCE ADDRESSES</u>
Morris Asinof	1055 Park Avenue, New York City
Abraham Blumenkrantz	450 West End Avenue, New York City
Joseph H. Cohen	2 Sutton Place, New York City
Leo M. Cooper	Dorset Hotel, 30 West 54th Street, New York City
Harry Fischel	910 Park Avenue, New York City
Paul P. Gelles	77 Greenacres, Scarsdale, New York
Samuel H. Golding	5th Avenue Hotel, 5th Avenue & 9th Street, New York City
Samuel Hausman	460 E. Shore Road, Great Neck, Kings Pt., L.I.
Henry Homes	239 Central Park West, New York City
Isidor Kaplan	160 Central Park South, New York City
Irving D. Karpas	1 West 81st Street, New York City.
George Kletz	Essex House Hotel, 160 Centrl Park South, New York City
Abraham Krasne	115 Central Park West, New York City
Abraham Landau	45 East 82nd Street, New York City
Hon. Aaron J. Levy	4551 Livingston Avenue, Fieldston, New York
Joseph Levy	115 Central Park West, New York City
Hon. Samuel Levy	Waldorf Astoria, 50th Street & Park Avenue, New York City
Irving D. Lipkowitz	15 West 81st Street, New York City

Hon. Nathan D. Perlman	25 East 9th Street, New York City
Seymour J. Phillips	1185 Park Avenue, New York City
David L. Podell	1 East 88th Street, New York City
Louis M. Rabinowitz	1052 East 8th Street, Brooklyn, New York
Joseph Ravitch	230 Central Park West, New York City
Saul Ravitch	15 West 81st Street, New York City
Karl Robbins	300 Central Park West, New York City
Samuel Rosen	1185 Park Avenue, New York City
Arthur M. Rosenbloom	812 Park Avenue, New York City
Jonathan Rubin	25 Central Park West, New York City
Jack P. Sadowsky	14 East 75th Street, New York City
Louis Satenstein	115 Central Park West, New York City
Julius Schwartz	1016 - 5th Avenue, New York City
Charles H. Silver	101 Central Park West, New York City
Louis Surut	885 Park Avenue, New York City
Jerome I. Udell	300 Central Park West, New York City
Walter W. Weismann	180 East 79th Street, New York City

7. The terms and conditions of the consolidation are as follows:

(a) The name of the new corporation, the territory in which it is to operate, the office of the new corporation, the number of its directors and the names and residences of the directors.

until the first annual meeting are as heretofore set forth.

~~(b) The purposes and objects of such new corporation shall be:~~

~~To support and maintain an institution known as Beth Israel Hospital and the maternity pavilion thereof known as Jewish Maternity Hospital.~~

~~To give medical and surgical aid, nursing and dispensary service and medical social service to the sick or disabled, to give pre-natal, obstetrical and post-partum care to women, and to cooperate with health and welfare organizations in the prevention of disease, all toward the service of humanity in accord with the highest ideals of medical science.~~

~~To provide the services of this institution to poor people free of charge, regardless of race, creed or nationality.~~

~~In furtherance of the foregoing objects, to make the services of this institution available to persons who are able to pay therefor in order to help defray the cost of providing its services to the poor.~~

~~(c) Mr. Louis Satenstein, one of the directors above named, shall be appointed Chairman of a committee to be named by the President of Beth Israel Hospital for the ensuing year, to deal with matters relating to the Maternity Division of the hospital.~~

~~(d) The time of the annual election shall be the second Tuesday of December in each year.~~

IN WITNESS WHEREOF, we have made and subscribed this Certificate this 23rd day of April, 1946.

Chas. N. Silver
Vice-President of Beth Israel Hospital
Association

Samuel Kussman
Secretary of Beth-Israel Hospital
Association

Shim Shtroum
President of Jewish Maternity Hospital

Mark Katus
Secretary of Jewish Maternity Hospital

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

On this 23rd day of April, 1946, before me personally came CHARLES H. SILVER, SAMUEL HAUSMAN, LOUIS SATENSTEIN and NATHAN RATNOFF, to me known and known to me to be the individuals described in and who executed the foregoing Certificate of Consolidation, and they severally duly acknowledged to me that they executed the same.

*Nathan D. Perlberg
Justice Court of Special
Sessions of City of New York*

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

CHARLES H. SILVER and SAMUEL HAUSMAN, being duly sworn, depose and say, and each for himself deposes and says:

That he, Charles H. Silver, is a Vice-President and he, Samuel Hausman, is the Secretary of Beth Israel Hospital Association, which has more than 500 members; that he was duly authorized to execute and file the foregoing Certificate of Consolidation by the votes cast by two-thirds of the members of said corporation present, in person or by proxy, at a meeting of such corporation held at 10/17 Livingston Place, in the Borough of Manhattan, New York City, New York, on the 23rd day of April, 1946, upon notice prescribed by Section Forty-Three of the Membership Corporations Law.

Sworn to before me this
23rd day of April, 1946.

Charles H. Silver

Charles H. Silver

Samuel Hausman

Samuel Hausman

*Nathan D. Perlberg
Justice Court of
Special Sessions
City of New York*

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

LOUIS SATENSTEIN and NATHAN RATNOFF, being duly sworn,
depose and say, and each for himself deposes and says:

That he, Louis Satenstein, is the President and he, Nathan
Ratnoff, is the Secretary of Jewish Maternity Hospital, ~~which has more than 500 members;~~ that he was
duly authorized to execute and file the foregoing Certificate of
Consolidation by the votes cast by two-thirds of the members of said
corporation present, in person or by proxy, at a meeting of such cor-
poration, held at 10/17 Livingston Place, in the Borough of Manhattan,
New York City, New York, on the 23rd day of April, 1946, upon notice
prescribed by Section Forty-Three of the Membership Corporations Law.

Sworn to before me this
23rd day of April, 1946.

Louis Satenstein

Louis Satenstein

Nathan Ratnoff

Nathan Ratnoff

*Nathan A. Rubin
Justice Court of
Special Sessions of
City of New York*

The State Department of Social Welfare of the State of
New York does hereby consent to and approve the foregoing Certificate
of Consolidation.

Dated, New York, 1946.

STATE DEPARTMENT OF SOCIAL WELFARE

By: _____

4698-106-2

Upon the foregoing Certificate of Consolidation, and the petition
of BETH ISRAEL HOSPITAL ASSOCIATION and JEWISH MATERNITY HOSPITAL, duly
verified April 23, 1946, I,

LOUIS A. VALENTE
a Justice of the Supreme Court of the First Judicial District of the
State of New York, hereby approve the said Certificate of Consolidation.

Dated, New York, July 3RD 1946.

Louis A. Valente

JUSTICE OF THE SUPREME COURT

Qiu

* 4699-16-9

4699-106

5/28/40
n y lo

37P-163

CERTIFICATE OF CONSOLIDATION
FORMING BETH ISRAEL HOSPITAL
ASSOCIATION, PURSUANT TO SECTION
FIFTY OF THE MEMBERSHIP CORPORA-
TIONS LAW. a.d.

4/27/06 698-142
n y lo

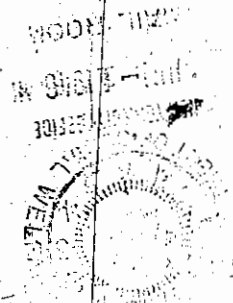
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 8 1946
TAX \$ None
FILING FEE \$ 75

Thomas J. ...
REGISTRAR GENERAL
BY *[Signature]*

IRVING D. LIPKOWITZ
ATTORNEY AT LAW
270 BROADWAY
NEW YORK CITY



01-900-8594



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 30, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Certificate of Report of Existence
of

BETH ISRAEL HOSPITAL ASSOCIATION

Exact Name of Corporation

Pursuant to Section 57 of the Membership Corporations Law

1. The name of the corporation is Beth Israel Hospital Association. The
Name of Corporation

original name was Beth Israel Hospital Association and Jewish Maternity

If name has been changed, insert original name.

Hospital, which were consolidated into Beth Israel Hospital Association by certificate
of Consolidation filed July 8, 1946.

2. The certificate of incorporation was filed in the Department
of State on July 8, 1946

Date of Incorporation

3. The corporation was formed pursuant to the Membership Corporations Law.
Cite Incorporation Statute

4. The existence of the foregoing corporation is hereby continued.

BETH ISRAEL HOSPITAL ASSOCIATION

BY: Charles H. Silver

President

To be signed by an officer,
trustee, director or five
members in good standing.

State of New York }
County of New York } SS.:

On this 28th day of December, 1950, before me
personally appeared CHARLES H. SILVER to me personally known
and known to me to be the person(x) described in and who executed
the foregoing certificate, and (he) ~~(they)~~ thereupon acknowledged
to me that (he) ~~(they)~~ executed the same for the uses and purposes
therein mentioned.

Samuel Romanoff
Notary Public

County of New York

NOTE: If the foregoing acknowledgment is taken without the State of
New York, the signature of the notary public should be
authenticated by a certificate of the clerk of the county in
which such notary has power to act, or other proper officer.

SAMUEL ROMANOFF
Notary Public, State of New York
No. 41-3336200
Qualified in Queens County
New York County
Commission Expires March 30

7EX-58

Certificate of Report of
Existence of

*Forwarded by consol.
7/1/46*

BETH ISRAEL HOSPITAL ASSOCIATION
Exact Name of Corporation

ny co

Pursuant to Section 57
of the
Membership Corporations
Law

4698-106

J

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 10 1951

FILING FEE \$5.00

Thomas Gleason

Secretary of State

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 30, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

CERTIFICATE OF CHANGE TO PROVIDE
THAT THE NUMBER OF DIRECTORS SHALL
BE NOT LESS THAN 35 NOR MORE THAN 75.
OF BETH ISRAEL HOSPITAL ASSOCIATION,
PURSUANT TO SECTION 30 OF THE MEMBER-
SHIP CORPORATIONS LAW.

WE, CHARLES H. SILVER and IRVING D. KARPAS, being
respectively the president and the secretary of BETH ISRAEL
HOSPITAL ASSOCIATION, hereby certify:

1. The name of the corporation is BETH ISRAEL
HOSPITAL ASSOCIATION.

2. The certificate of incorporation was filed in
the office of the secretary of state on the 8th day of July,
1946.

3. The statement as to the number of directors
to be amended is:

The number of directors previously authorized
is not less than 35 nor more than 40. The number of directors
as increased by this certificate shall hereafter be not less
than 35 nor more than 75.

Charles H. Silver
President

Irving D. Karpas
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS:

On this 23rd day of November, 1959, before me
personally came CHARLES H. SILVER and IRVING D. KARPAS, to
me known and known to me to be the persons described in and
who executed the foregoing certificate, and that they there-
upon duly acknowledged that they executed the same.

Ida Berger
IDA BERGER
Notary Public, State of New York
No. 03-526900
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1960

STATE OF NEW YORK)

COUNTY OF NEW YORK)

SS:

CHARLES H. SILVER and IRVING D. KARPAS,

being duly sworn depose and say, and each for himself deposes and says, that he, CHARLES H. SILVER, is the president of BETH ISRAEL HOSPITAL ASSOCIATION, and he, IRVING D. KARPAS, is the secretary thereof; that they have been duly authorized to execute and file the foregoing certificate of increase in number of directors by the concurring vote of a majority of the members of the corporation present at a special meeting held on the 23rd day of November 1959, upon notice pursuant to Section 43 of the Membership Corporations Law.

Subscribed to and sworn to before me this 23rd day of November, 1959.

Charles H. Silver

Irving D. Karpas

IDA BERGER
Notary Public, State of New York
No. 03-5280900
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1960

Irving D. Karpas

188961

CERTIFICATE OF CHANGE TO PROVIDE
THAT THE NUMBER OF DIRECTORS SHALL
BE NOT LESS THAN 35 NOR MORE THAN
75, OF BETH ISRAEL HOSPITAL
ASSOCIATION, PURSUANT TO SECTION 30
OF THE MEMBERSHIP CORPORATIONS LAW

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED DEC 2-1959

TAXES

FILING FEE \$

None
25

Charles S. Simon
Secretary of State

By *J. Frank*

LIPKOWITZ & PLAUT
ATTORNEYS AT LAW
16 WEST 46TH STREET
NEW YORK 36, N. Y.

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 30, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

CERTIFICATE OF CHANGE OF NAME OF
BETH ISRAEL HOSPITAL ASSOCIATION

-to-

BETH ISRAEL MEDICAL CENTER

(Pursuant to Section 40 of the
General Corporation Law)

WE, CHARLES H. SILVER and IRVING D. KARPAS, being re-
spectively the President and Secretary of BETH ISRAEL
HOSPITAL ASSOCIATION, certify:

- 489549
1. The name of this corporation is BETH ISRAEL
HOSPITAL ASSOCIATION.
 2. The Certificate of Incorporation of BETH ISRAEL
HOSPITAL ASSOCIATION was filed in the Office of the Secretary
of State on the 28th day of May, 1890, and thereafter by
Certificate of Consolidation filed in the Office of the
Secretary of State on August 8, 1946 the said BETH ISRAEL
HOSPITAL ASSOCIATION was consolidated with JEWISH MATERNITY
HOSPITAL, whose Certificate of Incorporation was filed in
the Office of the Secretary of State on the 27th day of April,
1906, and the name of the corporations as consolidated was
BETH ISRAEL HOSPITAL ASSOCIATION.
 3. The new name to be assumed by this corporation is
BETH ISRAEL MEDICAL CENTER.

IN WITNESS WHEREOF, we have made and subscribed this
Certificate this 24 day of February, 1965.

Charles H. Silver
President

Irving D. Karpas
Secretary

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 24 day of February, 1965 before me personally came CHARLES H. SILVER and IRVING D. KARPAS, to me known and known to me to be the persons subscribed in and who executed the foregoing Certificate of Change of Name, and they thereupon severally duly acknowledged to me that they executed the same.


Notary Public

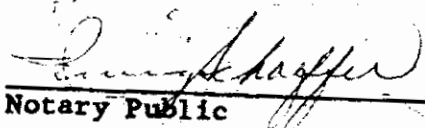
IRVING SCHAEFFER
Notary Public, State of New York
Qualified in New York
Term Expires 12/31/65

N

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 27 day of February, 1965 before me personally came CHARLES H. SILVER and IRVING D. KARPAS, to me known and known to me to be the persons subscribed in and who executed the foregoing Certificate of Change of Name, and they thereupon severally duly acknowledged to me that they executed the same.

IRVING SCHAEFFER
Notary Public


Notary Public

IRVING SCHAEFFER
Notary Public, State of New York
Qualified in New York
Term Expires 12.30, 1965

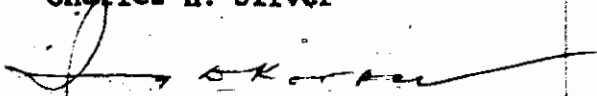
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CHARLES H. SILVER and IRVING D. KARPAS, being duly sworn, depose and says, and each for himself deposes and says:

That he, CHARLES H. SILVER, is President of BETH ISRAEL HOSPITAL ASSOCIATION, and he, IRVING D. KARPAS, is Secretary thereof; that they were duly authorized to execute and file the foregoing Certificate of Change of Name of said corporation by votes of a majority of the Board of Trustees of record of the corporation who are entitled to vote, and that such votes were cast at a meeting called for that purpose, which meeting was held on the 24 day of February, 1965, at 10 Nathan D. Perlman Place, Borough of Manhattan, City of New York, the said Board of Trustees constitute all of the members of said corporation.

Sworn to before me
this 24 day
of February, 1965.


Charles H. Silver


Irving D. Karpas


Notary Public

IRVING SCHAEFFER
Notary Public, State of New York
No. 24-2478795
Qualified in Kings County

Term Expires March 30, 1965

memorandum

*Formed by Corol: 7/8/46 nyc
46 pg - 106*

489549

**CERTIFICATE OF CHANGE OF
NAME OF BETH ISRAEL
HOSPITAL ASSOCIATION**

-to-

BETH ISRAEL MEDICAL CENTER

(Pursuant to Section 40
of the General Corporation
Law)

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 31 1965

TAX \$ *none*

FILING FEE \$ *30*

John P. Lanning
Secretary of State

SIDNEY SCHUTZ
Attorney at law by
110 West 57th Street
New York 19, New York

V. Carpin

Do not send

S 3/22

3/30

61

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 30, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

State of New York

101776

Department of State

DIVISION OF CORPORATIONS AND STATE RECORDS
162 Washington Avenue, Albany 12225

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION
OF

BETH ISRAEL MEDICAL CENTER

Exact Name of Corporation

Under Section 113 of the Not-for-Profit Corporation Law

The name of the corporation is BETH ISRAEL MEDICAL CENTER

The original name was BETH ISRAEL HOSPITAL ASSOCIATION

The certificate of incorporation was filed by the Department of State on July 8, 1946
Date of Incorporation

The corporation was formed pursuant to An Act for the Incorporation of Benevolent,
Charitable, Scientific and Cite Incorporation Statute
Missionary Societies

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 10 Nathan D. Perlman Place, New York, N.Y.

That under Section 201, it is a Type B Not-for-Profit Corporation as defined in this chapter.
(Insert A, B, C or-D)

IN WITNESS WHEREOF, this certificate has been subscribed this 30 day of August 1973 at the County of
by the undersigned who affirm(s) that the statements made herein are true under the penalties of perjury.

To be signed pursuant to
Section 104(d) of the N-PCL

Jack A. Rothenstein
Jack A. Rothenstein, Secretary
Seymour J. Phillips
Seymour J. Phillips, Vice President

NOTE: The fee for filing the foregoing certificate is \$10 payable to the Department of State by certified check or money order.
Every corporation required to file under Paragraph (a) of Section 113 of the N-PCL will be considered a Type-B corporation until it has filed a certificate of type.

- 2 -

A101776
CERTIFICATE OF TYPE
OF
NOT-FOR-PROFIT CORPORATION
OF

BETH ISRAEL MEDICAL CENTER

Exact Name of Corporation

Under Section 113
of the
NOT-FOR-PROFIT CORPORATION LAW

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 18 1973

TAX \$ None
FILING FEE \$ 10

John P. Lomango

Secretary of State

By *ams*

31 ny
Type B

BETH ISRAEL MEDICAL CENTER

Name and address of filer
10 Nathan D. Perlman Place
New York, New York

and 3-31-65
Formed by Consolidated
Beth Israel Hospital
Association

7-8-76

ny

4698-106

n.s. not
not type

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 30, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION

- of -

BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the
Not-For-Profit Corporation Law)

WE, the undersigned, hereby certify:

1. The name of the corporation is BETH ISRAEL MEDICAL CENTER. It was formed under the name of BETH ISRAEL HOSPITAL ASSOCIATION, and its name was changed from that name to BETH ISRAEL MEDICAL CENTER by Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965.

2. The Certificate of Incorporation of said corporation was filed by the Department of State on the 28th day of May, 1890 and thereafter by Certificate of Consolidation filed by the Department of State on ^{July} ~~August~~ 8, 1946 the said BETH ISRAEL HOSPITAL ASSOCIATION was consolidated with JEWISH MATERNITY HOSPITAL, whose Certificate of Incorporation was filed by the Secretary of State on the 27th day of April, 1906, and the name of the corporation as consolidated was BETH ISRAEL HOSPITAL ASSOCIATION, and thereafter the name was changed to BETH ISRAEL MEDICAL CENTER as aforesaid.

A 292634

3. The corporation is a corporation as defined under sub-paragraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law, and is a Type B corporation under Section 201, *and shall continue to be a Type B corporation.*

4. The post office address to which the Secretary of State shall mail a copy of any notice required by law is:
Beth Israel Medical Center, 10 Nathan D. Perlman Place, New York, New York 10003.

5. The corporate powers of the corporation are restated to include the following:

To provide on a non-profit basis, hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical care and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

6. The Certificate of Incorporation is amended so that the corporation is empowered:

- (a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in paragraph 5 hereof.
- (b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the corporation's property.

- (c) To do and perform all acts necessary to accomplish the purposes of the corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the corporation, its successors and assigns, so long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development.

7. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the entire Board of Directors, voting in person, at a meeting of the Board of Directors duly called for that purpose upon due notice to all Directors of record given in the manner required for a regular meeting of the corporation; said meeting was held at the office of the corporation, 10 Nathan D. Perlman Place, New York, New York, at 2:00 P.M. on December 17, 1975; a majority of the entire Board of Directors was present; the Certificate of Incorporation of the corporation does not require the consent of more than a majority of the entire Board of Directors to amend the corporate powers of the corporation. There are no members entitled to vote.

8. The following approvals or consents were endorsed on or annexed to the aforementioned Certificate of Incorporation and the aforementioned Certificate of Consolidation at the time they were filed with the Department of State:

(a) A Justice of the Supreme Court of the State of New York, First Judicial ^{District} Department; and

(b) The State Board of Social Welfare approving the consolidation of Beth Israel Hospital Association and Jewish Maternity Hospital, under the designation of Beth Israel Hospital Association.

No other approvals were required at the time of filing of said Certificate of Incorporation and Certificate of Consolidation.

The following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State:

(c) A Justice of the Supreme Court of the State of New York, First Judicial ^{District} Department; and

(d) Public Health Council of the State of New York.

IN WITNESS WHEREOF, we have executed this Certificate
this 18th day of December, 1975.

Chas. Silver

President

Jack A. Rothstein

Secretary

IN WITNESS WHEREOF, AS YEAH EXCERPTED BY CERTIFICATES

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CHARLES H. SILVER and JACK A. ROTHENSTEIN, being severally, duly sworn, depose and say that they are the President and Secretary, respectively of BETH ISRAEL MEDICAL CENTER, and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of BETH ISRAEL MEDICAL CENTER, and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

Charles H. Silver
CHARLES H. SILVER

Jack A. Rothenstein
JACK A. ROTHENSTEIN

Subscribed and sworn to before me this 18th day of December, 1975.

Rhea L. Davidson
Notary Public

RHEA L. DAVIDSON
Notary Public, New York
No. 31-4512691
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CHARLES H. SILVER and JACK A. ROTHENSTEIN, being severally, duly sworn, depose and say:

1. That CHARLES H. SILVER is the President of BETH ISRAEL MEDICAL CENTER mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to amend the corporate powers of the corporation.

2. That JACK A. ROTHENSTEIN is the Secretary of BETH ISRAEL MEDICAL CENTER mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein to amend the corporate powers of the corporation.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the entire Board of Directors at a regular meeting.

4. Such consent was given by affirmative votes cast in person by a majority of the entire Board of Directors at a meeting of the Directors duly called for that purpose after due notice to the entire Board of Directors of the corporation given in the manner required for a regular meeting of the corporation; said meeting was held at 10 Nathan D. Perlman Place, New York, New York on December 17, 1975, at 2:00 P.M.; a majority of the entire Board of Directors was present. There are no members entitled to vote.

7

5. That the Certificate of Incorporation of this corporation does not require the consent of more than a majority of the entire Board of Directors to amend the corporate powers of the corporation.

Charles H. Silver

CHARLES H. SILVER

Jack A. Rothenstein

JACK A. ROTHENSTEIN

Sworn to before me this
18th day of December, 1975.

Rhea L. Davidson
Notary Public

RHEA L. DAVIDSON
Notary Public, State of New York
No. 314-12091
Qualified in New York County
Commission Expires March 30, 1977

8

CONSENT BY COMMISSIONER OF HEALTH
TO FILING OF CERTIFICATE TO AMEND
CORPORATE POWERS

I, ROBERT P. WHALEN, M.D., Commissioner of Health of
the State of New York, do this 26th day of January, 1976
pursuant to Section 804 of the Not-For-Profit Corporation Law,
hereby certify that I consent to the filing with the Secretary
of State of the State of New York of the foregoing Certificate.

ROBERT P. WHALEN, M.D.
COMMISSIONER OF HEALTH

By Frank T. Green M.D.
Deputy Commissioner

WAIVER OF NOTICE OF APPLICATION
BY ATTORNEY GENERAL

~~Notice of application waived. (This is not to be
deemed an approval on behalf of any Department or Agency of the
State of New York, nor an authorization of activities otherwise
limited by law.)~~

Dated:) _____

LOUIS J. LEEKOWITZ,
ATTORNEY GENERAL

9

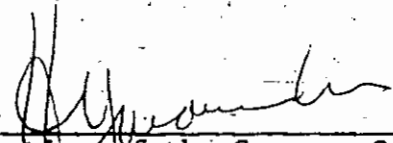
CONSENT BY A RESIDENT SUPREME COURT
JUSTICE TO FILING OF CERTIFICATE TO
AMEND CORPORATE POWERS

I, HYMAN KORN, Justice of

the Supreme Court of the State of New York for the First
Judicial District, hereby approve the within Certificate of
amend the corporate powers of the corporation, Beth Israel Medical
Center.

Dated: NEW YORK, N.Y.

FEB 3 - 1976


Justice of the Supreme Court

Notice of Application Waived
(This is not to be deemed an
approval on behalf of any
Department or Agency of the
State of New York, nor an
authorization of activities
otherwise limited by law.)

Dated: JANUARY 30, 1976
LOUIS J. LEFKOWITZ
Attorney-General

By Peter S. Berkinsky
Assistant Attorney General



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

January 26, 1976

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 23rd day of January, 1976, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS
Secretary

Sent to: Sidney Schutz, Esq.
55 Fifth Avenue
New York, New York 10003

cc: Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN

BLONEVA P. BOND
William Lee Frost
GORDON E. BROWN
VERNAL G. CAVE, M.D.

MORTON P. HYMAN

GEORGE METCALF
JAMES F.X. O'ROURKE, M.D.
W. KENNETH RILAND, D.O.
JOHN E. ROACH, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH

COMMISSIONER OF HEALTH
ROBERT P. WHALEN, M.D.
EX OFFICIO

A292034-12

[Handwritten signature]

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION**

of
BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the
Not-For-Profit Corporation Law)

Accepted 3/31/76

STATE OF NEW YORK
DEPARTMENT OF STATE

TAX \$ None
FILING FEE \$ 30

FILED FEB 10 1976

W. Randolph
Secretary of State

To the
SIDNEY SCHUTZ
Attorney at Law
55 Fifth Avenue
New York, New York 10003
(212) 929-0400

*31 ny
types*

noted to mother of [unclear]

12

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 30, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

WSC



The University of the State of New York

STATE OF NEW YORK:
: SS.:
COUNTY OF ALBANY :

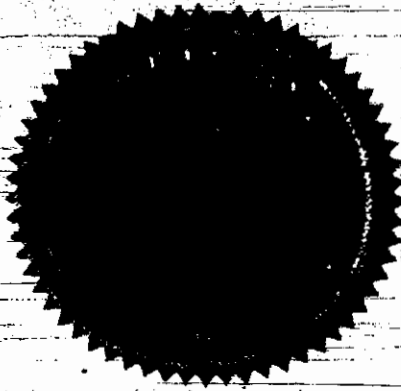
3272059

Pursuant to the provisions of section 804 of the Not-for-profit Corporation Law, consent is hereby given to the restatement and amendment of the text of the certificate of incorporation of BETH-ISRAEL MEDICAL CENTER as set forth in the annexed restated and amended certificate of incorporation.

527269

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 6th day of September, 1985.



Gordon M. Ambach
Commissioner of Education

BY:

Robert D. Stone
Counsel and Deputy Commissioner
for Legal Affairs

1

USC

RESTATED CERTIFICATE OF INCORPORATION

USC

OF

BETH ISRAEL MEDICAL CENTER

(Under Section 805 of the Not-for-Profit Corporation Law)

We, the undersigned, being the President and Secretary of BETH ISRAEL MEDICAL CENTER, do hereby certify that:

(1) The name of the corporation is: BETH ISRAEL MEDICAL CENTER (the "Corporation").

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965.

(3) The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of said law.

(4) The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The Post Office address to which the Secretary shall mail a copy of any process against the corporation served him is:

Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

(5) The Restated Certificate of Incorporation amends or changes the Certificate of Consolidation filed July 8, 1946 and all amendments thereto as follows:

(a) The purposes and powers of the constituent corporations that were parties to the Certificate of Consolidation are hereby amended to read as set forth in Article THIRD of the Restated Certificate of Incorporation.

(b) Paragraph 5 of the Certificate of Consolidation (relating to the number of directors) is hereby amended to read as set forth in Article SIXTH of the Restated Certificate of Incorporation.

(c) To make clear that the Corporation shall have no members, as set forth in Article SIXTH of the Restated Certificate of Incorporation.

(d) Provisions relating to the duration of the Corporation's existence, post office address and by-laws, all as continued by the Certificate of Consolidation, are amended to read as set forth in Articles SEVENTH, EIGHTH and NINTH, respectively, of the Restated Certificate of Incorporation.

(6) The Restated Certificate of Incorporation was authorized by a majority of the votes cast at a meeting of members by the members entitled to vote thereon, such majority having been at least equal to the quorum required at such meeting.

43

FIRST: The name of the corporation is: BETH ISRAEL MEDICAL CENTER (hereinafter referred to as the "Corporation").

SECOND: (a) The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.

(b) The Corporation shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

THIRD: The Corporation is organized exclusively for charitable and educational purposes, within the meaning of section 501(c) (3) of the Internal Revenue Code of 1954, as amended, and the corresponding provisions of any future United States Internal Revenue Law (collectively, the "Code"), which purposes shall include, but are not limited to, the following:

45

(a) to establish, maintain and/or operate an institution or institutions with facilities which include inpatient beds and a broad range of medical services, including dental services, for the diagnosis and treatment of patients, and associated services, including, but not limited to, outpatient care, home care, and extended care provided that the Corporation has obtained all approvals and consents as required by law prior to the provision of any such services;

(b) to operate a program for the training of nurses leading to the degree of associate in applied science (A.A.S.); to engage, in conjunction with universities, colleges and professional schools, in programs related to the training of other health care professionals;

(c) to promote and carry on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases, sickness, injuries and disabilities;

(d) to engage in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(e) to provide, on a non-profit basis, hospital facilities and services for the care and treatment of

56

persons who are acutely ill who otherwise require medical care and related services of a kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

In furtherance of these objects and purposes, the Corporation is authorized:

(a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in this Article;

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property; and

(c) To do and perform all acts necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Cor-

47

poration, its successors and assigns, so long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development.

Notwithstanding any other provision of this Article Third, the Corporation may not exercise any power, either express or implied, in such a manner as to disqualify the Corporation from exemption from Federal income tax under sections 501(a) and 501(c)(3) of the Code. It is the intention of the Corporation at all times to qualify and remain qualified as exempt from Federal income tax under sections 501(a) and 501(c)(3) of the Code. Accordingly:

(1) The Corporation shall receive, administer, maintain, use and employ its funds, net earnings, and real and personal property exclusively for charitable and educational purposes, within the meaning of section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Code;

(2) No part of the net earnings of the Corporation shall inure to the benefit of any officer, trustee, director, member, employee or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation and to make

8

payments and distributions in furtherance of one or more of its purposes). No officer, trustee, director, member or employee of the Corporation or any private individual shall be entitled to share in the distribution of any corporate assets upon dissolution of the Corporation or in any other event;

(3) The Corporation shall not carry on propaganda or otherwise attempt to influence legislation to an extent that would disqualify it from exemption from Federal income tax under section 501(a) of the Code by reason of attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements or otherwise) in any political campaign on behalf of or in opposition to any candidate for public office;

(4) In the event of liquidation, dissolution or winding up of the business and affairs of the Corporation upon approval of a Justice of the Supreme Court of the State of New York, whether voluntary or involuntary or by operation of law, the Board of Trustees shall, after paying or making provision for payment of all liabilities of the Corporation, dispose of all assets exclusively for the purposes of the Corporation or to one or more corporations or organizations located in the United States as shall at

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the time qualify as exempt under section 501(a) of the Code pursuant to section

501(c)(3) of the Code, or to one or more corporations or other organizations, contributions to which are deductible under section 170(c)(1) of the Code, in such manner as the Board of Trustees shall determine. Any assets not so distributed shall be distributed by a court of competent jurisdiction exclusively for such purposes or to such corporations or other organizations as said court shall determine are organized and operated solely for such purposes; and

(5) If the Corporation shall at any time be a private foundation within the meaning of section 509 of the Code, the Corporation, so long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to subject it to the tax on undistributed income imposed by section 4942 of the Code, and, so long as it shall be such a private foundation, the Corporation shall not (i) engage in any act of self-dealing as defined in section 4941(d) of the Code; (ii) retain any excess business holdings as defined in section 4943(c) of the Code; (iii) make any investments in such manner as to subject it to tax under section 4944 of

10 8

the Code; or (iv) make any taxable expenditures as defined in section 4945(d) of the Code.

FOURTH: The principal office of the Corporation is to be located in the County and City of New York, State of New York.

FIFTH: The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-laws of the Corporation, and in any case shall be not less than thirty-five (35) nor more than seventy-five (75). The Corporation shall have no members.


SIXTH: The existence of the Corporation shall be perpetual.


SEVENTH: The Corporation hereby designates the Secretary of State as agent of the Corporation upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon him is: 10 Nathan D. Perlman Place, New York, New York 10003.

Handwritten signature or initials

EIGHTH: By-laws of the Corporation may be adopted or amended by an affirmative vote of two-thirds of the Trustees present at any regular meeting, or at any special meeting called for that purpose, at which a quorum of trustees is present so long as the by-laws are not inconsistent with the provisions of this Certificate or the laws of the State of New York,

IN WITNESS WHEREOF, we hereunto sign our names and affirm that the statements made herein are true under the penalties of perjury, this 29th day of May, 1985, at New York, New York.


President - Robert Newman


Secretary - Robert L. Ginsberg

12.

Cert. of Incorporation

I, **THOMAS J. HUGHES** Justice of the Supreme Court of the State of New York; First Judicial District, do hereby approve the foregoing Restated Certificate of Incorporation of Beth Israel Medical Center, and consent that the same be filed.

Thomas J. Hughes
Justice of the Supreme Court
of the State of New York

Dated: SEP 19 1985
NEW YORK COUNTY

THOMAS J. HUGHES

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

Laura Werner
LAURA WERNER

Assistant Attorney General

April 12 1985

3



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING-TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 30, 1985

KNOW ALL MEN BY THESE PRESENTS:

After inquiry and investigation and in accordance with action taken at a meeting of the Public Health Council held on the 26th day of July, 1985, I hereby certify that the Restated Certificate of Incorporation of Beth Israel Medical Center dated May 29, 1985 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Nancy A. Massaroni
NANCY A. MASSARONI
Executive Secretary

Sent to: Robert G. Newman, M.D., President
Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

RECEIVED

AUG 2 1985

PRESIDENT
Beth Israel Medical Center

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SEP 11 1985

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Beth Israel Hospital Association
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USC

USC

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED OCT 1 - 1985

NO. OF CHECK \$ 49.50
FILING FEE \$ 3.00
COPY FEE \$ 9.50
SEARCH \$
SERIAL \$
SPEC HANDLE \$ 1.00

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PWPB

RESTATED CERTIFICATE OF
INCORPORATION OF
BETH ISRAEL MEDICAL CENTER
(Under Section 805 of the
Not-For-Profit Corporation
Law)

Paul, Weiss, Rifkind, Wharton & Garrison
ATTORNEYS AT LAW
345 PARK AVENUE, NEW YORK, N. Y. 10154

Handwritten:
D/O
DM 7/30

BILLED

RECEIVED
FILED
SEP 27 9 AM '85
OCT 1 6 54 AM '85

SEP 12 1985

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 30, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

PH

CERTIFICATE OF AMENDMENT OF THE
RESTATED CERTIFICATE OF INCORPORATION OF
BETH ISRAEL MEDICAL CENTER

PH

(Under Section 803 of the Not-For-Profit Corporation Law)

We, the undersigned, being the President and Secretary of BETH ISRAEL MEDICAL CENTER, do hereby certify that:

(1) The name of the corporation is: BETH ISRAEL MEDICAL CENTER (the "Corporation").

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965, and filed by the Secretary of State on March 31, 1965. A restated certificate of

2

incorporation was filed by the Department of State on
October 1, 1985.

(3) The Corporation is a corporation as defined
in subparagraph (a)(5) of Section 102 of the Not-For-Profit
Corporation Law and is a Type B corporation as defined
in Section 201 of that law.

(4) The Corporation designates the Secretary
of State of the State of New York as its agent upon whom
process against it may be served. The Post Office address
to which the Secretary of State shall mail a copy of any
process served upon him is as follows:


Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

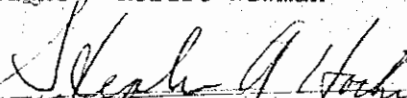
(5) The restated certificate of incorporation
is amended to permit the Corporation to have members.
Article FIFTH of the restated certificate is amended by
deleting therefrom the sentence, "The Corporation shall
have no members." Article FIFTH shall state as follows:

The number of directors of the Corporation,
who shall be known as Trustees, shall be
fixed by, or determined in accordance with,
the By-Laws of the Corporation, and in any
case shall not be less than thirty-five
(35) nor more than seventy-five (75).

(6) The above amendment to the restated certificate of incorporation was authorized by a vote of the majority of the entire Board of Trustees.

IN WITNESS WHEREOF, we have signed this certificate this 16th date of December, 1987.


President - Robert Newman

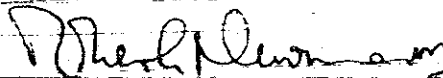

Secretary - Stephen A. Hochman

VERIFICATION

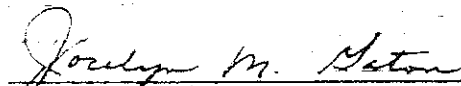
STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

ROBERT NEWMAN, being duly sworn, deposes and
say:

1. I am the President of Beth Israel Medical
Center.
2. I have read the annexed Certificate of Amendment
and know the contents thereof to be true.


Robert Newman

Sworn to before me this
16th day of DECEMBER, 1987


Notary Public

JOCELYN M. EATON
NOTARY PUBLIC, State of New York
No. 001601254
Qualified in Westchester County
Commission Expires Feb. 28, 1989

~~The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.~~

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

By: _____

Date: _____

JAWN A. SANDIFER

I, _____, a Justice of the Supreme

Court of the State of New York for the FIRST

Judicial District do hereby approve the foregoing Certificate

of Amendment of the ^{RESERVED} Certificate of Incorporation of Beth

Israel Medical Center, and consent that the same be filed.

Date: FEB 24 1988
New York, New York

Jawn A. Sandifer
J.S.C.

JAWN A. SANDIFER

JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK

First Judicial District

Feb 16, 1988
THE UNDERSIGNED HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL
APPROVAL HEREON AND WAIVES
STATUTORY NOTICE:

ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

By: [Signature]

5



STATE OF NEW YORK
DEPARTMENT OF HEALTH
GORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

January , 1987

Morton P. Hyman
Chairman

Robert M. Kaufman, Esq.
Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Re: Proposed Certificate of Amendment of the Restated
Certificate of Incorporation: Beth Israel Medical Center

Dear Mr. Kaufman:

The proposed Certificate of Amendment to the Restated Certificate of Incorporation of Beth Israel Medical Center, as executed on the 16th day of December, 1987, does not, pursuant to §804(a) of the Not-for-Profit Corporation Law, require the formal approval of the Public Health Council, as the amendment neither adds, changes or eliminates a purpose, power or provision the inclusion of which requires the approval of the Council, nor changes the name of the corporation.

Sincerely,

Karen Westervelt
Acting Executive Secretary
Public Health Council

PH

100182

BETH ISRAEL MEDICAL CENTER

Certificate of Amendment
of Restated
Certificate of Incorporation

(Under Section 803 of the
Not-For-Profit
Corporation Law)

BILLED

PROSKAUER ROSE GOETZ & MENDELSON
COUNSELLORS AT LAW
300 PARK AVENUE
BOROUGH OF MANHATTAN,
NEW YORK CITY 10022

FILED
MAR 1 9 24 AM '88

MAR 2 7 23 AM '88

FILED

125736

NFP NYC
assd 3/31/65
type B

L# B072689-15

S/S the Corp
157 Nathan Peckman
Place

NY NY Consolidation
Orig Beth Israel
Hospital Association
7/8/46 4699-106
FEB 10 1988

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 02 1988

AMT. OF CHECK \$ 80
FILING FEE \$ 30
TAX \$
COUNTY FEE \$
COPY \$ 40
CERT \$
REFUND \$
SPEC HANDLE \$ 10

4

BY: *[Signature]*
New
TYPE B

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 30, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

F990702000684
CSC 45CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the Not-For-Profit Corporation Law)

The undersigned, the sole member of Beth Israel Medical Center, a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York (the "Corporation") does hereby certify as follows:

(1) The name of the corporation is: **BETH ISRAEL MEDICAL CENTER.**

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965, and filed by the Secretary of State on March 31, 1965. A restated certificate of incorporation was filed by the Department of State of October 1, 1985. A certificate of amendment of the restated certificate of incorporation was filed by the Department of State on March 2, 1988.

(3) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.

(4) The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The Post office address to which the Secretary of State shall mail a copy of any process served upon him is as follows:

Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003


(5) The certificate is amended to delete therefrom the fixed number of trustees of the Corporation and permit the number of trustees of the Corporation to be fixed by, or determined in accordance with, the by-laws of the Corporation. Article FIFTH of the certificate of incorporation is amended to delete from the last clause of the sentence the language, "and in any case shall not be less than thirty-five (35) nor more than seventy-five (75)." Article FIFTH is hereby amended to read as follows:


The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-laws of the Corporation.

(6) The foregoing amendment to the certificate of incorporation of the Corporation was authorized by a majority of the votes cast at a meeting of the sole member of the Corporation, held on June 7, 1999, the affirmative votes cast in favor of the amendment being at least equal to the quorum, blank votes and abstentions not being counted in the number of votes cast.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 15 day of June, 1999 and affirms the statements made herein are true under penalties of perjury.

CONTINUUM HEALTH PARTNERS, INC.

By: 
Robert G. Newman, M.D., President
Continuum Health Partners, Inc.
555 West 57th Street
New York, New York 10019

By: 
Kathryn Meyer, Assistant Secretary
Continuum Health Partners, Inc.
555 West 57th Street
New York, New York 10019

/s:contcert

F 990702000684

CSC 45

STATE OF NEW YORK
DEPARTMENT OF STATE

JUL 02 1999

CERTIFICATE OF AMENDMENT

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the No-For-Profit Corporation Law

FILED
TAX \$
BY:

W. J. Ny

*ONE
RE.*

JUL 2 7 36 PM '99

JUL 2 1 39 PM '99

FILED BY: Anna L. Brown, Esq
BETH ISRAEL MEDICAL CENTER
555 West 57th Street
18th Floor-Legal Dept
New York, NY 10019
Cust. Ref#295963MPJ

DRAWDOWN

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990702000716

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 30, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER

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

The undersigned, being the Chairman of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL, and is a Type B corporation as defined in Section 201 of the NPCL.
4. The Corporation's Certificate of Incorporation is hereby amended as follows:
 - (a) Article TENTH of the Certificate of Incorporation, which specifies the identity of the sole member of the Corporation and certain affiliates of the Corporation and provides for certain processes relating to the medical staffs of the Corporation and such affiliates, is hereby deleted and replaced in its entirety with a new Article TENTH which shall read in its entirety as follows:

"TENTH: Notwithstanding anything in this Certificate of Incorporation to the contrary, the Corporation shall be a

corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the By-Laws of the Corporation.”

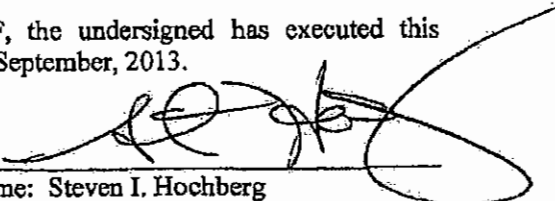
- (b) Article SEVENTH of the Certificate of Incorporation, which designates the Secretary of State as the agent of the Corporation upon whom process against the Corporation may be served and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is amended to change the post office address to which Secretary of State shall mail a copy of any process against the Corporation to:

Beth Israel Medical Center
c/o Mount Sinai Hospitals Group
One Gustave L. Levy Place
New York, New York 10029
Attention: General Counsel

5. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on July 16, 2013.
6. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him/her is:

Beth Israel Medical Center
c/o Mount Sinai Hospitals Group
One Gustave L. Levy Place
New York, New York 10029
Attention: General Counsel

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 12th day of September, 2013.

By 
Name: Steven I. Hochberg
Title: Chairman

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

September 17, 2013

Kenneth L. Davis, MD
President and CEO
The Mount Sinai Medical Center
One Gustave L. Levy Place
Box 1220
New York, New York 10029

Re: Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

Dear Dr. Davis:

The above referenced Certificate of Amendment of the Certificate of Incorporation, dated September 12, 2013 and signed by Stephen I. Hochberg, 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 neither changes the corporation's name nor changes substantively a purpose the inclusion of which requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the certificate being filed with the Department of State.

Sincerely,



Michael M. Stone
Assistant Counsel
Bureau of House Counsel

cc: Michael MacDonald, Mount Sinai Legal Counsel
Beth Essig, Continuum Health Partners Legal Counsel
Brad Beckstrom, Director, Government Affairs

ACR-41

130920000650

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

Epstein, Becker & Green, P.C.
250 Park Avenue
New York, NY 10177

2013 SEP 20 PM 12: 29

FILED

loc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 20 2013

TAXS _____

BY: lmc

NY

RRG ok

2013 SEP 20 AM 11: 55

RECEIVED

Drawdown

699

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 30, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

090723000 212

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER
Under Section 803 of the Not-For-Profit Corporation Law**

The undersigned, being the President and Chief Executive Officer and the Assistant Secretary of Continuum Health Partners, Inc., the sole member of Beth Israel Medical Center, a New York State not-for-profit corporation (the "Corporation"), do hereby certify and set forth:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."

2. The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation"). The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certification of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by a Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965. A Restated Certificate of Incorporation was filed by the Department of State on October 1, 1985. A Certificate of Amendment of the Certificate of Incorporation was filed by the Department of State on March 2, 1988. A Certificate of Amendment was filed by the Department of State on July 2, 1999. A Certificate of Amendment of the Certificate of Incorporation was filed by the Department of State pursuant to Section 803 of the Not-for-Profit Corporation Law on September 27, 2002.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B Corporation under section 201 of said law and shall remain a Type B Corporation after this amendment to the Certificate of Incorporation becomes effective.

4. The Corporation's Certificate of Incorporation is hereby amended. A new Article TENTH is added following article NINTH as follows:

"TENTH. The Corporation, The New York Eye and Ear Infirmary and The St. Luke's-Roosevelt Hospital Center (these three hospitals are collectively referred to herein as the "Affiliated Hospitals"), among others, have a common passive parent corporation, Continuum Health Partners, Inc. The Corporation may institute a joint application process to the medical staffs of the Affiliated Hospitals and share credentialing and quality assurance


information concerning medical staff members and applicants with the other Affiliated Hospitals, provided that the Corporation shall make a separate decision concerning admission of each applicant to its medical staff according to its medical staff bylaws.”

5. The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is:


Beth Israel Medical Center
c/o Continuum Health Partners, Inc.
555 West 57th Street, 18th Floor
New York, New York 10019
Attn: General Counsel

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting on January 30, 2008.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment this 11 day of June, 2009, and affirmed the contents to be true under the penalty of perjury.



Stanley Brezenoff
President and Chief Executive Officer



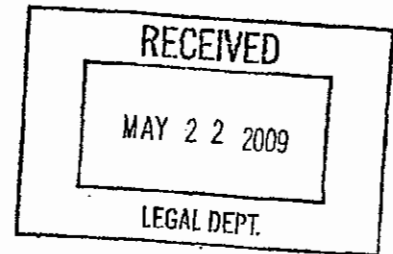
Kathryn Meyer
Assistant Secretary



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

May 18, 2009



Ms. Nina Brodsky
Senior Associate General Counsel
Continuum Services
555 West 57th Street, 18th Floor
New York, New York 10019

Re: Certificate of Amendment of the Certificate of Incorporation of
Beth Israel Medical Center

Dear Ms. Brodsky:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 8th day of May 2009, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, dated January 30, 2008.

Sincerely,

Colleen M. Frost
Executive Secretary

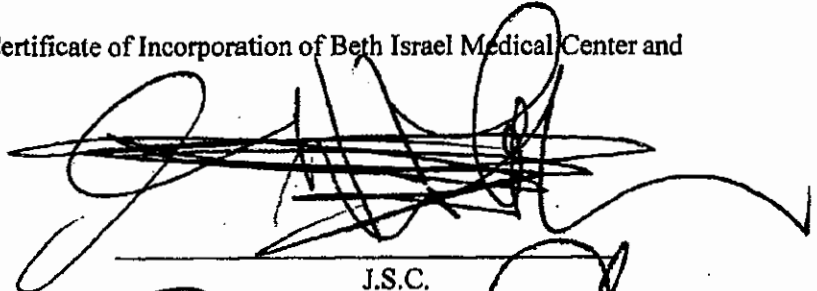
/cf

I, **EDWARD H. LEHNER**, a Justice of the Supreme Court of the State of

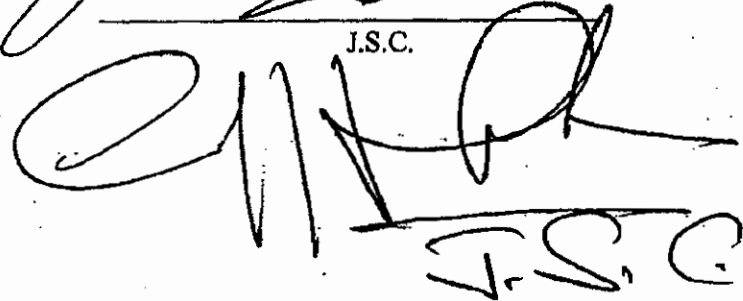
New York for the First Judicial District do hereby approve of the foregoing Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center and consent that the same be filed.

JUL 16 2009

Date: _____



J.S.C.



J.S.C.

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 60 DAYS HEREAFTER.

by Laura Werner
ASSISTANT ATTORNEY GENERAL DATE

June 25, 2009

UNI-37

090723000 2/2

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
Beth Israel Medical Center

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

FILED

2009 JUL 23 AM 10:16

PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036-8299

1/1/16

ice
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL 23 2009

TAXS _____
BY: *AMB*

ny

2009 JUL 23 AM 9:07 2009 JUL 22 PM 12:03

RECEIVED

RECEIVED

DRAWDOWN

238

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 30, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

F020927000245

Exhibit A

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER
Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Chief Executive Officer and the Assistant Secretary of Continuum Health Partners, Inc., the sole member of Beth Israel Medical Center, a New York State not-for-profit corporation (the "Corporation"), do hereby certify and set forth:

1 The name of the Corporation is "Beth Israel Medical Center". The Corporation was formed under the name "Beth Israel Hospital Association"

2 The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946 (the "Certificate of Incorporation") The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by a Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965. A Restated Certificate of Incorporation was filed by the Department of State on October 1, 1985. A Certificate of Amendment of the Restated Certificate of Incorporation was filed by the Department of State on March 2, 1988. A Certificate of Incorporation was filed by the Department of State on July 2, 1999.

3 The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B Corporation under section 201 of said law and shall remain a Type B Corporation after this amendment to the Certificate of Incorporation becomes effective.

4. The Corporation's Certificate of Incorporation is hereby amended by adding the following language to the end of paragraph (4) of Article THIRD

" Notwithstanding any other provisions of this paragraph (4), the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development or his nominee, subject to approval of a Justice of the

Supreme Court of the State of New York pursuant to New York State Law,"

5 Article EIGHTH of the Corporation's Certificate of Incorporation is hereby amended to delete the language, ["EIGHTH: By-laws of the Corporation may be adopted or amended by an affirmative vote of two-thirds of the Trustees present at any regular meeting, or at any special meeting called for that purpose, at which a quorum of trustees is present so long as the by-laws are not inconsistent with the provisions of this Certificate or the laws of the State of New York "] and insert the following language in its place.

"EIGHTH So long as a mortgage on the Corporation's property is insured or held by the United States Secretary of Housing and Urban Development, the Corporation shall not amend its bylaws to be inconsistent with this Certificate of Incorporation or any Regulatory Agreement between the Corporation and the said Secretary."

6 A new Article NINTH is added following Article EIGHTH as follows.

"NINTH So long as a mortgage on the Corporation's property is insured or held by the United States Secretary of Housing and Urban Development, this Certificate of Incorporation may not be amended without the prior written approval of said Secretary "

7 The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is

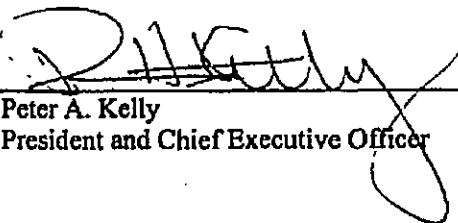
Beth Israel Medical Center
c/o Continuum Health Partners, Inc
555 West 57th Street, 18th Floor
New York, New York 10019
Attn. General Counsel

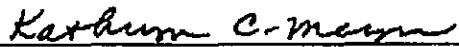
8. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting held on July 17, 2002.

2

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment this 18th day of July, 2002 and affirmed the contents to be true under the penalty of perjury.

CONTINUUM HEALTH PARTNERS, INC.

By: 
Peter A. Kelly
President and Chief Executive Officer

By: 
Kathryn C. Meyer
Assistant Secretary

3

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

by Laura Werner DATE August 5 2002
ASSISTANT ATTORNEY GENERAL

by: _____

Date: _____

PHYLLIS GANGEL-JACOB

I, _____, a Justice of the Supreme Court of the State of New York for the First Judicial District do hereby approve of the foregoing Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

and consent that the same be filed

Date: August 23, 2002

Phyllis Gangel-Jacob
I.S.C.

PHYLLIS GANGEL-JACOB



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 16, 2002

Frederick B. Martinez
Sidley Austin Brown & Wood LLP
787 Seventh Avenue
New York, NY 10019

Re: Certificate of Amendment of the Restated Certificate of Incorporation
of Beth Israel Medical Center

Dear Mr. Martinez:

The Certificate of Amendment of the Restated Certificate of Incorporation of Beth Israel Medical Center, dated July 18, 2002, does not require the formal approval of the Public Health Council or Commissioner of Health, since the Certificate of Amendment neither changes the corporation's name nor makes any substantive change to the corporation's purposes which would require such approval under either the Public Health Law or Not-for-Profit Corporation law.

The Department has no objection to the subject Certificate of Amendment being filed with the Department of State.

Sincerely,

A handwritten signature in black ink that reads "Frank Barry".

Frank Barry
Attorney
Bureau of House Counsel

FB/mem

5

F 020927000 245

fac

CERTIFICATE OF AMENDMENT

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP. 27 2002

TAX \$

BY:

fac
ny

FILED BY:

Sidley Austin Brown & Wood LLP
Attn: Erik F. Remmler, Esq.
787 Seventh Avenue
New York, NY 10019
(212) 839-5796

6

256

FILING RECEIPT

ENTITY NAME: BETH ISRAEL MEDICAL CENTER

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PURPOSES PROCESS

COUNTY: NEWY

FILED:02/17/2016 DURATION:***** CASH#:160217000622 FILM #:160217000588

FILER:

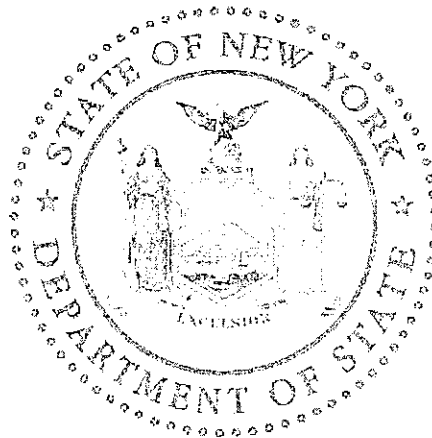
JAY E. GERZOG, ESQ., SHEPPARD
MULLIN RICHTER & HAMPTON LLP
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112-0015

ADDRESS FOR PROCESS:

THE CORPORATION
ATTN: LEGAL DEPARTMENT
NEW YORK, NY 10177

150 E. 42ND STREET

REGISTERED AGENT:



SERVICE COMPANY: ALBANY CORPORATE RESEARCH LTD. - 41

SERVICE CODE: 41

FEEs	115.00
FILING	30.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	75.00

PAYMENTS	115.00
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	115.00
OPAL	0.00
REFUND	0.00

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 February 18, 2016.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

160217000

588

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER

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

The undersigned, being the Chairman of the Board of Trustees of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the New York Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law.
4. 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 the Secretary of State is: Attn: Legal Department, 150 E. 42nd Street, New York, NY 10177.
5. The Corporation's Certificate of Incorporation is hereby amended as follows:

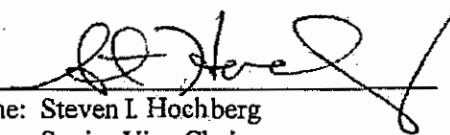
Article THIRD of the Certificate of Incorporation of the Corporation, which specifies the purposes for which the Corporation is organized, is hereby amended by modifying paragraph (b) thereof, which provides for the conduct of certain training programs for nurses and other health care professionals, to include a reference to bachelor of science degrees in connection with nurse training programs, and said paragraph (b) shall, as so amended, read in its entirety as follows:

“(b) to operate a program for the training of nurses leading to associate in applied science (A.A.S.) and bachelor of science (B.S.) degrees at the Phillips Beth Israel School of Nursing; to engage, in conjunction with universities, colleges and professional schools, in programs related to the training of other health care professionals;”

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on October 21, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 6th day of December, 2013.

By



Name: Steven L Hochberg

Title: Senior Vice Chairman

STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
Albany, New York

**CONSENT TO FILING WITH THE DEPARTMENT OF STATE
(General Use)**

Consent is hereby given to the filing of the annexed certificate of amendment

of Beth Israel Medical Center

[name of entity]

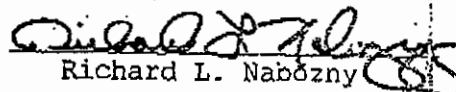
pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

MaryEllen Elia
Commissioner of Education

By:

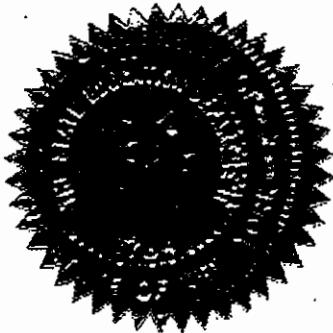

Richard L. Nabozny

Commissioner's authorized designee

Date

2-12-2016

**THIS DOCUMENT IS NOT VALID WITHOUT THE SIGNATURE OF THE
COMMISSIONER'S AUTHORIZED DESIGNEE AND THE OFFICIAL SEAL OF THE
STATE EDUCATION DEPARTMENT.**





PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

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

February 12, 2016

Tamar R. Rosenberg
Sheppard Mullin, LLP
30 Rockefeller Plaza
New York, New York 10112

Re: Certificate of Amendment of the Certificate of Incorporation of Beth Israel
Medical Center

Dear Ms. Rosenberg:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 11th day of February, 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 Beth Israel Medical Center, dated December 6, 2013.

Sincerely,

A handwritten signature in cursive script that reads 'Colleen M. Leonard'. The signature is written in dark ink and is positioned above the printed name.

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

The Attorney General hereby approves pursuant to NPCL 804(a)(ii)(A) the proposed Certificate of Amendment of Beth Israel Medical Center. 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.

January 22 2016
Date

Laura Werner

Assistant Attorney General

Laura Werner

588

AGR-41

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER

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

Filed by:

Jay E. Gerzog, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015

FILED
2016 FEB 17 PM 2:12

RECEIVED
RECEIVED
2016 FEB 17 PM 12:08
2016 FEB 16 AM 9:07

DRAWDOWN

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par/12

(6)

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED FEB 17 2016

TAXS \$

BY: par

622



MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Mark A. Schweitzer, Associate Attorney
Division of Legal Affairs, Bureau of Program Counsel

Date: January 18, 2023

Subject: Cayuga Health System, Inc. – Addition of Corporate Purposes

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) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel for Cayuga Health System, Inc., Nicole Ozminkowski, dated May 26, 2022;
- 3) A resolution of the Board of Directors of Cayuga Health System, Inc., dated April 7, 2022, authorizing the change of corporate name and amendment of Certificate of Incorporation, with a proposed Restated Certificate of Incorporation;
- 4) An executed photocopy of the proposed Restated Certificate of Incorporation of Cayuga Health System, Inc., signed by Justin P. Runke, as Authorized Person, dated April 7, 2022;
- 5) A photocopy of the current Certificate of Incorporation of Cayuga Health System, Inc., dated June 13, 2014, and filed on September 22, 2014, including associated OMH approval and Operating Certificate, and Consent to File Letter of the Public Health Council for Cayuga Health System, Inc., dated September 15, 2014;
- 6) Operating Certificates of the licensed entities under active parent Cayuga Health System, Inc.

Attachments

cc: B. DelCogliano



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks
General Counsel *Kathy Marks*

Date: January 18, 2023

Subject: Cayuga Health System, Inc. – Addition of Corporate Purposes

Cayuga Health System, Inc. (“CHS”) requests Public Health and Health Planning Council (PHHPC) approval to change its corporate purposes to add language to affiliate with approved chemical dependence and substance abuse programs under the Mental Hygiene Law, and to add additional counties and areas in New York State of operation of those facilities. PHHPC approved CHS as the active parent of Cayuga Medical Center and Schuyler Hospital, and consented to the filing of its Certificate of Incorporation on September 15, 2014, in CON # 141168. CHS / Cayuga Medical Center at Ithaca, Inc. received conditional approval by the NYS Office of Mental Health on September 9, 2014 to operate a Psychiatric Inpatient Unit of a General Hospital, to be known as Cayuga Medical Center at Ithaca Psychiatric Unit, a 26 bed inpatient treatment program, referenced by CON # HD 141168.

Cayuga Health System, Inc. is in the process of affiliating with a substance use disorder treatment facility. In connection with that affiliation, CHS requests permission to amend its Certificate of Incorporation to include certain purposes as required by the Office of Addiction Services and Supports. Because the Department of Health and PHHPC previously approved CHS’s Certificate of Incorporation, and the purposes and the Certificate of Incorporation are being amended, PHHPC approval of the Restated Certificate of Incorporation is required.

CHS requests approval of the following amendments in its Restated Certificate of Incorporation:

1. To revise Section 3 to redefine the corporate purposes and to redefine the definition of “Affiliate”;
2. To revise Section 3(a) to delete the reference to Tompkins County, Schuyler County and surrounding areas of New York State and replace with the central region of New York State; and
3. To add a provision which allows the Corporation the authority to operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law.

Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11, PHHPC must consent to the requested changes prior to the filing of any amended certificate.

There is no legal objection to the change in corporate purposes, and the Restated Certificate of Incorporation of Cayuga Health System, Inc. is in legally acceptable form.

Attachments.

Schweitzer, Mark A (HEALTH)

From: Nicole Ozminkowski <nozminkowski@HarrisBeach.com>
Sent: Thursday, May 26, 2022 3:51 PM
To: Leonard, Colleen M (HEALTH)
Cc: Runke, Justin
Subject: Request for approval of CHS Restated Certificate of Incorporation
Attachments: Executed CHS Restated Certificate of Incorporation (4875-5811-5103 1).pdf; Cayuga Health System Inc. filed Certificate of Incorporation (4811-2216-2023 1).PDF; Authorizing Resolution (4859-9396-7906 1).pdf

You don't often get email from nozminkowski@harrisbeach.com. [Learn why this is important](#)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Ms. Leonard:

As you may be aware, Cayuga Health System, Inc. ("CHS") is in the process of affiliating with a substance use disorder treatment facility. In connection with that affiliation, CHS need to amend its certificate of incorporation to include certain purposes as required by the Office of Addiction Services and Supports. Because the Department of Health / Public Health and Health Planning Counsel previously approved CHS's certificate of incorporation we are now asking for approval of the attached Restated Certificate of Incorporation.

I have attached the following for review:

1. Original filed CHS Certificate of Incorporation
2. CHS Restated Certificate of Incorporation which includes the following amendments:
 - a. to revise Section 3 to redefine the corporate purposes and to redefine the definition of "Affiliate";
 - b. to revise Section 3(a) to delete the reference to Tompkins County, Schuyler County and surrounding areas of New York State and replace with the central region of New York State; and
 - c. to add a provision which allows the Corporation the authority to operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law.
3. CHS board resolution approving the Restated Certificate of Incorporation.

Should you need any additional information or documentation, please let me know.

Best,

Nicole Ozminkowski

Nicole Ozminkowski
Partner

HARRIS BEACH PLLC

ATTORNEYS AT LAW

99 Garnsey Road
Pittsford, NY 14534
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Statement of Confidentiality

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**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF
CAYUGA HEALTH SYSTEM, INC.**

WHEREAS, this Board of Directors has approved an Affiliation Agreement (the "Affiliation Agreement") by and between Cayuga Health System, Inc. ("CHS") and Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services ("CARS") pursuant to which CHS will become the sole member and active parent of CARS in accordance with the terms and conditions of the Affiliation Agreement (the "Affiliation Transaction"); and

WHEREAS, in connection with the Affiliation Transaction, it is necessary for the Certificate of Incorporation to be revised to: (1) permit the Corporation to have affiliates which are licensed under the Mental Hygiene Law; (2) to recast the geographic area served by the Corporation from Tomkins and Schuyler Counties and the surrounding area to a broader reference with the central region of New York State; (3) to specifically allow the Corporation to operate chemical dependence, alcoholism and/or substance abuse services; and (4) to make certain related conforming changes; and

WHEREAS, it is in the best interests of the Corporation to amend its Certificate of Incorporation in accordance with the foregoing.

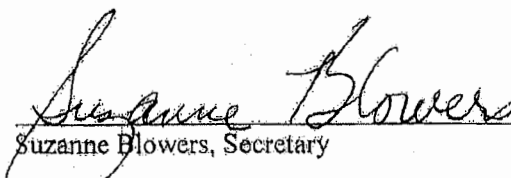
NOW, THEREFORE, IT IS RESOLVED, that, the Restated Certificate of Incorporation of the Corporation, in substantially the same form as attached to these Resolutions as Exhibit A, with such changes as may be required by the New York State Department of Health, the New York State Office of Addiction Services and Supports, the New York Attorney General or the New York Department of State is hereby approved and adopted as the Restated Certificate of Incorporation of the Corporation, pending the filing of the same with the New York Department of State; and

RESOLVED, that the President and Chief Executive Officer and the Vice President and General Counsel of the Corporation and their designees, and each of them, be and hereby are directed to take any and all actions and to execute, deliver and/or file any and all documents, instruments, or agreements deemed to be necessary and proper by the Authorized Officers or any of them to accomplish the purposes of the foregoing resolutions, his, her or their signature thereon, or filing or completion thereof, to be conclusive evidence of his or her approval thereof.

CERTIFICATION

The foregoing is a true and complete copy of the Resolutions duly adopted by the Board of Directors of Cayuga Health System, Inc. on the 7th day of April, 2022, which Resolutions have not been modified, revoked or rescinded and remain in full force and effect on the date hereof.

Date: April 7, 2022

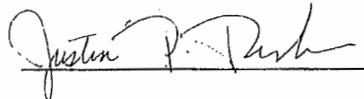

Suzanne Blowers, Secretary

State of New York)

)ss:

County of Tompkins)

On the 7th day of April in the year 2022, before me, the undersigned notary public, personally appeared Suzanne Blowers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

 Notary Public

JUSTIN P. RUNKE
Notary Public, State of New York
Registration No. 02RU6430020
Qualified in Monroe County
Commission Expires March 7, 20 26

RESTATED CERTIFICATE INCORPORATION

OF

CAYUGA HEALTH SYSTEM, INC.

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

The undersigned, being the Chair of the Board of Directors of Cayuga Health System, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is Cayuga Health System, Inc.
2. The Corporation's Certificate of Incorporation was filed by the Department of State on September 23, 2014 pursuant to the Not-for-Profit Corporation Law.
3. The Corporation's Certificate of Incorporation is hereby amended in the following respects:
 - (a) to revise Section 3 to change the corporate purposes and to revise the definition of "Affiliate";
 - (b) to revise Section 3(a) to delete the references to "Tompkins County, Schuyler County and surrounding areas of New York State" and replace with a reference to the central region of New York State;
 - (c) to add a provision which allows the Corporation the authority to operate chemical dependence, alcoholism and/or substance abuse services; within the meaning of Articles 19 and 32 of the Mental Hygiene Law;
 - (d) to delete Section 4(j) and to replace entirely with the following:
 - (j) to include the approval of the development of new clinical or treatment programs, including clinical/treatment or programmatic affiliations, or any termination of existing clinical or treatment programs by an Affiliate; provided, however, that any termination of existing clinical or treatment programs of any Affiliate, including the defunding of a clinical or treatment program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;
 - (e) to revise Section 4(k) to include within the powers delegated to the Corporation by an Affiliate the authority to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health or Certification

Applications to the New York State Office of Addiction Services and Supports, as required;

- (f) to revise Section 4(l) to delete reference to “hospital management services agreements” and replace with reference to management services agreements and to include within the powers delegated to the Corporation by an Affiliate the authority to approve entry into any management services agreements by an Affiliate that would require the approval of the New York State Department of Health or New York State Office of Addiction Services and Supports;
- (g) to revise Section 14 to delete the names and addresses of the initial directors of the Corporation;
- (h) all references to “Chief Campus Executive” or “President and Chief Campus Executive” shall be changed to “chief campus executive” throughout the Certificate of Incorporation and any reference to “Chief Campus Executive” or “President and Chief Campus Executive” shall be deemed a reference to “chief campus executive”; and
- (i) to renumber the paragraphs as a result of the amendments included herein.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as hereinafter set forth in full.

1. The name of the Corporation is: Cayuga Health System, Inc.

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

3. The Corporation is organized and shall be operated to promote and support community health, including to serve as the sole member of one or more entities licensed under the Mental Hygiene Law and/or the Public Health Law and whose purposes are to fulfill the mission and purpose of the Corporation (collectively, the “Affiliates”); so long as such Affiliates are organizations described in Section n501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). To this end, the Corporation shall:

(a) Support and assist the Affiliates by coordinating and monitoring their missions, objectives, activities and resources with each other and with those of regional health care providers, health care agencies and related organizations, all in furtherance of the purposes of promoting effective and economical health care services, in the central region of New York State;

(b) To solicit, collect, accept, hold, invest, reinvest and administer gifts, bequests, devises, grants, contributions, donations and property of any sort, without limitation as to amount or value, for the foregoing purposes;

(c) To expend, contribute, disburse, donate or otherwise use its assets and/or income for the foregoing purposes;

(d) To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Addiction Services and Supports.”; and

(e) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person.

4. In furtherance of its corporate purposes, in addition to the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, the Corporation shall have the following rights, all of which have been delegated to the Corporation in, and shall be exercised by the Corporation in the manner provided for by, the certificate of incorporation and/or bylaws of each Affiliate:

(a) to elect or appoint, fix the number of, and remove, with cause, the directors of each Affiliate;

(b) to appoint each Affiliate’s chief campus executive subject to the approval of the Affiliate’s Board and the President and Chief Executive Officer of the Corporation; provided, however, that the authority for removing an Affiliate’s chief campus executive shall rest solely with the Corporation’s President and Chief Executive Officer following consultation with the applicable Affiliate’s Board;

(c) to amend or repeal the certificate of incorporation and bylaws or other organizational and governing documents and to adopt any new or restated certificate of incorporation or bylaws or other organizational and governing documents of any Affiliate;

(d) to approve the capital and operating budgets of each Affiliate with input from the respective Boards of each Affiliate;

(e) to approve any strategic plans for each Affiliate with input from the respective Boards of each Affiliate;

(f) to approve the sale, acquisition, lease, transfer, or pledge of real or personal property of any Affiliate with an aggregate fair market value in excess of an amount set from time to time by the Board of the Corporation;

(g) to approve the incurrence of any indebtedness, including lease obligations, or the granting of any mortgage or guaranty by an Affiliate in excess of an amount set from time to time by the Board of the Corporation, excluding (i)

vendor debt incurred in the normal course of business and (ii) debt consistent with approved budgets of the Affiliate;

(h) to approve any plan of merger, consolidation, acquisition, dissolution, joint venture, or liquidation of any Affiliate;

(i) to approve or consent to the filing by an Affiliate of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or an assignment for the benefit of creditors;

(j) to approve of development of new clinical or treatment programs, including clinical/treatment or programmatic affiliations, or any termination of existing clinical or treatment programs by an Affiliate; provided, however, that any termination of existing clinical or treatment programs of any Affiliate, including the defunding of a clinical or treatment program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;

(k) to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health or Certification Applications to the New York State Office of Addiction Services and Supports, as required;

(l) to approve entry into any management services agreements by an Affiliate that would require the approval of the New York State Department of Health or New York State Office of Addiction Services and Supports;

(m) to approve the retention of outside general legal counsel by an Affiliate;

(n) to approve allocation of costs to an Affiliate and the formula for such allocation;

(o) to approve settlements of litigation by an Affiliate when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to an Affiliate;

(p) to approve all business or marketing plans for each Affiliate with input from that Affiliate's Board;

(q) to approve of any modification of existing clinical programs by an Affiliate;

(r) to approve any integrated services arrangements that would obligate the Affiliates to participate on an ongoing basis, excluding the selection of outside general legal counsel; and

(s) to address any other policy, business, or clinical issue that may arise from time-to-time that is not under the authority of the Affiliate's board or management.

For the purposes of the foregoing, the Corporation shall have: (i) the power to initiate and direct action by an Affiliate without a prior recommendation of that Affiliate's board; and (ii) the power to accept, reject, or modify the recommendation of any Affiliate's board and to direct action by that Affiliate or to return the matter to the Affiliate's Board for reconsideration, with reasons for rejection and/or suggested change. No Affiliate's board nor any Affiliate's officers shall implement any action requiring the approval of the corporation until the Corporation shall have exercised its reserved powers and communicated its determinations in writing to the applicable Affiliate's Board.

5. Notwithstanding anything to the contrary in this certificate of incorporation, in addition to any other powers retained by the Board of each Affiliate, the Board of each Affiliate shall retain the power and authority to do any and all of the following:

(a) to review and recommend candidates for that Affiliate's chief campus executive to the Corporation;

(b) to approve that Affiliate's chief campus executive;

(c) to provide input during performance review process for that Affiliate's chief campus executive; provided, however, that this retained power does not limit in any way the sole authority granted to the President and Chief Executive Officer of the Corporation to remove the chief campus executive of any Affiliate;

(d) to credential members of that Affiliate's medical staff;

(e) to oversee clinical quality and patient care service standards of that Affiliate;

(f) to participate in the development of and provide recommendations for strategic planning priorities, annual operating budgets, and capital budgets for that Affiliate with and to the Corporation;

(g) to recommend to the Governance and Nominating Committee of the Corporation candidates for nomination for election to the Board of that Affiliate;

(h) to identify and recommend approaches to address local community health priorities to the Corporation;

(i) to liaise with, maintain, and support the foundation established to support that Affiliate and related philanthropic initiatives;

(j) to develop and execute communications and outreach initiatives to the local communities served by that Affiliate in accordance with communications guidelines established from time to time by the Corporation;

(k) to exercise all other authorities and to undertake all responsibilities for which not-for-profit hospital boards in New York are legally required to assume, including but not necessarily limited to, compliance oversight and meeting all other hospital and other related health care provider licensing requirements;

(l) to undertake any other duties or initiatives that the Corporation delegates to the board of that Affiliate; and

(m) to exercise all authorities retained by that Affiliate in furtherance of the mission and vision adopted from time to time by the Corporation.

6. The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

7. Notwithstanding any other provision of these articles, the Corporation is organized and operated exclusively for charitable 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 an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of said Code.

8. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporate assets on dissolution of the Corporation.

9. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

10. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. If none of the Corporation's not-for-profit affiliates shall so qualify at the time of dissolution, the distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational 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, as amended, subject to the approval of the Attorney General of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by or is under common control with the Corporation, and any other not-for-profit organization that expressly and specifically includes among its purposes the benefit or support of the Corporation.

11. In any taxable year in which the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the Corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of said Code;

(c) not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of said Code;

(d) not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of said Code; and

(e) not make any expenditures that are subject to tax under Section 4945 of said Code.

12. The number of directors constituting the entire board of directors of the Corporation shall not be less than fifteen (15) nor more than twenty-five (25). Subject to such limitation, the number shall be fixed by the bylaws of the Corporation pursuant to Section 702 of the Not-for-Profit Corporation Law.

13. The office of the Corporation is to be located in the County of Tompkins, State of New York.

14. The Secretary of State is hereby designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is: President and Chief Executive Officer, Cayuga Health System, Inc., 101 Dates Drive, Ithaca, New York 14850.

5. This Restated Certificate of Incorporation and the foregoing amendments of the Certificate of Incorporation were authorized by the affirmative vote of a majority of the entire Board of Directors of the Corporation. The Corporation does not have any members.

IN WITNESS WHEREOF, the undersigned has subscribed this Restated Certificate of Incorporation this 7th day of April, 2022.

Justin P. Runke, Authorized Person

RESTATED CERTIFICATE INCORPORATION

OF

CAYUGA HEALTH SYSTEM, INC.

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

The undersigned, being the Chair of the Board of Directors of Cayuga Health System, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is Cayuga Health System, Inc.
2. The Corporation's Certificate of Incorporation was filed by the Department of State on September 23, 2014 pursuant to the Not-for-Profit Corporation Law.
3. The Corporation's Certificate of Incorporation is hereby amended in the following respects:
 - (a) to revise Section 3 to change the corporate purposes and to revise the definition of "Affiliate";
 - (b) to revise Section 3(a) to delete the references to "Tompkins County, Schuyler County and surrounding areas of New York State" and replace with a reference to the central region of New York State;
 - (c) to add a provision which allows the Corporation the authority to operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law;
 - (d) to delete Section 4(j) and to replace entirely with the following:
 - (j) to include the approval of the development of new clinical or treatment programs, including clinical/treatment or programmatic affiliations, or any termination of existing clinical or treatment programs by an Affiliate; provided, however, that any termination of existing clinical or treatment programs of any Affiliate, including the defunding of a clinical or treatment program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;
 - (e) to revise Section 4(k) to include within the powers delegated to the Corporation by an Affiliate the authority to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health or Certification

Applications to the New York State Office of Addiction Services and Supports, as required;

- (f) to revise Section 4(l) to delete reference to “hospital management services agreements” and replace with reference to management services agreements and to include within the powers delegated to the Corporation by an Affiliate the authority to approve entry into any management services agreements by an Affiliate that would require the approval of the New York State Department of Health or New York State Office of Addiction Services and Supports;
- (g) to revise Section 14 to delete the names and addresses of the initial directors of the Corporation;
- (h) all references to “Chief Campus Executive” or “President and Chief Campus Executive” shall be changed to “chief campus executive” throughout the Certificate of Incorporation and any reference to “Chief Campus Executive” or “President and Chief Campus Executive” shall be deemed a reference to “chief campus executive”; and
- (i) to renumber the paragraphs as a result of the amendments included herein.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as hereinafter set forth in full.

1. The name of the Corporation is: Cayuga Health System, Inc.

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

3. The Corporation is organized and shall be operated to promote and support community health, including to serve as the sole member of one or more entities licensed under the Mental Hygiene Law and/or the Public Health Law and whose purposes are to fulfill the mission and purpose of the Corporation (collectively, the “Affiliates”); so long as such Affiliates are organizations described in Section n501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). To this end, the Corporation shall:

(a) Support and assist the Affiliates by coordinating and monitoring their missions, objectives, activities and resources with each other and with those of regional health care providers, health care agencies and related organizations, all in furtherance of the purposes of promoting effective and economical health care services, in the central region of New York State;

(b) To solicit, collect, accept, hold, invest, reinvest and administer gifts, bequests, devises, grants, contributions, donations and property of any sort, without limitation as to amount or value, for the foregoing purposes;

(c) To expend, contribute, disburse, donate or otherwise use its assets and/or income for the foregoing purposes;

(d) To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Addiction Services and Supports.”; and

(e) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person.

4. In furtherance of its corporate purposes, in addition to the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, the Corporation shall have the following rights, all of which have been delegated to the Corporation in, and shall be exercised by the Corporation in the manner provided for by, the certificate of incorporation and/or bylaws of each Affiliate:

(a) to elect or appoint, fix the number of, and remove, with cause, the directors of each Affiliate;

(b) to appoint each Affiliate’s chief campus executive subject to the approval of the Affiliate’s Board and the President and Chief Executive Officer of the Corporation; provided, however, that the authority for removing an Affiliate’s chief campus executive shall rest solely with the Corporation’s President and Chief Executive Officer following consultation with the applicable Affiliate’s Board;

(c) to amend or repeal the certificate of incorporation and bylaws or other organizational and governing documents and to adopt any new or restated certificate of incorporation or bylaws or other organizational and governing documents of any Affiliate;

(d) to approve the capital and operating budgets of each Affiliate with input from the respective Boards of each Affiliate;

(e) to approve any strategic plans for each Affiliate with input from the respective Boards of each Affiliate;

(f) to approve the sale, acquisition, lease, transfer, or pledge of real or personal property of any Affiliate with an aggregate fair market value in excess of an amount set from time to time by the Board of the Corporation;

(g) to approve the incurrence of any indebtedness, including lease obligations, or the granting of any mortgage or guaranty by an Affiliate in excess of an amount set from time to time by the Board of the Corporation, excluding (i)

vendor debt incurred in the normal course of business and (ii) debt consistent with approved budgets of the Affiliate;

(h) to approve any plan of merger, consolidation, acquisition, dissolution, joint venture, or liquidation of any Affiliate;

(i) to approve or consent to the filing by an Affiliate of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or an assignment for the benefit of creditors;

(j) to approve of development of new clinical or treatment programs, including clinical/treatment or programmatic affiliations, or any termination of existing clinical or treatment programs by an Affiliate; provided, however, that any termination of existing clinical or treatment programs of any Affiliate, including the defunding of a clinical or treatment program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;

(k) to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health or Certification Applications to the New York State Office of Addiction Services and Supports, as required;

(l) to approve entry into any management services agreements by an Affiliate that would require the approval of the New York State Department of Health or New York State Office of Addiction Services and Supports;

(m) to approve the retention of outside general legal counsel by an Affiliate;

(n) to approve allocation of costs to an Affiliate and the formula for such allocation;

(o) to approve settlements of litigation by an Affiliate when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to an Affiliate;

(p) to approve all business or marketing plans for each Affiliate with input from that Affiliate's Board;

(q) to approve of any modification of existing clinical programs by an Affiliate;

(r) to approve any integrated services arrangements that would obligate the Affiliates to participate on an ongoing basis, excluding the selection of outside general legal counsel; and

(s) to address any other policy, business, or clinical issue that may arise from time-to-time that is not under the authority of the Affiliate's board or management.

For the purposes of the foregoing, the Corporation shall have: (i) the power to initiate and direct action by an Affiliate without a prior recommendation of that Affiliate's board; and (ii) the power to accept, reject, or modify the recommendation of any Affiliate's board and to direct action by that Affiliate or to return the matter to the Affiliate's Board for reconsideration, with reasons for rejection and/or suggested change. No Affiliate's board nor any Affiliate's officers shall implement any action requiring the approval of the corporation until the Corporation shall have exercised its reserved powers and communicated its determinations in writing to the applicable Affiliate's Board.

5. Notwithstanding anything to the contrary in this certificate of incorporation, in addition to any other powers retained by the Board of each Affiliate, the Board of each Affiliate shall retain the power and authority to do any and all of the following:

(a) to review and recommend candidates for that Affiliate's chief campus executive to the Corporation;

(b) to approve that Affiliate's chief campus executive;

(c) to provide input during performance review process for that Affiliate's chief campus executive; provided, however, that this retained power does not limit in any way the sole authority granted to the President and Chief Executive Officer of the Corporation to remove the chief campus executive of any Affiliate;

(d) to credential members of that Affiliate's medical staff;

(e) to oversee clinical quality and patient care service standards of that Affiliate;

(f) to participate in the development of and provide recommendations for strategic planning priorities, annual operating budgets, and capital budgets for that Affiliate with and to the Corporation;

(g) to recommend to the Governance and Nominating Committee of the Corporation candidates for nomination for election to the Board of that Affiliate;

(h) to identify and recommend approaches to address local community health priorities to the Corporation;

(i) to liaise with, maintain, and support the foundation established to support that Affiliate and related philanthropic initiatives;

(j) to develop and execute communications and outreach initiatives to the local communities served by that Affiliate in accordance with communications guidelines established from time to time by the Corporation;

(k) to exercise all other authorities and to undertake all responsibilities for which not-for-profit hospital boards in New York are legally required to assume, including but not necessarily limited to, compliance oversight and meeting all other hospital and other related health care provider licensing requirements;

(l) to undertake any other duties or initiatives that the Corporation delegates to the board of that Affiliate; and

(m) to exercise all authorities retained by that Affiliate in furtherance of the mission and vision adopted from time to time by the Corporation.

6. The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

7. Notwithstanding any other provision of these articles, the Corporation is organized and operated exclusively for charitable 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 an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of said Code.

8. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporate assets on dissolution of the Corporation.

9. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

10. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. If none of the Corporation's not-for-profit affiliates shall so qualify at the time of dissolution, the distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational 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, as amended, subject to the approval of the Attorney General of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by or is under common control with the Corporation, and any other not-for-profit organization that expressly and specifically includes among its purposes the benefit or support of the Corporation.

11. In any taxable year in which the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the Corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of said Code;

(c) not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of said Code;

(d) not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of said Code; and

(e) not make any expenditures that are subject to tax under Section 4945 of said Code.

12. The number of directors constituting the entire board of directors of the Corporation shall not be less than fifteen (15) nor more than twenty-five (25). Subject to such limitation, the number shall be fixed by the bylaws of the Corporation pursuant to Section 702 of the Not-for-Profit Corporation Law.

13. The office of the Corporation is to be located in the County of Tompkins, State of New York.

14. The Secretary of State is hereby designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is: President and Chief Executive Officer, Cayuga Health System, Inc., 101 Dates Drive, Ithaca, New York 14850.

5. This Restated Certificate of Incorporation and the foregoing amendments of the Certificate of Incorporation were authorized by the affirmative vote of a majority of the entire Board of Directors of the Corporation. The Corporation does not have any members.

IN WITNESS WHEREOF, the undersigned has subscribed this Restated Certificate of Incorporation this 7th day of April, 2022.

A handwritten signature in cursive script, appearing to read "Justin P. Runke".

Justin P. Runke, Authorized Person

FILING RECEIPT

=====

ENTITY NAME: CAYUGA HEALTH SYSTEM, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: C COUNTY: TOMP

=====

FILED:09/22/2014 DURATION:PERPETUAL CASH#:140922000770 FILM #:140922000710

FILER:

EXIST DATE

HARRIS BEACH PLLC
99 GARNSEY ROAD

09/22/2014

PITTSFORD, NY 14534

ADDRESS FOR PROCESS:

PRESIDENT AND CHIEF EXECUTIVE OFFICER
CAYUGA HEALTH SYSTEM, INC.
ITHACA, NY 14850

101 DATES DRIVE

REGISTERED AGENT:



=====

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL SERVICE CODE: AL

FEEES 85.00

FILING 75.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 0.00

PAYMENTS 85.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 85.00
 OPAL 0.00
REFUND 0.00

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 23, 2014.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

140922000

710

CERTIFICATE OF INCORPORATION
OF
CAYUGA HEALTH SYSTEM, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the Corporation is: Cayuga Health System, Inc.
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
3. The Corporation is organized and shall be operated exclusively in connection with and for the benefit of Cayuga Medical Center at Ithaca, Inc. and Schuyler Hospital, Inc. (each an "Affiliate" and together, the "Affiliates"), both of which are New York not-for-profit corporations. To this end, the Corporation shall:
 - (a) Support and assist the Affiliates by coordinating and monitoring their missions, objectives, activities and resources with each other and with those of regional health care providers, health care agencies and related organizations, all in furtherance of the purposes of promoting effective and economical health care services, in Tompkins County, Schuyler County and the surrounding areas of New York State;
 - (b) To solicit, collect, accept, hold, invest, reinvest and administer gifts, bequests, devises, grants, contributions, donations and property of any sort, without limitation as to amount or value, for the foregoing purposes;
 - (c) To expend, contribute, disburse, donate or otherwise use its assets and/or income for the foregoing purposes; and
 - (d) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person.
4. In furtherance of its corporate purposes, in addition to the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, the Corporation shall have the following rights, all of which have been delegated to the Corporation in, and shall be exercised by the Corporation in the manner provided for by, the certificate of incorporation and/or bylaws of each Affiliate:

(a) to elect or appoint, fix the number of, and remove, with cause, the directors of each Affiliate;

(b) to appoint each Affiliate's Chief Campus Executive subject to the approval of the Affiliate's Board and the President and Chief Executive Officer of the Corporation; provided, however, that the authority for removing an Affiliate's Chief Campus Executive shall rest solely with the Corporation's President and Chief Executive Officer following consultation with the applicable Affiliate's Board;

(c) to amend or repeal the certificate of incorporation and bylaws or other organizational and governing documents and to adopt any new or restated certificate of incorporation or bylaws or other organizational and governing documents of any Affiliate;

(d) to approve the capital and operating budgets of each Affiliate with input from the respective Boards of each Affiliate;

(e) to approve any strategic plans for each Affiliate with input from the respective Boards of each Affiliate;

(f) to approve the sale, acquisition, lease, transfer, or pledge of real or personal property of any Affiliate with an aggregate fair market value in excess of an amount set from time to time by the Board of the Corporation;

(g) to approve the incurrence of any indebtedness, including lease obligations, or the granting of any mortgage or guaranty by an Affiliate in excess of an amount set from time to time by the Board of the Corporation, excluding (i) vendor debt incurred in the normal course of business and (ii) debt consistent with approved budgets of the Affiliate;

(h) to approve any plan of merger, consolidation, acquisition, dissolution, joint venture, or liquidation of any Affiliate;

(i) to approve or consent to the filing by an Affiliate of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or an assignment for the benefit of creditors;

(j) to approve of development of new clinical programs, including clinical or programmatic affiliations, or any termination of existing clinical programs by an Affiliate; provided, however, that any termination of existing clinical programs of any Affiliate, including the defunding of a clinical program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;

(k) to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health as required;

(l) to approve entry into any hospital management services agreements by an Affiliate that would require the approval of the New York State Department of Health;

(m) to approve the retention of outside general legal counsel by an Affiliate;

(n) to approve allocation of costs to an Affiliate and the formula for such allocation;

(o) to approve settlements of litigation by an Affiliate when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to an Affiliate;

(p) to approve all business or marketing plans for each Affiliate with input from that Affiliate's Board;

(q) to approve of any modification of existing clinical programs by an Affiliate;

(r) to approve any integrated services arrangements that would obligate the Affiliates to participate on an ongoing basis, excluding the selection of outside general legal counsel; and

(s) to address any other policy, business, or clinical issue that may arise from time-to-time that is not under the authority of the Affiliate's board or management.

For the purposes of the foregoing, the Corporation shall have: (i) the power to initiate and direct action by an Affiliate without a prior recommendation of that Affiliate's board; and (ii) the power to accept, reject, or modify the recommendation of any Affiliate's board and to direct action by that Affiliate or to return the matter to the Affiliate's Board for reconsideration, with reasons for rejection and/or suggested changes. No Affiliate's board nor any Affiliate's officers shall implement any action requiring the approval of the corporation until the Corporation shall have exercised its reserved powers and communicated its determinations in writing to the applicable Affiliate's Board.

5. Notwithstanding anything to the contrary in this certificate of incorporation, in addition to any other powers retained by the Board of each Affiliate, the Board of each Affiliate shall retain the power and authority to do any and all of the following:

(a) to review and recommend candidates for that Affiliate's President and Chief Campus Executive to the Corporation;

- (b) to approve that Affiliate's President and Chief Campus Executive;
- (c) to provide input during performance review process for that Affiliate's President and Chief Campus Executive; provided, however, that this retained power does not limit in any way the sole authority granted to the President and Chief Executive Officer of the Corporation to remove the President and Chief Campus Executive of any Affiliate;
- (d) to credential members of that Affiliate's medical staff;
- (e) to oversee clinical quality and patient care service standards of that Affiliate;
- (f) to participate in the development of and provide recommendations for strategic planning priorities, annual operating budgets, and capital budgets for that Affiliate with and to the Corporation;
- (g) to recommend to the Governance and Nominating Committee of the Corporation candidates for nomination for election to the Board of that Affiliate;
- (h) to identify and recommend approaches to address local community health priorities to the Corporation;
- (i) to liaise with, maintain, and support the foundation established to support that Affiliate and related philanthropic initiatives;
- (j) to develop and execute communications and outreach initiatives to the local communities served by that Affiliate in accordance with communications guidelines established from time to time by the Corporation;
- (k) to exercise all other authorities and to undertake all responsibilities for which not-for-profit hospital boards in New York are legally required to assume, including but not necessarily limited to, compliance oversight and meeting all other hospital and other related health care provider licensing requirements;
- (l) to undertake any other duties or initiatives that the Corporation delegates to the board of that Affiliate; and
- (m) to exercise all authorities retained by that Affiliate in furtherance of the mission and vision adopted from time to time by the Corporation.

6. The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

7. Notwithstanding any other provision of these articles, the Corporation is organized and operated exclusively for charitable 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 an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of said Code.

8. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporate assets on dissolution of the Corporation.

9. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

10. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. If none of the Corporation's not-for-profit affiliates shall so qualify at the time of dissolution, the distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational 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, as amended, subject to the approval of the Attorney General of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by or is under common control with the Corporation, and any other not-for-profit organization that expressly and specifically includes among its purposes the benefit or support of the Corporation.

11. In any taxable year in which the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the Corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of said Code;

(c) not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of said Code;

(d) not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of said Code; and

(e) not make any expenditures that are subject to tax under Section 4945 of said Code.

12. The number of directors constituting the entire board of directors of the Corporation shall not be less than fifteen (15) nor more than twenty-five (25). Subject to such limitation, the number shall be fixed by the bylaws of the Corporation pursuant to Section 702 of the Not-for-Profit Corporation Law. The names and addresses of the initial directors are:

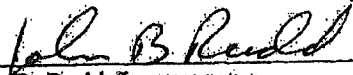
<u>Name</u>	<u>Address</u>
Fred Tanneberger	4829 Birge Road Burdett, NY 14818
Ben Saks, D.O.	3669 Rose Lane Burdett, NY 14818
Rick Weakland	4375 Merrill Road Burdett, NY 14818
Suzanne Blowers	PO Box 416 Montour Falls, NY 14865
Kyle Tuttle	3167 Abrams Road Watkins Glen, NY 14891
Larry Baum	101 Maplewood Road Ithaca, NY 14850
Greg Hartz	49 Blackchin Boulevard Ithaca, NY 14850
Jean McPheeters	276 Bailor Road PO Box 93 Brooktondale, NY 14817
James Brown	684 Remington Road Ithaca, NY 14850
Noel Desch	132 Updike Road Ithaca, NY 14850

Tom LiVigne	33 Grandview Drive Ithaca, NY 14850
John Neuman	1077 Taughannock Boulevard Ithaca, NY 14850
Gary Ferguson	1485 Mecklenburg Road Ithaca, NY 14850
Paula Younger	7 John Street Eastern Heights Ithaca, NY 14850
Sami Hussein, M.D.	28 Wedgewood Drive Ithaca, NY 14850
Pater Bardaglio	9748 Arden Road Trumansburg, NY 14886
John Rudd	22 Rosina Drive Ithaca, NY 14850

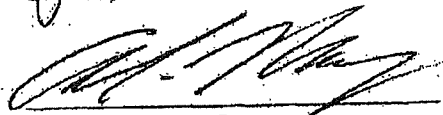
13. The office of the Corporation is to be located in the County of Tompkins, State of New York.

14. The Secretary of State is hereby designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is: President and Chief Executive Officer, Cayuga Health System, Inc., 101 Dates Drive, Ithaca, New York 14850.

IN WITNESS WHEREOF, the subscriber has signed this Certificate of Incorporation this
13th day of June, 2014.



John B. Rudd, Incorporator
101 Dates Drive
Ithaca, NY 14850



Andrew Manzer, Incorporator
220 Steuben Street
Montour Falls, NY 14865



State of New York
Andrew Cuomo
Governor



Office of Mental Health
44 Holland Avenue
Albany, New York 12229
www.omh.ny.gov

September 9, 2014

John Rudd
President and CEO
Cayuga Health System, Inc.
101 Dates Drive
Ithaca, NY 14850-1383

Re: Prior Approval Review (PAR) Application
Project #: CON # HD 141168
Cayuga Medical Center at Ithaca Psychiatric Unit
OC #: 7247020
Application to: Change sponsor of a psychiatric inpatient unit of a general hospital

Dear Mr. Rudd:

The New York State Office of Mental Health is issuing final approval of the above-referenced PAR application to change the sponsor of the Cayuga Medical Center at Ithaca Psychiatric Unit.

The PAR application was reviewed in accordance with Sections 31.22 and 31.23 of the Mental Hygiene Law and Parts 551 and 580 of Title 14 of the Codes, Rules and Regulations of the State of New York (NYCRR).

An Operating Certificate in the Hospitals for the Mentally Ill Class is issued to Cayuga Health System, Inc. and Cayuga Medical Center at Ithaca, Inc. in accordance with Article 31 of the Mental Hygiene Law and Title 14, Part 580 of the Codes, Rules and Regulations of the State of New York (NYCRR). This certification, effective on September 9, 2014 and renewable on November 30, 2015, authorizes the operation of a psychiatric inpatient unit of a general hospital program as follows:

Program: Cayuga Medical Center at Ithaca Psychiatric Unit
Address: 101 Dates Drive
Ithaca, NY 14850
Certificate #: 7247020
Capacity: Twenty six (26) beds

In accordance with 14 NYCRR 580.4(d) the operating certificate shall be framed and displayed in a conspicuous place, readily accessible to the public. In accordance with 14 NYCRR 580.4(e), your acknowledgment of the receipt of the enclosed certificate and return of the previously issued operating certificate to the above address are requested.

By copy of this letter, we are notifying the NYS Department of Health of our approval.

An addendum to the Operating Certificate is enclosed. As a condition of approval, you must submit a response to this office and the Western New York Field Office, 737 Delaware Avenue, Suite 200, Buffalo, NY 14209.



If you have any questions regarding this approval, please contact Rudy Arias at (518) 474-5570.

Sincerely,



Keith J. McCarthy

Director

Bureau of Inspection and Certification

KJM:RAA
Enclosures

cc: Susan Romanczuk Ph.D.
Mary Hart, DOH
Sheila E. Shea, MHLS
Lawrence Austin
Susan Knapik/FILE

cc: Christina Doherty-Smith
Carol Sabatino
Cathy Grover
Janet Foster

Concert7247020

New York State
Office of Mental Health



Operating Certificate

Hospitals for the Mentally Ill Class

I do hereby certify that pursuant to authority conferred by law this operating certificate has been issued on September 9, 2014


to: Cayuga Health System/ Cayuga Medical Center at Ithaca, Inc.
to operate a: Psychiatric Inpatient Unit of a General Hospital
to be known as: Cayuga Medical Center at Ithaca Psychiatric Unit
located at: 101 Dates Drive
Ithaca, NY 14850

in accordance with the rules and regulations made and established by the Commissioner as the statute provides.

Authorized by this operating certificate:

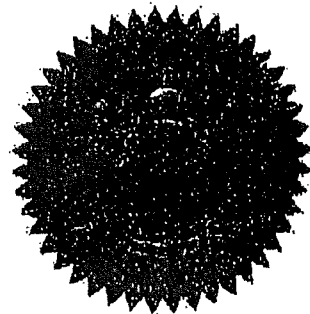
Inpatient Treatment Program for Adolescents & Adults
with a certified capacity of Twenty-six (26) beds:
Adult Unit - Twenty (20)
Adolescent Unit - Six (6)

In witness whereof, I have hereunto set my hand on September 9, 2014



Keith J. McCarthy, Director
Bureau of Inspection and Certification

Renewal Date: November 30, 2015
Operating Certificate Number: 7247020



Addendum to Operating Certificate
CON # HD 141168
Cayuga Medical Center at Ithaca Psychiatric Unit
7247020

Please respond to the following:

- 1. Upon the filing of the documents of incorporation for Cayuga Health System, Inc. approved by the New York State Department of Health, please submit a copy of the incorporation documents and filing receipt to this office. Please also note that should there be a need for the sponsor and/or facilities to operate OMH licensed outpatient programs, the documents of incorporation, as currently drafted, would need to be amended to include the following language under its purposes:**

"To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate."

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

(518) 402-0964
PHHPC@health.state.ny.us

September 15, 2014

Liebe Meier Swain
Strategic Planning Manager
Cayuga Medical Center at Ithaca
101 Dates Drive
Ithaca, New York 14850

Re: Application No. 141168 E Cayuga Health System (Tompkins County)

Dear Mr. Meier-Swain:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Cayuga Health System is APPROVED. The Public Health and Health Planning Council considered this application at its meeting of August 7, 2014. You are expected to comply with the conditions listed on the August 14, 2014 letter from Keith W. Servis.

Public Health and Health Planning Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payer reimbursement guidelines.

To complete the requirements for certification approval, please contact the Operating Certificate Unit, Bureau of Project Management, Empire State Plaza, Corning Tower, Room 1842, Albany, New York, 12237 or (518) 402-0911, within 30 days of receipt of this letter.

Certificate of Need staff are interested in your experience with the CON process for this project. Please take a short survey to let us know how we are doing. Thank you.

The link to the survey is below:

<https://www.surveymonkey.com/s/9Y6258P>

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

/cl

CERTIFICATE OF RESERVATION

=====

ENTITY NAME: CAYUGA HEALTH SYSTEM, INC.

DOCUMENT TYPE: RESERVATION (NEW) (DOM. NFP)

=====

FILED: 07/29/2014 DURATION: 09/29/2014 CASH#: 140729000680 FILM #: 140729000638

FILER:

CARLA PENAZEK
HARRIS BEACH PLLC
99 GARNSEY ROAD
PITTSFORD, NY 14534

ADDRESS FOR PROCESS:

REGISTERED AGENT:



** SUBMIT RECEIPT WHEN FILING CERTIFICATE **
APPLICANT NAME : CARLA PENAZEK

=====

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL	SERVICE CODE: AL
FEEs	35.00
FILING	10.00
TAX	0.00
CERT	0.00
COPIES	0.00
HANDLING	25.00
PAYMENTS	35.00
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	35.00
OPAL	0.00
REFUND	0.00

54630

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DOS-1025 (04/2007)

710

CERTIFICATE OF INCORPORATION
OF
CAYUGA HEALTH SYSTEM, INC.

Under Section 402 of the Not-for-Profit Corporation Law

FILED

2014 SEP 22 PM 4:46

**LCS
DRAWDOWN - #AL**

ICC
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 22 2014

TAXS _____
BY: MM

HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, New York 14534

Customer Ref.# 55549

770

Facility Id. 977
 Certificate No. S401001H

Certified Beds - Total 212
 Coronary Care 8
 Intensive Care 8
 Maternity 20
 Medical / Surgical 127
 Neonatal Intensive Care 8
 Physical Medicine and Rehabilitation 15
 Psychiatric 26

Effective Date: 01/06/2017
 Expiration Date: NONE

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital

Cayuga Medical Center at Ithaca
 101 Dates Drive
 Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc
 Co-Operator: Cayuga Health System, Inc.
 Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Ambulance	Ambulatory Surgery - Multi Specialty	Audiology O/P	Cardiac Catheterization - Adult Diagnostic	Cardiac Catheterization - Electrophysiology (EP)
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Certified Mental Health Services O/P	Clinical Laboratory Service	Coronary Care	Dental O/P
Emergency Department	Intensive Care	Level III Perinatal Care	Linear Accelerator	Lithotripsy
Maternity	Medical Services - Other Medical Specialties	Medical Services - Primary Care	Medical Social Services	Medical/Surgical
Neonatal Intensive Care	Nuclear Medicine - Diagnostic	Physical Medical Rehabilitation	Psychiatric	Radiology - Diagnostic
Radiology-Therapeutic	Renal Dialysis - Acute	Respiratory Care	Stroke Center	Swing Bed Program
Therapy - Occupational O/P	Therapy - Physical O/P	Therapy - Speech Language Pathology	Therapy - Vocational Rehabilitation O/P	

Other Authorized Locations

Hospital Extension Clinic Cayuga Endoscopy Center 2435 N. Triphammer Road Ithaca, New York 14850	Cayuga Medical Center Imaging Services 16 Brenwood Drive Suite B Ithaca, New York 14850	Cayuga Medical Center Physical Therapy 10 Breatwood Drive Ithaca, New York 14850	Convenient Care Center 10 Arrowwood Drive Ithaca, New York 14850
Cortland Convenient Care 1129 Commons Ave Cortland, New York 13045	Island Health Center 310 Taughannock Blvd Ithaca, New York 14850		

Scott W. Shaw

20170109 Deputy Director Office of Primary Care and Health Systems Management

Howard Zucker, M.D.

Commissioner

This certificate must be conspicuously displayed on the premises.

Facility Id.
Certificate No.

7670
5401001H

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Cortland Convenient Care

1129 Commons Ave

Cortland, New York 13045

Operator: Cayuga Medical Center at Ithaca, Inc
Co-Operator: Cayuga Health System, Inc.
Operator Class: Voluntary Not for Profit Corporation

It has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Clinical Laboratory Service O/P

Medical Services - Other Medical Specialties Medical Services - Primary Care

Effective Date:
Expiration Date:

06/01/2015
NONE

20150910

Deputy Director Office of Primary Care and
Health Systems Management



This certificate must be conspicuously displayed on the premises.

Howard Zucker, M.D.

Commissioner

Facility Id.
Certificate No.

4333
5401001H

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Convenient Care Center

10 Arrowwood Drive

Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc
Co-Operator: Cayuga Health System, Inc.
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Ambulatory Surgery - Multi Specialty

Clinical Laboratory Service O/P

Lithotripsy O/P

Medical Services - Other Medical Specialties

Medical Services - Primary Care

Therapy - Occupational O/P

Therapy - Physical O/P

Therapy - Respiratory O/P

Effective Date: 06/01/2015
Expiration Date: NONE

Scott W. Jensen

20150910 Deputy Director Office of Primary Care and Health Systems Management

Howard Zucker, M.D.

Commissioner

This certificate must be conspicuously displayed on the premises.

Facility Id.
Certificate No.

9023
5401001H

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Island Health Center
310 Taughannock Blvd
Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc
Co-Operator: Cayuga Health System, Inc.
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Medical Services - Other Medical
Specialties

Medical Services - Primary Care

Therapy - Physical O/P

Effective Date:
Expiration Date:

06/01/2015
NONE

Scott W. Shuman

20150910 Deputy Director Office of Primary Care and
Health Systems Management

Howard Zucker, M.D.

Commissioner

This certificate must be conspicuously displayed on the premises.

Facility Id.
Certificate No.

9063
5401001H

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Cayuga Medical Center Physical Therapy

10 Brentwood Drive

Ithaca, New York 14850

Operator:

Cayuga Medical Center at Ithaca, Inc

Co-Operator:

Cayuga Health System, Inc.

Operator Class:

Voluntary Not for Profit Corporation

It has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Medical Services - Primary Care

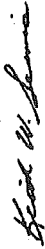
Therapy - Physical O/P

Effective Date:
Expiration Date:

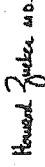
10/01/2014
NONE

20150910

Deputy Director Office of Primary Care and
Health Systems Management



This certificate must be conspicuously displayed on the premises.



Commissioner

Facility Id.
Certificate No.

9777
5401001H

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE
Hospital Extension Clinic

Cayuga Medical Center Imaging Services
16 Brentwood Drive Suite B
Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc
Co-Operator: Cayuga Health System, Inc
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Medical Services - Other Medical
Specialties

Effective Date: 01/20/2015
Expiration Date: NONE

Scott W. Lewis

Deputy Director Office of Primary Care and
Health Systems Management

Howard Zucker, M.D.

Commissioner

This certificate must be conspicuously displayed on the premises.

20150910

Facility Id.
Certificate No.

9794
5401001H

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Cayuga Endoscopy Center
2435 N. Tripphammer Road
Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc
Co-Operator: Cayuga Health System, Inc.
Operator Class: Voluntary Not for Profit Corporation

It has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Ambulatory Surgery - Single Specialty -
Gastroenterology

Effective Date: 04/03/2015
Expiration Date: NONE

Scott W. Jensen

20150910 Deputy Director Office of Primary Care and
Health Systems Management

Howard Zucker, M.D.

Commissioner

This certificate must be conspicuously displayed on the premises.

Facility Id. 858
Certificate No. 4823700C

Certified Beds - Total 25
Special Use 25

State of New York Department of Health Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Primary Care Hospital - Critical Access Hospital

Schuyler Hospital
220 Steuben Street
Montour Falls, New York 14865

Operator: Schuyler Hospital, Inc.
Co-Operator: Cayuga Health System, Inc.
Operator Class: Voluntary Not for Profit Corporation

Effective Date: 06/01/2015
Expiration Date: NONE

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Ambulatory Surgery - Multi Specialty	Audiology O/P	Clinic Part Time Services	Dental O/P	Emergency Department
Medical Services - Other Medical Specialties	Medical Services - Primary Care	Medical Social Services	Podiatry O/P	Swing Bed Program
Therapy - Occupational O/P	Therapy - Physical O/P	Therapy - Speech Language Pathology O/P		

Other Authorized Locations

Primary Care Hospital - Critical Access Hospital Extension Clinic
 Montour Falls Extension Clinic
 401 West Main Street
 Montour Falls, New York 14865

Primary Care Extension Clinic
 2138 West Seneca Street
 Ovid, New York 14521

September Hill Birth Center
 250 Steuben St
 Montour Falls, New York 14865

Scott W. Lewis

20150910 Deputy Director Office of Primary Care and Health Systems Management

Howard Zucker M.D.

Commissioner

This certificate must be conspicuously displayed on the premises.



Project # 201222-E
True North III DC, LLC d/b/a Grand Boulevard Dialysis

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Suffolk
Acknowledged: June 30, 2020

Executive Summary

Description

True North DC III, LLC, an existing New York limited liability company, requests approval to be established as the new operator of Grand Boulevard Dialysis (Grand Boulevard). Grand Boulevard is a 20-station, Article 28 chronic renal dialysis center located at 860 Grand Boulevard, Deer Park, NY (Suffolk County). After the change of ownership True North III DC, LLC will continue to operate the facility under the name Grand Boulevard Dialysis.

The membership of True North III DC, LLC is shown below:

Table with 2 columns: Members, %
True North DC Holding, LLC 80%
Knickerbocker Dialysis Inc. (51%)
North Shore-LIJ Renal Ventures, LLC (49%)
Long Island Hemodialysis, LLC 10%
Sushil Sagar, M.D. (100%)
Comprehensive Dialysis Care, LLC 10%
Victor Chang, M.D. (100%)
Total 100%

Sushil Sagar, M.D. will serve as the Medical Director. The transfer and backup hospital remains Southside Hospital, which is approximately 5.1 miles and 14 minutes away.

Northwell Health, Inc. is the parent and sole member of North Shore-LIJ Renal Ventures, LLC, and DaVita Inc. is the parent of Knickerbocker. True North III DC, LLC will enter into a Consulting and Administrative Service

Agreement with DaVita Inc. to provide accounting, billing, funds management, and other consulting and administrative services. True North III will assume the lease for the facility's site. Otherwise, operations at the facility are expected to continue generally as they have.

OPCHSM Recommendation

Contingent Approval

Need Summary

After the change of ownership, True North III will continue to operate the facility under the name Grand Boulevard Dialysis with no change in stations or services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. True North III DC, LLC will purchase the operating interests of Grand Boulevard via a Contribution and Purchase Agreement (CAPA) for \$5,360,000 to be funded by the proposed members' contribution of \$1,608,000 (contributed in proportion to the members' percent ownership interest) and BOKF National Bank for a loan of \$3,752,000. Executed on October 25, 2019, the loan is classified as a revolving installment loan structured to cover a drawdown period until November 1, 2022, and

has a maturity date of August 1, 2024. Once the drawdown expires, the loan then becomes a fixed-rate loan described in the CAPA agreement. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,261,174	\$4,055,121
Expenses	<u>1,666,875</u>	<u>3,257,181</u>
Net Income	(\$405,811)	\$ 797,940

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 Administrative Services Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Articles of Organization for True North DC Holding, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Articles of Organization for Long Island Hemodialysis, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement for Long Island Hemodialysis, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Articles of Organization for Comprehensive Dialysis Care, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Operating Agreement for Comprehensive Dialysis Care, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the amended and restated Certificate of Incorporation for Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Bylaws of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of a list of the Board of Directors of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Incorporation for DaVita of New York, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Bylaws for DaVita of New York, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of the Certificate of Incorporation for DaVita, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the Bylaws for DaVita, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of an amended and executed Articles of Organization for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of an amended and executed Operating Agreement for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Certificate of Incorporation for North Shore University Hospital, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Bylaws for North Shore University Hospital, acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Bylaws for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
20. Submission of a photocopy of the Certificate of Incorporation for Northwell Health, Inc., acceptable to the Department. [CSL]
21. Submission of a photocopy of the Bylaws for Northwell Health, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

June 2, 2022

Need and Program Analysis

Program Description

Proposed Operator	True North III DC, LLC
Doing Business As	Grand Boulevard Dialysis
Site Address	860 Grand Boulevard Deer Park, NY 11729 (Suffolk County)
Shift/Hours/Schedule	Initially, Monday-Wednesday-Friday 7:30 AM to 4 PM then Monday through Saturday 5 AM to 3 PM
Approved Services	Renal Dialysis-Chronic O/P
Staffing (1st Year/3rd Year)	6.1 FTES/12.9 FTES
Medical Director(s)	Sushil Sagar, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Southside Hospital 5.1 mile/14 minutes

There will be no programmatic changes or changes in stations or services as a result of this proposed change in ownership.

The membership of True North III DC, LLC is listed below.

Member Name/Title	Membership Interest
True North DC Holding, LLC	80%
Knickerbocker Dialysis, Inc (51%) <i>Marcus Catsouphus, Treasurer</i> <i>Nicholas Gossman, Secretary</i> <i>Caroline Pierce, Assistant Secretary</i> <i>John Winslet, Vice President</i>	
North Shore-LIJ Renal Ventures (49%) <i>Michele Cusack, Treasurer & CFO</i>	
Long Island Hemodialysis, LLC	10%
<i>Sushil Sagar, M.D. (100%)</i>	
Comprehensive Dialysis, LLC	10%
<i>Victor Chang, M.D. (100%)</i>	
Total	100.0%

Knickerbocker is the licensed operator of 61 chronic renal dialysis facilities in New York State. DaVita of New York, Inc. (DVANY), which is owned by DaVita Inc., is the sole owner of the shares of stock of Knickerbocker Dialysis, Inc. DVANY is also the owner of Huntington Artificial Kidney Center, Ltd, Empire State DC, Inc. and Liberty RC, Inc., which are also operators of chronic renal dialysis facilities in New York State.

Knickerbocker Dialysis, Inc. is also a member of:

- Enchanted Dialysis, LLC, the operator of Newark Wayne Dialysis Center.
- True North Dialysis Center, LLC, the operator of Port Washington Dialysis Center (PFI 9926).
- True North DC Holding, LLC, which is one of the members of True North VI DC, LLC, the proposed operator of Peconic Bay Dialysis (pending approval and completion of Project No. 211244-E).
- Bandelier Dialysis, LLC, the proposed operator of Bronxchester Home Training (pending approval and completion of Project No. 202170-E).
- Empress Dialysis, LLC, the proposed operator of Brooklyn Community Dialysis (pending approval and completion of Project No. 211108-E).
- Latsch Dialysis, LLC, the proposed operator of Westchester Home Training (pending approval and completion of Project No. 211109-E).

DaVita is the operator of more than 2,600 dialysis facilities in the United States.

Character and Competence

True North III DC, LLC is managed by its members, through a Board of Members comprised of managers appointed by the members of True North III. The officers of True North III are as follows:

<u>Name</u>	<u>Title</u>
Luann D. Regensburg	President
Matt H. Henn	Vice President
Steven N. Fishbane M.D.	Chief Medical Officer
John D. Winslet	Treasurer
Laurence A. Kraemer	Secretary
Samuel Wey	Assistant Secretary
Adam Boll	Manager
John McGovern	Manager
Victor Chang, M.D.	Manager
Sushil Sagar, M.D.	Manager

Sushil Sagar, M.D. received his medical degree from H.P. Medical College in Shimla and completed his residency at Nassau University Medical Center. He completed a Nephrology Fellowship at Long Island Jewish Medical Center and is board-certified in Internal Medicine and a sub-specialty in Nephrology. Dr. Sagar will continue to serve as the facility's Medical Director.

Roger Blumencranz is a licensed Insurance Broker and has been the Managing Director of BWD Group, LLC for approximately 61 years, where he spearheaded the formation of the Commerce and Industry Council, devoted to raising funds for then North Shore-LIJ Health System. He is a member of the Northwell Health Inc, Board of Trustees since 1980 where he chairs the Education and Insurance Committees and serves on the Finance Committee and the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell. Roger Blumencranz is also a member of the John T. Mather Board of Directors.

Adam Boll is the Vice President of Northwell Health Operations where he is responsible for the office held and tenure in the health care industry contributing to the competency for management for the subject facility. In addition to this role, he is also a Physician's Assistant. Adam Boll discloses ownership interest/office held in the following health care facilities:

<i>Port Washington Dialysis Center</i>	<i>03/2016-present</i>
<i>Floral Park Home Dialysis</i>	<i>03/2016-present</i>
<i>Oyster Bay Dialysis Center</i>	<i>11/2016-present</i>
<i>Julia and Israel Waldbaum Dialysis</i>	<i>11/2016-present</i>
<i>Huntington on Broadway Dialysis</i>	<i>11/2016-present</i>
<i>East Islip Dialysis</i>	<i>07/2017-present</i>
<i>Digestive Health Center of Huntington</i>	<i>03/2017-present</i>
<i>Endoscopy Center of Long Island</i>	<i>03/2013-present</i>
<i>Garden City Surgi Center</i>	<i>12/2014-present</i>

<i>Greenwich Village Ambulatory Surgery Center</i>	<i>12/2017-present</i>
<i>Melville ASC</i>	<i>10/2017-present</i>
<i>South Shore Surgery Center</i>	<i>02/2016-present</i>
<i>Suffolk Surgery Center</i>	<i>10/2016-present</i>
<i>Surgical Specialty Center of Westchester</i>	<i>09/2017-present</i>

Marcus Catsouphe is the Division Vice President of DaVita Inc where he led more than 35 outpatient dialysis centers across multiple states to generate \$300M in revenue and \$60M EBITDA; executed turnaround and improved divisional performance to the top 25% within one year, improved and sustained a ranking of fifth or better; hired/promoted new team leadership; improved relative competitive growth from losing to outperforming competitive and industry benchmarks. He was the previous Regional Operations Director where he managed a \$125M revenue outpatient dialysis business with responsibility for financial, operational, and clinical performance of 200 person team across more than 10 locations; led quality improvement initiatives that reversed declining clinical metrics to the top 25% of the company; mapped the business process for the new center development, leading to the development of a national project management system, and; identified opportunities to expand the business, negotiated multiparty joint venture partnerships, led acquisition diligence and post-merger integration.

Michael Caridi is the President of VG Enterprises Management Group. He is a member of the Northwell Health Inc. Board of Trustees and is the chairman of the Staten Island regional Executive Council, tasked with ensuring Staten Island University Hospital meets the healthcare needs of the borough. He previously served as vice-chair of the council.

Victor Chang M.D. is a Nephrologist currently employed at Long Island Kidney Associates PC. He received his medical degree from St. George's University School of Medicine in Grenada and completed his residency in Internal Medicine and Nephrology at the State University of New York Stony Brook. He is board-certified in Internal Medicine with a sub-certification in Nephrology.

Mark Claster has been the President of Carl Marks & Co., Inc. for 40 years. He currently has an advisory role in the firm's investment businesses and previously served as General Partner of the firm's two small business investment companies. He also serves as the President of Carl Marks Securities LLC and Co-manager of Carl Marks Advisors and is the Director of the Board of Staten Island University Hospital. Previously, he was the Chairman of the Board of Trustees of Northwell Health where he still serves on various health system committees and is Chair of the nominating and Governance Committee. Mark Claster is also a Member of the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell.

Gary A. Cohen retired in 2014, and before that he was employed at IBM for over 35 years as a General Manager in the Global Communications Sector. In that role, he was responsible for the company's business with telecommunications, media, entertainment, energy, and utilities clients around the world. He led the strategic direction of the company's growth and the global alliance organization. Later, he was the Vice President of Strategy, developing the pervasive computing division.

Margaret Crotty is the President and CEO of John Snow, Inc., and JSI Research and Training Institute, a global public health consulting firm. Previously, she served as the CEO of Partnership with Children and previously ran Save the Children. She was President and CEO of AFS-USA Intercultural Programs and served as Executive Director of a workforce development agency. She is a member of the Northwell Health Inc, Board of Trustees, the Open Medical Institute, the Inner-City Scholarship Fund, Access Health, the Human Services Council, and Seachange Capital. Margaret Crotty is also a member of the Young Presidents Organization and the Council on Foreign Relations and serves as the Program Leader for Princeton AlumniCorps' Emerging Leader Program.

Michele Cusack is the Senior Vice President and Chief Financial Officer for Northwell Health, Inc where her responsibilities include managing the system's day to financial operations. She discloses offices held in the following healthcare facilities:

<i>Glen Cove Hospital</i>	<i>10/10/2017-present</i>
<i>Greenwich Village Ambulatory Surgery Center</i>	<i>12/29/2017-present</i>
<i>Hospice Care Network</i>	<i>10/10/2017-present</i>
<i>Huntington Hospital</i>	<i>01/23/2018-present</i>
<i>Lenox Hill Hospital</i>	<i>10/10/2017-present</i>
<i>Long Island Jewish Medical Center</i>	<i>10/10/2017-present</i>
<i>North Shore University Hospital</i>	<i>10/10/2017-present</i>
<i>Plainview Hospital</i>	<i>10/10/2017-present</i>
<i>Southside Hospital</i>	<i>10/10/2017-present</i>
<i>Staten Island University Hospital</i>	<i>10/10/2017-present</i>
<i>The Long Island Home</i>	<i>10/10/2017-present</i>

Michael Dowling is the President and CEO of Northwell Health, Inc. Prior to becoming President and CEO, he was the health system's Executive Vice President and Chief Operating Officer. He leads a clinical, academic, and research enterprise with a workforce of more than 75,000 and annual revenue of \$14 billion.

Michael Epstein is a licensed Attorney and is a Partner at Weil Gotshal & Manges, LLP where he practices intellectual property law as a leading attorney in the field. He has been a Board Member of Northwell's Feinstein Institute for Medical Research since 2002 and was elected as the Chair of Northwell's Board of Trustees in 2019.

Michael Feldman is a retired Attorney. He was a Faculty Member of the New York University Tisch Center, teaching courses in legal issues. He was a former chair of the Advisory Board of the NYU Tisch Center. He is a member of the Board of Trustees and Executive Committee, Chair of the Audit and Corporate Compliance Committee, and a member of the Legal Affairs Committee of Northwell Health Inc. He is also a co-chair and a member of the Board of Directors of the New York Hospitality Council, Inc.

Michael Fisch is the Managing Director and CEO of American Securities, LLC and the Managing Member of the general partners of the American Securities Partners' series of private equity funds. He serves as an investment committee member of the funds managed by Ascribe Capital, an affiliate of American securities. Michael Fisch is a member of the Northwell Health Inc. Board of Trustees.

Steven Fishbane, M.D. is a licensed Nephrologist who is employed at Northwell Health. He is the Director of Clinical Trials and is a Professor of Medicine at Donald and Barbara Zucker School of Medicine at Hofstra/Northwell. He was previously employed at Winthrop University Hospital. He received his medical degree from Albert Einstein College of Medicine, completed his residency in Internal Medicine at Montefiore Medical Center, and his Fellowship in Nephrology at Montefiore Medical Center. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Fishbane is a member of the Northwell Health Inc, Board of Trustees.

Loyd Friedlander is a licensed Attorney and Insurance Agent. He is the Managing Director of Acrisure, LLC and was previously employed at Loyd Keith Friedlander, LLC as the Owner and Shareholder. He is Chairman of the Board of Hunting Hospital and is a member of the Northwell Health Inc, Board of Trustees.

Clifford H. Friedman is the Chairman and CEO of ShareNett, a private/closed co-investment platform bringing curated investment opportunities across multiple asset classes, geographies, and industries. He has a demonstrated history in private equity venture capital, investment management, financial, and various senior operational roles with a focus on media, communication, technology, and fintech. He is also the Founder and CIO of Cold Springs Ventures. He is skilled in value creation through a systematic process of working with management teams, board members, and customers, and creating and negotiating strategic partnerships globally to drive revenue and profitability.

Catherine Foster is a Faculty Employee at Columbia University. She is a member of the Northwell Health, Inc Board of Trustees and is vice-chair of the quality and credentials committee. She was previously employed as a Senior Executive at American Express where she led marketing, business development, and strategic planning for various divisions.

Lloyd Goldman is the President of BLDG Management Co. He serves on many boards and committees, including being elected president of the American Associates Ben-Gurion University of the Negev, trustee of the Joyce and Irving Goldman Family Foundation. He is also involved in the Conservation International, The Education Alliance, and We Are a Family Foundation. Lloyd Goldman serves as a trustee on the North Shore-LIJ Health System and is a member of the Northwell Health Inc, Board of Trustees.

Richard Goldstein is a licensed Attorney. He is the Chairman and CEO of AEP Capital, LLC, a specialized investment and merchant banking firm. He was previously an attorney at the firm of Paul, Weiss, Rifkind, Wharton, and Garrison, specializing in mergers and acquisitions. He served as Chairman of North Shore-LIJ Health System and its constituent hospitals, including North Shore Hospital, Long Island Jewish Hospital, Lenox Hill Hospital, and Staten Island Hospital. Richard Goldstein is a Trustee Emeritus of the Queens College Foundation.

Nicholas Gossman is the Group Finance Director for DaVita, Inc., where he is a key contributor to monthly financial reviews with senior leadership, provides root cause analysis and recommendations on action plans; coordinates the budget process; does joint venture reporting, and communicates with joint venture partners on financial performance. He builds models and assesses new projects; partners with Division Vice Presidents to analyze, review, and recommend overall divisional growth strategy; directly supervises five Finance Managers and one Financial Analyst, and has active roles in national projects for DaVita, including DeNovo Labor benchmarking, Report Rationalization, and Field Reporting Initiatives.

Alan Greene is the Managing Director of Neuberger Berman, LLC where he is a portfolio manager for mid and all-cap strategies. He has experience in investment research, account analysis, and portfolio management. He is currently on the Board of Trustees of Northwell Health, Inc. and also serves as Trustee of Eisenhower Medical Center and Trustee Emeritus of Colgate University.

Paul Guenther is retired since April 1995. He is a member of the Northwell Health, Inc Board of Trustees and joined the Campaign Executive Committee. He endorses physician recruitment to enhance the faculty and has many longstanding relationships with physicians in the community. He co-established the Paul and Diane Guenther Chair in Cardiology to support the future of teaching, healing, and research at Lenox Hill Hospital.

Elizabeth M. Hammack is the CEO of Goldman Sachs Bank where she is responsible for overseeing the global activities of the bank, the day-to-day management, developing strategy, and ensuring the bank is operated in a safe and sound manner. She has additional reporting oversight to the executive officers and is a member of the Goldman Sachs Bank USA Board of Directors. She is also a Chairperson of the GS Bank Management Committee and is also Global Treasurer of Group Inc. where she provides global management of Group Inc.'s liquidity, funding, balance sheet, and capital, including liability planning, execution, financial resource allocation, asset-liability management, and liquidity portfolio management. Previously, she was the Global Head of Short-Term Macro trading and Global Repo Trading at Goldman Sachs and Global Head of Short-Term Interest Rate Products at Goldman Sachs.

Douglas Hammond is the Chairman and CEO of NFP Corp., where he has held multiple roles including President, COO, Head of Strategy, Executive Vice President, General Counsel, Senior Vice President, and Deputy General Counsel. Previously, he was the Manager and CEO of NFP Ventures, LLC. He is a licensed attorney who was employed at Leboeuf, Lamb, Green & MacRae, a Corporate Insurance, Regulatory, and Mergers and Acquisitions attorney, and at the Gulf Group in various legal and business positions. He is a member of Northwell Health, Inc., an Advisor on the Madison Dearborn Capital Partners Financial Services Industry Group; a Trustee on the Fairfield University Board of

Trustees; a Board Member of the Nassau County Police Department Foundation; a former Board Member of the Kestra Financial Board of Directors, and a Trustee of the Committee for Economic Development.

Matt Henn is the Division Vice President of DaVita, Inc where his responsibilities include leading DaVita's largest division and 1800 staff members; driving treatment growth rates at three times the market average; designing, piloting, and scaling a new method of staff selection, hiring, and on-boarding that is the enterprise standard; increasing staff retention and satisfaction; and partnering with corporate teams to drive field implementation of new initiatives for growth, HR, finance, and compliance.

Saul Katz is a Certified Public Accountant and Real Estate Broker. He is the President and COO of Sterling Equities for over 48 years and is a member of the Northwell Health Inc. Board of Trustees. He played a role in the 1993 merging of Glen Cove Hospital, where he served as a trustee for 12 years, to North Shore Health System. He became the Chairman of the North Shore Health System and precipitated the 1997 merger with Long Island Jewish Medical Center. He worked with both entities to create the system originally known as North Shore-Long Island Jewish Health System and became the first Chairman of the combined board.

Laurence Kraemer is a licensed Attorney. He is the Senior Vice President, Chief General Counsel, and Assistant Secretary of Northwell Health Inc where he supervises a team of more than 40 lawyers and 50 compliance professionals who provide legal services and compliance oversight to all Northwell hospitals, clinical entities, and joint ventures. He is the vice-chair of strategic planning of the AHLA Tax and Finance Group and is a member of Northwell Health Inc, Board of Trustees.

Cary Kravet is a retired licensed Attorney. He is the President of Kravet, Inc, a decorative home furnishing business. He has been an active trustee of the North Shore-LIJ Health System for approximately 21 years where he served on the Executive Committee and chaired the Committee on Quality. He also serves on the Board of Directors of Hunting Hospital and is a member of the Northwell Health Inc., Board of Trustees.

Jeffrey Lane is a partner at York Bridge Wealth Partners where he offers investment advisory services, financial planning, and portfolio and investment management services. Previously, he was the Chairman of the Board at Lebenthal Holdings, LLC, the Chairman of Casa Columbia, and Chief Executive of Modern Bank. He is a member of the Northwell Health Inc, Board of Trustees.

Seth Lipsay is a licensed Attorney. He is the CEO of Galaxy Realty Capital, LLC and was previously employed as the Executive Managing Director of New World Realty Advisors LLC, where he continues to serve as an Officer for the company. He was previously a Member of the Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell Health. Seth Lipsay is a Trustee of the Board of Directors at the Feinstein Institute for Medical Research.

Richard Mack is the CEO and Co-founder of Mack Real Estate Group where he is responsible for raising capital, decisions involving business management, and investment decisions. He was the previous CEO-North America of Area Property Partners. He is a board member of Northwell Health, Inc.

William Mack is a licensed Real Estate Broker. He is the Chairman and Founder of Mack Real Estate Group where he manages institutional, high net worth, and Mack family capital by making debt and equity investments in real estate and real estate-related securities through several business lines. He specializes in domestic and international real estate investment, development, and financing opportunities with a view toward long-term performance and hands-on management. He serves as Chairman of the Board of Directors of Mack-Cali Realty Corporation and is Chairman of the Board of the Solomon R. Guggenheim Foundation. William Mack is Vice-Chair of Northwell Health, Inc., where he serves on the Executive Committee and is also a Trustee and Member of the Executive Committee of Lenox Hill Hospital.

F.J. McCarthy is a licensed Real Estate Broker. He is the President of Site Selection Advisory Group, Inc., a real estate development and investment company. He is a trustee of Catholic Charities for the Diocese of Rockville Center, where he served on the Executive Committee, Governance and Leadership Committee, and was the Chairman of the Development Committee. F.J. McCarthy is a Trustee of Northwell Health Inc., where he serves on the Executive Committee, Governance Committee, and Quality Committee, and is Co-Chair of the Committee on Community and Public Health. He is also Chairman of the Southside Hospital of the Northwell Health System.

John McGovern is the Senior Vice President of Finance of Northwell Health, Inc where he is responsible for the office held and tenure in the health care industry contributing to the competency for management for the subject facility. John McGovern discloses the following membership interest/offices held in the following healthcare facilities:

<i>Port Washington Dialysis Center</i>	<i>03/2016-present</i>
<i>Floral Park Home Dialysis</i>	<i>03/2016-present</i>
<i>Oyster Bay Dialysis Center</i>	<i>11/2016-present</i>
<i>Julia and Israel Waldbaum Dialysis</i>	<i>11/2016-present</i>
<i>Huntington on Broadway Dialysis</i>	<i>11/2016-present</i>
<i>East Islip Dialysis</i>	<i>07/2017-present</i>
<i>Digestive Health Center of Huntington</i>	<i>03/2017-present</i>
<i>Endoscopy Center of Long Island</i>	<i>03/2013-present</i>
<i>Garden City Surgi Center</i>	<i>12/2014-present</i>
<i>Greenwich Village Ambulatory Surgery Center</i>	<i>12/2017-present</i>
<i>Melville ASC</i>	<i>10/2017-present</i>
<i>South Shore Surgery Center</i>	<i>02/2016-present</i>
<i>Suffolk Surgery Center</i>	<i>10/2016-present</i>
<i>Surgical Specialty Center of Westchester</i>	<i>09/2017-present</i>

Ralph Nappi is the Executive Vice Chairman of Northwell Health, Inc. Previously, he was the President of North Shore LIJ Health System where he worked to cultivate private charitable support for programs, endowments, and facilities. He was also responsible for establishing charitable partnerships with the region's leading individuals, corporations, and foundations.

Sharon Patterson is a Broker and Office Manager at Tuccio Real Estate where she deals in residential and commercial real estate with knowledge in TDR and Pine Barrens Credit transfers. She has experience as a former member of the Riverhead Zoning Board of Appeals and was the previous Vice-Chair for the Peconic Bay Medical Center. Sharon Patterson is Board Chair for the Peconic Bay Medical Center and also serves on the Board of Trustees of the East End Health Alliance.

Caroline Pierce is the Division Vice President of DaVita, Inc. and was the previous Regional Operations Director there. She is responsible for the general management and oversight of operations within the assigned division and provides strategic and tactical leadership, along with counsel, directing field management personnel to ensure safe, efficient, therapeutic, and ethical patient care. Additionally, she is responsible for identifying and developing strategic growth opportunities, monitoring division performance, and working with the Senior Vice President to develop competitive strategies consistent with DaVita's mission and values. She was the previous Facility Administrator of DaVita, Inc., a Math Teacher, and the Director of Growth in the Phoenix Charter Academy Network.

Lewis Ranieri is the Chairman and Senior Managing Partner of Ranieri Partners Management LLC where he is an investment manager focused on financial services opportunities. He has served on the Board of Directors of Computer Associates, overseeing the restructuring and turnaround during that period, and has served on the National Association of Home Builders Mortgage Roundtable. He is the Chair of the Feinstein Institute for Medical Research for Northwell Health.

Scott Rechler is the Chairman and CEO of RXR Realty LLC. He is an owner, manager, and developer of real estate in the New York Tri-State area. In 2011, he was appointed by the Governor to the Board of Commissioners of the Port Authority of New York and New Jersey. In 2017, the Governor nominated him

to the Metropolitan Transportation Authority. Scott Rechler is the Chairman of the Regional Plan Association and on the Board of Governors of the Real Estate Board of New York and serves as a Board Member of the Feinstein Institute for Medical Research for Northwell Health.

Luann Regensburg is the Divisional Vice President of DaVita Health Care Partners where she is responsible for all dialysis operations, clinical outcomes, hospital and physician partnerships, strategy, and growth for the division. She is the previous Regional Operations Director where she oversaw the overall management of 11 facilities serving 1,400 patients on Long Island, Queens, and Manhattan, providing leadership and direction to assure safe, efficient, therapeutic, and ethical patient care. She led a team of 11 direct reports and 300 plus teammates across multiple disciplines. She oversaw project management, planning, design, and construction of new clinics, including clinic expansion/renovation and participation in due diligence on a potential acquisition. She is the previous Director of Clinical Support Services of Mercy Medical Center for over 20 years.

Robert Rosenthal is the Chairman and CEO of First Long Island Investors, LLC, a boutique wealth management firm, where he takes a long-term view to preserving and growing the wealth of clients. He employs a prudent asset allocation approach and develops customized plans for each client after understanding their individual goals, needs, and risk tolerance. He was named a Trustee of the Board of Directors of Northwell Health Inc. and serves as Treasurer and a member of the Executive Committee. He is also Co-Chairman of the Investment Committee and Chairman of the Advisory Board for North Shore University Hospital.

Barry Rubenstein is the Managing Partner of Wheatley Partners, a venture capital firm. He has been active on the Northwell Health Inc., Board of Trustees' Finance, Compensation, and Executive Committees. He was a leader in the New Century Campaign Committee and sits on the Strategic Planning Committee. He was previously a Board Member of the Feinstein Institutes for Medical Research.

Michael Schwartz is a licensed Attorney. He is the Founder and Managing Member of the SoCali Partners investment firm and was the Co-founder and Co-managing Partner of Trilynx Partners, LLC. He is an investment professional with financial acumen and an investing skill set. He was previously employed as a Partner and Portfolio Manager at Taconic Capital Advisor as an investment professional. He is a member of the Northwell Health Inc, Board of Trustees, and the Board of Trustees for Northern Westchester Hospital.

Michael Smith is the Chairman and CEO of Freeport LNG Development, L.P., which is one of four liquification and export terminals in the U.S. Previously, he was a Trustee for the National Jewish Health and a member of the Board of Directors. He is a member of the Northwell Health Inc., Board of Trustees.

Leo Sternlicht is the President of Riverhead Motors, Inc. where his responsibilities include all the financial, managerial, and legal aspects of the company. Previously, he was the Director of John T. Mather Memorial Hospital and is the current Board Chair.

Kenneth Tabar is a licensed Attorney. He is a Partner in the Pillsbury, Winthrop, Shaw, Pittman, LLP where his areas of practice in Litigation, Employment Law, Products Liability and Mass Torts Defense, Trade Secrets Counseling and Litigation, and Financial Services Litigation. He is the Chairman of the Board of Phelps Hospital and is a Member of Northwell Health Inc, Board of Trustees on the Legal Affairs Committee, and Committee on Quality.

Benjamin B. Tucker is the former First Deputy Commissioner of the New York City Police Department where he was directly responsible for training, support services, and risk management. He was also responsible for prosecuting misconduct and adjudicating alleged misconduct and made recommendations to the Police Commissioner for review relative to the efficacy of officer conduct and/or ancillary action pertaining to tactics, training, policy, and community relations. Previously, he was the liaison at the Office of the New York State Attorney General and Deputy Commissioner of Training. He was responsible for developing and shaping the vision for progressive and innovative, research-based education and training for the members of the NYPD. He directed the development of recruit training, field training, firearms and

tactics, in-service, specialized, and leadership training for the members of the department. He was also the former Deputy Director of the Office of State, Local, & Tribal Affairs where he was responsible for overseeing a \$500 million budget. He directed and leveraged programs that advanced the President's National Drug Control Strategy, and coordinated domestic federal, state, local, and tribal law enforcement agencies in their efforts to dismantle and disrupt drug trafficking and money laundering organizations.

Emmett Walker, Jr. is the CEO of Walker SCM LLC where he is involved in global transportation, logistics optimization, and supply chain integration. He is a Member of the Board of Southside Hospital and Northwell's Community Outreach and Health Education Council

Samuel T. Wey is the Senior Director of Licensure and Certification at DaVita Inc. where he is responsible for overseeing all operational lanes of licensure and certification to ensure timely submission of initial and revalidation applications. He maintains oversight of and developed process excellence initiatives, developing, and leveraging. He collaborates with multiple Medicaid agencies, resulting in \$3.5M of Accounts Receivable dollars that had been deemed uncollectable and revamped processes across the licensure and certification department to bring uniformity to the processes, while also mitigating risk. He is the former Director of Licensure and Certification where he determined and set target goals for the Maintenance Lane and developed and implemented new processes to achieve key metrics set forth by CMS. He served as a high-level expert in all regulatory matters related to ESR licensure and certification. Previously, he was also the Manager of Acquisitions & Integrations where he participated in setting appropriate target goals for the acquisitions department and monitored results, tracked metrics, and performed a cost-benefit analysis to drive decision making. He developed, coordinated, and implemented successful integration plans with regional and divisional teams. In addition, he was also previously the Facility Administrator where he managed the second largest clinic in middle Tennessee with an annual budget of \$26M.

John Winstel is the current Chief Accounting Officer of DaVita, Inc. and was the previous Group Vice President. His responsibilities include all accounting and financial reporting to ensure timely and accurate reporting of accounting and financial information, in compliance with U.S. reporting requirements. He interfaces directly with senior management team members, board of directors, and advisors to ensure the integrity of all financial information. He was previously employed as the Vice President/Corporate Controller of Cooper Tire & Rubber Company.

Donald Zucker is a licensed Real Estate Broker. He is the Chairman of the Board of Donald Zucker Company, where he oversees the company that builds, buys, and manages apartment and retail properties. He is a member of the Northwell Health Inc., Board of Trustees and the Campaign Executive Committee.

Roy Zuckerberg retired as the Senior Director of the Goldman Sachs Group, Inc in 2000. He is a member of the Northwell Health Inc, Board of Trustees and was a former Chairman of the North Shore-LIJ Board. He played an integral role in the merger of Long Island Jewish Medical Center with North Shore University Hospital.

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

A Character and Competence Review was conducted on the members of True North DC Holding, LLC, Long Island Hemodialysis, North Shore-LIJ Renal Ventures, LLC, Knickerbocker Dialysis, Inc, and Comprehensive Dialysis, LLC.

Compliance with Applicable Codes, Rules, and Regulations

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

This Record of Legal Actions is submitted by DaVita Inc., as consultant for the applicant, True North III DC, LLC d/b/a Grand Boulevard Dialysis, and sets forth: (i) ongoing inquiries, investigations, and administrative actions by federal and state government agencies and certain civil proceedings, (ii) ongoing shareholder and derivative actions, and (iii) investigations and proceedings, including settlements and licensure actions, which have been resolved over the last ten years. Note: References to the "Company" or "DaVita" mean DaVita Inc. and its subsidiaries. References to "DMG" mean DaVita Medical Group, formerly known as HealthCare Partners (HCP), a former subsidiary of DaVita.

Ongoing Inquiries, Investigations and Administrative Actions, and Certain Civil Proceedings

2016 U.S. Attorney Texas Investigation: In February 2016, DaVita Rx, LLC (DaVita Rx), a wholly-owned subsidiary of the Company, received a Civil Investigative Demand (CID) from the U.S. Attorney's Office, Northern District of Texas. The government is conducting a federal False Claims Act (FCA) investigation concerning allegations that DaVita Rx presented or caused to be presented false claims for payment to the government for prescription medications, as well as an investigation into the Company's relationships with pharmaceutical manufacturers. The CID covers the period from January 1, 2006 through the present. In connection with the Company's ongoing efforts working with the government, the Company learned that a qui tam complaint had been filed covering some of the issues in the CID and practices that had been identified by the Company in a self-disclosure that it filed with the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) on February 20, 2016. In December 2017, the Company finalized and executed a settlement agreement with the government and relators in the qui tam matter that included total monetary consideration of \$63,700,000, of which \$41,500,000 was an incremental cash payment and \$22,200,000 was for amounts previously refunded, and all of which was previously accrued. The government's investigation into certain of the Company's relationships with pharmaceutical manufacturers is ongoing, and in July 2018, the OIG served the Company with a subpoena seeking additional documents and information relating to those relationships. The Company is continuing to cooperate with the government in this investigation.

Jeff Kent v. St. Elizabeth Medical Center et al.: In January 2017, a putative class action lawsuit was filed in Kentucky Commonwealth court against the Company, a local medical center, a nephrology group, and an individual physician, alleging that the defendants conspired to provide medically unnecessary dialysis services to the plaintiff and other putative class members. In February and March 2017, the defendants filed a motion to dismiss the class action claims. The court subsequently denied the motion. In January 2019, the defendants filed a motion to dismiss most of Kent's claims on the ground that after his death, his estate failed to "revive" the claims under Kentucky law. The court granted that motion on May 17, 2019. On July 17, 2019, the Company filed a motion to dismiss Kent's class action claims. On September 17, 2019, the court granted that motion, dismissing all of Kent's class action claims except for wrongful death claims. The Company disputes these allegations and continues to defend it accordingly.

2017 U.S. Attorney Massachusetts Investigation: In January 2017, the Company was served with an administrative subpoena for records by the U.S. Attorney's Office, District of Massachusetts, relating to an investigation into possible health care offenses. The subpoena covered the period from January 1, 2007 to the present and sought documents relevant to charitable patient assistance organizations, particularly the American Kidney Fund (AKF), including documents related to efforts to provide patients with information concerning the availability of charitable assistance. On July 23, 2019, the Department of Justice notified the court of its decision not to intervene in the matter of US. ex rel. David Gonzalez v. DaVita Healthcare Partners, et al. The Court unsealed the complaint by order entered on August 1, 2019. The Department of Justice has confirmed that the complaint, which alleges violations of the federal False Claims Act and various state false claims acts, was the basis of its investigation initiated in January 2017. The Company has not been served with the complaint.

2017 U.S. Attorney Colorado Investigation: In November 2017, the U.S. Attorney's Office, District of Colorado informed the Company of an investigation it was conducting into possible federal healthcare offenses involving DaVita Kidney Care, as well as several of the Company's wholly-owned subsidiaries. In addition to DaVita Kidney Care, the matter currently includes an investigation into DaVita Rx, DaVita Laboratory Services, Inc. (DaVita Labs), and RMS Lifeline, Inc. (Lifeline). In each of August 2018 and May 2019, the Company received Civil Investigative Demands from the U.S. Attorney's Office relating to this investigation, which were issued pursuant to the FCA. The Company is continuing to cooperate with the government in this investigation.

2018 U.S. Attorney Florida Investigation: In March 2018, DaVita Labs received two CIDs from the U.S. Attorney's Office, Middle District of Florida that suggest it is investigating whether DaVita Labs submitted false claims for blood, urine, and fecal testing when there was insufficient test validation or stability studies to ensure accurate results, in violation of the FCA. In October 2018, DaVita Labs received a subpoena from the OIG in connection with this matter requesting certain patient records linked to clinical laboratory tests. On September 30, 2019, the U.S. Attorney's Office notified the U.S. District Court, Middle District of Florida, of its decision not to elect to intervene at this time in the matter of US. ex rel. Lorne Holland, et al. v. DaVita Healthcare Partners, Inc., et al. The court then unsealed the complaint, which alleges violations of the FCA, by order dated the same day. In January 2020, the private party relators served the Company and DaVita Labs with an amended complaint. On February 24, 2020, the Company and DaVita Labs filed a motion to dismiss the amended complaint. The Company and DaVita Labs dispute these allegations and intend to defend this action accordingly.

2019 Blue Cross & Blue Shield of Florida, Inc. and Health Options, Inc. v. DaVita Inc. In May of 2019, Blue Cross of Florida filed suit against DaVita in Federal Court alleging a variety of claims, including breach of contract, tortious interference with contract, fraud, negligent misrepresentation, civil conspiracy, violation of Florida's Unfair and Deceptive Trade Practices Act, and unjust enrichment. The claims primarily concern charitable premium assistance. On November 7, 2019, the Company moved for summary judgment on all claims. The Company disputes the allegations and continues to defend the case accordingly.

2019 Keystone Health Plan East, Inc. et. al v. DaVita Inc. In November 2019 several subsidiaries of Independence Blue Cross filed suit against DaVita in Federal Court in Pennsylvania alleging a variety of claims, including breach of contract, fraud, negligent misrepresentation, tortious interference with contract, and unjust enrichment. These claims primarily concern charitable premium assistance. The Company disputes the allegations and intends to defend the case accordingly.

2020 U.S. Attorney New Jersey Investigation: In March 2020, the U.S. Attorney's Office, District of New Jersey served the Company with a subpoena and a CID relating to an investigation being conducted by that office and the U.S. Attorney's Office, Eastern District of Pennsylvania. The subpoena and CID request information on several topics, including certain of the Company's joint venture arrangements with physicians and physician groups, medical director agreements, and compliance with the Corporate Integrity Agreement. The Company is cooperating with the government in this investigation.

2020 California Department of Insurance Investigation: In April 2020, the California Department of Insurance sent the Company an Investigative Subpoena relating to an investigation being conducted by that office. The subpoena requests information on a number of topics, including but not limited to the Company's communications with patients about insurance plans and financial assistance from the AKF, analyses of the potential impact of patients' decisions to change insurance providers, and documents relating to donations or contributions to the AKF. The Company is cooperating with the California Department of Insurance in this investigation.

Shareholder and Derivative Claims

Peace Officers' Annuity and Benefit Fund of Georgia Securities Class Action Civil Suit: In February 2017, the Peace Officers' Annuity and Benefit Fund of Georgia filed a putative federal securities class action complaint in the U.S. District Court for the District of Colorado against the Company and certain executives generally alleging that they violated federal securities laws concerning the Company's financial results and revenue derived from patients who received charitable premium assistance from an industry-

funded non-profit organization. The complaint further alleges that the process by which patients obtained commercial insurance and received charitable premium assistance was improper and "created a false impression of DaVita's business and operational status and future growth prospects." In March 2018, the Company and various individual defendants filed a motion to dismiss. On March 28, 2019, the U.S. District Court for the District of Colorado denied the motion to dismiss. The Company answered on May 28, 2019. On January 31, 2020, the plaintiffs filed a motion for class certification that the Company intends to oppose. The Company disputes these allegations and intends to defend it accordingly.

In re DaVita Inc. Stockholder Derivative Litigation: In August 2017, the U.S. District Court for the District of Delaware consolidated three previously disclosed shareholder derivative lawsuits: the Blackburn Shareholder action, the Gabilondo Shareholder action, and the City of Warren Police and Fire Retirement System Shareholder action. The complaint generally alleges breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, corporate waste, and misrepresentations and/or failures to disclose certain information in violation of the federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize the Company's profits. In December 2017, the Company filed a motion to dismiss and a motion to stay the proceedings in the alternative. On April 25, 2019, the court denied the Company's motion to dismiss. The Company answered the complaint on May 28, 2019. The Company disputes these allegations and intends to defend it accordingly.

Resolved Matters

2011 U.S. Attorney Medicaid Investigation: In 2011, the Company received an administrative subpoena from the OIG and a request for documents from the U.S. Attorney's Office for the Eastern District of New York related to payments for infusion drugs covered by Medicaid composite payments for dialysis. The Company cooperated with the government, produced the requested documents, and in March 2016, finalized and executed settlement agreements with the State of New York and the U.S. Department of Justice (DOJ), including a settlement payment of an immaterial amount.

2014 OIG Medicaid Program Integrity Audit: Following a review of claims for Medicaid reimbursement at 19 DaVita dialysis facilities, the Agency for Health Care Administration, through its OIG Medicaid Program Integrity office, made a preliminary determination that the Company was overpaid for claims that in whole or in part should have been billed to the Nursing Home Division Waiver Program rather than Medicaid Fee-For-Service. Without waiving its right to contest future requests for repayment, the Company refunded the Agency \$267,287.93.

Settlement and Corporate Integrity Agreement. In October 2014, DaVita entered into a Settlement Agreement with the U.S. Department of Justice and a CIA with the OIG to resolve all allegations arising under the complaint *United States ex rel. David Barbeta v. DaVita, Inc. et al.*, No. 09-cv- 02175-WJM KMT (D. Colo.). *2014 Indiana Attorney General Medicaid Fraud Control Unit Demand Letter:* In July 2014, the Indiana Attorney General's Medicaid Fraud Control Unit requested, and in October 2014 DaVita refunded \$712.66 to the Indiana Medicaid program in relation to dialysis services provided by a DaVita nurse to a Medicaid recipient for three days while the nurse was temporarily unlicensed

Vainer Private Civil Suit: In 2008, the OIG issued a subpoena for documents relating to the pharmaceutical products Zemplar, Hectorol, Venofer, Ferrlecit, and erythropoietin, as well as other related matters, as a result of a civil complaint filed by relators Daniel Barbir and Dr. Alon Vainer pursuant to the qui tam provisions of the federal FCA. The relators alleged that the Company's drug administration practices for the Company's dialysis operations for Vitamin D and iron agents fraudulently created unnecessary waste, which was billed to and paid for by the government. In June 2015, the Company finalized the terms of a settlement with plaintiffs, including a settlement amount of \$450 million and attorney fees and other costs of \$45 million.

2015 U.S. Attorney Transportation Investigation: Between 2015 and 2016, the Company received ten administrative subpoenas (each for one set of patient medical records) at ten different dialysis centers in southern California. In 2017, a qui tam complaint was served on the Company in the U.S. District Court for the Central District of California related to an investigation concerning the medical necessity of patient transportation, which was the basis for the subpoenas. The DOJ declined to intervene, and the court

ultimately granted the Company's motion to dismiss both the original Complaint and the plaintiff's Amended Complaint. In July 2017, the plaintiff declined to proceed further and filed a notice of dismissal.

2015 OIG Medicare Advantage Civil Investigation: In March 2015, JSA HealthCare Corporation (JSA), a subsidiary of DMG, received a subpoena from the OIG requesting documents and information related to certain MA plans for which JSA provided services, and seeking information regarding JSA's communications about patient diagnoses as they related to certain MA plans generally, and more specifically as related to two Florida physicians with whom JSA previously contracted. In addition, in June 2015, the Company received a civil subpoena from the OIG seeking production of a wide range of documents relating to the Company's and its subsidiaries (including DMG and its subsidiary JSA) provision of services to MA plans and related patient diagnosis coding and risk adjustment submissions and payments, including information relating to patient diagnosis coding practices for a number of conditions, including potentially improper historical coding for a particular condition. With respect to that condition, the guidance related to that coding issue was discontinued following the Company's November 1, 2012 acquisition of HCP, and the Company notified CMS in April 2015 of the coding practice that may have been problematic, some of which were the subject of the Swoben Private Civil Suit, discussed below. On September 28, 2018, the Company reached a settlement with the DOJ and agreed to pay \$270 million. In connection with the Company's acquisition of HCP, the Company had escrowed a portion of the purchase price to secure its indemnification rights, and the \$270 million settlement was paid with these escrowed funds.

2015 U.S. Department of Justice Vascular Access Investigation and Related Qui Tam Litigation: In 2015, Lifeline, a wholly-owned subsidiary of the Company, received a CID from the DOJ related to two Florida vascular access centers that the Company acquired in 2012. The DOJ investigation was initiated pursuant to a qui tam complaint that alleged violations of the FCA as a result of claims submitted to the government for allegedly medically unnecessary angiograms and angiography procedures performed at the two vascular access centers as well as employment-related claims. The DOJ declined to intervene and in January 2017, the Company finalized and executed a settlement agreement with the relator and the government for an immaterial amount. In April 2017, the court dismissed the case with prejudice. *Swoben Private Civil Suit:* In April 2013, HCP was one of several defendants served with a civil complaint filed by a former employee of SCAN Health Plan alleging violations of the federal False Claim Act (FCA) and the California FCA. In October 2017, James M. Swoben, the relator, filed a Notice of Dismissal of the action as to HCP, and the government consented to the dismissal of the suit without prejudice.

Solari Post-Acquisition Matter: In 2016, HCP Nevada disclosed to the OIG that proper procedures for clinical and eligibility determinations may not have been followed by Las Vegas Solari Hospice (Solari), which HCP Nevada acquired in March 2013 and sold in September 2016. In June 2016, the Company was notified by the OIG that the disclosure submission had been accepted into the OIG's Self Disclosure Protocol. In October 2017, the Company finalized and executed a settlement agreement with the OIG including payment of an immaterial amount.

White, Kathleen, et al. v. DaVita Healthcare Partners, Inc. Civil Action No. 15-cv-2106, U.S. District Court for the District of Colorado: In three consolidated actions (*Menchaca v. DaVita Healthcare Partners, Inc.*, *Saldana v. DaVita Healthcare Partners, Inc.* and *Hardin v. DaVita Healthcare Partners, Inc.*), the plaintiffs alleged wrongful death based on allegations related to Granuflo®, a product used as a component of the dialysis process. The *Menchaca* and *Saldana* actions arose out of the treatment of patients in California, while the *Hardin* action arose out of the treatment of a patient in Illinois. In June 2018, the jury returned a verdict in favor of the plaintiffs, collectively awarding \$85 million in compensatory damages and \$375 million in punitive damages. Judgment on this verdict was not entered, and in November 2018, the parties settled all three actions collectively for \$25.5 million, and all three cases were dismissed with prejudice.

DaVita -- Cielo Vista Dialysis, Sun City Dialysis Center, and Loma Vista Dialysis Center: In August 2018, Medicare revoked the certification of three Texas dialysis centers owned in whole or in part by DaVita (Cielo Vista Dialysis, Sun City Dialysis Center, and Loma Vista Dialysis Center). The owners of the facilities appealed the revocations and on November 28, 2018, Medicare reinstated their certification with no gap in coverage.

DaVita- Southside Dialysis: In September 2018, DaVita, as the majority owner of Southside Dialysis (Texas), received notification that the facility's initial Medicare certification was denied. The denial is under appeal. The clinic was re-surveyed on February 13, 2018, and was certified effective March 29, 2019.

Davita - Brighton Park Dialysis: In September 2018, DaVita, as the majority owner of Brighton Park Dialysis (Illinois), received notification that the facility's initial Medicare certification application was denied. The denial was appealed and following receipt of a final denial determination, a new 855A application was submitted and approved. Brighton Park was certified effective July 17, 2019.

Davita-Estabrook Park Dialysis: In February 2019, DaVita, as the indirect owner of Estabrook Park Dialysis (Wisconsin), received notification that the facility's initial Medicare certification application was denied due to the fact that the clinic's sole patient was hospitalized on the date of the initial survey, making it impossible for a survey to be conducted. A new 855A application was submitted and approved. Estabrook Park was certified effective September 10, 2019.

2017 U.S. Attorney Florida Investigation: In November 2017, the U.S. Attorney's Office, Southern District of Florida informed the Company of an investigation it was conducting into possible federal healthcare offenses involving Lifeline. The U.S. Attorney's Office, Southern District of Florida notified the court on April 4, 2019, of its decision to not intervene in the matter of Gabriel Valle, MD., et al, v. RMS Lifeline, Inc., et al. The complaint then was unsealed in the U.S. District Court, Southern District of Florida by order dated April 5, 2019. The U.S. Attorney's Office confirmed that the complaint, which alleges violations of the FCA, was the basis of its investigation initiated in November 2017. On July 16, 2019, the private party relators filed a Notice of Voluntary Dismissal of the matter, and the court dismissed the lawsuit without prejudice and closed the case.

2020 Medicaid Denial: In February 2020, North Carolina Medicaid issued a not-for-cause denial for an out-of-state enrollment submitted by a wholly-owned subsidiary of DaVita and the owner of Myrtle Beach Dialysis (South Carolina). DaVita re-submitted the application for enrollment, which was approved. Ohio Department of Health Settlement. On March 5, 2020, DaVita reached a settlement with the Ohio Department of Health in connection with a potential licensure revocation of National Trail Dialysis Center, a DaVita facility located in Springfield, OH. As part of the settlement, DaVita made a payment of \$130,000 to the state and agreed to pay for an independent surveyor to monitor the facility over a three-month period.

Northwell Health Legal Disclosures

Northwell Health Care, Inc. ("Northwell") (formerly known as "North Shore-Long Island Jewish Health Care, Inc.") and/or its affiliates and/or its employees, like other large employers in the heavily regulated health care field, has received inquiries from governmental agencies concerning various federal and/or state laws regarding issues involving, among other things, claim submissions to government insurance plans such as Medicare or Medicaid. In many instances, Northwell has been informed that it is viewed by the government as a witness in these investigations. In other instances, the investigations were concluded without any findings against Northwell, its affiliates, and/or its employees. Any remaining closed investigations would have been resolved through settlement, consent decree, or similar mechanisms. With respect to any open investigations, Northwell, its affiliates, and/or their managerial employees have either denied wrongdoing or are in the process of reviewing the relevant issues, and when warranted, submitting a response. Below are examples of such matters.

On or about November 18, 2010, North Shore University Hospital ("NSUH"), the Health System, and certain of their current and former employees received Civil Investigative Demands ("CIDs") issued by the United States Attorney for the Southern District of New York ("USAO/SDNY"). The CIDs sought documents, interviews, and other information relating to a clinical documentation improvement program undertaken by NSUH and certain other Health System hospitals. The matter is now closed.

On or about December 1, 2010, the Health System received a letter from the Civil Division of the United States Department of Justice ("DOJ") alleging that, since 2003, certain Health System hospitals may have submitted claims to Medicare for payment for the implantation of implantable cardioverter defibrillators

("ICD") and related services for which Medicare does not provide coverage, and further alleging potential liability under the federal False Claims Act.

Numerous other hospitals throughout the country received similar inquiries. This matter was resolved in 2016 by a settlement agreement with DOJ, and the matter is now closed. In a press release, DOJ announced that it resolved allegations concerning ICDs with approximately 500 hospitals throughout the country. In or about October 2011, Southside Hospital ("SH") learned that the U.S. Attorney's Office for the Western District of New York ("USAO/WDNY") was conducting a review of inpatient admissions for atherectomy procedures, a minimally invasive surgical method used to treat the peripheral arterial disease of the lower extremities. It is our understanding that similar requests were made of other hospitals at the time. The USAO/WDNY initially requested that SH provide information concerning such procedures (but did not issue a subpoena for such information), and SH cooperated with the request. Since the initial request for information, SH has had no further contact from the USAO/WDNY, and at no time has the USAO/WDNY indicated that it believes SH has any potential liability in this matter.

In June 2012, Staten Island University Hospital ("SIUH") received a subpoena from the OIG and the U.S. Attorney's Office for the Eastern District of New York ("USAO/EDNY") requesting documentation relating to services rendered at SIUH's inpatient specialized bum unit since 2005. The requested documentation was provided in the summer of 2012. In June 2013, the USAO/EDNY contacted SIUH with follow-up questions regarding the material provided, and SIUH provided the requested information. SIUH has had no further contact from the USAO/EDNY regarding this matter, and at no time has the USAO/EDNY indicated that it believes SIUH has any potential liability in this matter.

In July 2012, NSUH received a letter from the Office for Civil Rights ("OCR") of the United States Department of Health and Human Services indicating that it had opened a compliance review of certain incidents of identity theft that were alleged to have occurred at NSUH. In 2016, OCR closed its review by issuing a technical assistance letter and did not impose penalties or other sanctions. In September 2012, a laptop computer containing research data was stolen from the car of an employee of The Feinstein Institute for Medical Research ("The Feinstein Institute"). The Feinstein Institute investigated the theft and reported it to law enforcement authorities. The research participants whose personal information may have been contained on the laptop were notified, and The Feinstein Institute cooperated with authorities concerning the matter. In 2016, this investigation was resolved by agreement with OCR.

In or about August 2015, Northwell received requests for documents from two law enforcement agencies and a court-appointed examiner focusing on gifts made to it by a Long Island-based charitable foundation and its court-appointed receiver. In particular, Northwell received document requests from (1) the New York Attorney General's Office; (2) the USAO/EDNY (issued to an employee); and (3) an examiner appointed by the Surrogate's Court to investigate the receiver's conduct. Northwell cooperated fully in these inquiries and produced documents in response to the requests. Northwell has not received any communication from either of the law enforcement agencies or the court-appointed examiner since 2016.

In November 2015 and in months thereafter, the Northwell responded to various grand jury subpoenas and other information requests issued by the U.S. Attorney's Office for the Southern District of New York seeking, among other records and information, documents relating to cardiac catheterization procedures performed by a non-employed physician who held medical staff privileges at two Northwell Health hospitals. It is our understanding that Northwell and its employees were witnesses in this investigation, and the investigation is now closed.

In September 2015, Staten Island University Hospital ("SIUH") made a voluntary self-disclosure to OIG-HHS and the New York State Office of the Medicaid Inspector General ("OMIG") in which it identified potential overpayments to Medicare and Medicaid relating to a certain type of documentation issues at one of its laboratory patient service centers. SIUH entered into a settlement agreement with OIG-HHS in January 2017 that resolved the OIG-HHS self-disclosure

In April 2017, Northwell made a voluntary self-disclosure to OIG-HHS relating to overpayments that it determined had been received by ten Northwell hospitals relating to certain inpatient percutaneous

vertebral augmentation procedures performed at those hospitals. Northwell entered into a settlement agreement with OIG-HHS in February 2018 that settled the self-disclosure.

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In a Stipulation and Order (S&O) dated November 21, 2016, Long Island Jewish Medical Center was fined \$4,000 based on an infection control investigation. The facility had 21 ORs running. It was observed that in 12 of the ORs a total of 24 staff members were not following accepted standards of practice for Infection Control in the Surgical Area.

In a Stipulation and Order (S&O) dated December 18, 2020; December 31, 2020; January 11, 2021, and February 18, 2021, Lenox Hill Hospital/Northwell Health received notification they did not have adequate stores of PPE required by the Governor's Executive Order.

In a Stipulation and Order (S&O) dated December 18, 2020; December 29, 2020; January 11, 2021, and February 18, 2021, South Shore Hospital/Northwell Health received notification they did not have adequate stores of PPE required by the Governor's Executive Order.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility, which may be found on the Dialysis Facility Compare website as a “Star Rating.” The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has a quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weigh the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

Knickerbocker Dialysis, Inc. operates 61 dialysis centers in New York State. The star ratings for these facilities are shown below:

Facility Name	Address	Star Rating
South Bronx Dialysis Center	1940 Webster Avenue Bronx, NY 10457	***
Richmond Kidney Center	1366 Victory Boulevard Staten Island, NY 10301	***
Catskill Dialysis Center	139 Forestburgh Road Monticello, NY 12701	***
Sheepshead Bay Renal Care Center	26 Brighton 11 th Street Brooklyn, NY 11235	*****
Garden City Dialysis Center	1100 Stewart Avenue Garden City, NY 11530	***
Orchard Park Dialysis Center	3801 Taylor Road Orchard Park, NY 14127	****
Central New York Dialysis Center	910 Erie Boulevard East Syracuse, NY 13210	***
Millennium Dialysis	1408 Ocean Drive Brooklyn, NY 11230	****
Bronx Dialysis Center	1615-1617 Eastchester Road Bronx, NY 10461	****
Riverdale Dialysis Center	170 West 233 rd Street Bronx, NY 10463	****
Bronx River Dialysis	1616 Bronxdale Avenue Bronx, NY 10462	***
Queens Dialysis Center	118-01,05,07A Guy Brewer Boulevard Jamaica, NY 11434	***
Boston Post Road Dialysis Center	4000-4026 Boston Road Bronx, NY 10475	***
Soundview Dialysis Center	1622-24 Bruckner Boulevard Bronx, NY 10473	****
Lynbrook Dialysis Center	147 Scranton Road Lynbrook, NY 11563	****
Long Island Renal Care	3460 Great Neck Road Amityville, NY 11701	***
Queens Village Dialysis Center	222-02 Hempstead Avenue Queens Village, NY 11429	****

Facility Name	Address	Star Rating
Suburban Dialysis Center	705 Maple Road Williamsville, NY 14221	***
Atlas Park Dialysis	80-00 Cooper Avenue Glendale, NY 11385	***
Allerton Dialysis	2554 White Plains Road Bronx, NY 10467	N/A
Oyster Bay Dialysis	17 East Old Country Road Hicksville, NY 11801	****
Long Island City Dialysis	30-46 Northern Boulevard Long Island City, NY 11101	N/A
East Islip Dialysis	200 Carlton Avenue East Islip, NY 11730	****
Crossways Park Dialysis	113 Crossways Park Drive Woodbury, NY 11797	*****
Julia and Israel Waldbaum Dialysis	100 Community Drive Great Neck, NY 11021	*****
Port Washington Dialysis Center	50 Seaview Boulevard Port Washington, NY 11050	*****
Huntington on Broadway Dialysis	256 Broadway Huntington Station, NY 11746	****
Deer Park Dialysis	860 Grand Boulevard Deer Park, NY 11729	N/A
Flatlands Dialysis	1641 East 16 th Street, 5 th Floor Brooklyn, NY 11129	N/A
Longwood Dialysis	931 Bruckner Boulevard Bronx, NY 10459	N/A
Rockland County Dialysis	203 West Route 59 Nanuet, NY 10954	N/A
Downtown Brooklyn Dialysis	133 Mill Street Brooklyn, NY 11231	N/A
Staten Island South Dialysis	30 Sneden Avenue Staten Island, NY 10312	****
Wingate Dialysis	550 Kingston Avenue Brooklyn, NY 11203	N/A
Mount Eden Dialysis	1490 Macombs Road Bronx, NY 10452	N/A
Clearview Dialysis	45-60 Francis-Lewis Boulevard Bayside, NY 11361	****
Laconia Dialysis	3440 Boston Road Bronx, NY 10469	N/A
Sanford Boulevard Dialysis	120 East Sanford Boulevard Mount Vernon, NY 10550	*
Greenpoint Dialysis	146 Meserole Street Brooklyn, NY 11206	N/A
Hutchinson River Dialysis	2331 Eastchester Road Bronx, NY 10469	N/A
Ozone Park Dialysis	100-02 Rockaway Boulevard Ozone Park, NY 11417	**
Westchester Home Training	955 Yonkers Avenue Yonkers, NY 10704	N/A
Brooklyn Community Dialysis	730 64 th Street Brooklyn, NY 11220	N/A

Facility Name	Address	Star Rating
Buffalo Downtown Dialysis	520 Ellicott Street Buffalo, NY 14203	***
Seaway Dialysis	999 East Ridge Road, Suite 11 Rochester, NY 14621	***
Melrose Dialysis	459 East 148 th Street Bronx, NY 10455	**
Jamaica Hillside Dialysis	171-19 Hillside Avenue Jamaica, NY 11423	***
Clinton Hill Dialysis	1275 Bedford Avenue Jamaica, NY 11216	*
Williamsbridge Dialysis Center	3525 White Plains Road, Suite A Bronx, NY 10467	****
Schuyler Dialysis	220 Steuben Street Montour Falls, NY 14865	***
Corning Dialysis	8 W Pulteney Street Suite 101 Corning, NY 14830	*****
Ivy Dialysis	602 Ivy Street Elmira, NY 14905	****
Staten Island Dialysis Center	1139 Hyland Boulevard Staten Island, NY 10305	****
Waters Place Dialysis Center	1733 Eastchester Road Bronx, NY 10461	****
Orange Dialysis Center	100 Crystal Run Road Middletown, NY 10941	****
Jamestown Dialysis Center	207 Foote Avenue Jamestown, NY 14701	*****
Borough Park Dialysis	4102 13 th Avenue Brooklyn, NY 11219	**
NEOMY Dialysis Center	1122 Coney Island Avenue Brooklyn, NY 11230	***
Yonkers Dialysis Center	575 Yonkers Avenue Yonkers, NY 10704	****
Northtowns Dialysis Center	4041 Delaware Avenue Tonawanda, NY 14150	***
Peekskill Cortland Dialysis Center	Pike Place Suite 15 Cortland Manor, NY 10566	****

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). After the change of ownership, True North III will continue to operate the facility under the name Grand Boulevard Dialysis with no change in stations, services, or access.

Financial Analysis

Operating Budget

The applicant has submitted the years one and three operating budget, in 2022 dollars, shown below:

	<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>				
Commercial FFS	\$1,057.81	\$518,328	\$1,099.96	\$1,552,040
Commercial MC	\$ 314.71	\$211,168	\$ 304.98	\$ 665,471
Medicare MC	\$ 295.59	\$535,019	\$ 303.29	\$ 1,806,376
Medicaid MC	\$ 255.21	\$ 63,037	\$ 305.06	\$ 244,661
Less Bad Debt	=	<u>(\$66,378)</u>		<u>(\$213,427)</u>
Total Revenue		\$1,261,174		\$4,055,121
 <u>Expenses</u>				
Operating	\$ 333.64	\$1,073,665	\$ 255.97	\$2,649,581
Capital	<u>\$ 184.34</u>	<u>\$ 593,210</u>	<u>\$ 58.70</u>	<u>\$607,600</u>
Total Expenses	\$ 518.02	\$1,666,985	\$ 314.67	\$3,257,181
 Net Income:		<u>(\$405,811)</u>		<u>\$797,940</u>
 Visits:		3,218		10,351

The following is noted concerning the submitted budget:

- Revenues in the first and third-year budgets are based on the actual rates by the payor currently received by the existing facility with Medicaid based on current reimbursement methodologies, the experience of the proposed provider, and the Medicaid APG rate for renal dialysis.
- Revenues are forecasted based on an increased need for dialysis procedures, physician relationships, and outreach programs that will significantly increase volume. Northwell has also a referral program where they can utilize this facility to absorb some of their patients needing this treatment.
- Expense and utilization assumptions are based on the current experience of the existing dialysis center that started late in November 2019. Utilization growth from years one to three is primarily driven by the Hemodialysis for Medicare and Medicaid payor sources. This facility is relatively new, so the applicant is expecting a start-up period until the intake of patients builds over time. The applicant expects to experience a year one projection for Hemodialysis Medicare of 1,810 and growing to 5,956 by year three. The Hemodialysis Medicaid payor source is expected to grow from 671 in year one to 2,182 by year three. This high level of utilization is expected after implementing an outreach program to reach underserved residents.

Utilization by payor source for years one and three after the ownership change is summarized below:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	15.22%	13.63%
Commercial MC	20.85%	21.08%
Medicare MC	56.25%	57.54%
Medicaid MC	<u>7.68%</u>	<u>7.75%</u>
Total	100%	100%

Contribution and Asset Purchase Agreement (CAPA)

The applicant has submitted an executed CAPA to acquire the operating interests of Grand Boulevard, to be effectuated upon PHHPC approval as shown below.

Date:	October 25, 2019
Seller:	Knickerbocker Dialysis, Inc.
Buyer:	True North DC III, LLC

Asset Acquired:	All assets are free and used in the business without limitation.
Assumption of Liabilities:	All liabilities include past debts and obligations of the past business, lease agreements, capital investments and benefits, and salary expenses.
Purchase Price:	\$5,360,000 Start-up capital expenditures are \$4,075,700 and start-up working capital is \$1,120,758 plus development fees (Professional fees, Legal fees, etc.) of \$163,542 assuming 5% for development fees.
Payment of Purchase Price:	Credit facility from BOKF (Bank) for \$3,752,000 and proposed members' contribution of \$1,608,000 deposited and held in escrow until closing by DaVita, Inc.

Members	Loan*	Equity	Estimated Initial Capital Requirements
True North DC Holdings, LLC	\$3,001,600	\$1,286,400	\$4,288,000
Long Island Hemodialysis, LLC	\$ 375,200	\$ 160,800	\$ 536,000
Comprehensive Dialysis, LLC	\$ 375,200	\$ 160,800	\$ 536,000

*BOKF National Bank's total revolving loan is \$3,752,000. The loan, executed on October 25, 2019, is classified as a revolving to installment loan structured to cover the initial funds needed in the start-up phase with a term limit. The loan term will begin immediately once approved by PHHPC, which will be the drawdown start date and the loan has a drawdown maturity date until November 1, 2022. After this date, no additional drawdowns are permitted and the paydown of the principal begins (installment phase). Interest on the outstanding principal amount for the loan is equal to the greater of LIBOR plus 3%; however, the CAPA agreement does have a provision that an alternative agreed upon rate may be negotiated. The executed agreement shows the loan Swap Obligation maturity date of October 25, 2026, and the payout over 48 months following the conversion. The payout and interest rate will be estimated at that time.

The applicant has provided 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 under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Agreement

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

Premises:	Approximately 7,567 rentable square feet of floor area in a building located at 860 Grand Boulevard Dialysis, Deer Park (Suffolk County).
Lessor:	Stewart Avenue Associates, LLC
Lessee:	Knickerbocker Dialysis, Inc
Term:	180 months renewable (3 additional periods--each period is 5 years)
Rent:	Year 1 (\$0), Year 2 through 5 is \$168,000, Year 6 through 10 is \$184,000, Year 11 through 15 is \$203,280 annually. First Renewal for the next 5 years is \$223,600 annually. The second Renewal for the next 5 years is \$246,000 annually. The third Renewal for the next 5 years is \$270,640 annually.
Provisions:	Tenant's share of real estate taxes, other taxes, assessments, and public charges, insurance, gas, water, and electricity

Luann D. Regensburg, President and a Manager of True North III DC, LLC, Assistant Secretary of Knickerbocker Dialysis, Inc., and Acting Division Vice President of DaVita Inc., submitted an affidavit stating the proposed lease is an arm's length agreement as there is no relationship between landlord and tenant.

Assignment and Assumption of Lease Agreement

The applicant has submitted an executed assignment and assumption of the lease agreement for site control of the center dated October 25, 2019. The terms are summarized below.

Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	True North III DC, LLC

Consulting and Administrative Services Agreement (CASA)

The applicant has submitted an executed CASA, to be effective upon PHHPC approval of the change in ownership. The terms of the agreement are summarized below.

Consultant:	DaVita, Inc.
Licensed Operator:	True North DC Holdings, LLC & North Shore-LIJ Renal Ventures, LLC
Services Provided:	Insurance monitoring, bookkeeping, accounting, taxes, compliance, regulations, and legal actions, government compliance, and other administrative duties.
Term:	5-years with renewal if both parties agree.
Fee:	\$10,000 per annual to be adjusted accordingly and at renewal time.

While DaVita, Inc. will provide all the above services, the licensed operator retains ultimate authority, responsibility, and control for the operations. There is common ownership between the applicant and the CASA provider as shown in BFA Attachment B's post-closing organization chart. 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

There are no project costs associated with this application. True North III DC, LLC will purchase the operating interest through a Contribution and Purchase Agreement (CAPA) for \$5,360,000 to be funded via a \$3,752,000 loan and the proposed members' contribution of \$1,608,000. BOKF National Bank provided a revolving installment loan that was executed on October 25, 2019. The loan is classified as a revolving installment loan the loan term will begin immediately after PHHPC approval, (drawdown start date) and has a drawdown maturity date of November 1, 2022, after which the paydown of the principal begins. Interest on the outstanding principal amount is equal to the greater of LIBOR plus 3%. The loan Swap Obligation according to the executed agreement shows the maturity date of October 25, 2026, and the payout over 48 months following the conversion. The payout and interest rate will be estimated at that time.

The working capital requirement is estimated at \$1,628,591 based on two months of third-year expenses. Working capital will be funded through the capital contributions via an escrow account held by Davita Inc. BFA Attachment A is the Net Worth Statement for Long Island Hemodialysis, LLC and Comprehensive Dialysis, LLC that indicate sufficient funds available for estimated working capital.

The submitted budget projects a net loss of \$405,811 for year one and a net income of \$797,490 during year three. The first-year projected loss will be funded by the ongoing operations of DaVita Inc., the ultimate parent of Knickerbocker Dialysis, Inc.

BFA Attachment C presents the 10-Q Financial Summary of DaVita Inc. for 2020, indicating that the publicly traded corporation has a positive working capital and net asset position and achieved a net income of \$773,642,000 for the period shown. The Internal Balance sheet and Income Statement dated January 1, 2021, through September 30, 2021, indicates a positive working capital and net asset position and net income of \$790,977,000.

BFA Attachment D is Northwell Health, Inc. is the 2019 and 2020 Certified Financial Statements, which show a positive working capital position and positive net asset position for both years. Also, the entity had positive excess of revenues over expenses of \$809,881,000 and \$671,760,000 respectively. The Internal

Financial Statement from (January 1, 2021, through June 30, 2021) indicates a positive working capital and net-asset position and Net Income of \$647,204,000.

BFA Attachment E presents the Pro Forma Balance Sheet of True North DC III, LLC. The pro forma indicates a positive members' equity of \$1,608,000 on the first day of operation.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement for Long Island Hemodialysis, LLC, and Comprehensive Dialysis
BFA Attachment B	Pre and Post Organizational Chart of True North III DC, LLC
BFA Attachment C	Financial Summary DaVita, Inc. (1/1/2020 Audited - Internal 1/1/2021- 9/30/2021)
BFA Attachment D	Northwell Health, Inc. Certified F/S 2019-2020, and Internal 1/1/2021- 6/30/2021 F/S
BFA Attachment E	Pro Forma Balance Sheet for True North DC III, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish True North III DC, LLC as the new operator of the 20-station chronic renal dialysis center located at 860 Grand Boulevard, Deer Park that is currently operated as an extension clinic of Bronx Dialysis Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

201222 E True North III DC, LLC d/b/a Grand Boulevard Dialysis

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an Administrative Services Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Articles of Organization for True North DC Holding, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Articles of Organization for Long Island Hemodialysis, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement for Long Island Hemodialysis, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Articles of Organization for Comprehensive Dialysis Care, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Operating Agreement for Comprehensive Dialysis Care, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the amended and restated Certificate of Incorporation for Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Bylaws of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of a list of the Board of Directors of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Incorporation for DaVita of New York, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Bylaws for DaVita of New York, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of the Certificate of Incorporation for DaVita, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the Bylaws for DaVita, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of an amended and executed Articles of Organization for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of an amended and executed Operating Agreement for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Certificate of Incorporation for North Shore University Hospital, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Bylaws for North Shore University Hospital, acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Bylaws for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
20. Submission of a photocopy of the Certificate of Incorporation for Northwell Health, Inc., acceptable to the Department. [CSL]
21. Submission of a photocopy of the Bylaws for Northwell Health, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 211244-E
True North VI DC, LLC d/b/a Peconic Bay Dialysis

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

Executive Summary

Description

True North VI DC, LLC, an existing New York limited liability company, requests approval to be established as the new operator of Peconic Bay Dialysis Center (Peconic Bay). Peconic Bay is a 13-station, Article 28 chronic renal dialysis diagnostic and treatment center (D&TC) located at 700 Old Country Road, Suite 4, Riverhead (Suffolk County). True North VI intends to continue operating the facility under the name Peconic Bay Dialysis after the change in ownership.

The membership of True North VI DC, LLC, is shown below:

Members	%
True North DC Holding, LLC	90%
<i>Knickerbocker Dialysis Inc. (51%)</i>	
<i>North Shore-LIJ Renal Ventures, LLC (49%)</i>	
Fox Run Holding Company, LLC	10%
<i>Neeru Kumar, M.D. (100%)</i>	
Total	100%

Neeru Kumar, M.D., who is board-certified in Nephrology and Internal Medicine, will serve as the Medical Director. The backup hospital for Peconic Bay Dialysis is and will continue to be Peconic Bay Medical Center, which is located 0.5 miles from the dialysis facility.

Northwell Health, Inc. is the parent and sole member of North Shore-LIJ Renal Ventures, LLC. DaVita Inc. is the parent of Knickerbocker Dialysis, Inc. True North VI DC, LLC will enter into a Consulting and Administrative Agreement with DaVita Inc. to provide accounting, billing,

and other consulting and administrative services. True North VI will assume the lease for the facility's site. Otherwise, operations at the facility are expected to continue generally as they have.

OPCHSM Recommendation

Contingent Approval.

Need Summary

After the change of ownership, True North VI will continue to operate the facility under the name Peconic Bay Dialysis with no change in stations or services.

Program Summary

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

Financial Summary

There are no project costs associated with this application. True North VI DC, LLC will purchase the operating interest via a Contribution and Purchase Agreement (CAPA) for \$4,000,000 to be funded by the proposed members' equity in proportion to the members' percent ownership interest. True North DC Holding, LLC will fund \$3,600,000, and Fox Run Holding Company, LLC will fund \$400,000. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$422,830	\$2,075,197
Expenses	<u>1,087,920</u>	<u>2,015,892</u>
Net Income(Loss)	(\$665,090)	\$59,305

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 amended and executed Articles of Organization, acceptable to the Department of Health (Department). [CSL]
2. Submission of a photocopy of a Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Articles of Organization for True North DC Holding, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement for True North DC Holding, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement for Fox Run Holding Company, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the amended and restated Certificate of Incorporation for Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
7. Submission of a photocopy of a list of the Board of Directors of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Certificate of Incorporation for DaVita of New York, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the Bylaws for DaVita of New York, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Incorporation for DaVita, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Bylaws for DaVita, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of an amended and executed Articles of Organization for North Shore–LJ Renal Ventures, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an amended and executed Operating Agreement for North Shore–LJ Renal Ventures, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the Certificate of Incorporation for North Shore University Hospital, acceptable to the Department. [CSL]
15. Submission of a photocopy of the Bylaws for North Shore University Hospital, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Certificate of Incorporation for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
17. Submission of a photocopy of the Bylaws for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation for Northwell Health, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Bylaws for Northwell Health, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

2. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

June 2, 2022

Need and Program Analysis

Program Description

Proposed Operator	True North VI DC, LLC
Doing Business As	Peconic Bay Dialysis
Site Address	700 Old Country Road, Suite 4 Riverhead, NY 11901 (Suffolk County)
Shift/Hours/Schedule	Initially, Monday-Wednesday-Friday, 8 AM to 4 PM Then Monday-Saturday, 8 AM to 4 PM
Approved Services	Renal Dialysis-Chronic O/P
Staffing (1st Year/3rd Year)	2.8 FTEs/6.6 FTEs
Medical Director(s)	Neeru Kumar, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Peconic Bay Medical Center 0.4 mile/1 minutes

There will be no programmatic changes or changes in stations or services as a result of this proposed change in ownership.

The membership of True North VI DC, LLC is listed below.

Member Name/Title	Membership Interest
True North DC Holding Knickerbocker (51.00%) Caroline Pierce, Asst. Secretary Nicholas Gossman, Secretary John Winslet, Vice President North Shore-LIJ Renal Ventures (49.00%) Michele Cusack, CFO, Treasurer	90%
Fox Run Holding Company, LLC Neeru Kumar, M.D. (100.00%)	10%
Total	100.0%

Knickerbocker is the licensed operator of 761 chronic renal dialysis facilities in New York State. DaVita of New York, Inc. (DVANY), which is owned by DaVita Inc., is the sole owner of the shares of stock of Knickerbocker Dialysis, Inc. DVANY is also the owner of Huntington Artificial Kidney Center, Ltd, Empire State DC, Inc., and Liberty RC, Inc., which are also operators of chronic renal dialysis facilities in New York State.

Knickerbocker Dialysis, Inc. is also a member of the following:

- Enchanted Dialysis, LLC, the operator of Newark Wayne Dialysis Center.
- True North Dialysis Center, LLC, the operator of Port Washington Dialysis Center (PFI 9926).
- True North DC Holding, LLC, which is one of the members of True North III DC, LLC, the proposed operator of Grand Boulevard Dialysis (pending approval and completion of Project No. 201222-E).
- Bandelier Dialysis, LLC, the proposed operator of Bronxchester Home Training (pending approval and completion of Project No. 202170-E).
- Empress Dialysis, LLC, the proposed operator of Brooklyn Community Dialysis (pending approval and completion of Project No. 211108-E).
- Latsch Dialysis, LLC, the proposed operator of Westchester Home Training (pending approval and completion of Project No. 211109-E).

DaVita is the operator of more than 2,600 dialysis facilities in the United States.

Character and Competence

True North VI DC, LLC is managed by its members through a Board of Members comprised of managers appointed by the members of True North VI. The officers of True North VI DC, LLC are as follows:

Name	Title
Luann D. Regensburg	President
Matt H. Henn	Vice President
Steven Fishbane, M.D.	Chief Medical Officer
John Winstel	Treasurer
Laurence Kraemer	Secretary

Neeru Kumar, M.D., is a Nephrologist at Long Island Community Hospital, Brookhaven Healthcare Rehab Facility, and Bellhaven Nursing & Rehab. Dr. Kumar received his medical degree from the Medical University of Americas in the West Indies, and he completed his residency in Internal Medicine and Nephrology Fellowship at Nassau University Medical Center. He is board-certified in Internal Medicine and board eligible in Nephrology. Dr. Kumar will continue to serve as the facility's Medical Director.

Roger Blumencranz is a licensed Insurance Broker and has been the Managing Director of BWD Group, LLC for approximately 61 years, where he spearheaded the formation of the Commerce and Industry Council, devoted to raising funds for the then North Shore-LIJ Health System. He is a member of the Northwell Health Inc, Board of Trustees since 1980, where he chairs the Education and Insurance Committees and serves on the Finance Committee and the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell. Roger Blumencranz is also a member of the John T. Mather Board of Directors.

Adam Boll is the Vice President of Northwell Health Operations, where he is responsible for the office held and tenure in the health care industry, contributing to the competency for management for the subject facility. In addition to this role, he is also a Physician's Assistant. Adam Boll discloses ownership interest/office held in the following health care facilities:

<i>Port Washington Dialysis Center</i>	<i>03/2016-present</i>
<i>Floral Park Home Dialysis</i>	<i>03/2016-present</i>
<i>Oyster Bay Dialysis Center</i>	<i>11/2016-present</i>
<i>Julia and Israel Waldbaum Dialysis</i>	<i>11/2016-present</i>
<i>Huntington on Broadway Dialysis</i>	<i>11/2016-present</i>
<i>East Islip Dialysis</i>	<i>07/2017-present</i>
<i>Digestive Health Center of Huntington</i>	<i>03/2017-present</i>
<i>Endoscopy Center of Long Island</i>	<i>03/2013-present</i>
<i>Garden City Surgi Center</i>	<i>12/2014-present</i>
<i>Greenwich Village Ambulatory Surgery Center</i>	<i>12/2017-present</i>
<i>Melville ASC</i>	<i>10/2017-present</i>
<i>South Shore Surgery Center</i>	<i>02/2016-present</i>
<i>Suffolk Surgery Center</i>	<i>10/2016-present</i>
<i>Surgical Specialty Center of Westchester</i>	<i>09/2017-present</i>

Michael Caridi is the President of VG Enterprises Management Group. He is a member of the Northwell Health Inc. Board of Trustees and is the chairman of the Staten Island regional Executive Council, tasked with ensuring Staten Island University Hospital meets the healthcare needs of the borough. He previously served as vice-chair of the council.

Mark Claster has been the President of Carl Marks & Co., Inc. for 40 years. He currently has an advisory role in the firm's investment businesses and previously served as General Partner of the firm's two small business investment companies. He also serves as the President of Carl Marks Securities LLC and Co-manager of Carl Marks Advisors and is the Director of the Board of Staten Island University Hospital. Previously, he was the Chairman of the Board of Trustees of Northwell Health, where he still serves on various health system committees and is Chair of the nominating and Governance Committee. Mark

Claster is also a Member of the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell.

Gary A. Cohen retired in 2014, and before that, he was employed at IBM for over 35 years as a General Manager in the Global Communications Sector. In that role, he was responsible for the company's business with telecommunications, media, entertainment, energy, and utilities clients around the world. He led the strategic direction of the company's growth and the global alliance organization. Later, he was the Vice President of Strategy, developing the pervasive computing division.

Margaret Crotty is the President and CEO of John Snow, Inc. and JSI Research and Training Institute, a global public health consulting firm. Previously, she served as the CEO of Partnership with Children and previously ran Save the Children. She was President and CEO of AFS-USA Intercultural Programs and served as Executive Director of a workforce development agency. She is a member of the Northwell Health Inc, Board of Trustees, the Open Medical Institute, the Inner-City Scholarship Fund, Access Health, the Human Services Council, and Seachange Capital. Margaret Crotty is also a member of the Young Presidents Organization and the Council on Foreign Relations and serves as the Program Leader for Princeton AlumniCorps' Emerging Leader Program.

Michele Cusack is the Senior Vice President and Chief Financial Officer for Northwell Health, Inc, where her responsibilities include managing the system's day-to-day financial operations. She discloses offices held in the following healthcare facilities:

<i>Glen Cove Hospital</i>	<i>10/10/2017-present</i>
<i>Greenwich Village Ambulatory Surgery Center</i>	<i>12/29/2017-present</i>
<i>Hospice Care Network</i>	<i>10/10/2017-present</i>
<i>Huntington Hospital</i>	<i>01/23/2018-present</i>
<i>Lenox Hill Hospital</i>	<i>10/10/2017-present</i>
<i>Long Island Jewish Medical Center</i>	<i>10/10/2017-present</i>
<i>North Shore University Hospital</i>	<i>10/10/2017-present</i>
<i>Plainview Hospital</i>	<i>10/10/2017-present</i>
<i>Southside Hospital</i>	<i>10/10/2017-present</i>
<i>Staten Island University Hospital</i>	<i>10/10/2017-present</i>
<i>The Long Island Home</i>	<i>10/10/2017-present</i>

Michael Dowling is the President and CEO of Northwell Health, Inc. Prior to becoming President and CEO, he was the health system's Executive Vice President and Chief Operating Officer. He leads a clinical, academic, and research enterprise with a workforce of more than 75,000 and annual revenue of \$14 billion.

Michael Epstein is a licensed Attorney and is a Partner at Weil Gotshal & Manges, LLP, where he practices intellectual property law as a leading attorney in the field. He has been a Board Member of Northwell's Feinstein Institute for Medical Research since 2002 and was elected as the Chair of Northwell's Board of Trustees in 2019.

Michael Feldman is a retired Attorney. He was a Faculty Member of the New York University Tisch Center, teaching courses in legal issues. He was a former chair of the Advisory Board of the NYU Tisch Center. He is a member of the Board of Trustees and Executive Committee, Chair of the Audit and Corporate Compliance Committee, and a member of the Legal Affairs Committee of Northwell Health Inc. He is also a co-chair and a member of the Board of Directors of the New York Hospitality Council, Inc.

Michael Fisch is the Managing Director and CEO of American Securities, LLC, and the Managing Member of the general partners of the American Securities Partners' series of private equity funds. He serves as an investment committee member of the funds managed by Ascribe Capital, an affiliate of American securities. Michael Fisch is a member of the Northwell Health Inc. Board of Trustees.

Steven Fishbane, M.D. is a licensed Nephrologist who is employed at Northwell Health. He is the Director of Clinical Trials and is a Professor of Medicine at the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell. He was previously employed at Winthrop University Hospital. He received his medical degree from Albert Einstein College of Medicine, completed his residency in Internal Medicine

at Montefiore Medical Center, and his Fellowship in Nephrology at Montefiore Medical Center. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Fishbane is a member of the Northwell Health Inc, Board of Trustees.

Loyd Friedlander is a licensed Attorney and Insurance Agent. He is the Managing Director of Acrisure, LLC, and was previously employed at Loyd Keith Friedlander, LLC as the Owner and Shareholder. He is Chairman of the Board of Hunting Hospital and is a member of the Northwell Health Inc, Board of Trustees.

Clifford H. Friedman is the Chairman and CEO of ShareNett, a private/closed co-investment platform bringing curated investment opportunities across multiple asset classes, geographies, and industries. He has a demonstrated history in private equity venture capital, investment management, financial, and various senior operational roles with a focus on media, communication, technology, and fintech. He is also the Founder and CIO of Cold Springs Ventures. He is skilled in value creation through a systematic process of working with management teams, board members, and customers, and creating and negotiating strategic partnerships globally to drive revenue and profitability.

Catherine Foster is a Faculty Employee at Columbia University. She is a member of the Northwell Health, Inc Board of Trustees and is vice-chair of the quality and credentials committee. She was previously employed as a Senior Executive at American Express, where she led marketing, business development, and strategic planning for various divisions.

Lloyd Goldman is the President of BLDG Management Co. He serves on many boards and committees, including being elected president of the American Associates Ben-Gurion University of the Negev, a trustee of the Joyce and Irving Goldman Family Foundation. He is also involved in Conservation International, The Education Alliance, and We Are a Family Foundation. Lloyd Goldman serves as a trustee on the North Shore-LIJ Health System and is a member of the Northwell Health Inc, Board of Trustees.

Richard Goldstein is a licensed Attorney. He is the Chairman and CEO of AEP Capital, LLC, a specialized investment and merchant banking firm. He was previously an attorney at the firm of Paul, Weiss, Rifkind, Wharton, and Garrison, specializing in mergers and acquisitions. He served as Chairman of North Shore-LIJ Health System and its constituent hospitals, including North Shore Hospital, Long Island Jewish Hospital, Lenox Hill Hospital, and Staten Island Hospital. Richard Goldstein is a Trustee Emeritus of the Queens College Foundation.

Nicholas Gossman is the Group Finance Director for DaVita, Inc., where he is a key contributor to monthly financial reviews with senior leadership, provides root cause analysis and recommendations on action plans; coordinates the budget process; does joint venture reporting, and communicates with joint venture partners on financial performance. He builds models and assesses new projects; partners with Division Vice Presidents to analyze, review, and recommend overall divisional growth strategy; directly supervises five Finance Managers and one Financial Analyst; and has active roles in national projects for DaVita, including DeNovo Labor benchmarking, Report Rationalization, and Field Reporting Initiatives.

Alan Greene is the Managing Director of Neuberger Berman, LLC, where he is a portfolio manager for mid and all-cap strategies. He has experience in investment research, account analysis, and portfolio management. He is currently on the Board of Trustees of Northwell Health, Inc. and also serves as Trustee of Eisenhower Medical Center and Trustee Emeritus of Colgate University.

Paul Guenther has been retired since April 1995. He is a member of the Northwell Health, Inc Board of Trustees and joined the Campaign Executive Committee. He endorses physician recruitment to enhance the faculty and has many longstanding relationships with physicians in the community. He co-established the Paul and Diane Guenther Chair in Cardiology to support the future of teaching, healing, and research at Lenox Hill Hospital.

Elizabeth M. Hammack is the CEO of Goldman Sachs Bank, where she is responsible for overseeing the global activities of the bank, the day-to-day management, developing strategy, and ensuring the bank is operated in a safe and sound manner. She has additional reporting oversight to the executive officers

and is a member of the Goldman Sachs Bank USA Board of Directors. She is also a Chairperson of the GS Bank Management Committee and is also Global Treasurer of Group Inc., where she provides global management of Group Inc.'s liquidity, funding, balance sheet, and capital, including liability planning, execution, financial resource allocation, asset-liability management, and liquidity portfolio management. Previously, she was the Global Head of Short-Term Macro trading and Global Repo Trading at Goldman Sachs and the Global Head of Short-Term Interest Rate Products at Goldman Sachs.

Douglas Hammond is the Chairman and CEO of NFP Corp., where he has held multiple roles, including President, COO, Head of Strategy, Executive Vice President, General Counsel, Senior Vice President, and Deputy General Counsel. Previously, he was the Manager and CEO of NFP Ventures, LLC. He is a licensed attorney who was employed at Leboeuf, Lamb, Green & MacRae, a Corporate Insurance, Regulatory, and Mergers and Acquisitions attorney, and at the Gulf Group in various legal and business positions. He is a member of Northwell Health, Inc., an Advisor on the Madison Dearborn Capital Partners Financial Services Industry Group; a Trustee on the Fairfield University Board of Trustees; a Board Member of the Nassau County Police Department Foundation; a former Board Member of the Kestra Financial Board of Directors, and a Trustee of the Committee for Economic Development.

Matt Henn is the Division Vice President of DaVita, Inc, where his responsibilities include leading DaVita's largest division and 1800 staff members; driving treatment growth rates at three times the market average; designing, piloting, and scaling a new method of staff selection, hiring, and on-boarding that is the enterprise standard; increasing staff retention and satisfaction; and partnering with corporate teams to drive field implementation of new initiatives for growth, HR, finance, and compliance.

Saul Katz is a Certified Public Accountant and Real Estate Broker. He has been the President and COO of Sterling Equities for over 48 years and is a member of the Northwell Health Inc. Board of Trustees. He played a role in the 1993 merging of Glen Cove Hospital, where he served as a trustee for 12 years, to North Shore Health System. He became the Chairman of the North Shore Health System and precipitated the 1997 merger with Long Island Jewish Medical Center. He worked with both entities to create the system originally known as North Shore-Long Island Jewish Health System and became the first Chairman of the combined board.

Laurence Kraemer is a licensed Attorney. He is the Senior Vice President, Chief General Counsel, and Assistant Secretary of Northwell Health Inc, where he supervises a team of more than 40 lawyers and 50 compliance professionals who provide legal services and compliance oversight to all Northwell hospitals, clinical entities, and joint ventures. He is the vice-chair of strategic planning of the AHLA Tax and Finance Group and is a member of Northwell Health Inc, Board of Trustees.

Cary Kravet is a retired licensed Attorney. He is the President of Kravet, Inc, a decorative home furnishing business. He has been an active trustee of the North Shore-LIJ Health System for approximately 21 years, where he served on the Executive Committee and chaired the Committee on Quality. He also serves on the Board of Directors of Hunting Hospital and is a member of the Northwell Health Inc. Board of Trustees.

Jeffrey Lane is a partner at York Bridge Wealth Partners, where he offers investment advisory services, financial planning, and portfolio and investment management services. Previously, he was the Chairman of the Board at Lebenthal Holdings, LLC, the Chairman of Casa Columbia, and the Chief Executive of Modern Bank. He is a member of the Northwell Health Inc. Board of Trustees.

Seth Lipsay is a licensed Attorney. He is the CEO of Galaxy Realty Capital, LLC, and was previously employed as the Executive Managing Director of New World Realty Advisors LLC, where he continues to serve as an Officer for the company. He was previously a Member of the Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell Health. Seth Lipsay is a Trustee of the Board of Directors at the Feinstein Institute for Medical Research.

Richard Mack is the CEO and Co-founder of Mack Real Estate Group, where he is responsible for raising capital, decisions involving business management, and investment decisions. He was the previous CEO-North America of Area Property Partners. He is a board member of Northwell Health, Inc.

William Mack is a licensed Real Estate Broker. He is the Chairman and Founder of Mack Real Estate Group, where he manages institutional, high net worth, and Mack family capital by making debt and equity investments in real estate and real estate-related securities through several business lines. He specializes in domestic and international real estate investment, development, and financing opportunities with a view toward long-term performance and hands-on management. He serves as Chairman of the Board of Directors of Mack-Cali Realty Corporation and is Chairman of the Board of the Solomon R. Guggenheim Foundation. William Mack is the Vice-Chair of Northwell Health, Inc., where he serves on the Executive Committee and is also a Trustee and Member of the Executive Committee of Lenox Hill Hospital.

F.J. McCarthy is a licensed Real Estate Broker. He is the President of Site Selection Advisory Group, Inc., a real estate development and investment company. He is a trustee of Catholic Charities for the Diocese of Rockville Center, where he served on the Executive Committee, Governance and Leadership Committee, and was the Chairman of the Development Committee. F.J. McCarthy is a Trustee of Northwell Health Inc., where he serves on the Executive Committee, Governance Committee, and Quality Committee, and is Co-Chair of the Committee on Community and Public Health. He is also Chairman of the Southside Hospital of the Northwell Health System.

John McGovern is the Senior Vice President of Finance of Northwell Health, Inc, where he is responsible for the office held and tenure in the health care industry, contributing to the competency for management for the subject facility. John McGovern discloses the following membership interest/offices held in the following healthcare facilities:

<i>Port Washington Dialysis Center</i>	<i>03/2016-present</i>
<i>Floral Park Home Dialysis</i>	<i>03/2016-present</i>
<i>Oyster Bay Dialysis Center</i>	<i>11/2016-present</i>
<i>Julia and Israel Waldbaum Dialysis</i>	<i>11/2016-present</i>
<i>Huntington on Broadway Dialysis</i>	<i>11/2016-present</i>
<i>East Islip Dialysis</i>	<i>07/2017-present</i>
<i>Digestive Health Center of Huntington</i>	<i>03/2017-present</i>
<i>Endoscopy Center of Long Island</i>	<i>03/2013-present</i>
<i>Garden City Surgi Center</i>	<i>12/2014-present</i>
<i>Greenwich Village Ambulatory Surgery Center</i>	<i>12/2017-present</i>
<i>Melville ASC</i>	<i>10/2017-present</i>
<i>South Shore Surgery Center</i>	<i>02/2016-present</i>
<i>Suffolk Surgery Center</i>	<i>10/2016-present</i>
<i>Surgical Specialty Center of Westchester</i>	<i>09/2017-present</i>

Ralph Nappi is the Executive Vice Chairman of Northwell Health, Inc. Previously, he was the President of North Shore LIJ Health System, where he worked to cultivate private charitable support for programs, endowments, and facilities. He was also responsible for establishing charitable partnerships with the region's leading individuals, corporations, and foundations.

Sharon Patterson is a Broker and Office Manager at Tuccio Real Estate, where she deals in residential and commercial real estate with knowledge in TDR and Pine Barrens Credit transfers. She has experience as a former member of the Riverhead Zoning Board of Appeals and was the previous Vice-Chair for the Peconic Bay Medical Center. Sharon Patterson is Board Chair for the Peconic Bay Medical Center and also serves on the Board of Trustees of the East End Health Alliance.

Caroline Pierce is the Division Vice President of DaVita, Inc., and was the previous Regional Operations Director there. She is responsible for the general management and oversight of operations within the assigned division and provides strategic and tactical leadership, along with counsel, directing field management personnel to ensure safe, efficient, therapeutic, and ethical patient care. Additionally, she is responsible for identifying and developing strategic growth opportunities, monitoring division performance, and working with the Senior Vice President to develop competitive strategies consistent with DaVita's mission and values. She was the previous Facility Administrator of DaVita, Inc., a Math Teacher, and the Director of Growth in the Phoenix Charter Academy Network.

Lewis Ranieri is the Chairman and Senior Managing Partner of Ranieri Partners Management LLC, where he is an investment manager focused on financial services opportunities. He has served on the Board of Directors of Computer Associates, overseeing the restructuring and turnaround during that period, and has served on the National Association of Home Builders Mortgage Roundtable. He is the Chair of the Feinstein Institute for Medical Research for Northwell Health.

Scott Rechler is the Chairman and CEO of RXR Realty LLC. He is an owner, manager, and developer of real estate in the New York Tri-State area. In 2011, he was appointed by the Governor to the Board of Commissioners of the Port Authority of New York and New Jersey. In 2017, the Governor nominated him to the Metropolitan Transportation Authority. Scott Rechler is the Chairman of the Regional Plan Association and on the Board of Governors of the Real Estate Board of New York and serves as a Board Member of the Feinstein Institute for Medical Research for Northwell Health.

Luann Regensburg is the Divisional Vice President of DaVita Health Care Partners, where she is responsible for all dialysis operations, clinical outcomes, hospital and physician partnerships, strategy, and growth for the division. She is the previous Regional Operations Director, where she oversaw the overall management of 11 facilities serving 1,400 patients on Long Island, Queens, and Manhattan, providing leadership and direction to assure safe, efficient, therapeutic, and ethical patient care. She led a team of 11 direct reports and 300-plus teammates across multiple disciplines. She oversaw project management, planning, design, and construction of new clinics, including clinic expansion/renovation and participation in due diligence on a potential acquisition. She was the previous Director of Clinical Support Services at Mercy Medical Center for over 20 years.

Robert Rosenthal is the Chairman and CEO of First Long Island Investors, LLC, a boutique wealth management firm, where he takes a long-term view to preserving and growing the wealth of clients. He employs a prudent asset allocation approach and develops customized plans for each client after understanding their individual goals, needs, and risk tolerance. He was named a Trustee of the Board of Directors of Northwell Health Inc. and serves as Treasurer and a member of the Executive Committee. He is also Co-Chairman of the Investment Committee and Chairman of the Advisory Board for North Shore University Hospital.

Barry Rubenstein is the Managing Partner of Wheatley Partners, a venture capital firm. He has been active on the Northwell Health Inc., Board of Trustees' Finance, Compensation, and Executive Committees. He was a leader in the New Century Campaign Committee and sits on the Strategic Planning Committee. He was previously a Board Member of the Feinstein Institutes for Medical Research.

Michael Schwartz is a licensed Attorney. He is the Founder and Managing Member of the SoCali Partners investment firm and was the Co-founder and Co-managing Partner of Trilyn Partners, LLC. He is an investment professional with financial acumen and an investing skill set. He was previously employed as a Partner and Portfolio Manager at Taconic Capital Advisor as an investment professional. He is a member of the Northwell Health Inc, Board of Trustees and the Board of Trustees for Northern Westchester Hospital.

Michael Smith is the Chairman and CEO of Freeport LNG Development, L.P., which is one of four liquification and export terminals in the U.S. Previously, he was a Trustee for the National Jewish Health and a member of the Board of Directors. He is a member of the Northwell Health Inc. Board of Trustees.

Leo Sternlicht is the President of Riverhead Motors, Inc., where his responsibilities include all the financial, managerial, and legal aspects of the company. Previously, he was the Director of John T. Mather Memorial Hospital and is the current Board Chair.

Kenneth Tabar is a licensed Attorney. He is a Partner in the Pillsbury, Winthrop, Shaw, Pittman, LLP, where his areas of practice in Litigation, Employment Law, Products Liability and Mass Torts Defense, Trade Secrets Counseling and Litigation, and Financial Services Litigation. He is the Chairman of the Board of Phelps Hospital and is a Member of Northwell Health Inc. Board of Trustees on the Legal Affairs Committee and Committee on Quality.

Benjamin B. Tucker is the former First Deputy Commissioner of the New York City Police Department, where he was directly responsible for training, support services, and risk management. He was also responsible for prosecuting misconduct and adjudicating alleged misconduct and made recommendations to the Police Commissioner for review relative to the efficacy of officer conduct and/or ancillary action pertaining to tactics, training, policy, and community relations. Previously, he was the liaison at the Office of the New York State Attorney General and Deputy Commissioner of Training. He was responsible for developing and shaping the vision for progressive and innovative, research-based education and training for the members of the NYPD. He directed the development of recruit training, field training, firearms and tactics, in-service, specialized, and leadership training for the members of the department. He was also the former Deputy Director of the Office of State, Local, & Tribal Affairs, where he was responsible for overseeing a \$500 million budget. He directed and leveraged programs that advanced the President's National Drug Control Strategy and coordinated domestic federal, state, local, and tribal law enforcement agencies in their efforts to dismantle and disrupt drug trafficking and money laundering organizations.

Emmett Walker, Jr. is the CEO of Walker SCM LLC, where he is involved in global transportation, logistics optimization, and supply chain integration. He is a Member of the Board of Southside Hospital and Northwell's Community Outreach and Health Education Council.

Samuel T. Wey is the Senior Director of Licensure and Certification at DaVita Inc., where he is responsible for overseeing all operational lanes of licensure and certification to ensure the timely submission of initial and revalidation applications. He maintains oversight of and developed process excellence initiatives, developing, and leveraging. He collaborates with multiple Medicaid agencies, resulting in \$3.5M of Accounts Receivable dollars that had been deemed uncollectable and revamped processes across the licensure and certification department to bring uniformity to the processes while also mitigating risk. He is the former Director of Licensure and Certification, where he determined and set target goals for the Maintenance Lane and developed and implemented new processes to achieve key metrics set forth by CMS. He served as a high-level expert in all regulatory matters related to ESR licensure and certification. Previously, he was also the Manager of Acquisitions & Integrations, where he participated in setting appropriate target goals for the acquisitions department and monitored results, tracked metrics, and performed a cost-benefit analysis to drive decision-making. He developed, coordinated, and implemented successful integration plans with regional and divisional teams. In addition, he was also previously the Facility Administrator, where he managed the second-largest clinic in middle Tennessee with an annual budget of \$26M.

John Winstel is the current Chief Accounting Officer of DaVita, Inc., and was the previous Group Vice President. His responsibilities include all accounting and financial reporting to ensure timely and accurate reporting of accounting and financial information in compliance with U.S. reporting requirements. He interfaces directly with senior management team members, the board of directors, and advisors to ensure the integrity of all financial information. He was previously employed as the Vice President/Corporate Controller of Cooper Tire & Rubber Company.

Donald Zucker is a licensed Real Estate Broker. He is the Chairman of the Board of Donald Zucker Company, where he oversees the company that builds, buys, and manages apartment and retail properties. He is a member of the Northwell Health Inc. Board of Trustees and the Campaign Executive Committee.

Roy Zuckerberg retired as the Senior Director of the Goldman Sachs Group, Inc in 2000. He is a member of the Northwell Health Inc. Board of Trustees and was a former Chairman of the North Shore-LIJ Board. He played an integral role in the merger of Long Island Jewish Medical Center with North Shore University Hospital.

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

Compliance with Applicable Codes, Rules, and Regulations

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

This Record of Legal Actions is submitted by DaVita Inc., as consultant for the applicant, True North VI, LLC d/b/a Peconic Bay Dialysis, and sets forth: (i) ongoing inquiries, investigations, and administrative actions by federal and state government agencies and certain civil proceedings, (ii) ongoing shareholder and derivative actions, and (iii) investigations and proceedings, including settlements and licensure actions, which have been resolved over the last ten years. Note: References to the "Company" or "DaVita" mean DaVita Inc. and its subsidiaries. References to "DMG" mean DaVita Medical Group, formerly known as HealthCare Partners (HCP), a former subsidiary of DaVita.

Ongoing Inquiries, Investigations and Administrative Actions, and Certain Civil Proceedings

2016 U.S. Attorney Texas Investigation: In February 2016, DaVita Rx, LLC (DaVita Rx), a wholly-owned subsidiary of the Company, received a Civil Investigative Demand (CID) from the U.S. Attorney's Office, Northern District of Texas. The government is conducting a federal False Claims Act (FCA) investigation concerning allegations that DaVita Rx presented or caused to be presented false claims for payment to the government for prescription medications, as well as an investigation into the Company's relationships with pharmaceutical manufacturers. The CID covers the period from January 1, 2006 through the present. In connection with the Company's ongoing efforts working with the government, the Company learned that a qui tam complaint had been filed covering some of the issues in the CID and practices that had been identified by the Company in a self-disclosure that it filed with the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) on February 2016. In December 2017, the Company finalized and executed a settlement agreement with the government and relators in the qui tam matter that included total monetary consideration of \$63,700,000, of which \$41,500,000 was an incremental cash payment and \$22,200,000 was for amounts previously refunded, and all of which was previously accrued. The government's investigation into certain of the Company's relationships with pharmaceutical manufacturers is ongoing, and in July 2018, the OIG served the Company with a subpoena seeking additional documents and information relating to those relationships. The Company is continuing to cooperate with the government in this investigation.

Jeff Kent v. St. Elizabeth Medical Center et al.: In January 2017, a putative class action lawsuit was filed in Kentucky Commonwealth court against the Company, a local medical center, a nephrology group, and an individual physician, alleging that the defendants conspired to provide medically unnecessary dialysis services to the plaintiff and other putative class members. In February and March 2017, the defendants filed a motion to dismiss the class action claims. The court subsequently denied the motion. In January 2019, the defendants filed a motion to dismiss most of Kent's claims on the ground that after his death, his estate failed to "revive" the claims under Kentucky law. The court granted that motion on May 17, 2019. On July 17, 2019, the Company filed a motion to dismiss Kent's class action claims. On September 17, 2019, the court granted that motion, dismissing all of Kent's class action claims except for wrongful death claims. The Company disputes these allegations and continues to defend it accordingly.

2017 U.S. Attorney Massachusetts Investigation: In January 2017, the Company was served with an administrative subpoena for records by the U.S. Attorney's Office, District of Massachusetts, relating to an investigation into possible health care offenses. The subpoena covered the period from January 1, 2007 to the present and sought documents relevant to charitable patient assistance organizations, particularly the American Kidney Fund (AKF), including documents related to efforts to provide patients with information concerning the availability of charitable assistance. On July 23, 2019, the Department of Justice notified the court of its decision not to intervene in the matter of US. ex rel. David Gonzalez v. DaVita Healthcare Partners, et al. The Court unsealed the complaint by order entered on August 1, 2019. The Department of Justice has confirmed that the complaint, which alleges violations of the federal False Claims Act and various state false claims acts, was the basis of its investigation initiated in January 2017. The Company has not been served with the complaint.

2017 U.S. Attorney Colorado Investigation: In November 2017, the U.S. Attorney's Office, District of Colorado informed the Company of an investigation it was conducting into possible federal healthcare offenses involving DaVita Kidney Care, as well as several of the Company's wholly-owned subsidiaries. In addition to DaVita Kidney Care, the matter currently includes an investigation into DaVita Rx, DaVita Laboratory Services, Inc. (DaVita Labs), and RMS Lifeline, Inc. (Lifeline). In each August 2018 and May 2019, the Company received Civil Investigative Demands from the U.S. Attorney's Office relating to this investigation, which were issued pursuant to the FCA. The Company is continuing to cooperate with the government in this investigation.

2018 U.S. Attorney Florida Investigation: In March 2018, DaVita Labs received two CIDs from the U.S. Attorney's Office, Middle District of Florida that suggest it is investigating whether DaVita Labs submitted false claims for blood, urine, and fecal testing when there was insufficient test validation or stability studies to ensure accurate results, in violation of the FCA. In October 2018, DaVita Labs received a subpoena from the OIG in connection with this matter requesting certain patient records linked to clinical laboratory tests. On September 30, 2019, the U.S. Attorney's Office notified the U.S. District Court, Middle District of Florida, of its decision not to elect to intervene at this time in the matter of US. ex rel. Lorne Holland, et al. v. DaVita Healthcare Partners, Inc., et al. The court then unsealed the complaint, which alleges violations of the FCA, by order dated the same day. In January 2020, the private party relators served the Company and DaVita Labs with an amended complaint. On February 24, 2020, the Company and DaVita Labs filed a motion to dismiss the amended complaint. The Company and DaVita Labs dispute these allegations and intend to defend this action accordingly.

2019 Blue Cross & Blue Shield of Florida, Inc. and Health Options, Inc. v. DaVita Inc. In May of 2019, Blue Cross of Florida filed suit against DaVita in Federal Court alleging a variety of claims, including breach of contract, tortious interference with contract, fraud, negligent misrepresentation, civil conspiracy, violation of Florida's Unfair and Deceptive Trade Practices Act, and unjust enrichment. The claims primarily concern charitable premium assistance. On November 7, 2019, the Company moved for summary judgment on all claims. The Company disputes the allegations and continues to defend the case accordingly.

2019 Keystone Health Plan East, Inc. et. al v. DaVita Inc. In November 2019 several subsidiaries of Independence Blue Cross filed suit against DaVita in Federal Court in Pennsylvania alleging a variety of claims, including breach of contract, fraud, negligent misrepresentation, tortious interference with contract, and unjust enrichment. These claims primarily concern charitable premium assistance. The Company disputes the allegations and intends to defend the case accordingly.

2020 U.S. Attorney New Jersey Investigation: In March 2020, the U.S. Attorney's Office, District of New Jersey served the Company with a subpoena and a CID relating to an investigation being conducted by that office and the U.S. Attorney's Office, Eastern District of Pennsylvania. The subpoena and CID request information on several topics, including certain of the Company's joint venture arrangements with physicians and physician groups, medical director agreements, and compliance with the Corporate Integrity Agreement. The Company is cooperating with the government in this investigation.

2020 California Department of Insurance Investigation: In April 2020, the California Department of Insurance sent the Company an Investigative Subpoena relating to an investigation being conducted by that office. The subpoena requests information on a number of topics, including but not limited to the Company's communications with patients about insurance plans and financial assistance from the AKF, analyses of the potential impact of patients' decisions to change insurance providers, and documents relating to donations or contributions to the AKF. The Company is cooperating with the California Department of Insurance in this investigation.

Shareholder and Derivative Claims

Peace Officers' Annuity and Benefit Fund of Georgia Securities Class Action Civil Suit: In February 2017, the Peace Officers' Annuity and Benefit Fund of Georgia filed a putative federal securities class action complaint in the U.S. District Court for the District of Colorado against the Company and certain executives generally alleging that they violated federal securities laws concerning the Company's financial results and revenue derived from patients who received charitable premium assistance from an industry-funded non-profit organization. The complaint further alleges that the process by which patients obtained

commercial insurance and received charitable premium assistance was improper and "created a false impression of DaVita's business and operational status and future growth prospects." In March 2018, the Company and various individual defendants filed a motion to dismiss. On March 28, 2019, the U.S. District Court for the District of Colorado denied the motion to dismiss. The Company answered on May 28, 2019. On January 31, 2020, the plaintiffs filed a motion for class certification that the Company intends to oppose. The Company disputes these allegations and intends to defend it accordingly.

In re DaVita Inc. Stockholder Derivative Litigation: In August 2017, the U.S. District Court for the District of Delaware consolidated three previously disclosed shareholder derivative lawsuits: the Blackburn Shareholder action, the Gabilondo Shareholder action, and the City of Warren Police and Fire Retirement System Shareholder action. The complaint generally alleges breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, corporate waste, and misrepresentations and/or failures to disclose certain information in violation of the federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize the Company's profits. In December 2017, the Company filed a motion to dismiss and a motion to stay the proceedings in the alternative. On April 25, 2019, the court denied the Company's motion to dismiss. The Company answered the complaint on May 28, 2019. The Company disputes these allegations and intends to defend it accordingly.

Resolved Matters

2011 U.S. Attorney Medicaid Investigation: In 2011, the Company received an administrative subpoena from the OIG and a request for documents from the U.S. Attorney's Office for the Eastern District of New York related to payments for infusion drugs covered by Medicaid composite payments for dialysis. The Company cooperated with the government, produced the requested documents, and in March 2016, finalized and executed settlement agreements with the State of New York and the U.S. Department of Justice (DOJ), including a settlement payment of an immaterial amount.

2014 OIG Medicaid Program Integrity Audit: Following a review of claims for Medicaid reimbursement at 19 DaVita dialysis facilities, the Agency for Health Care Administration, through its OIG Medicaid Program Integrity office, made a preliminary determination that the Company was overpaid for claims that in whole or in part should have been billed to the Nursing Home Division Waiver Program rather than Medicaid Fee-For-Service. Without waiving its right to contest future requests for repayment, the Company refunded the Agency \$267,287.93.

Settlement and Corporate Integrity Agreement. In October 2014, DaVita entered into a Settlement Agreement with the U.S. Department of Justice and a CIA with the OIG to resolve all allegations arising under the complaint *United States ex rel. David Barbetta v. DaVita, Inc. et al.*, No. 09-cv- 02175-WJM KMT (D. Colo.).

2014 Indiana Attorney General Medicaid Fraud Control Unit Demand Letter: In July 2014, the Indiana Attorney General's Medicaid Fraud Control Unit requested, and in October 2014 DaVita refunded \$712.66 to the Indiana Medicaid program in relation to dialysis services provided by a DaVita nurse to a Medicaid recipient for three days while the nurse was temporarily unlicensed.

Vainer Private Civil Suit: In 2008, the OIG issued a subpoena for documents relating to the pharmaceutical products Zemplar, Hectorol, Venofer, Ferrlecit, and erythropoietin, as well as other related matters, as a result of a civil complaint filed by relators Daniel Barbir and Dr. Alon Vainer pursuant to the qui tam provisions of the federal FCA. The relators alleged that the Company's drug administration practices for the Company's dialysis operations for Vitamin D and iron agents fraudulently created unnecessary waste, which was billed to and paid for by the government. In June 2015, the Company finalized the terms of a settlement with plaintiffs, including a settlement amount of \$450 million and attorney fees and other costs of \$45 million.

2015 U.S. Attorney Transportation Investigation: Between 2015 and 2016, the Company received ten administrative subpoenas (each for one set of patient medical records) at ten different dialysis centers in southern California. In 2017, a qui tam complaint was served on the Company in the U.S. District Court for the Central District of California related to an investigation concerning the medical necessity of patient transportation, which was the basis for the subpoenas. The DOJ declined to intervene, and the court

ultimately granted the Company's motion to dismiss both the original Complaint and the plaintiff's Amended Complaint. In July 2017, the plaintiff declined to proceed further and filed a notice of dismissal.

2015 OIG Medicare Advantage Civil Investigation: In March 2015, JSA HealthCare Corporation (JSA), a subsidiary of DMG, received a subpoena from the OIG requesting documents and information related to certain MA plans for which JSA provided services, and seeking information regarding JSA's communications about patient diagnoses as they related to certain MA plans generally, and more specifically as related to two Florida physicians with whom JSA previously contracted. In addition, in June 2015, the Company received a civil subpoena from the OIG seeking the production of a wide range of documents relating to the Company's and its subsidiaries' (including DMG and its subsidiary JSA) provision of services to MA plans and related patient diagnosis coding and risk adjustment submissions and payments, including information relating to patient diagnosis coding practices for a number of conditions, including potentially improper historical coding for a particular condition. With respect to that condition, the guidance related to that coding issue was discontinued following the Company's November 1, 2012 acquisition of HCP, and the Company notified CMS in April 2015 of the coding practice that may have been problematic, some of which were the subject of the Swoben Private Civil Suit, discussed below. On September 28, 2018, the Company reached a settlement with the DOJ and agreed to pay \$270 million. In connection with the Company's acquisition of HCP, the Company had escrowed a portion of the purchase price to secure its indemnification rights, and the \$270 million settlement was paid with these escrowed funds.

2015 U.S. Department of Justice Vascular Access Investigation and Related Qui Tam Litigation: In 2015, Lifeline, a wholly-owned subsidiary of the Company, received a CID from the DOJ related to two Florida vascular access centers that the Company acquired in 2012. The DOJ investigation was initiated pursuant to a qui tam complaint that alleged violations of the FCA as a result of claims submitted to the government for allegedly medically unnecessary angiograms and angiography procedures performed at the two vascular access centers as well as employment-related claims. The DOJ declined to intervene and in

January 2017, the Company finalized and executed a settlement agreement with the relator and the government for an immaterial amount. In April 2017, the court dismissed the case with prejudice. *Swoben Private Civil Suit:* In April 2013, HCP was one of several defendants served with a civil complaint filed by a former employee of SCAN Health Plan alleging violations of the federal False Claim Act (FCA) and the California FCA. In October 2017, James M. Swoben, the relator, filed a Notice of Dismissal of the action as to HCP, and the government consented to the dismissal of the suit without prejudice.

Solari Post-Acquisition Matter: In 2016, HCP Nevada disclosed to the OIG that proper procedures for clinical and eligibility determinations may not have been followed by Las Vegas Solari Hospice (Solari), which HCP Nevada acquired in March 2013 and sold in September 2016. In June 2016, the Company was notified by the OIG that the disclosure submission had been accepted into the OIG's Self Disclosure Protocol. In October 2017, the Company finalized and executed a settlement agreement with the OIG including payment of an immaterial amount.

White, Kathleen, et al. v. DaVita Healthcare Partners, Inc. . . Civil Action No. 15-cv-2106, U.S. District Court for the District of Colorado: In three consolidated actions (*Menchaca v. DaVita Healthcare Partners, Inc.*, *Saldana v. DaVita Healthcare Partners, Inc.* and *Hardin v. DaVita Healthcare Partners, Inc.*), the plaintiffs alleged wrongful death based on allegations related to Granuflo®, a product used as a component of the dialysis process. The *Menchaca* and *Saldana* actions arose out of the treatment of patients in California, while the *Hardin* action arose out of the treatment of a patient in Illinois. In June 2018, the jury returned a verdict in favor of the plaintiffs, collectively awarding \$85 million in compensatory damages and \$375 million in punitive damages. Judgment on this verdict was not entered, and in November 2018, the parties settled all three actions collectively for \$25.5 million, and all three cases were dismissed with prejudice.

DaVita -- Cielo Vista Dialysis, Sun City Dialysis Center, and Loma Vista Dialysis Center: In August 2018, Medicare revoked the certification of three Texas dialysis centers owned in whole or in part by DaVita (Cielo Vista Dialysis, Sun City Dialysis Center, and Loma Vista Dialysis Center). The owners of the

facilities appealed the revocations and on November 28, 2018, Medicare reinstated their certification with no gap in coverage.

DaVita- Southside Dialysis: In September 2018, DaVita, as the majority owner of Southside Dialysis (Texas), received notification that the facility's initial Medicare certification was denied. The denial is under appeal. The clinic was re-surveyed on February 13, 2018, and was certified effective March 29, 2019.

Davita - Brighton Park Dialysis: In September 2018, DaVita, as the majority owner of Brighton Park Dialysis (Illinois), received notification that the facility's initial Medicare certification application was denied. The denial was appealed and following receipt of a final denial determination, a new 855A application was submitted and approved. Brighton Park was certified effective July 17, 2019.

Davita-Estabrook Park Dialysis: In February 2019, DaVita, as the indirect owner of Estabrook Park Dialysis (Wisconsin), received notification that the facility's initial Medicare certification application was denied due to the fact that the clinic's sole patient was hospitalized on the date of the initial survey, making it impossible for a survey to be conducted. A new 855A application was submitted and approved. Estabrook Park was certified effective September 10, 2019.

2017 U.S. Attorney Florida Investigation: In November 2017, the U.S. Attorney's Office, Southern District of Florida informed the Company of an investigation it was conducting into possible federal healthcare offenses involving Lifeline. The U.S. Attorney's Office, Southern District of Florida notified the court on April 4, 2019 of its decision to not intervene in the matter of Gabriel Valle, MD., et al, v. RMS Lifeline, Inc., et al. The complaint then was unsealed in the U.S. District Court, Southern District of Florida by order dated April 5, 2019. The U.S. Attorney's Office confirmed that the complaint, which alleges violations of the FCA, was the basis of its investigation initiated in November 2017. On July 16, 2019, the private party relators filed a Notice of Voluntary Dismissal of the matter, and the court dismissed the lawsuit without prejudice and closed the case.

2020 Medicaid Denial: In February 2020, North Carolina Medicaid issued a not-for-cause denial for an out-of-state enrollment submitted by a wholly-owned subsidiary of DaVita and the owner of Myrtle Beach Dialysis (South Carolina). DaVita re-submitted the application for enrollment, which was approved. Ohio Department of Health Settlement. On March 5, 2020, DaVita reached a settlement with the Ohio Department of Health in connection with a potential licensure revocation of National Trail Dialysis Center, a DaVita facility located in Springfield, OH. As part of the settlement, DaVita made a payment of \$130,000 to the state and agreed to pay for an independent surveyor to monitor the facility over a three-month period.

Northwell Health Legal Disclosures

Northwell Health Care, Inc. ("Northwell") (formerly known as "North Shore-Long Island Jewish Health Care, Inc.") and/or its affiliates and/or its employees, like other large employers in the heavily regulated health care field, has received inquiries from governmental agencies concerning various federal and/or state laws regarding issues involving, among other things, claim submissions to government insurance plans such as Medicare or Medicaid. In many instances, Northwell has been informed that it is viewed by the government as a witness in these investigations. In other instances, the investigations were concluded without any findings against Northwell, its affiliates, and/or its employees. Any remaining closed investigations would have been resolved through settlement, consent decree, or similar mechanisms. With respect to any open investigations, Northwell, its affiliates, and/or their managerial employees have either denied wrongdoing or are in the process of reviewing the relevant issues, and when warranted, submitting a response. Below are examples of such matters.

On or about November 18, 2010, North Shore University Hospital ("NSUH"), the Health System, and certain of their current and former employees received Civil Investigative Demands ("CIDs") issued by the United States Attorney for the Southern District of New York ("USAO/SDNY"). The CIDs sought documents, interviews, and other information relating to a clinical documentation improvement program undertaken by NSUH and certain other Health System hospitals. The matter is now closed.

On or about December 1, 2010, the Health System received a letter from the Civil Division of the United States Department of Justice ("DOJ") alleging that, since 2003, certain Health System hospitals may have submitted claims to Medicare for payment for the implantation of implantable cardioverter defibrillators ("ICD") and related services for which Medicare does not provide coverage, and further alleging potential liability under the federal False Claims Act.

Numerous other hospitals throughout the country received similar inquiries. This matter was resolved in 2016 by a settlement agreement with DOJ, and the matter is now closed. In a press release, DOJ announced that it resolved allegations concerning ICDs with approximately 500 hospitals throughout the country.

In or about October 2011, Southside Hospital ("SH") learned that the U. S. Attorney's Office for the Western District of New York ("USAO/WDNY") was conducting a review of inpatient admissions for atherectomy procedures, a minimally invasive surgical method used to treat the peripheral arterial disease of the lower extremities. It is our understanding that similar requests were made of other hospitals at the time. The USAO/WDNY initially requested that SH provide information concerning such procedures (but did not issue a subpoena for such information), and SH cooperated with the request. Since the initial request for information, SH has had no further contact from the USAO/WDNY, and at no time has the USAO/WDNY indicated that it believes SH has any potential liability in this matter.

In June 2012, Staten Island University Hospital ("SIUH") received a subpoena from the OIG and the U. S. Attorney's Office for the Eastern District of New York ("USAO/EDNY") requesting documentation relating to services rendered at SIUH's inpatient specialized burn unit since 2005.

The requested documentation was provided in the summer of 2012. In June 2013, the USAO/EDNY contacted SIUH with follow-up questions regarding the material provided, and SIUH provided the requested information. SIUH has had no further contact from the USAO/EDNY regarding this matter, and at no time has the USAO/EDNY indicated that it believes SIUH has any potential liability in this matter.

In July 2012, NSUH received a letter from the Office for Civil Rights ("OCR") of the United States Department of Health and Human Services indicating that it had opened a compliance review of certain incidents of identity theft that were alleged to have occurred at NSUH. In 2016, OCR closed its review by issuing a technical assistance letter and did not impose penalties or other sanctions.

In September 2012, a laptop computer containing research data was stolen from the car of an employee of The Feinstein Institute for Medical Research ("The Feinstein Institute"). The Feinstein Institute investigated the theft and reported it to law enforcement authorities. The research participants whose personal information may have been contained on the laptop were notified, and The Feinstein Institute cooperated with authorities concerning the matter. In 2016, this investigation was resolved by agreement with OCR.

In or about August 2015, Northwell received requests for documents from two law enforcement agencies and a court-appointed examiner focusing on gifts made to it by a Long Island-based charitable foundation and its court-appointed receiver. In particular, Northwell received document requests from (1) the New York Attorney General's Office; (2) the USAO/EDNY (issued to an employee); and (3) an examiner appointed by the Surrogate's Court to investigate the receiver's conduct. Northwell cooperated fully in these inquiries and produced documents in response to the requests. Northwell has not received any communication from either of the law enforcement agencies or the court-appointed examiner since 2016.

In November 2015 and in months thereafter, the Northwell responded to various grand jury subpoenas and other information requests issued by the U. S. Attorney's Office for the Southern District of New York seeking, among other records and information, documents relating to cardiac catheterization procedures performed by a non-employed physician who held medical staff privileges at two Northwell Health hospitals. It is our understanding that Northwell and its employees were witnesses in this investigation, and the investigation is now closed.

In September 2015, Staten Island University Hospital ("SIUH") made a voluntary self-disclosure to OIG-HHS and the New York State Office of the Medicaid Inspector General ("OMIG") in which it identified

potential overpayments to Medicare and Medicaid relating to a certain type of documentation issues at one of its laboratory patient service centers. SIUH entered into a settlement agreement with OIG-HHS in January 2017 that resolved the OIG-HHS self-disclosure.

In April 2017, Northwell made a voluntary self-disclosure to OIG-HHS relating to overpayments that it determined had been received by ten Northwell hospitals relating to certain inpatient percutaneous vertebral augmentation procedures performed at those hospitals. Northwell entered into a settlement agreement with OIG-HHS in February 2018 that settled the self-disclosure.

The requested documentation was provided in the summer of 2012. In June 2013, the USAO/EDNY contacted SIUH with follow-up questions regarding the material provided, and SIUH provided the requested information. SIUH has had no further contact from the USAO/EDNY regarding this matter, and at no time has the USAO/EDNY indicated that it believes SIUH has any potential liability in this matter.

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In September 2015, Staten Island University Hospital ("SIUH") made a voluntary self-disclosure to OIG-HHS and the New York State Office of the Medicaid Inspector General ("OMIG") in which it identified potential overpayments to Medicare and Medicaid relating to a certain type of documentation issues at one of its laboratory patient service centers. SIUH entered into a settlement agreement with OIG-HHS in January 2017 that resolved the OIG-HHS self-disclosure.

In April 2017, Northwell made a voluntary self-disclosure to OIG-HHS relating to overpayments that it determined had been received by ten Northwell hospitals relating to certain inpatient percutaneous vertebral augmentation procedures performed at those hospitals. Northwell entered into a settlement agreement with OIG-HHS in February 2018 that settled the self-disclosure.

In a Stipulation and Order (S&O) dated November 21, 2016, Long Island Jewish Medical Center was fined \$4,000 based on an infection control investigation. The facility had 21 ORs running. It was observed that in 12 of the ORs a total of 24 staff members were not following acceptable standards of practice for Infection Control in the Surgical Area.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility, which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has a quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weigh the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

Knickerbocker Dialysis, Inc. operates 61 dialysis centers in New York State. The star ratings for these facilities are shown below:

Facility Name	Address	Star Rating
South Bronx Dialysis Center	1940 Webster Avenue Bronx, NY 10457	***
Richmond Kidney Center	1366 Victory Boulevard Staten Island, NY 10301	***
Catskill Dialysis Center	139 Forestburgh Road Monticello, NY 12701	***
Sheepshead Bay Renal Care Center	26 Brighton 11 th Street Brooklyn, NY 11235	*****
Garden City Dialysis Center	1100 Stewart Avenue Garden City, NY 11530	***
Orchard Park Dialysis Center	3801 Taylor Road Orchard Park, NY 14127	****
Central New York Dialysis Center	910 Erie Boulevard East Syracuse, NY 13210	***
Millennium Dialysis	1408 Ocean Drive Brooklyn, NY 11230	****
Bronx Dialysis Center	1615-1617 Eastchester Road Bronx, NY 10461	****
Riverdale Dialysis Center	170 West 233 rd Street Bronx, NY 10463	****
Bronx River Dialysis	1616 Bronxdale Avenue Bronx, NY 10462	***
Queens Dialysis Center	118-01,05,07A Guy Brewer Boulevard Jamaica, NY 11434	***
Boston Post Road Dialysis Center	4000-4026 Boston Road Bronx, NY 10475	***
Soundview Dialysis Center	1622-24 Bruckner Boulevard Bronx, NY 10473	****
Lynbrook Dialysis Center	147 Scranton Road Lynbrook, NY 11563	****
Long Island Renal Care	3460 Great Neck Road Amityville, NY 11701	***
Queens Village Dialysis Center	222-02 Hempstead Avenue Queens Village, NY 11429	****

Facility Name	Address	Star Rating
Suburban Dialysis Center	705 Maple Road Williamsville, NY 14221	***
Atlas Park Dialysis	80-00 Cooper Avenue Glendale, NY 11385	***
Allerton Dialysis	2554 White Plains Road Bronx, NY 10467	N/A
Oyster Bay Dialysis	17 East Old Country Road Hicksville, NY 11801	****
Long Island City Dialysis	30-46 Northern Boulevard Long Island City, NY 11101	N/A
East Islip Dialysis	200 Carlton Avenue East Islip, NY 11730	****
Crossways Park Dialysis	113 Crossways Park Drive Woodbury, NY 11797	*****
Julia and Israel Waldbaum Dialysis	100 Community Drive Great Neck, NY 11021	*****
Port Washington Dialysis Center	50 Seaview Boulevard Port Washington, NY 11050	*****
Huntington on Broadway Dialysis	256 Broadway Huntington Station, NY 11746	****
Deer Park Dialysis	860 Grand Boulevard Deer Park, NY 11729	N/A
Flatlands Dialysis	1641 East 16 th Street, 5 th Floor Brooklyn, NY 11129	N/A
Longwood Dialysis	931 Bruckner Boulevard Bronx, NY 10459	N/A
Rockland County Dialysis	203 West Route 59 Nanuet, NY 10954	N/A
Downtown Brooklyn Dialysis	133 Mill Street Brooklyn, NY 11231	N/A
Staten Island South Dialysis	30 Sneden Avenue Staten Island, NY 10312	****
Wingate Dialysis	550 Kingston Avenue Brooklyn, NY 11203	N/A
Mount Eden Dialysis	1490 Macombs Road Bronx, NY 10452	N/A
Clearview Dialysis	45-60 Francis-Lewis Boulevard Bayside, NY 11361	****
Laconia Dialysis	3440 Boston Road Bronx, NY 10469	N/A
Sanford Boulevard Dialysis	120 East Sanford Boulevard Mount Vernon, NY 10550	*
Greenpoint Dialysis	146 Meserole Street Brooklyn, NY 11206	N/A
Hutchinson River Dialysis	2331 Eastchester Road Bronx, NY 10469	N/A
Ozone Park Dialysis	100-02 Rockaway Boulevard Ozone Park, NY 11417	**
Westchester Home Training	955 Yonkers Avenue Yonkers, NY 10704	N/A
Brooklyn Community Dialysis	730 64 th Street Brooklyn, NY 11220	N/A

Facility Name	Address	Star Rating
Buffalo Downtown Dialysis	520 Ellicott Street Buffalo, NY 14203	***
Seaway Dialysis	999 East Ridge Road, Suite 11 Rochester, NY 14621	***
Melrose Dialysis	459 East 148 th Street Bronx, NY 10455	**
Jamaica Hillside Dialysis	171-19 Hillside Avenue Jamaica, NY 11423	***
Clinton Hill Dialysis	1275 Bedford Avenue Jamaica, NY 11216	*
Williamsbridge Dialysis Center	3525 White Plains Road, Suite A Bronx, NY 10467	****
Schuyler Dialysis	220 Steuben Street Montour Falls, NY 14865	***
Corning Dialysis	8 W Pulteney Street Suite 101 Corning, NY 14830	*****
Ivy Dialysis	602 Ivy Street Elmira, NY 14905	****
Staten Island Dialysis Center	1139 Hyland Boulevard Staten Island, NY 10305	****
Waters Place Dialysis Center	1733 Eastchester Road Bronx, NY 10461	****
Orange Dialysis Center	100 Crystal Run Road Middletown, NY 10941	****
Jamestown Dialysis Center	207 Foote Avenue Jamestown, NY 14701	*****
Borough Park Dialysis	4102 13 th Avenue Brooklyn, NY 11219	**
NEOMY Dialysis Center	1122 Coney Island Avenue Brooklyn, NY 11230	***
Yonkers Dialysis Center	575 Yonkers Avenue Yonkers, NY 10704	****
Northtowns Dialysis Center	4041 Delaware Avenue Tonawanda, NY 14150	***
Peekskill Cortland Dialysis Center	Pike Place Suite 15 Cortland Manor, NY 10566	****

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). After the change of ownership, True North VI will continue to operate the facility under the name Peconic Bay Dialysis with no change in stations, services, or access.

Financial Analysis

Operating Budget

The applicant has submitted the facility's year one and three operating budgets, in 2022 dollars, shown below:

	Year One		Year Three	
Revenues	Per Proc.	Total	Per Proc.	Total
Commercial FFS	\$1,029.54	\$239,883	\$1,069.37	\$922,863
Medicare FFS	\$297.70	144,089	\$304.59	902,505
Medicaid FFS	\$255.33	7,660	\$253.15	44,555
Other Revenues	\$310.35	49,966	\$317.04	297,385
(Bad Debt)		<u>(18,768)</u>		<u>(92,111)</u>
Total Revenues		\$422,830		\$2,075,197
Expenses				
Operating	\$577.74	\$524,595	\$292.49	\$1,444,914
Capital	<u>\$620.40</u>	<u>563,325</u>	<u>\$115.58</u>	<u>570,978</u>
Total Expenses	\$1,198.14	\$1,087,920	\$408.07	\$2,015,892
Net Income (Loss)		<u>(\$665,090)</u>		<u>\$59,305</u>
Procedures		908		4,940

The following is noted concerning the submitted budget:

- Revenues are reflective of the extension clinic beginning operations on 4/12/2021 and represent the current owner's reimbursement rates adjusted for Years One and Three.
- Utilization increases are based on the current facility's ramp-up period and therefore reflect a conservative approach to the projected increase in procedures in the initial years of operation.
- Utilization is expected to increase with referrals from Northwell Health and community physicians as they are added to the ownership of the facility.

Utilization by payor source for years one and three after the ownership change are summarized below:

Payor	Year One	Year Three
Commercial FFS	25.66%	17.47%
Medicare FFS	53.30%	59.98%
Medicaid FFS	3.30%	3.56%
Other Revenues	<u>17.73%</u>	<u>18.99%</u>
Total	100%	100%

Contribution and Asset Purchase Agreement (CAPA)

The applicant has submitted an executed CAPA for the change in ownership of the operations related to True North VI DC, LLC. The agreement will become effectuated upon PHHPC's approval of this CON. The terms of the agreement are summarized below:

Date:	November 10, 2020		
Seller:	Knickerbocker Dialysis, Inc.		
Buyer:	True North VI DC		
Assets Acquired:	All assets are free and used in business without limitation.		
Assumed Liabilities:	All liabilities include past debts and obligations of the past business, lease agreements, capital investments and benefits, and salary expenses.		
Purchase Price:	Purchase Price is \$4,000,000 to include Start-up capital expenditures are \$2,600,054 and start-up working capital \$1,303,950 plus development fees of \$95,996 assuming 5% for development fees.		
Payment of Purchase Price:	The purchase price will be paid from True North DC Holding, LLC for \$3,600,000 and Fox Run Holding Company, LLC for \$400,000 in equity contribution. The amount is only an estimate and remains subject to change. Assets and assumed liabilities are subject to agreement by both parties after approval and held in escrow until closing by DaVita, Inc.		
Members	Estimated Initial Capital Requirements (1)	Subscription Capital	Deposited Capital (2)
True North DC Holding, LLC	\$3,600,000	\$27,000	\$1,737,000
Fox Run Holdings, LLC	\$400,000	\$3,000	\$397,000
Total	\$4,000,000	\$30,000	\$2,134,000

- (1) True North Holding, LLC's Capital Contribution is based upon estimated start-up costs, including construction costs, development fees, and working capital costs.
(2) The Members' deposited capital is being held by DaVita and will be reconciled at closing.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding, any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments, made to the facility and/or surcharges, assessments, or fees due from the Seller under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the Seller of its ability and responsibility.

Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the proposed site, the terms of which are summarized below:

Date:	November 8, 2018
Premises:	Approximately 9,000 sq. ft. Premises located 700 Old Country Road, Riverhead Commons, Riverhead. (Suffolk County)
Landlord:	Richmond Realty Corp. Agent (Riverhead Commons, LLC & Theo Associates, LLC)
Lessee:	Knickerbocker Dialysis, Inc.
Term:	10 Years, Option to renew for additional (2) 5-year terms.
Rental:	Year 1 through 5 is \$228,294.50 annum. Year 6 through ten is 256,857.06 per annum. First 5 years there is a flat 15% increase and for the second 5-year renewal and another flat 15% increase.
Provisions:	The tenant is responsible for taxes, insurance, maintenance, and utilities.

Luann D. Regensburg, President and a Manager of True North III DC, LLC, and True North VI DC, VI Assistant Secretary of Knickerbocker Dialysis, Inc., and Acting Division Vice President of DaVita Inc. submitted an affidavit stating the proposed lease is an arm's length agreement as there is no relationship between landlord and tenant.

Assignment and Assumption of Lease Agreement

The applicant has submitted an executed Assignment and Assumption Agreement for the assignment of the lease associated with this project to the proposed new operator, as shown below:

Date:	November 10, 2020
Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	True North VI DC, LLC

Consulting and Administrative Service Agreement (CASA)

The applicant has submitted an executed CASA, between DaVita Inc. and True North VI DC which was executed and signed on November 10, 2020, and will effectuate upon PHHPC approval as summarized below.

Consultant:	DaVita Inc.
Licensed Operator:	Knickerbocker Dialysis, Inc.
Services:	Development of Center, Assets, Equipment and Center Maintenance, Computer Hardware & Software, Budget, Insurance, Supplies & Prescription Drugs, Accounting & Financial Support, Funds Management, staff scheduling, negotiating contracts with suppliers for purchasing & making recommendations to the operator, staffing & recruitment, assist in the development of a utilization & quality assurance program under Quality Oversight Agreement, billing & collections.
Term:	The Agreement Commence on the Execution date and continue the initial term until the 10 th anniversary or until the date of the transactions contemplated by the Contribution and Asset purchase agreement or one of the parties, Consultant or Licensed Operator exercised their rights/options to terminate the agreement or renew the option to continue.
Compensation:	\$56,916 annually to be adjusted accordingly and at renewal time.

Assignment, Assumption, and Restatement of Consulting and Administrative Service Agreement:

The applicant has submitted an executed Assignment, Assumption, and Restatement of Consulting & Administrative Service Agreement, which is summarized as follows:

Date:	October 20, 2020
Assignor:	Knickerbocker Dialysis Inc.
Established Operator:	True North VI DC, LLC

While DaVita, Inc. will provide all the above services, the licensed operator retains ultimate authority, responsibility, and control for the operations. There is common ownership between the applicant and the CASA provider as shown in BFA Attachment B's post-closing organization chart. 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

There are no project costs associated with this application. True North VI DC, LLC will purchase the operating interest through a Contribution and Purchase Agreement (CAPA) for \$4,000,000, funded with members' equity. The \$4,000,000 of members' equity for the CAPA Agreement is being held by DaVita in escrow until closing. Estimated costs include start-up capital expenditures, working capital fees, and development fees as described in the CAPA Agreement above. This \$4,000,000 is funded through \$3,600,000 by True North Holding, LLC and \$400,000 by Fox Run Holding, LLC.

The submitted budget projects a net loss of \$665,090 for year one and a net income of \$59,305 by year three. Year one projected losses will be funded by the ongoing operations of DaVita Inc. Estimated working capital requirements of \$335,982, will be funded by the capital contributions held in escrow by

DaVita Inc. The pro forma balance sheet of True North VI DC, LLC on the first day of operations (BFA Attachment E) indicates that the facility has members' equity of \$4,000,000. The amount designated for working capital on the pro forma balance sheet is \$1,303,950.

BFA Attachment C is the SEC Form 10-Q Financial Summary of DaVita Inc. for 2020, indicating that the publicly traded corporation has a positive working capital and net asset position and achieved a net income of \$773,642,000 for the period shown. The Internal Balance sheet and Income Statement dated January 1, 2021, through September 30, 2021, indicates a positive working capital and net asset position and net income of \$790,977,000.

BFA Attachment D is Northwell Health, Inc. 2019 and 2020 Certified Financial Statements, which show a positive working capital position and favorable net asset position for both years. Also, the facility had positive excess of revenues over losses of \$809,881,000 and \$671,760,000, respectively. The Internal Financial Statement from (January 1, 2021, through June 30, 2021) indicates a positive working capital and net-asset position and Net Income of \$647,204,000.

BFA Attachment E is the Pro Forma Balance Sheet of True North DC VI, LLC and it indicates a positive members' equity of \$4,000,000 on the first day of operation.

Conclusion

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

Attachments

BFA Attachment A	Net worth Statement of Sole Member of Fox Run Holding Company, LLC
BFA Attachment B	Pre and Post-Closing Organizational Chart
BFA Attachment C	Financial Summary DaVita, Inc. 1/1/2020 Audited Internal 1/1/2021- 9/30/2021
BFA Attachment D	Northwell Health, Inc. Certified F/S 2019-2020 Internal 1/1/2021-6/30/2021
BFA Attachment E	Pro-Forma Balance Sheet for True North DC VI, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of February 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish True North VI DC, LLC d/b/a Peconic Bay Dialysis as the new operator of Peconic Bay Dialysis, a 13-station chronic renal dialysis facility at 700 Old Country Road, Suite 4, Riverhead, currently operated by Knickerbocker Dialysis, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

211244 E True North VI DC, LLC d/b/a Peconic Bay Dialysis

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department of Health (Department). [CSL]
2. Submission of a photocopy of a Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Articles of Organization for True North DC Holding, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement for True North DC Holding, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement for Fox Run Holding Company, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the amended and restated Certificate of Incorporation for Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
7. Submission of a photocopy of a list of the Board of Directors of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Certificate of Incorporation for DaVita of New York, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the Bylaws for DaVita of New York, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Incorporation for DaVita, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Bylaws for DaVita, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of an amended and executed Articles of Organization for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an amended and executed Operating Agreement for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the Certificate of Incorporation for North Shore University Hospital, acceptable to the Department. [CSL]
15. Submission of a photocopy of the Bylaws for North Shore University Hospital, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Certificate of Incorporation for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
17. Submission of a photocopy of the Bylaws for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation for Northwell Health, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Bylaws for Northwell Health, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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