

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

March 18, 2020
10:30 a.m.

Marriott Albany
189 Wolf Road
Empire Room
Albany, New York 12205

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services – Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	192008 C	NYU Langone Hospitals (New York County)
2.	192206 C	Samaritan Hospital (Rensselaer County)
3.	192324 C	Good Samaritan Hospital Medical Center (Suffolk County)

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

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	192267 E	The Surgery Center at Orthopedic Associates, LLC (Dutchess County)
2.	192320 E	Avicenna ASC, Inc. (Bronx County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 3

<u>Number</u>	<u>Applicant/Facility</u>
1. 191323 E	Century Medical & Dental Center, Inc. (Kings County)
2. 192042 B	Ohel Medical, Inc. (Kings County)
3. 192120 B	Kerestir Health, LLD d/b/a Kerestir Health Center (Orange County)
4. 192211 B	Beach Channel D&TC, LLC d/b/a Beach Channel Diagnostic and Treatment Center (Queens County)
5. 192223 B	Care365, LLC (Rockland County)

Dialysis Services - Establish/Construct

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 192048 B	USRC Hamburg, LLC d/b/a U.S. Renal Care Hamburg Dialysis (Erie County)
2. 192321 B	USRC North Flushing, LLC d/b/a U.S. Renal Care North Flushing Dialysis (Queens County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 5

<u>Number</u>	<u>Applicant/Facility</u>
1. 191265 E	Highland Operations, LLC d/b/a Highland Park Rehabilitation and Nursing Center (Allegany County)
2. 191301 E	Beech Tree Operations, LLC d/b/a Beechtree Center for Rehabilitation and Nursing (Tompkins County)
3. 192237 E	JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation (Herkimer County)

C. Certificate of Amendment of the Certificate of Incorporation

Exhibit # 6

Applicant

Massena Memorial Hospital Foundation, Inc.

Phelps Community Corporation



**Project # 192008-C
NYU Langone Hospitals**

**Program: Hospital
Purpose: Construction**

**County: New York
Acknowledged: July 25, 2019**

Executive Summary

Description

NYU Langone Hospitals (NYULH), an 844-bed, voluntary not-for-profit, Article 28 acute-care hospital located at 550 First Avenue, New York (New York County), requests approval to certify a Pediatric Heart Transplant Program. In January 2016, NYULH established a comprehensive Transplant Institute to provide patients with quality transplantation services and pre- and post-transplant care that incorporates the latest medical advancements. The Institute consists of multidisciplinary teams of medical and surgical specialists with Robert A. Montgomery, M.D., a Board-certified surgeon with extensive organ transplant experience, as its Director. The Pediatric Heart Transplant Program will function in existing inpatient and outpatient space on the main hospital campus, with the clinical program developed and managed in conjunction with Hassenfeld Children’s Hospital, NYULH’s nexus for children’s services, and the NYULH Transplant Institute.

NYU Langone Health consists of the following inpatient entities located throughout the New York City area: Tisch Hospital, Kimmel Pavilion, Hassenfeld Children’s Hospital, NYU Langone Orthopedic Hospital, Rusk Rehabilitation, and NYU Langone Hospital-Brooklyn.

OPCHSM Recommendation
Approval

Need Summary

At this time, although NYS has three approved pediatric heart transplant programs, only one is performing a significant number of transplants. Historically, Mount Sinai and Montefiore have been low volume programs and for the last two years Montefiore’s volume of procedures has decreased, and Mount Sinai has performed virtually no pediatric heart transplants.

NYULH’s plans include the establishment of a pediatric lung transplant program and heart-lung transplant program for children, both, however, are contingent upon the state’s approval of this application for a PHTP program. At this time, there are no pediatric heart-lung programs in NYS.

Program Summary

NYULH opened its adult heart and lung program in 2018. Providing heart transplant services to pediatric patients is a natural extension of NYULH’s existing adult heart transplant program. Both the adult heart and adult lung transplant programs have successfully transferred patients turned down by other local transplant centers and maintain outcomes better than the regional or national averages. The applicant projects to perform one pediatric health transplant in Year One, three and Year Two, and four in Year Three of a new program. The objective is to expand upon NYULH’s transplant treatment strategies to include a pediatric continuum of care.

Financial Summary

There is no project cost associated with this application.

<u>Incremental Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$981,271	\$2,580,341
Expenses	<u>950,883</u>	<u>1,435,688</u>
Excess Revenues over Expenses	\$30,388	\$1,144,653

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and expiration of the approval. [PMU]
2. The applicant remaining a member, in good standing, with the NY Center for Cardiothoracic Transplantation (NYCTC). [HSP]
3. Actively participating in the NYCTC by sharing data, participating in peer review, research, quality improvement and other activities endorsed by the Department including but not limited to coordinating the facility's plan with efforts that NYCTC may be conducting. [HSP]
4. Submission of evidence of UNOS approval of their pediatric heart transplant program upon receipt, acceptable to the Department. [HSP]
5. The applicant committing and devoting resources to improving organ donation and NYS Donate Life Registry enrollments a top priority in all system hospitals. This commitment must be reflected in a written plan to create a system-wide institutional culture that supports organ donation and NYS Donate Life Registry enrollment, which is continually evaluated and updated as needed. This plan includes, but is not limited to:
 - a. Implementation of and participation in programs and initiatives to promote health and prevent diseases associated with the need for organ and tissue donation and transplantation;
 - b. Implementation of practitioner-focused education and outreach efforts to inform them of the availability and breadth of NYU's pediatric heart transplant services.
 - c. Implementation of patient evaluation services in underserved areas of the state.
 - d. improving communication and coordination with the OPO(s), for example, establishing onsite transplant coordinators, conducting regular multidisciplinary clinical case reviews to identified missed opportunities and/or opportunities for improvement and reporting and reviewing aggregate donor data jointly with the OPO(s);
 - e. enlisting participation, improving coordination and holding staff throughout the facility accountable as partners in achieving these goals, including but not limited to critical care, emergency department and palliative care staff;
 - f. developing pediatric-specific organ/tissue donor referral strategies, such as the use of automated monitoring systems to notify OPO of potential donors and other similar initiatives;
 - g. developing and implementing proactive donor management improvement activities, in conjunction with the OPO(s), including, but not limited to, the use of protocols and standard processes to improve organ management and recovery;
 - h. supporting research to advance organ donation referral, management, recovery, preservation, and NYS Donate Life Registry donor enrollment rates;
 - i. increasing awareness and education of staff about organ donation throughout system facilities, and the communities they serve, by partnering and coordinating with organ donation stakeholders (e.g. the NY Alliance for Donation, OPOs and tissue banks) and others (e.g. community-based organizations such as interfaith organizations, organizations that provide services to different ethnic and cultural groups, etc.) to implement awareness and education initiatives;
 - j. conducting specific activities to improve enrollment in the NYS Donate Life Registry;
 - k. exploring the use of technology to accomplish plan goals;
 - l. establishing measurable goals and benchmarks with timeframes which are monitored and are used to continually evaluate and update the plan;

- m. collaborating with the Department, the NYS Transplant Council, and statewide organizations, such as the NY Alliance for Donation, GNY Hospital Association, and the Healthcare Association of NYS to share plan results to improve practices in hospitals and communities across the state.
- n. annually for the first five years and upon request, providing the Department with information and updates about the plan including progress towards meeting the goals, benchmarks and timelines developed and described above. [HSP]

Council Action Date
April 2, 2020

Need and Program Analysis

Proposal and Background

NYULH provides a wide array of inpatient and outpatient pediatric services in its primary service area of metropolitan NYC and Long Island. NYULH and its affiliates including Winthrop Hospital had approximately 22,000 inpatient pediatric discharges, 45,000 pediatric emergency department visits, and 16,600 deliveries in 2018. They have a pediatric congenital heart surgery program with approximately 200 cases per year with survival rates that exceed the national average in a number of key categories and a post-op length of stay lower than the national average.

The proposed pediatric heart transplant program (PHTP) will be established within NYULH's Transplant Institute (TI). The TI, an organizational structure that brings all of NYULH's transplant services together under one umbrella department, was established in 2016. The TI currently houses the United Network for Organ Sharing (UNOS) approved kidney, liver, pancreas, lung and adult heart transplant programs. The TI's aggressive outreach, evaluation, listing efforts and donor management practices have contributed to increases in the number of transplants of all of the above-listed organs at NYULH and statewide. The NYULH TI is a member and actively engaged in the work of the New York Center for Liver Transplantation, Center for Kidney Transplantation and the NY Cardiothoracic Transplant Consortium.

Since 2011, NYULH has operated an adult Ventricular Assist Device (VAD) program, accredited by The Joint Commission (TJC), providing mechanical circulatory support for patients in acute cardiogenic shock and with chronic advanced heart failure as destination and bridge to transplantation therapy. The program was recently re-certified. NYULH's VAD survival and quality outcomes surpass national registry benchmarks.

NYULH opened its adult heart and lung transplant programs in 2018. As of February 20, 2020, the Organ Procurement and Transplant Network (OPTN) reports that NYULH has performed 78 adult heart and 67 adult lung transplants. The applicant reports that both the adult heart and adult lung transplant programs have evaluated and successfully transplanted patients turned down by other local transplant centers and maintained outcomes better than the regional and national average.

As a condition of the 2018 approval of the adult heart transplant program (AHTP), NYULH was required to develop and implement a five-year plan to create a system-wide institutional culture of organ donation and support for enrollment in the NYS Donate Life Registry. Required components of the plan included committing and devoting resources to:

- Implementation of programs to promote health and prevent diseases associated with the need for organ donation;
- Improving communication and coordination with the organ procurement organizations;
- Developing specific organ/tissue donor identification and referral strategies and proactive organ donor management improvement activities;
- Supporting research to advance organ donor referral, management, recovery, preservation, and enrollment in the NYS Donate Life Registry;
- Working to increase awareness, education, and accountability of staff throughout the health systems facilities and the communities they serve; and
- Collaborating with the Department, the NYS Transplant Council and statewide organizations to share results and practices.

NYULH is implementing the conditions set forth in the approval of their adult heart transplant program, and the number of heart and lung transplants performed in New York State since NYULH opened its adult program has increased. The applicant reports that even factoring out the heart transplants performed by their program, there was a seven percent increase in adult heart transplants statewide.

The applicant seeks to enhance the breadth of transplantation services that NYULH provides to include pediatric heart transplantation services. They plan to provide such services within the existing physical plant of the Kimmel Pavilion and in conjunction with the practitioners and services provided by its pediatric program, known as Hassenfeld Children's Hospital (HCH). HCH houses a pediatric ICU, Congenital Cardiovascular Care Unit (CCVCU), a cardiac catheterization and electrophysiology lab as well as a Labor and Delivery Unit, Newborn Nursery and Neonatal ICU.

The applicant reports that pediatric cardiologists at HCH currently care for children with heart disease, diagnosing congenital heart defects and acquired heart disease in infants, children, and adolescents using advanced cardiac imaging technology, echocardiology, cardiac catheterization, treadmill stress testing, and electrophysiology testing. To support the cardiac and respiratory needs of adults and children with heart and/or lung failure, NYULH implemented a pediatric and adult extracorporeal membrane oxygenation (ECMO) program in 2015. The applicant reports that their ECMO survival outcomes exceed benchmarks.

When surgical treatment is required, the HCH pediatric cardiologists work collaboratively with the pediatric cardiac surgical team. Currently, cardiac surgeons at the HCH perform approximately 200 cardiac surgeries per year, including cardiac reconstructive procedures on infants and children in those with complex cardiovascular disorders and congenital heart defects. The applicant reports that for pediatric patients undergoing heart surgery, NYULH's survival rates exceed the national average in a number of key categories, and their post-op length of stay after cardiac surgery is lower than the national average.

The applicant reports that there are a number of children under the care of NYULH HCH physicians that are currently in need of a heart transplant, and they have referred six pediatric patients to other facilities for heart transplant evaluation in the last year. The applicant projects that they will perform one pediatric heart transplant in Year One, three in Year Two and four in Year Three of a new program.

The applicant identifies the service area of the proposed pediatric heart transplant program, by the geographic area served by NYULH as well as its affiliate hospitals encompassing all five boroughs of NYC as well as Nassau and Suffolk Counties. They describe an outreach plan that includes visits to community physicians located in areas where there are few or no patients on the waitlist, educating hospitals on the indications for heart transplantation and how to refer patients for rapid evaluation, ensuring transplant physicians availability 24 hours a day for emergent evaluation and transfer, and implementing other strategies that are effective in promoting awareness of their adult heart transplant program.

The applicant's position is that limited and carefully considered growth in the number of approved transplant programs stimulates growth in organ donation and transplant, rather than simply spreading the same number of cases among transplant providers.

NYULH currently holds UNOS approval and CMS certification for its heart transplant program. CMS allows facilities with adult heart transplant certification to perform both adult and pediatric transplants as long as the volume of the pediatric transplants they perform does not exceed 49% of their total transplant volume. Currently, UNOS does not differentiate adult from pediatric program applications or approvals, however, they are in the process of implementing changes that will require all facilities seeking to provide transplant services to apply separately for adult and pediatric program approvals. Therefore, NYULH does not need to apply to either UNOS or CMS to establish a new pediatric heart transplant program.

NYULH plans to expand its VAD program to the pediatric population and begin to perform pediatric lung transplants upon approval and implementation of their pediatric heart transplant program.

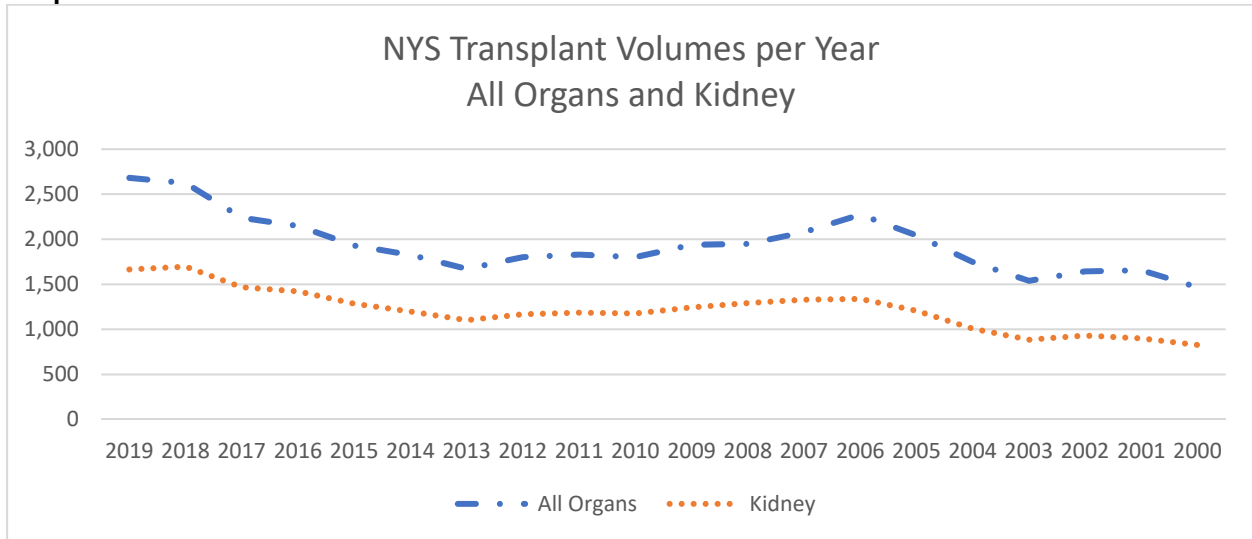
Transplant Program Review

Status of Donation and Transplantation in NYS and NYULH

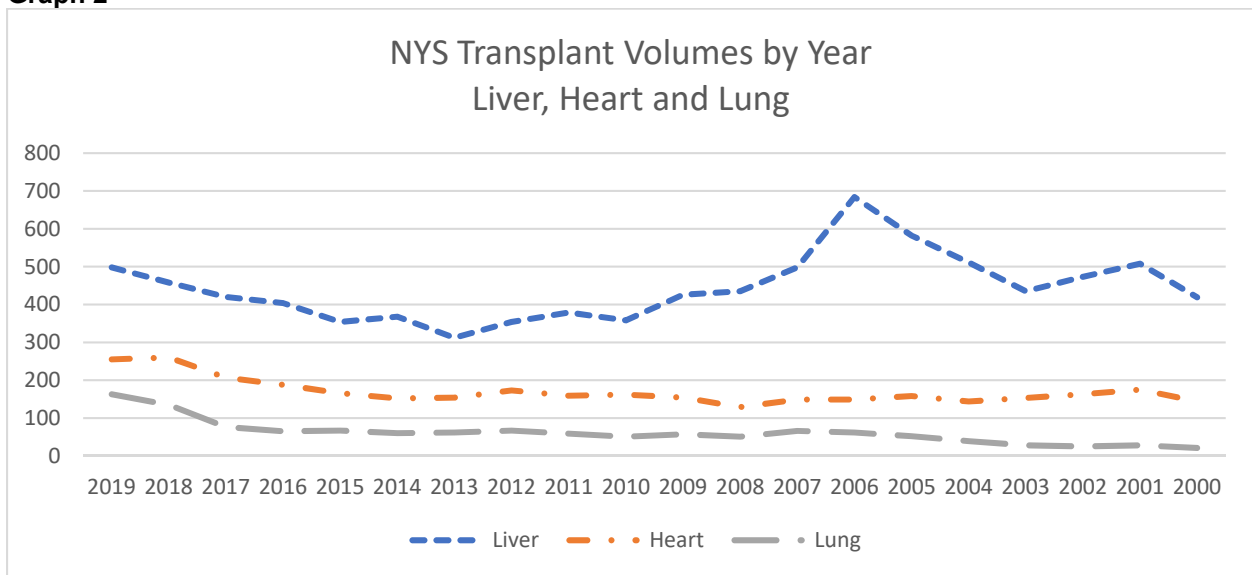
In addition to materials provided as part of the CON application and the applicant's response to the Department's Request for Additional Information, staff reviewed the facility's recent CMS survey(s), NYULH's UNOS/Organ Procurement and Transplantation Network (UNOS/OPTN) and the Scientific Registry of Transplant Recipients (SRTR) data, data of other NYS and out of state hospitals that perform heart transplants, and the most recent Report of the NYS Cardiac Advisory Committee (CAC) on Pediatric Congenital Cardiac Surgery (2010-13).

In NYS and nationally, the number of solid organs transplanted per year is cyclical. Overall, the number of solid organ transplants performed in NYS has been increasing since 2013. See below.

Graph 1



Graph 2

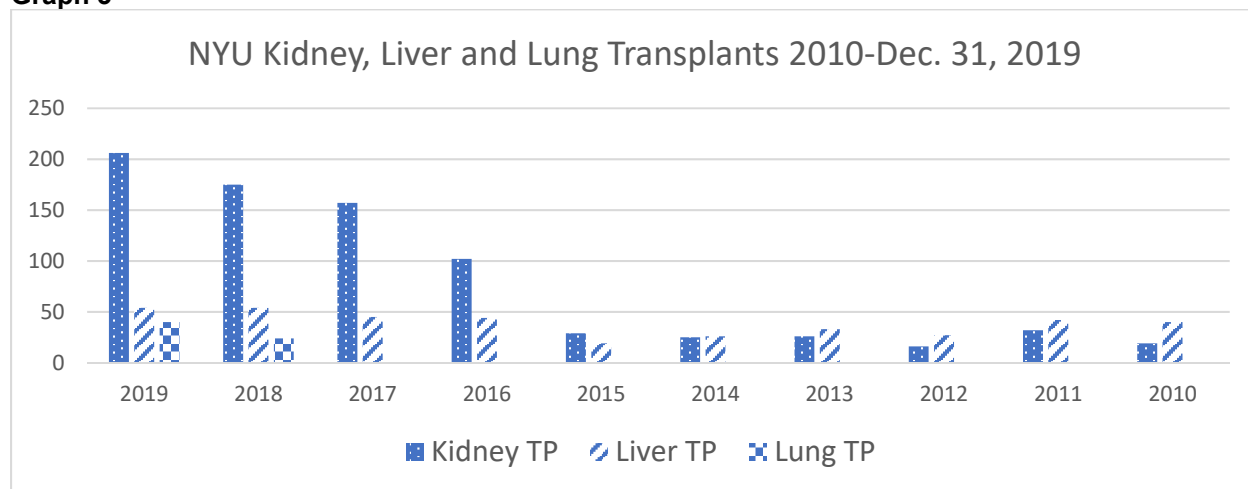


It is somewhat early to evaluate the impact that changes to the UNOS organ allocation rules have had on the number of transplants in NYS, but, generally, more organs were projected to be available for transplantation to NY centers.

As noted above, NYULH’s Transplant Institute currently houses UNOS approved kidney, liver, pancreas, lung and adult heart transplant programs. The TI’s aggressive outreach, work-up, listing efforts and donor management practices have contributed to increases in the number of transplants across all of their transplant programs and statewide. See Graphs 1 and 2 above.

Data from UNOS/OPTN and SRTR demonstrate that NYULH performed 38 adult heart, 206 kidney, 54 liver, and 40 lung transplants in 2019. SRTR reports graft and patient survival transplant outcomes as higher than the national average. Graph 3 below depicts the number of kidney, liver, and lung transplants performed at NYULH since 2010.

Graph 3



There are seven existing adult heart transplant programs in NYS; three of the seven centers also perform pediatric heart transplants. Four of the seven centers are located in New York City, including all three existing pediatric heart transplant centers, Outside of NYC, one adult heart transplant program is located in Nassau County, one is in Westchester County and one is in Monroe County.

Table 1 shows NYS heart transplant center pediatric and adult transplant center volumes from 2010 through the end of 2019, as reported to UNOS.

Table 1

NYS Heart Transplants – Pediatric and Adult											
Hospital	Type	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Montefiore	Peds	4	6	6	7	4	1	8	4	9	8
	Adult	47	37	43	33	38	26	14	24	20	17
Mt. Sinai	Peds	0	1	3	2	7	2	2	6	2	5
	Adult	23	30	32	31	24	27	19	21	27	24
NYP-Columbia	Peds	30	28	21	18	22	18	25	18	23	18
	Adult	61	56	55	52	38	47	54	67	54	66
NYULH	Adult	38	35	NA	NA	NA	NA	NA	NA	NA	NA
NSUH	Adult	14	14	NA	NA	NA	NA	NA	NA	NA	NA
Strong	Adult	15	15	20	16	15	9	12	9	10	10
WCMC	Adult	23	38	27	29	18	22	20	24	14	14

It is clear from the volumes reported to UNOS shown in Table 1 and the heart transplant waitlist additions per transplant center indicated in Table 2, that NYP-Columbia has the highest volume of pediatric heart transplants in NYS and is considered a moderate to high volume pediatric heart transplant center. Both Montefiore and Mount Sinai have been low volume PHTP centers for some time with Mount Sinai not adding any children to their PHTP waitlist for the last two years, not performing any pediatric heart transplants in 2019 and only performing one pediatric heart transplant in 2018.

Table 2

Hospital	Type	Heart Waitlist Additions			Heart Waitlist Mortality Rate 07/01/17-06/30/19	
		2017	2018	2019	Center	National
Montefiore	Peds	11	9	3	84.7	15.2
	Adult	64	51	47	4.6	8.6
Mt Sinai	Peds	5	0	0	7.8	15.2
	Adult	53	36	41	8.5	8.6
NYP-Columbia	Peds	30	31	32	4.4	15.2
	Adult	69	75	69	4.1	8.6
NYULH	Adult	3	47	59	4.9	8.6
NSUH	Adult	0	23	25	NA	8.6
Strong	Adult	32	43	26	8.7	8.6
WCMC	Adult	31	36	34	8.7	8.6

Of the 3,686 people awaiting a heart transplant nationally on 02/1/2020, 345, or 9%, are listed at NYS heart transplant centers; eleven are under the age of eighteen.

As noted in Table 3, NYS is the fourth most populous state in the country with a population of 19.4 million people. In 2019, NYS transplant centers performed 255 heart transplants, 34 of which were pediatric. Of the ten most populous states, New York has the fourth-highest overall heart transplant rate and the fourth highest pediatric heart transplant rate among these states.

Table 3

State	2019 Est. Pop.	2019 TP Total	2019 TP Rate per Mil. Pop.	2019 Peds TP Total	2019 Peds TP Rate per Mil. Total State Pop.	24% of state Pop.	Peds TP Rate Based on 24% of state Pop.**	Peds Rank
Ca.	39.5M	466	11.80	57	1.44	9.48	6.01	8
Tx.	29.2M	302	10.34	47	1.61	7.00	6.71	5
Fl.	21.4M	236	11.03	24	1.12	5.13	4.68	10
NY	19.4M	255	13.14	34	1.75	4.65	7.31	4
Pa.	12.8M	182	14.22	23	1.80	3.07	7.49	3
Il.	12.6M	176	13.97	36	2.86	3.02	11.92	1
Oh.	11.6M	124	10.69	18	1.55	2.78	6.47	6
Ga.	10.6M	64	6.04	13	1.23	2.54	5.12	9
NC	10.4M	162	15.58	23	2.21	2.50	9.20	2
Mi.	9.9M	85	8.59	15	1.52	2.38	6.30	7

**Based on the 2010 Census, children under 18 are 24% of the total population

SRTR data for 2017 and 2018 reveals that the waitlist mortality for all centers except Montefiore's is below the national benchmark. The one-year observed-to-expected post-transplant mortality rate is within the expected range for all New York transplant centers. The Department believes Montefiore's higher number is due to the small number of children on their list.

LiveOnNY, the New York City Metro-area organ procurement agency (OPO), supplied a letter of support for NYULH's application. LiveOnNY, who has previously attested to NYULH's outreach and efforts to develop donation improvement programs both within and outside of the facility, strongly supports the need for another pediatric heart transplant program in NYS and the need for a program in NYS that is capable of performing simultaneous pediatric heart-lung transplants.

Although not noted in their letter, LiveOnNY and NYULH work closely together on donation and transplantation related research and in promoting best practices in organ donor management.

SRTR data for July 1, 2018 through June 30, 2019, as indicated in Table 4, shows the main NYULH campus is above the expected donation rate and identifies opportunities for improvement at the Brooklyn, Winthrop, and Bellevue campuses. There is no differentiation made between adult and pediatric heart donors in this report.

Table 4

Hospital	Eligible Deaths	Donors meeting Eligible Death Definition.	Observed Donation Rate	Expected Donation Rate	Additional Donors
NYULH	7	5	71.4	67.9	1
NYU Brooklyn	6	3	50	63.3	3
NYU-Winthrop	7	0	0	61.1	2
Bellevue	12	5	41.7	70	1

Compliance with Applicable Codes, Rules, and Regulations

A successful Medicare Transplant re-certification survey was conducted for the NYULH adult kidney and liver transplant programs May 3-5, 2016. Initial certification of NYULH’s adult heart and lung transplant programs was granted in 2018 and initial certification of their pancreas transplant program was granted in 2019.

The 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. NYU Langone Hospitals are accredited by The Joint Commission and have achieved advanced certification for their advanced comprehensive stroke center, ventricular assist device program, advance palliative care program, inpatient diabetes program and perinatal care services.

Ad Hoc Expert Review Committee (Review Committee) Discussion

The Department convened a committee consisting of experts in the field to review the application, provide feedback as to its strengths and weaknesses, and make recommendations to the Commissioner of Health and PHHPC.

The Review Committee was facilitated by Department staff and included:

- representation from the NYS Transplant Council (TC);
- a NYS transplant program administrator;
- a pediatric heart transplant surgeon and cardiologist from non-competing out-of-state programs recommended by the NYS Cardiac Advisory Committee (CAC); and
- a chief operating officer from a large out-of-state organ procurement organization

Review Committee members were provided with the following information for review and evaluation:

- Relevant components of the CON application and attachments;
- NYULH’s response to the Department’s request for additional information;
- UNOS/OPTN and SRTR data for volumes, outcomes, transplant rates and other data regarding existing heart transplant centers in NYS;
- Volumes and mortality for the NYULH’s other transplant programs;
- A copy of the most recent Report of the NYS CAC on Pediatric Congenital Cardiac Surgery Data (2010-13); and
- Information regarding public comment received about the application.

Committee members were instructed to review the proposed program on the merits of the application and material supplied. Each member was asked their thoughts and opinions and discussion followed.

Committee members noted:

- The active pediatric, pediatric cardiology and pediatric cardiac surgical programs at NYULH that have demonstrated good outcomes;
- The existing pediatric cardiac and surgery infrastructure within the NYULH system is likely to be able to leverage existing services and patients served by them to generate a waitlist and supports the number of pediatric heart transplants projected for their new program;
- NYULH's has an existing physical plant capable of providing pediatric heart transplant services at the HCH;
- The facility's success in increasing the number of non-heart transplants over the last few years and in establishing an active, successful adult heart transplant program without negatively impacting the performance of existing adult programs as they grew;
- The contributions that active outreach, acceptance of hard to place organs, listing of patients turned down by other centers, and implementation of assertive donor management techniques have had on reaching the desired volumes and outcomes of the adult heart and other organ transplant programs;
- The likelihood that a new pediatric heart transplant program at NYULH would receive UNOS approval based on the:
 - credentials of the pediatric cardiology and transplant surgical team members;
 - presence of existing transplantation services structures upon which the new program would build; and
 - strong quality assurance and performance improvement program (QAPI) described by the applicant.
- The existence of three established pediatric heart transplant (PHTP) programs in NYS all located in NYC; and
- The active nature of the PHTP program at Columbia performing approximately 30 PHTP per year, and the low to no volume nature of the Montefiore and Mt. Sinai PHTP programs for a number of years.

The need for another pediatric heart transplant program in New York was discussed extensively. The Committee noted that the number of PHTP programs a state "needs" is influenced by many factors, not the least of which is the number of pediatric hearts available for transplantation.

Committee members raised questions as to whether Montefiore and/or Mount Sinai intended to continue to perform PHTP. Although the answer to this question was unknown, the Committee did not feel that it would make much difference because of their low volumes, and it was thought that Columbia had the capacity to accommodate more transplants if need be.

Questions/topics discussed included:

- Whether or not there was an evident unmet disease burden in NYS that would require increased PHTP capacity:
 - The Committee did not see evidence of unmet need. They noted that the size of a facility's pediatric congenital heart program was generally a predictor of disease burden and volume of an associated pediatric heart transplant program. They noted that NYULH's congenital heart surgery program performs approximately 200 cases a year and that the volume of PHTP projected, 1, 3 and 4 in Years One, Two and Three, respectively, were thought to be appropriate, especially in a new program. They also noted that there was capacity at the existing programs sufficient to meet the need.
- Whether children on existing NYS PHTP program waiting lists were dying at a higher than expected rate before they could receive a transplant:
 - The data did not support this conclusion.
- Whether opening a new program would destabilize any existing programs:
 - Committee members did not believe opening a new program would destabilize Columbia and that the impact of a new program on the two existing low volume programs was unclear.
 - The Department has received no public comment in support or opposition from any of the existing heart transplant programs.

The committee discussed the applicant's argument that establishing a new program at NYULH would facilitate continuity of care for the applicant's patients. Committee members did not disagree with this

assessment but made the point that there are many hospitals with pediatric cardiology and congenital heart surgery programs that do not perform pediatric heart transplants because this is such a specialized service requiring significant resources. In this case, PHTP services are already available in this service area and are costly to establish and maintain when the needs of these children could be met by collaboration between practitioners and existing programs, rather than opening a new program.

Committee members noted that one-third of the pediatric heart transplants performed in NYS were performed on out-of-state residents, but they were not persuaded that out-of-state children could not be served by the existing programs in New York or by programs in the nearby states of Massachusetts and Pennsylvania. At the time the Review Committee met, data regarding the number of NYS residents seeking pediatric heart transplants out-of-state was not available.

The committee felt strongly that the shortage, or need, that exists is in the availability of pediatric hearts donated and available for transplantation rather than the availability of programs to provide pediatric heart transplant services. They noted that strategies that work to increase the number of hearts transplanted in the adult population, e.g. accepting hard to place hearts and listing patients turned down by other programs, will not necessarily have the same effect in a pediatric program.

Review Committee Recommendation

The Review Committee did not believe that an additional pediatric heart transplant program was needed in NYS given that there are already three approved PHTP programs in NYS and that Columbia can increase the number of transplants that they perform to accommodate the low number of PHTP projected by NYULH and the volume historically performed by Mount Sinai and Montefiore should they close their programs.

Therefore, although the merits of the application would support approval, the Review Committee recommends disapproval of this application based on a lack of demonstrated need.

Additional Data

As noted above, at the time of the Review Committee, data regarding NYS residents seeking out-of-state pediatric heart transplants was unavailable. Subsequently, data provided to the applicant by UNOS and shared with the Department indicates that NYS children are increasingly going out of state to receive their heart transplants. This is of concern because of the implications it has for children and families without the means or insurance coverage to travel to and receive this specialized care provided at an out of state facility.

Prevention Agenda

NYU Langone states that the proposed project advances Prevention Agenda 2019-2024 priorities identified by the community in the most recently completed Community Health Improvement Plan/Community Service Plan by promoting healthy infants and children within the Promoting Health Women, Infants and Children priority area. The applicant identifies Preventing Chronic Disease and Promoting Health Women, Infants and Children as the Prevention Agenda priorities the applicant will address.

NYU Langone identifies several interventions across various sectors the applicant is participating in to advance the Promote Healthy Women, Infants and Children and Preventing Chronic Disease priority areas by decreasing rates of childhood and adolescent obesity and reducing disparities:

- ParentCorps in community-based early childhood education settings and schools;
- Implement the Greenlight health literacy/parent engagement program in the primary care setting;
- Implement the Health Families/Programa de Familias Saludables, a Pediatric Obesity Intervention in the primary care setting;
- Develop a Two Generations model in the primary care setting to address maternal/child health for high-risk families;
- Develop and implement a community health worker program in low-income housing to improve management of chronic illness; and
- Increase capacity among community partners and physicians to address tobacco use.

NYU Langone Hospitals actively partners with numerous with multiple community partners across various sectors, including the New York City Department of Health and Mental Health to address the Prevention Agenda priorities.

To measure the performance and progress of their interventions, the applicant will monitor levels of participation, patient satisfaction and impact on health and well-being.

In 2017 NYU Langone Hospitals spent \$3,249,891 on community health improvement services, representing 0.086% of total operating expenses.

OPCHSM Conclusion

NYULH's application reflects that they are a health care system dedicated to increasing the availability of organ transplantation to the population they serve by contributing to research relevant to the field, working to identify and develop techniques to improve organ donor management, contribute to the education of practitioners in both transplant and non-transplant facilities and promote enrollment in the NYS Donate Life Registry.

The application and responses to requests for additional information assured the Review Committee and the Department that NYULH has the structure and resources to implement a pediatric heart transplant program that would meet UNOS requirements for approval and provide quality pediatric heart transplant-related care.

At this time, although NYS has three approved pediatric heart transplant programs, only one is performing a significant number of transplants. Historically, Mount Sinai and Montefiore have been low volume programs and for the last two years Montefiore's volume of procedures has decreased, and Mount Sinai has performed virtually no pediatric heart transplants.

NYULH's plans include the establishment of a pediatric lung transplant program and heart-lung transplant program for children, both, however, are contingent upon the state's approval of this application for a PHTP program. At this time, there are no pediatric heart-lung programs in NYS.

Based on all of the information and data evaluated, the OPCHSM recommendation differs from that of the Review Committee; OPCHSM recommends approval of the application.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2020 dollars, during the first and third years, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
<u>Inpatient Revenues</u>				
Commercial MC	\$0	\$0	\$149,719	\$748,596
Medicaid MC	\$148,983	<u>893,898</u>	\$176,121	<u>1,232,848</u>
Total Inpatient Revenue		\$893,898		\$1,981,444
 <u>Inpatient Expenses</u>				
Operating	\$11,959	\$71,752	\$17,938	\$215,256
Capital		<u>0</u>		<u>0</u>
Total Inpatient Expenses	\$11,959	\$71,752	\$17,938	\$215,256
Inpt Excess Rev. over Exp.		\$822,146		\$1,766,188
 <u>Outpatient Revenues</u>				
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial MC	\$0	\$0	\$4,187	\$293,090
Medicaid MC	\$3,120	<u>87,373</u>	\$3,120	<u>305,807</u>
Net Outpatient Revenue		\$87,373		\$598,897
 <u>Outpatient Expenses</u>				
Operating	\$31,398	\$879,131	\$7,264	\$1,220,432
Capital		<u>0</u>		<u>0</u>
Total Outpatient Expenses	\$31,398	\$879,131	\$7,264	\$1,220,432
Outpt Excess Rev. over Exp.		(\$791,758)		(\$621,535)
Total Revenues		\$981,271		\$2,580,341
Total Expense		<u>\$950,883</u>		<u>\$1,435,688</u>
Excess Rev. over Exp.		<u>\$30,388</u>		<u>\$1,144,653</u>
 <u>Utilization</u>				
Pediatric Heart Transplants		1		4
Total Inpt Discharges		6		12
Total Outpt Visits		28		168

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

- Effective January 1, 2020, Medicaid payments have been reduced by 1% per the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets.
- Inpatient revenue and expenses represent patient transplants, patients who are admitted and evaluated for transplant but are not transplanted, and transplant readmissions.
- Revenue assumptions are based on the actual data for current NYULH heart transplant and Left Ventricular Assist Device (LVAD) patients. Total revenue was calculated by applying the rates of utilization using a combination of heart transplant and LVAD program experience, the NYULH pediatric cardiac surgery program experience and Vizient inpatient data for pediatric heart transplant and LVAD cases.
- Expense assumptions are based on the calculation of staffing expenses using specialized-specific full-time equivalents per transplant rates, which are made available annually by the United Network for Organ Sharing Staffing survey. Staff benefits were based on a fringe rate of 39.6% and supply and purchased services expenses were based on the experience of NYULH adult heart transplant and Left Ventricular Assist Device programs.

- Utilization assumptions are based on the actual NYULH heart program rates by payor for each of these types of encounters. The payor mix for pediatric heart transplants performed in New York in calendar years 2017 and 2018 was 57% Medicaid, CHIP, or Self-pay. In Year One, the estimates included one transplant, one LVAD implant, and in Year Three, as volume increases, the payor mix was adjusted to be more reflective of the New York historical actual.
- Utilization broken down by payor source for inpatient and outpatient services is as follows:

<u>Inpatient</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	0%	42%
Medicaid MC	100%	58%

<u>Outpatient</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	0%	42%
Medicaid MC	100%	58%

Capability and Feasibility

There are no issues of capability since there is no total project cost associated with this application. The submitted budget projects an excess of revenues over expenses of \$30,388 and \$1,144,653 for the first and third years, respectively. Medicaid Managed Care is reflected in first year revenue due to the following:

- As per the Medicare Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers to perform Organ Transplants, an adult transplant program is permitted to perform pediatric transplants under its Medicare approval.
- A center that is requesting initial Medicare approval to perform pediatric transplant is not required to comply with the clinical experience requirements. Therefore, there is no minimum volume, or additional Medicare certification requirement for NYULH to perform Medicare-approved pediatric heart transplants.
- The first-year incremental revenue estimated includes one pediatric heart transplant, one pediatric LVAD implantation, and the pre- and post-transplant and LVAD admissions provided to patients who are evaluated for transplantation as well as the patient who is transplanted.
- The applicant estimates that the payor for such cases will be Medicaid based on the historical payor mix for pediatric heart transplants in New York.

The submitted budget appears reasonable.

BFA Attachment A is the August 31, 2018 and the August 31, 2019 certified financial statements of NYU Langone Hospitals. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an excess of revenues over expenses of \$207,548 and \$580,603 for August 31, 2018 and August 31, 2019, respectively.

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

Attachments

BFA Attachment A Financial Summary- August 31, 2018 and August 31, 2019 certified financial statements of NYU Langone Hospitals



**Project # 192206-C
Samaritan Hospital**

**Program: Hospital
Purpose: Construction**

**County: Rensselaer
Acknowledged: October 29, 2019**

Executive Summary

Description

Samaritan Hospital of Troy, NY Inc. d/b/a Samaritan Hospital (Samaritan), a 257-bed, voluntary not-for-profit, Article 28 acute care hospital located at 2215 Burdett Avenue, Troy (Rensselaer County), seeks approval to merge The Burdett Care Center, Inc. (Burdett), a 15-bed, voluntary not-for-profit, Article 28 maternity hospital located within leased space in Samaritan Hospital, into its operations. Samaritan will be the surviving hospital and corporation. Upon Public Health and Health Planning Council (PHHPC) approval of the merger, the maternity department will continue to use the assumed name Burdett Birth Center. St. Peter's Health Partners (SPHP), a not-for-profit healthcare system in New York's Capital Region that operates numerous health facilities, is the sole member, active parent and co-operator of Samaritan and Trinity Health Corporation is the sole member of SPHPs and a co-operator of the SPHP's licensed facilities.

Samaritan consists of three campuses: 257 beds at the main campus at 2215 Burdett Avenue; 165 beds at Albany Memorial Hospital Campus at 600 Northern Blvd, Albany (recently merged into Samaritan under CON 192045); and 20 Chemical Dependence-Rehabilitation (CD-Rehab) beds at St. Mary's Campus at 1300 Massachusetts Avenue, Troy. Upon completion of this project, Burdett's 15 Maternity beds will be added to Samaritan's operating certificate resulting in 272 total certified beds (457 beds across all campuses).

Burdett was established in 2011 under CON 091172 as a result of the formation of St. Peter's Health Partners to preserve reproductive-related

procedures that are prohibited by the Ethical and Religious Directives (ERDs) of the Catholic Church. Burdett was initially granted a five-year limited life due to uncertainty as to the financial feasibility of a 15-bed maternity hospital. The hospital began operations effective October 1, 2011, and in 2016 Burdett was granted a three-year extension of the limited life (CON 161389) to allow Burdett more time to demonstrate financial feasibility.

SPHP was formed in 2011 when SPHP became the sole member and passive parent of St. Peter's Health Care Services, Northeast Health, Inc., and Seton Health System, Inc. Prior to this affiliation, Catholic Health East (CHE) was the sole member and passive parent of St. Peter's Health Care Services and, due to the 2011 St. Peter's - Northeast Health - Seton affiliation, became the sole member and passive parent of SPHP. In 2013, CHE affiliated with Trinity Health, Inc. forming a new corporation, CHE Trinity, Inc. (sole member of the two entities). In 2014, CHE, Trinity Health, Inc., and CHE Trinity, Inc., merged and the surviving entity's name became Trinity Health Corporation. In 2019, Trinity became a second active parent/co-operator of the licensed health care facilities under SPHP.

Burdett has been losing money for years due to an unfavorable payor mix, significant malpractice, and other expenses. It has a significant deficit and projects further operating losses. The merger is expected to deliver governance, administrative and operational efficiencies via one legal board, a single management structure, one set of policies and

procedures, one medical and nursing staff, and many unified departments. Reductions in regulatory obligations imposed by federal and state agencies will also be cut in half.

On September 26, 2019, Samaritan Hospital became the sole corporate member of Burdett Care Center. Accordingly, Burdett is now part of the SPHP system and abides by the Ethical and Religious Directives of the Catholic Church and has thus discontinued providing reproductive services prohibited by the ERDs. Post-merger, Burdett will cease to exist as a separately licensed entity.

OPCHSM Recommendation Contingent Approval

Need Summary

As a stand-alone 15-bed maternity hospital, Burdett is not financially sustainable. Approval of this application will preserve maternity services in Rensselaer County, especially for the significant low-income population; however, as a result other reproductive services prohibited by the ERDs have been discontinued. Patients residing in Rensselaer County in need of discontinued reproductive health services will be informed of options to utilize the Upper Hudson

Planned Parenthood in Troy and two private physician offices who will perform reproductive procedures at Albany Medical Center. Medicaid will cover the cost of transportation services.

Program Summary

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

Financial Summary

There are no project costs or acquisition price associated with this application. Samaritan Hospital of Troy, NY Inc. has submitted an affidavit that they will provide additional funding to cover any net operating losses.

<u>Budget</u>	<i>(In Thousands)</i>	
	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$392,018	\$400,248
Total Expenses	<u>\$392,244</u>	<u>\$391,583</u>
Net Gain/Loss	(\$226)	\$8,665

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 a Certificate of Assumed Name, acceptable to the Department. [CSL]
2. Submission of a photocopy of the Bylaws of The Burdett Care Center, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Active referrals for current and future patients: Any current and future patient who may be interested in or who requests unavailable services must be provided with medically accurate, judgement-free information and referrals to facilities that can provide requested services. [DFH]
3. Submission of the following information at least 60 days before the completion of the merger, acceptable to the Department:
 - a. A comprehensive list of reproductive health services that have been discontinued due to the merger and adherence to the Ethical and Religious Directives for Catholic Health Care Services, as well as any reproductive health and perinatal services discontinued for other reasons. The reason for each discontinued service must be provided (i.e., ERD; Other (brief description)). If not already completed, providers and the community should be notified of all reduction of health services including access to sterilization and family planning services such as postpartum long acting reversible contraceptives (LARC).
 - b. Community and patient communications plans that demonstrate how the changes to available services are being clearly and plainly communicated to current and potential patients, as well as to the community at large. The communication plans should also include information on community resources and health care facilities where services can be accessed.
 - c. Healthcare provider communications plans that demonstrate how relevant private practitioners (including midwives) and nearby hospitals are being notified about the changes in services. This information must also include information on where these providers can refer patients who may need discontinued services. [DFH]

Council Action Date

April 2, 2020

Need Analysis

Background

Samaritan Hospital located at 2215 Burdett Ave, Troy, NY 12180 is seeking approval to merge The Burdett Care Center, Inc. d/b/a Burdett Birth Center ("Burdett") into Samaritan Hospital. This project will result in the addition of 15 maternity beds to Samaritan and the closure of Burdett Care Center. Both hospitals are affiliated with St. Peter's Health Partners.

Table 1: Samaritan Hospital Beds

Bed Type	Current	Change	Upon Completion
Coronary Care	12		12
Intensive Care	12		12
Maternity	0	+15	15
Medical / Surgical	170		170
Psychiatric	63		63
Total	257		272

Source: HFIS

Table 2: Burdett Care Center Beds

Bed Type	Current	Change	Upon Completion
Maternity	15	-15	0

Source: HFIS

Table 3: Burdett Care Center

Bed Type	Beds	2016		2017		2018	
		ADC	Occ.	ADC	Occ.	ADC	Occ.
Obstetric	15	6.66	44.40%	6.40	45.40%	6.60	44.20%

Source: SPARCS

Burdett's occupancy has been approximately 45% over the past three years with an average daily census (ADC) of approximately 6.6 patients. A significant percentage of the births are to patients with Medicaid as the payor.

Birth Data and Assessment of Impact on Perinatal Designation

Burdett Care Center is currently a Level I Perinatal Center in Rensselaer County, affiliated with the Capital District Regional Perinatal Center at Albany Medical Center. Their annual births between 2012 and 2016 range from 991 to 1,183. Through the merger, Samaritan Hospital would receive a presumptive designation of a Level I birthing hospital under current public health regulations (10 NYCRR 721).

The transfer of maternity beds from one entity to another co-located provider has no anticipated impact on deliveries or bed utilization and would not have an impact on the hospital's current level of perinatal designation.

Impact on Access to Reproductive Health Services

Burdett Care Center was formed as a result of the October 1, 2011 merger among Northeast Health, Seton Health System, and St. Peter's Health Care Services, and the formation of St. Peter's Health Partners. As a condition of merging with two Catholic systems, Northeast Health agreed to cease providing services that conflicted with the Catholic Ethical and Religious Directives, such as abortion, tubal ligation, and vasectomy. Northeast Health and its subsidiary Samaritan Hospital formed the Burdett Care Center, a co-located facility that was not included in the merger, as a way to preserve access to comprehensive reproductive health services while proceeding with the merger.

When Samaritan Hospital became Burdett's sole corporate member in September 2019, all ERD-prohibited reproductive health services ceased. There are limited reproductive health services available to residents of Rensselaer County. Upper Hudson Planned Parenthood (UHPP) is a contractor for the

Department's Family Planning Program, which provides comprehensive, confidential reproductive health services to low-income, uninsured/underinsured people of reproductive age, including adolescents. However, not all reproductive health services, such as tubal ligation or postpartum long-acting reversible contraception (LARC), are available at UHPP or elsewhere in the County.

Conclusion

Approval of this application is intended to preserve maternity services in Rensselaer County, especially for the significant low-income population, even though other reproductive services prohibited by the ERDs have been discontinued.

Program Analysis

Program Description

Burdett submitted the facility closure plan that has been reviewed by the Department. The facility closure plan includes notifying the community by posting information about the merger on both hospitals' websites and issuing a press release to the major local news and television stations.

This application does not seek to add new services. It seeks to merge two hospitals and combine their existing services. This CON brings the two hospitals under the same operating certificate. Maternity services and 15 maternity beds will be added to Samaritan Hospital's operating certificate. Staffing levels will increase by 127.2 FTEs in the first year and decrease by 43.7 FTEs in the third year.

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 Facility's accreditation is a Medicare deemed survey done by The Joint Commission to insure we comply with all regulations. A sliding fee scale is in place for those without insurance and provisions are made for those who cannot afford services.

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.

Prevention Agenda

Samaritan's application does not specify how the proposed project advances local Prevention Agenda priorities. It does state that St. Peter's Health Partners is implementing the following interventions to support two Prevention Agenda focus areas:

- Reduce Obesity in Children and Adults: Pre-diabetes screenings and education through the use of evidence-based tools; Self-management programs; nutrition and beverage standards in public institutions, worksites, school districts, and childcare centers; physical activity promotion in childcare centers, school districts, community venues, and worksites.
- Prevent Substance Abuse and other Mental Emotional Behavioral Disorders: Provider education on addiction and pain management; New York State Opioid Overdose Prevention Training; ambulatory detox service locations.

The application states that Samaritan and St. Peter's Health Partners engaged the Healthy Capital District Initiative (HCDI) and other community partners in their Prevention Agenda efforts. Samaritan cites

data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Percentage of youth who are obese
- Percentage of adults who are obese
- Hospitalizations among patients 18 and over for short-term complications of diabetes

In 2016 the applicant spent \$435,920 on community health improvement services, representing 0.249% of total operating expenses.

Conclusion

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

Financial Analysis

Certificate of Merger

The applicant has submitted an executed Certificate of Merger as summarized below:

Date:	October 14, 2019
Merging Entities:	Burdett Care Center, Inc and Samaritan Hospital of Troy, NY
Surviving Entity:	Samaritan Hospital of Troy NY, Inc

Operating Budget

The applicant has submitted the current year (FYE 6/30/19) and projected first and third year operating budgets (457 beds), in 2020 dollars, as summarized below:

	Current Year (2019)		(*In Thousands) Year One		Year Three	
	Per Disch	Total*	Per Disch	Total*	Per Disch	Total*
Inpatient Revenues						
Commercial FFS	\$8,322	\$6,400	\$8,459	\$6,488	\$8,811	\$6,759
Commercial MC	\$14,855	28,804	\$15,390	29,303	\$15,933	30,336
Medicare FFS	\$9,791	32,565	\$9,661	32,663	\$10,073	34,056
Medicare MC	\$9,499	29,143	\$9,589	29,831	\$9,964	30,999
Medicaid FFS	\$15,574	8,939	\$14,648	7,734	\$15,119	7,983
Medicaid MC	\$6,201	15,627	\$6,389	15,238	\$6,634	15,822
Private Pay	\$4,801	591	\$4,743	583	\$5,625	692
Bad Debt		<u>(3,637)</u>		<u>(4,830)</u>		<u>(5,063)</u>
Total Inpt Revenue		\$118,431		\$117,011		\$121,583
Outpatient Revenues						
Commercial FFS	\$214	\$25,619	\$222	\$26,594	\$228	\$27,256
Commercial MC	\$449	126,398	\$434	126,712	\$445	129,806
Medicare FFS	\$184	39,395	\$187	41,133	\$192	42,161
Medicare MC	\$186	38,673	\$184	39,753	\$189	40,770
Medicaid FFS	\$187	3,509	\$196	3,841	\$201	3,952
Medicaid MC	\$148	26,242	\$147	27,914	\$151	28,659
Private Pay	\$189	5,318	\$344	8,711	\$351	8,892
Bad Debt		<u>(17,697)</u>		<u>(17,034)</u>		<u>(17,460)</u>
Total Outpt Revenue		\$247,458		\$257,626		\$264,036
Net Patient Revenue		365,889		374,637		385,619
Other Operating Rev		13,668		14,518		11,700
Non-Operating Rev		<u>1,823</u>		<u>2,863</u>		<u>2,929</u>
Total Revenues		\$381,380		\$392,018		\$400,248

	<u>Current Year (2019)</u>		<u>(*In Thousands)</u> <u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch</u>	<u>Total*</u>	<u>Per Disch</u>	<u>Total*</u>	<u>Per Disch</u>	<u>Total*</u>
<u>Inpatient Expenses</u>						
Operating	\$7,148	\$80,055	\$7,388	\$90,121	\$7,386	\$90,097
Capital	\$375	4,617	\$377	4,599	\$380	4,633
Total Inpt Expense	\$7,523	\$92,671	\$7,765	\$94,720	\$7,765	\$94,730
<u>Outpatient Expenses</u>	<u>Per Visit</u>	<u>Total*</u>	<u>Per Visit</u>	<u>Total*</u>	<u>Per Visit</u>	<u>Total*</u>
Operating	\$264	\$277,032	\$262	\$283,052	\$261	\$282,287
Capital	\$14	14,525	\$13	14,473	\$13	14,566
Total Outpt Expense	\$278	\$291,557	\$275	\$297,524	\$274	\$296,853
Total Expenses		\$384,228		\$392,244		\$391,583
Net Gain/Loss		<u>(\$2,848)</u>		<u>(\$226)</u>		<u>\$8,665</u>
Discharges		12,319		12,199		12,199
Visits		1,047,551		1,081,466		1,081,466

The following is noted with respect to the first and third year budgets:

- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets.
- The current year budget is the accumulation of revenues and expenses from Samaritan Hospital's fiscal year ending June 30, 2019, accumulated six months for the St. Mary's Campus as of June 30, 2019 (the facility became a division of Samaritan Hospital effective January 1, 2019), accumulated six months for Albany Memorial Hospital as of June 30, 2019 (the facility became a division of Samaritan Hospital effective on or about January 1, 2020), and twelve months of operation for the Burdett Care Center as of December 31, 2018. For the year ended December 31, 2018, Burdett had a net operating loss of \$1,022,302.
- Other Operating revenue includes cafeteria, grants, rent, and assets released from restrictions.
- First and Third Year budgeted rates are based on the contracted negotiated rates and proposed Medicare rates.
- Expenses and utilization assumptions are based on Samaritan Hospital's experience and strategic initiatives.
- Revenue assumptions are based on current reimbursement methodologies as well as current and historical utilization.
- Burdett has been experiencing losses are a result of their payor mix being predominantly 55% Medicaid and self-pay. Per their 2018 cost report filing, Medicaid patients accounted for 56.3% of total discharges and uninsured/self-pay patients accounted for 2.5% of the total. Outpatient utilization was 53% Medicaid. The applicant indicated that reimbursement rates for Medicaid and payments from uninsured/self-pay patients have not keep pace with maternity service expense increases, primarily labor costs, resulting in financial constraints.

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

<u>Inpatient Discharges</u>	<u>2019</u>	<u>2020</u>	<u>2022</u>
Commercial FFS	6.24%	6.29%	6.29%
Commercial MC	15.74%	15.61%	15.61%
Medicare FFS	27.00%	27.72%	27.72%
Medicare MC	24.90%	25.50%	25.50%
Medicaid FFS	4.66%	4.33%	4.33%
Medicaid MC	20.46%	19.55%	19.55%
Private Pay	<u>1.00%</u>	<u>1.01%</u>	<u>1.01%</u>
Total	100.00%	100.00%	100.00%

<u>Outpatient Visit</u>	<u>2019</u>	<u>2020</u>	<u>2022</u>
Commercial FFS	11.43%	11.06%	11.06%
Commercial MC	26.85%	27.00%	27.00%
Medicare FFS	20.48%	20.29%	20.29%
Medicare MC	19.87%	19.95%	19.95%
Medicaid FFS	1.79%	1.82%	1.82%
Medicaid MC	16.89%	17.54%	17.54%
Private Pay	<u>2.69%</u>	<u>2.34%</u>	<u>2.34%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

There are no project costs or acquisition price associated with this application. The submitted budget projects a net operating loss of \$226,000 and a net income of \$8,665,000 for the first and third years, respectively. The improvement in profitability by Year Three is primarily driven by the realization of operating expense efficiencies through the consolidation of the St. Mary's, Albany Memorial, and Burdett operations into Samaritan. Samaritan Hospital of Troy, NY, Inc. has submitted an affidavit that they will provide additional funding from Board Designated Funds under Assets limited to use on the balance sheet to be available to cover any net operating losses as necessary. BFA Attachment B shows sufficient funds. The budget appears to be reasonable.

BFA Attachment A is the 2018-2019 consolidated certified financial statements of St. Peter's Health Partners Albany, NY, which shows positive working capital and net asset positions and a positive net operating income of \$11,548,000 for the year ending June 30, 2019.

BFA Attachment B is the June 30, 2019 supplemental certified financial data for Samaritan Hospital, which shows negative working capital, a positive net asset position and an operating loss before other items of \$1,482,000 offset by restructuring costs, earnings in Trinity Health pooled investment programs and investment earnings realizing an excess of revenue over expenses of \$1,675,000. The applicant stated that Samaritan's negative working capital of \$59,253,000 is due to the merger of St. Mary's Hospital into its operation effective January 1, 2019. St. Mary's audit as of December 31, 2018 shows a negative working capital position of \$30,425,000 that was brought over to the Samaritan balance sheet. There was also an impact related to an increase in the accrued salaries and wages liability due to the timing of payroll, which was another \$3 million dollars approximately. BFA Attachment B also shows the operating results of Albany Memorial Hospital, which had positive working capital and net assets positions for the period ending June 30, 2019, and an operating income before other items of \$4,303,000.

BFA Attachment C is The Burdett Care Center's internal financial statements as of September 30, 2019, which shows negative working capital, a negative net asset position and a net operating loss of \$1,741,433 on total revenue of \$4,767,121 (or a -36.53% operating margin). The applicant indicated that the loss is a result of Burdett's payor mix being approximately 55% Medicaid and self-pay with insufficient increases in reimbursement to keep up with labor and other expense increases. The merger of Burdett Care Center into Samaritan Hospital will preserve maternity services in the Troy community. Samaritan Hospital is a member of St. Peter's Health Partners, which has the resources available to provide funding to support continuing maternity-related services.

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

Attachments

- BFA Attachment A St. Peter's Health Partners Albany, NY 2018 and 2019 consolidated certified financial statements
- BFA Attachment B Supplemental 2019 certified financial data - Samaritan Hospitals
- BFA Attachment C September 30, 2019 Internal Financial Statements and 2018 Certified Financial Statements for The Burdett Care Center
- BFA Attachment D St. Peter's Health Partners Pre-Merger and Post-Merger Organizational Charts



Project # 192324-C

Good Samaritan Hospital Medical Center

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: January 2, 2020

Executive Summary

Description

Good Samaritan Hospital Medical Center (GSH), a 437-bed, voluntary not-for-profit, Article 28 acute care hospital located at 1000 Montauk Highway, West Islip (Suffolk County), requests approval to construct a six-story addition to the hospital to include a new emergency department (ED), a new, larger operating room (OR) suite, 36 additional private rooms with no change to the certified bed capacity, and shell space for future expansion. GSH is co-operated by Catholic Health System of Long Island, Inc. (CHSLI). The approximately 300,000-square-foot addition will be known as the Patient Care Pavilion (PCP) and will provide significant and needed improvements and enhancements to the inpatient, surgical and emergency services of GSH.

The PCP will be connected to the hospital and will include the following:

- First Floor: a 75-room ED and a central sterile supply and processing department;
- Second Floor: a new 16-OR surgical suite and platform including perioperative and support space;
- Third Floor: mechanical space;
- Fourth Floor: 36 private-bed medical/surgical inpatient floor; and
- Fifth and Sixth Floors: shell space for future private-room inpatient floors;

Although GSH has made facility and programmatic improvements over the last several years, their last major expansion project was over 33 years ago, and they have been maneuvering within an antiquated operational infrastructure and facility setting. This project is essential for the hospital to meet the current and future health care needs of the community GSH serves. GSH is not seeking an increase in the number of certified beds in this project; it is, however, seeking to increase the number of private inpatient beds, as well as increase the number of ED rooms and ORs to meet current and future demand.

OPCHSM Recommendation
Contingent Approval

Need Summary

The proposed Patient Care Pavilion, the first major expansion project at Good Samaritan Hospital in over 33 years, addresses the facility's immediate needs while also providing prudent capacity and flexibility for the future.

Program Summary

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

Financial Summary

Project cost of \$525,230,772 includes the cost of Article 28 and shell space construction broken down as follows: Article 28 space for \$471,819,943 and shell space for \$53,410,829. Project costs will be met via \$125,230,772 equity and a \$400,000,000 taxable bond over a 30-year term at 4% interest. Goldman, Sachs & Co and Morgan Stanley have provided a letter of interest to underwrite the bond.

	<i>In Thousands</i>		
<u>Budget</u>	<u>Current Yr</u>	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$663,366	\$692,925	\$743,568
Expenses	<u>609,998</u>	<u>662,561</u>	<u>679,069</u>
Net			
Income	<u>\$53,368</u>	<u>\$30,364</u>	<u>\$64,499</u>

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. 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 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]
4. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12 [SEQ]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before July 1, 2022 and construction must be completed by January 1, 2025, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. Submission of a cost benefit analysis of tax-exempt bonds verses taxable bonds if taxable bonds are secured, acceptable to the Department of Health. [BFA]
4. The satisfaction of in-place time-limited waiver for the work required to install a required compliant Type I Emergency Electrical System (EES) for the existing facility and proposed addition described in this CON application. [DAS]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [DAS]

Council Action Date

April 2, 2020

Need and Program Analysis

Project Description

Good Samaritan Hospital Medical Center (GSH), a, 437-bed, not-for-profit hospital and member of Catholic Health Services of Long Island (CHSLI), is seeking approval to construct a 300,000-square-foot, six-story addition (Patient Care Pavilion; PCP) to modernize and accommodate the expected growth of demand for services.

GSH is the second ranked hospital for ED visits in Suffolk County and all of Long Island. It is a Level II Adult Trauma Center, a Level II Pediatric Trauma Center, a Level III Perinatal Center, a Primary Stroke Center and a SAFE-Designated Hospital. Claritas population projections show an expected 25.8% increase in residents aged 64+ over the next ten years.

There will be no change to the facility's 437 beds or services provided as a result of this project. The proposed PCP consists of five (5) levels of clinical programmatic space and interstitial level for mechanical space, including the following:

- Level 1: a new entry lobby with visitor access and a new 75-room replacement and rightsized Emergency Department with specific ED drop-off and ambulance entries. Additionally, there is a new (replacement) and rightsized Central Sterile Processing Department and connection back to the North Building;
- Level 2: a new modernized 16-OR surgical platform, including general and hybrid ORs as well as preparation and recovery areas, to replace and right size the existing 12 OR and support space;
- Level 3: centralized main mechanical and electrical space; and
- Levels 4,5, and 6: inpatient unit for medical/surgical beds. One (1) level of 36 private beds will be constructed and fit out as part of the current PCP project and the other two (2) levels will be built as shell space for future use as replacement private inpatient rooms.
- Staffing is expected to increase as a result of this project by 74.4 FTEs in Year One and 128.1 FTEs in Year Three of the completed project.

GHS's last major expansion project was over 33 years ago. This project will be completed over the course of 30 months without disruption of the existing functions of the inpatient, ED or OR.

Emergency Department

GSH currently has 48 ED bays. Having recognized an immediate need for more bays, GSH submitted Certificate of Need project 191103 to construct a modular out-building connected to the current ED to house an 11-bay pediatric ED, bringing the hospital total to 59. That project is now under construction. This project will eventually replace both the existing ED and the modular pediatric ED with a completely new 75-bay ED in the first level of the proposed addition. The table below shows the progression of ED visits, historical and projected, against the parameters of the existing ED, the interim modular addition, and the proposed new ED in this application.

ED Visits and Size, Historical and Projected					
	2017	2018	2019 Projected	2019 Projected with interim CON 191103	2027 Projected
Visits	87,098	88,346	88,361	88,361	92,763
Area in ft ²	22,096	22,096	22,096	28,670	55,220
Visits per ft ²	3.9	4	4	3.1	1.7
# of ED Bays	48	48	48	59	75
Visits per ED Bay	1,815	1,841	1,841	1,497	1,237

Source: Applicant Supplied and SPARCS

While the projected visits per square foot and visits per bay resulting from this project are somewhat lower than benchmarks the Department has used to evaluate ED projects (roughly 1,500 annual visits per ED bay and 3 annual visits per square foot), GSH has arrived at their project parameters through thoughtful analysis with a third-party consultant.

The proposed 75 bays in 55,220 square feet was arrived at after breaking down the actual average ED room minutes per patient by specific patient type. Throughput targets were developed for each patient type based on average room time, target utilization factors, and measures to significantly reduce the time patients remain in the ED waiting for a bed. The target is a door to floor time of four hours. The table below summarizes this analysis.

Projected Encounters and ED Bay Need Planning			
Room Type	2027 Encounters	Throughput Planning Guide	Room Need
Trauma	1,851	500	4
ESI Level 1	962	550	8
General	1,945	1,400	23
Ortho	868	1,200	2
OB/GYN	1,371	1,000	2
Fast Track	8,568	2,000	15
Pediatric	2,036	1,500	15
Behavioral	1,162	230	6
Total	92,763		75

Source: Applicant / Consultant

Included in the above are specialty rooms for airborne isolation, positive pressure, and sexual assault examinations. Included in the new ED footprint, GSH will have increased embedded imaging to further increase throughput and reduce time waiting in the ED. Overall, the proposed ED should comfortably accommodate projected volumes, both average and surge, with improved operation and flexibility for future needs as they arise.

Surgery Suite

GSH currently operates 12 OR's treating all inpatient surgical needs and some higher-acuity same-day surgeries. A separate six room ambulatory surgery suite serves lower acuity same-day surgeries and a six-room interventional procedure suite (for cardiac catheterizations, EPI's, etc.) complement the main OR suite. The 12 ORs experience 93% utilization.

Surgery Volume						
	2014	2015	2016	2017	2018	2017 Projected
Total Procedures	16,878	17,578	16,859	14,930	19,515	13,461
Operating Rooms	12	12	12	12	12	16
Annual Procedures per OR	1,407	1,465	1,405	1,244	1,626	841

Source: SPARCS for history, applicant for projection.

The Department uses an expected benchmark range of 800-1,200 procedures per OR per year. Historic utilization shown above is significantly above that benchmark. The applicant's proposal for 16 ORs handling 841 cases per OR is intentionally at the low end of the range to account for increased inpatient CMI over time, to mitigate the need to run cases after hours, and to allow for future growth. GSH projects expansion from 12 to 16 ORs will reduce utilization from 93% to 75%. Overall, the expansion of the OR suite will relieve near capacity utilization, improve operations, increase surgeon satisfaction, and provide both surge and future capacity.

Expansion of Private Inpatient Space

GSH's total inpatient bed count will not change as a result of this project. The new Patient Care Pavilion includes a floor of private inpatient beds, increasing their number from 85 to 121 (from 19.6% to 27.6% of total). The shell space included in the construction will allow for future expansion to 193 private beds (44.1% of total).

Occupancy by Major Bed Category									
Bed Category	Beds	2011	2012	2013	2014	2015	2016	2017	2018 *
Med/Surg	355	86.8%	80.9%	70.1%	78.0%	83.7%	87.6%	85.6%	77.8%
Pediatric	30	53.3%	43.3%	36.7%	40.0%	43.3%	40.0%	26.7%	30.0%
Obstetric	36	80.6%	80.6%	72.2%	77.8%	77.8%	77.8%	69.4%	69.4%
High Risk Neo	16	100.0%	106.3%	87.5%	106.3%	100.0%	100.0%	100.0%	100.0%
Total	437	89.7%	84.9%	73.5%	81.5%	86.0%	89.2%	86.0%	79.6%

Source: SPARCS June 2019.

* 2018 Data may be incomplete.

Actual and Projected ALOS		
Inpatient	2018	2027
Admissions	26,642	30,637
Patient Days	127,312	146,089
ALOS	4.78	4.77

Projections Source: Applicant.

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 Facility's accreditation is a Medicare deemed survey done by The Joint Commission to insure we comply with all regulations. A sliding fee scale is in place for those without insurance and provisions are made for those who cannot afford services.

The Department issued a Stipulation and Order (S&O) dated April 28, 2017 and fined Good Samaritan Hospital \$2,000 based on an investigation that was completed on July 25, 2016. Specifically, the facility failed to ensure that the facility's Security Guards, who assist with the application of restraints, are trained in first aid techniques and certified in Cardiopulmonary Resuscitation (CPR).

Prevention Agenda

The applicant states that this project addresses the need to increase preventive care and the management of chronic disease by enhancing and modernizing the inpatient, emergency and surgical services where chronic disease management will occur. The applicant works with the Long Island Health Collaborative, which is an extensive workgroup of committed partners including the local health department to assess the community needs and address the agreed upon Prevention Agenda Priority Focus areas of Chronic Disease, specifically obesity and preventive care and Promoting Wellbeing and Mental Health.

The applicant states that the following interventions are evidenced-based and offered to support the Prevention Agenda goals:

- Diabetes Management
- Smoking Cessation
- Healthy food/beverage choices
- Cancer prevention and screening
- Walking campaigns
- Stress reduction programs and
- Mental wellness programs

The applicant states that the following process measures are used to track the impact of their efforts:

- Number of community/screening programs provided, # of residents reached and # of new participants attending
- Pre- and post-test scores of program participants
- Measure awareness and change in knowledge of obesity by the number of people attending specific programs/seminars and
- Height/weight/BMI measurements

In 2017 the applicant spent \$1,074,311 on community health improvement services, representing 0.172% of total operating expenses.

Conclusion

The proposed Patient Care Pavilion, the first major expansion project at Good Samaritan Hospital in over 33 years, appropriately addresses the facility's immediate needs while also providing prudent capacity and flexibility for the future. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

Total project cost for the Article 28 space and shell space is estimated at \$525,230,772::

	<u>Article 28</u>	<u>Shell Space</u>	<u>Total</u>
New Construction	\$263,297,795	\$34,710,372	\$298,008,167
Site Development	9,453,722	1,246,278	\$10,700,000
Temporary Utilities	3,534,102	465,898	\$4,000,000
Design Contingency	35,782,780	4,717,220	\$40,500,000
Construction Contingency	13,164,529	1,735,471	\$14,900,000
Architect/Engineering Fees	29,677,439	3,912,357	\$33,589,796
Construction Manager Fees	6,582,445	867,759	\$7,450,204
Other Fees (Consultant)	53,011	6,989	\$60,000
Moveable Equipment	46,366,882	0	\$46,366,882
Telecommunications	17,718,927	0	\$17,718,927
Financing Costs	7,068,203	931,797	\$8,000,000
Interim Interest Expense	36,537,304	4,816,688	\$41,353,992
CON Fee	2,000	0	\$2,000
Additional Processing Fee	<u>2,580,804</u>	<u>0</u>	<u>\$2,580,804</u>
Total Project Cost	<u>\$471,819,943</u>	<u>\$53,410,829</u>	<u>\$525,230,772</u>

Project costs are based on a construction start date of July 1, 2022, and a 30-month construction period.

The applicant's financing plan appears as follows:

Equity	\$125,230,772
Taxable Bond (4% interest, 30-year term)	<u>\$400,000,000</u>
Total	<u>\$525,230,772</u>

The \$125,230,772 equity for this application will come from the following sources:

- approximately \$56.5 million in short term investments;
- approximately \$38.6 million in Board designated investments; and
- approximately \$30 million from CHSLI in the form of a CHSLI fund transfer to GSH.

BFA Attachments B and D show sufficient funds available for the equity contribution.

CHSLI will seek to secure financing for this project with taxable bonds in May of 2020. In preparing its cost benefit analysis, GSH/CHSLI conservatively assumed that the earliest date tax-exempt bonds could be issued is December 2021. In conjunction with its Financial Advisor, GSH discovered that the market consensus indicates that current rates are very low/attractive with taxable rates (at an all-time low), and overall, rates are most likely to increase after this year going into 2021. The tax-exempt analysis prepared at the end of November 2019 indicated an all-in True Interest Cost (TIC) rate of 4.04% in comparison to the taxable all-in TIC rate of 4.14%. GSH has attempted to project what the 30-year Municipal Market Data (MMD) rates for December 2021 would have to increase from today so that the tax-exempt issue would have the same present value (PV) net debt service as a taxable issuance today. The analysis prepared indicates that the 30-year MMD would have to increase by 66 basis points to 2.75%. GSH has also been provided information that the percent of time the 30-year MMD equaled 2.75% over the past five years was 63.37% and over the past ten years was 79.68%. This assumes that all of the 66 basis points is attributable to the MMD change and not to other factors (credit spread, credit rating, etc.). GSH/CHSLI continues to monitor the market and movement in 30-year treasury rates (taxable) and 30-year MMD rates (tax-exempt). Goldman, Sachs & Co and Morgan Stanley have provided a letter of interest to underwrite the bond.

Operating Budget

The applicant submitted the current budget (2018) of Good Samaritan Hospital Medical Center, and the projected first- and third-year operating budgets, in 2020 dollars, summarized below:

	<u>Current Year (2018)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch</u>	<u>Total*</u>	<u>Per Disch</u>	<u>Total*</u>	<u>Per Disch</u>	<u>Total*</u>
<u>Inpatient Revenues</u>						
Commercial MC	\$22,809	\$177,815	\$23,183	\$191,143	\$23,849	\$213,805
Medicare FFS	\$14,181	111,377	\$14,285	118,654	\$14,423	130,273
Medicare MC	\$13,532	39,769	\$13,632	42,368	\$13,762	46,516
Medicaid FFS	\$9,122	11,294	\$9,153	11,974	\$9,161	13,028
Medicaid MC	\$7,509	40,753	\$7,534	43,211	\$7,543	47,011
Private Pay	\$35,627	5,202	\$36,673	5,648	\$38,413	6,453
All Other	\$10,912	13,552	\$11,087	14,568	\$11,411	16,295
Bad Debt		<u>-19,118</u>		<u>-20,667</u>		<u>-23,565</u>
Total Inpt Rev		\$380,644		\$406,899		\$449,816
<u>Outpatient Revenues</u>	<u>Per Visit</u>	<u>Total*</u>	<u>Per Visit</u>	<u>Total*</u>	<u>Per Visit</u>	<u>Total*</u>
Commercial MC	\$2,319	\$184,362	\$2,326	\$186,764	\$2,344	\$192,498
Medicare FFS	\$841	43,849	\$842	44,347	\$844	45,471
Medicare MC	\$1,211	16,661	\$1,213	16,850	\$1,216	17,277
Medicaid FFS	\$764	6,462	\$764	6,531	\$765	6,678
Medicaid MC	\$263	13,233	\$263	13,371	\$264	13,677
Private Pay	\$2,325	16,815	\$2,337	17,066	\$2,370	17,698
All Other	\$358	5,248	\$359	5,316	\$362	5,480
Bad Debt		<u>-22,049</u>		<u>-22,360</u>		<u>-23,168</u>
Total Outpt Rev		\$264,581		\$267,885		\$275,611
Net Patient Rev		\$645,225		\$674,784		\$725,427
Other Oper. Rev		<u>18,141</u>		<u>18,141</u>		<u>18,141</u>
Total Revenue		\$663,366		\$692,925		\$743,568

	<u>Current Year (2018)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch</u>	<u>Total*</u>	<u>Per Disch</u>	<u>Total*</u>	<u>Per Disch</u>	<u>Total*</u>
<u>Inpatient Expenses</u>						
Operating	\$12,965	\$345,420	\$12,585	\$354,593	\$11,336	\$364,676
Capital	\$544	14,479	\$1,295	36,478	\$1,123	36,129
Total Inpt Expense	\$13,509	\$359,899	\$13,880	\$391,071	\$12,459	\$400,805
<u>Outpatient Expenses</u>						
Operating	\$1,062	\$240,038	\$1,079	\$246,412	\$1,075	\$253,419
Capital	\$45	10,061	\$110	25,078	\$105	24,845
Total Outpt Expense	\$1,107	\$250,099	\$1,189	\$271,490	\$1,180	\$278,264
Total Expenses		\$609,998		\$662,561		\$679,069
Net Gain (Loss)		<u>\$53,368</u>		<u>\$30,364</u>		<u>\$64,499</u>
Discharges		26,642		28,176		32,171
Visits		226,005		228,268		235,657

*in thousands

The following is noted with respect to the current, first and third year budgets:

- The 2018 current year revenues and expenses reflect the operations of GSH only, while the revenues and expenses on the 2018 certified financials (BFA Attachment A) include the operations of owned private practices as well as other professional corporations.
- Effective January 1, 2020 Medicaid payments have been reduced by 1% in accordance with the FY 2020 enacted State budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets.
- All Other Revenues include the New York Health Exchange, Worker's Compensation and No-Fault Insurance.
- Other Operating revenue of \$18,141,000 is comprised of grant income, rental income, management fee income, cafeteria/coffee shop income and miscellaneous.
- Revenue assumptions are based on the 2018 prorated percent to total patient revenue by payor at GSH.
- Expense assumptions are based on historical experience of the facility, new incremental square footage and estimated average salaries, benefits, professional fees, per-unit supply expense, new lab service contracts and new depreciation based on the project.
- Utilization by payor source during the current, first and third years (identical) is as follows:

	<u>Inpatient</u>	<u>Outpatient</u>
Commercial MC	29.26%	35.18%
Medicare FFS	29.48%	23.08%
Medicare MC	11.03%	6.09%
Medicaid FFS	4.65%	3.74%
Medicaid MC	20.37%	22.22%
Private Pay	0.55%	3.20%
All Other	<u>4.66%</u>	<u>6.49%</u>
Total	100.00%	100.00%

Capability and Feasibility

Total project cost is \$525,230,772 consisting of Article 28 space for \$471,819,943 and shell space construction for \$53,410,829. The project cost will be met via \$125,230,772 equity and a \$400,000,000 taxable bond over 30-year term at 4% interest. Goldman, Sachs & Co and Morgan Stanley have provided a letter of interest to underwrite the bond. BFA Attachment B indicates sufficient liquid resources to cover the current equity requirement for total project cost.

There is no working capital need associated with this application because the facility is a going concern that has been in operation for many years.

The submitted budget indicates net operating gains of \$30,364,000 and \$64,499,000 during the first and third years, respectively. Revenues reflect current reimbursement rates for hospital services. The budget appears reasonable.

BFA Attachment A is the 2018 certified financial statements of Good Samaritan Hospital Medical Center. As shown, the entity achieved a positive working capital position, positive net asset position and generated a net income from operations of \$15,079,000.

BFA Attachment B is the October 31, 2019 internal financial statements of Good Samaritan Hospital Medical Center. As shown, the entity achieved a positive working capital position, positive net asset position and generated a net income from operations of \$14,078,000.

BFA Attachment C is the 2018 certified financial statements of Catholic Health Services of Long Island. As shown, the entity achieved a positive working capital position, positive net asset position and generated a net income from operations of \$81,737,000.

BFA Attachment D is the October 31, 2019 internal financial statements of Catholic Health Services of Long Island. As shown, the entity achieved a positive working capital position, positive net asset position and generated a net income from operations of \$136,475,000.

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

Attachments

BFA Attachment A	2018 Certified Financial Statements of Good Samaritan Hospital Medical Center
BFA Attachment B	October 31, 2019 Internals for Good Samaritan Hospital Medical Center
BFA Attachment C	2018 Certified Financial Statements of Catholic Health Services of Long Island
BFA Attachment D	October 31, 2019 Internals for Catholic Health Services of Long Island



Project # 192267-E
The Surgery Center at Orthopedic Associates, LLC

Program: Diagnostic and Treatment Center **County:** Dutchess
Purpose: Establishment **Acknowledged:** December 31, 2019

Executive Summary

Description

The Surgery Center at Orthopedic Associates, LLC (SCOA), a proprietary, Article 28 multispecialty freestanding ambulatory surgery center (FASC) located at 1910 South Road, Poughkeepsie (Dutchess County), requests approval to transfer 6.25% membership interest to each of two new members. The transfer is being effectuated via a Membership Interest Purchase Agreement and related Joinder Agreement executed November 1, 2019. The purchase price for each 6.25% membership interest is \$660,000 for a total purchase price of \$1,320,000.

There will be no management or operational changes resulting from this application.

Ownership interest before and after the requested change is as follows:

Members	Current	Proposed
Carl Barbera, M.D.	7.143%	6.25%
William Barrick, M.D.	7.143%	6.25%
William Colman, M.D.	7.143%	6.25%
Lawrence Kusior, M.D.	7.143%	6.25%
Stephen Maurer, M.D.	7.143%	6.25%
Richard Perkins, M.D.	7.143%	6.25%
Sasha Ristic, M.D.	7.143%	6.25%
Wen Shen, M.D.	7.143%	6.25%
Russell Tigges, M.D.	7.143%	6.25%
Mark Aierstock, M.D.	7.143%	6.25%
Frank Lombardo, M.D.	7.143%	6.25%
Nicholas Renaldo, M.D.	7.143%	6.25%
Richard Dentico, M.D.	7.143%	6.25%
Daniel Kelmanovich, M.D.	-----	6.25%
Vishal Rekhala, M.D.	-----	6.25%
Total	100%	100%

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no change to services provided as a result of the change in ownership. The Surgery Center at Orthopedics Associates has been in operation since 2013. The number of projected visits is 5,736 in Year One with Medicaid at 10.9% and Charity Care at 0.3%.

Program Summary

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

Financial Summary

There are no project costs associated with this application and no change in services or business model.

The purchase price for each 6.25% membership interest is \$660,000 for a total purchase price of \$1,320,000 to be divided and paid equally to the 14 current members at \$47,142.85 each. The proposed new members will finance their purchase price via personal loans over seven years at 4.375% interest.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed copy of Operating Agreement that is acceptable to the Department.
[CSL]
2. Submission of an executed copy of Schedule 4 - Legal Information for Ownership Transfers. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.
[PMU]

Council Action Date

April 2, 2020

Need and Program Analysis

Project Proposal

The Surgery Center at Orthopedic Associate, LLC, an existing multi-specialty Article 28 ambulatory surgery center specializing in gastroenterological procedures at 1910 South Road in Poughkeepsie (Dutchess County), requests approval to transfer 6.25% ownership interest to each of its two new members. This membership purchase will result in the Center exceeding the five-(5)-year, 25% threshold in PHL Section 2801-a(4)(b)(ii), thus requiring the Center to submit a Full Review application. There are no programmatic or managerial changes anticipated by this change in membership.

Analysis

The facility is located at 1910 South Road, Poughkeepsie, 12601, in Dutchess County. The primary service area is Dutchess County. The center began operations in August 2013 and was granted permanent life under CON 181277. The center provided a total of 5,084 visits in 2016, 5,149 visits in 2017, and 5,514 visits in 2018. The center's Medicaid utilization was 12.5% in 2016, 12.2% in 2017, and 10.9% in 2018 per the AHCF cost reports. This center's Medicaid utilization has been strong over the last few years. Upon approval of the project, the applicant projects to have 5,736 visits in Year One and 5,746 in Year Three.

Character and Competence

The table below details the proposed change in ownership:

Member	Current	Proposed
Mark Aierstock	7.143%	6.25%
Carl Barbera, M.D.	7.143%	6.25%
William Barrick, M.D.	7.143%	6.25%
William Colman, M.D.	7.143%	6.25%
Richard Dentico, M.D.	7.143%	6.25%
Richard Perkins, M.D.	7.143%	6.25%
Lawrence Kusior, M.D.	7.143%	6.25%
Frank Lombardo, M.D.	7.143%	6.25%
Stephen Maurer, M.D.	7.143%	6.25%
Nicholas Renaldo, M.D.	7.143%	6.25%
Sasha Ristic, M.D.	7.143%	6.25%
Michael Schweppe, M.D.	7.143%	6.25%
Wen Shen, M.D.	7.143%	6.25%
Russell Tigges, M.D.	7.143%	6.25%
*Daniel Kelmanovich, M.D.	-----	6.25%
*Vishal Rekhala, M.D.	-----	6.25%
Total	100%	100%

*** Subject to Character and Competence Review**

Dr. Daniel Kelmanovich, M.D. is a practicing Orthopedic Surgeon for almost 11 years. He has extensive experience working in surgical centers. He is familiar with the day to day issues and how to deal with the problems.

Dr. Vishal Rekhala, M.D. is a practicing physician, board-certified in Physical Medicine and Rehabilitation. He is currently employed as an Interventional Pain Management Physician and Physiatrist for over five years. He received his medical degree from Midwestern University Arizona College of Osteopathic Medicine. He completed his Pain Management and Musculoskeletal Fellowship at Rutgers. He completed a Hospice and Palliative Care Fellowship at Kingsbrook Jewish Medical Center. He completed his residency at Long Beach Medical Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the two proposed individual members regarding licenses held, formal education, training in pertinent health

and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Kelmanovich disclosed that in June 2019, Academic Health Professionals Insurance Association filed suit in the Supreme Court in the State of New York for payment of extra assessment of the previous malpractice insurance. This is related to the previous malpractice coverage while working for University Orthopedics as a contracted employee. The employer was responsible for paying the malpractice insurance premium. The case is in the discovery phase.

Conclusion

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

Financial Analysis

Membership Interest Purchase Agreements

The applicant has submitted two separate executed Membership Subscription Agreements for each proposed member, the terms of which are summarized below:

Date:	November 1, 2019
Description:	Purchase of 6.25% membership interest for each new member
Company:	The Surgery Center at Orthopedic Associates, LLC
Purchasers:	Daniel Kelmanovich, M.D. and Vishal Rekhala, M.D.
Purchase Price:	\$660,000 per proposed new member
Payment of	\$1,320,000 total balance due at closing
Purchase Price:	To be paid via the proceeds of personal loan agreements.

Joinder Agreements

Dr. Kelmanovich and Dr. Rekhala have each submitted an executed Joinder Agreement with SCOA. Upon Public Health and Health Planning Council (PHHPC) approval, they will join the Operating Agreement as Members, holding the same percentage of membership interest as all other members of SCOA (6.25%). As members, Dr. Kelmanovich and Dr. Rekhala agree to be jointly and severally liable for their pro rata shares of any outstanding obligations of the LLC for which the members are personally liable. They will be entitled to receive their respective shares of distributions based on the Net Cash Flow from SCOA's activities. However, Drs. Kelmanovich and Rekhala will not receive any distributions from the amount they will pay in exchange for their membership interests, nor will they receive any distributions based on Net Cash Flow prior to January 1, 2020 (the effective date).

Drs. Kelmanovich and Rekhala will each fund the purchase price of their respective membership interests via equity from a \$660,000 personal loan. Rhinebeck Bank has provided an executed personal loan commitment for each physician in the amount of \$660,000 with an 84-month term at 4.375% interest.

Operating Budget

The applicant has provided the current year results and the first- and third-year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

Revenues	Current Year		First Year		Third Year	
	Per Proc.	Total	Per Proc.	Total	Per Proc.	Total
Commercial - FFS	\$2,190.60	\$4,630,925	\$2,191.00	\$4,818,014	\$2,190.46	\$4,825,573
Medicare – FFS	\$846.19	1,273,513	\$846.08	1,324,963	\$846.33	1,327,042
Medicare-MC	\$1,098.26	448,092	\$1,099.52	466,195	\$1,098.65	466,926
Medicaid – FFS	\$1,311.33	7,868	\$1,337.16	8,023	\$1,352.18	8,113
Medicaid - MC	\$1,131.09	672,996	\$1,108.64	686,251	\$1,119.34	693,991
Private Pay	\$3,260.07	45,641	\$3,165.67	47,485	\$3,170.60	47,559
All Other	\$2,182.71	<u>1,898,962</u>	\$2,183.07	<u>1,975,680</u>	\$2,181.67	<u>1,978,779</u>
Total		\$8,977,997		\$9,326,611		\$9,347,983
Expenses						
Operating	\$1,051.52	\$5,798,094	\$1,031.11	\$5,914,456	\$1,029.76	\$5,916,979
Capital	<u>139.75</u>	<u>770,593</u>	<u>134.45</u>	<u>771,192</u>	<u>134.22</u>	<u>771,204</u>
Total Expenses	\$1,191.27	\$6,568,687	\$1,165.56	\$6,685,648	\$1,163.97	\$6,688,183
Net Income		<u>\$2,409,310</u>		<u>\$2,640,963</u>		<u>\$2,659,800</u>
Total Procedures		5,514		5,736		5,746

The following is noted with respect to the submitted budget:

- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Year One and Three. This reduction has been reflected within the budgets.
- All Other revenue consists of Government, Workers Compensation and No Fault.
- The increase in expenses in years one and three are due mostly to operating expenses, the largest of which come from Medical & Surgical Supplies.
- Utilization by payor source is as follows:

Payor	Current Year	Years One & Three
Commercial FFS	38.34%	38.34%
Medicare FFS	27.29%	27.29%
Medicare MC	7.40%	7.40%
Medicaid FFS	0.11%	0.10%
Medicaid MC	10.79%	10.79%
Private Pay	0.25%	0.26%
Charity Care	0.04%	0.04%
All Other	<u>15.78%</u>	<u>15.78%</u>
	100.00%	100.00%

Capability and Feasibility

There are no project costs associated with this application and no change in services or business model. Each of the proposed members will finance their respective membership purchase price of \$660,000 via personal loans with an 84-month term at 4.375% interest. Rhinebeck Bank has provided executed personal loan commitments at the stated terms. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,853,403.

BFA Attachment B is The Surgery Center at Orthopedic Associates, LLC's internal financial summary as of December 31, 2019, which shows the entity has maintained positive working capital and net equity positions and experienced a net income of \$3,094,142. BFA Attachment C is the 2017 and 2018 certified financial statements of The Surgery Center at Orthopedic Associates, LLC, which shows the entity has maintained positive working capital and net equity positions over the two-year period. The Center experienced a net income of \$2,409,310 and \$1,902,276 in 2018 and 2017, respectively.

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

Attachments

- BFA Attachment A The Surgery Center at Orthopedic Associates, LLC – Internal Financial Statements as of December 31, 2019
- BFA Attachment B The Surgery Center at Orthopedic Associates, LLC – 2017 and 2018 Certified Financial Statements
- BFA Attachment C Pro Forma Balance Sheet - The Surgery Center at Orthopedic Associates



Project # 192320-E
Avicenna ASC, Inc.

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment **Acknowledged:** December 31, 2019

Executive Summary

Description

Avicenna ASC, Inc. (the Center), a proprietary, Article 28 freestanding ambulatory surgery center (FASC) located at 2522 Hughes Avenue (Bronx County), requests approval for indefinite life status. The facility was approved by the Public Health and Health Planning Council (PHHPC) under CON 111277 as a multi-specialty FASC. PHHPC approval was for a conditional five-year limited life and the Center began operations effective March 18, 2015. The applicant requested indefinite life status before their limited life expiration.

The Center is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC) and provides ambulatory surgical services in gastroenterology, gynecology, neurology, orthopedics, otolaryngology, urology, pain management, podiatry, plastic surgery, general surgery and vascular surgery utilizing two operating rooms and two procedure rooms. The applicant is not proposing to add or change any services or expand or renovate the facility. The current lease expires January 31, 2026 and provides for a five-year extension option.

Suzanne Yu, M.D., PhD, is the current Medical Director and the facility has a Transfer and Affiliation Agreement with Bronx-Lebanon Hospital Center, located 2.4 miles (10 minutes) from the FASC, for backup and emergency services.

OPCHSM Recommendation

Approval

Need Summary

Data submission by the applicant, a contingency of CON 111277, has been completed. Based on CON 111277, Avicenna ASC projected 6,252 visits in Year One and 6,633 visits in Year Three. Medicaid visits were projected at 65 % and Charity Care was projected at 4 % for Year Three. The total number of visits was 2,777 in Year One (2016-1st full year) and 5,497 in Year Three (2018). Actual Medicaid was 45.8% in Year Three (2018) and Charity Care was 3.5%.

Upon approval of this project, Avicenna ASC projects 5,936 visits in Year One with Medicaid at 45.8% and Charity Care at 3.5%.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,960,970	\$9,005,396
Expenses	\$8,748,608	\$8,802,995
Net Income	\$212,362	\$202,401

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval

Council Action Date

April 2, 2020

Need and Program Analysis

Analysis

The primary service area is Bronx County. The table below provides Year Three utilization, projections and actual, by payor, for CON 111277, and projections for Year One following approval.

Payor	CON 111277 Projected Year 3 (2018)	CON 111277 Actual Year 3 (2018)	CON 192320 Projections Year 1
Comm Ins FFS	2.0%	0.0%	0.0%
Comm Ins MC	7.0%	2.3%	2.4%
Medicare- FFS	18.0%	3.4%	3.4%
Medicare MC	2.0%	13.1%	13.1%
Medicaid FFS	10.0%	3.2%	3.2%
Medicaid MC	55.0%	42.6%	42.6%
Charity Care	4.0%	3.5%	3.5%
Private Pay/Other (WC)	2.0%	31.9%	31.8%
Total	100.0%	100.0%	100.0%

The table below provides information on projections and utilization by visits for Year One (2016-1st full year) and Year Three (2018) based on CON 111277.

CON 111277- Visits	Year 1 (2016)		Year 3 (2018)	
	Projected	Actual	Projected	Actual
Avicenna ASC				
Total	6,252	2,777	6,633	5,497

Upon beginning operations, the center had difficulty obtaining its Medicaid provider number, causing delays in obtaining contracts with Medicaid managed care plans. This resulted in a significantly lower number of cases being performed in its first full year of operation (2016). The Center currently has Medicaid Managed Care contracts with the following health plans: Affinity, Anthem, BCBS, Fidelis, Healthfirst, Metroplus and WellCare. This center's Medicaid utilization has been strong during their limited-life approval process, 55% in 2016, 51% in 2017, and 46% in 2018. The center's charity care utilization reached 3.5% for Year Three. The center has partnered with area FQHCs, including Urban Health Plan and Brighton Health to provide service to the under-insured in their service area.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

Conclusion

Per the PHHPC Ad Hoc Committee recommendation, the department should exercise flexibility to evaluate each ASC according to its totality of its proposed and actual volume of service to the underserved whether Medicaid, Charity Care or a combination of the two. The center's Medicaid utilization has been strong each year, above 45% for the past three years. Charity care utilization reached 3.5% for year three (2018). The center has partnered with FQHCs in their service area to provide care to the under-insured. These facts reflect the center's commitment to the under-insured, thereby showing reasonable efforts to provide service to the underserved patients in Bronx County. Therefore, certification for indefinite life should be granted.

Financial Analysis

The applicant has submitted their current operating budget (2018) and the first and third years subsequent to indefinite life certification, in 2020 dollars, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
<u>Revenues</u>						
Commercial MC	\$2,720	\$339,985	\$2,559	\$368,452	\$2,544	\$371,448
Medicare FFS	\$1,297	\$243,785	\$1,301	\$264,014	\$1,301	\$265,363
Medicare MC	\$980	\$705,811	\$1,029	\$800,711	\$1,033	\$808,892
Medicaid FFS	\$1,100	\$191,381	\$1,099	\$206,625	\$1,099	\$207,714
Medicaid MC	\$995	\$2,331,709	\$994	\$2,515,947	\$994	\$2,530,725
All Other	\$3,612	\$4,529,689	\$2,514	\$4,739,721	\$2,523	\$4,755,754
Other Oper. Rev		<u>\$65,500</u>		<u>\$65,500</u>		<u>\$65,500</u>
Total Revenues		\$8,407,860		\$8,960,970		\$9,005,396
<u>Expenses</u>						
Operating	\$1,343.32	\$7,384,257	\$1,325.51	\$7,868,203	\$1,321.55	\$7,890,962
Capital	<u>\$151.68</u>	<u>\$833,790</u>	<u>\$148.32</u>	\$880,405	<u>\$152.74</u>	\$912,033
Total Expenses	\$1,495.01	\$8,218,047	\$1,473.82	\$8,748,608	\$1,474.29	\$8,802,995
Net Income		<u>\$189,813</u>		<u>\$212,362</u>		<u>\$202,401</u>
Total Procedures		5,497		5,936		5,971

The following is noted with respect to the submitted budget:

- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets.
- Revenue, expense and utilization assumptions are based on the combined historical experience of the physician members of Avicenna ASC, Inc.
- Expenses include maintaining the current level of 22.91 FTEs in Year One and Year Three, particularly for Technicians, Specialists, and Registered Nurses. Increases in expenses in Year One and Year Three are largely attributable to medical and surgical supplies and salaries/wages.
- All Other revenues reflect self-insured, Worker's Compensation and other governmental insurance carriers.

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

Payor	Current Year		Year One		Year Three	
	Proc.	%	Proc.	%	Proc.	%
Commercial FFS	125	2.3%	144	2.4%	146	2.4%
Medicare FFS	188	3.4%	203	3.4%	204	3.4%
Medicare MC	720	13.1%	778	13.1%	783	13.1%
Medicaid FFS	174	3.2%	188	3.2%	189	3.2%
Medicaid MC	2,343	42.6%	2,530	42.6%	2,545	42.6%
Charity Care	193	3.5%	208	3.5%	209	3.5%
All Other	<u>1,754</u>	<u>31.9%</u>	<u>1,885</u>	<u>31.8%</u>	<u>1,895</u>	<u>31.7%</u>
Total	5,497	100.0%	5,936	100.0%	5,971	100.0%

Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates a net income from operations of \$212,362 and \$202,401 for the first and third years, respectively. Revenue is based on the historical experience of the operation and on current reimbursement rates. The budget appears reasonable.

BFA Attachment A, the internal financial statements (accrual basis) of Avicenna ASC, Inc., indicates that the facility has maintained positive working capital, positive net assets and generated positive net income from operations. BFA Attachment B, the 2018 certified financial statements of Avicenna ASC, Inc., indicates that the facility has maintained positive working capital, net assets and experienced a net income from operations after taxes of \$189,813 for the period.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

- BFA Attachment A Avicenna ASC, Inc. – Internal Financial Statements as of December 31, 2019
- BFA Attachment B Avicenna ASC, Inc. – 2018 Certified Financial Statements



Project # 191323-E
Century Medical & Dental Center, Inc.

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** June 21, 2019

Executive Summary

Description

Century Medical & Dental Center, Inc., a proprietary business corporation, Article 28 Diagnostic and Treatment Center (D&TC) located at 260 Avenue X, Brooklyn (Kings County), requests approval to transfer 50% ownership interest from one withdrawing member to one new member. The facility also operates two extension clinics in Brooklyn (one at 770 Flatbush Ave and a second at 200 Livingston Street) and is certified to provide Medical Services - Primary Care, Medical Services - Other Medical Services, Dental and Physical Therapy services. There will be no change to site locations or services provided.

On July 30, 2019, the parties to the sale executed a Stock Purchase Agreement (SPA) for the purchase of 5,000 shares of common stock in the corporation (50% ownership) for \$1.00. There is a familial relationship between the buyer and seller in that the proposed new member is the daughter of the withdrawing member. The shareholder transaction will to be effectuated upon Public Health and Health Planning Council (PHHPC) approval of this application.

Ownership interest before and after this requested change is as follows:

<u>Shareholders</u>	<u>Current</u>	<u>Proposed</u>
Fred Weingaraten	50%	0%
Valentin Zusman	50%	50%
Amanda Weingarten	0%	50%

Steven Siegel, M.D., who is Board-Certified in Internal Medicine, will continue to serve as Medical Director for the facility. The D&TC has a long-standing Transfer Agreement with Coney Island Hospital, a New York City Health and Hospitals Corporation facility, for backup and emergency care.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no impact to beds, services, or utilization through this project.

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 purchase price for 50% shareholder interest is \$1.00 to be paid via the new shareholder's personal equity.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$14,224,126	\$15,013,340
Expenses	<u>13,375,465</u>	<u>14,001,540</u>
Gain/(Loss)	\$848,661	\$1,011,800

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a Restated Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a proposed stock certificate acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

April 2, 2020

Program Analysis

Project Proposal

Century Medical & Dental Center, Inc, operator of Century Medical & Dental Center, Inc, an existing Article 28 Diagnostic and Treatment Center, located at 260 Avenue X in Brooklyn (Kings County), seeks approval to transfer a 50% membership interest from one (1) withdrawing member to one (1) new member. Other than the proposed changes in membership, there are no programmatic changes or staffing changes as a result of this request.

Character and Competence

Name	Current	Proposed
Frank Weingarten	50%	-----
Valentine Zusman	50%	50%
Amanda Weingarten*	-----	50%
Total	100.00%	100.00%

****Subject to Character & Competence Review***

Mrs. Amanda Weingarten is a Registered Nurse and Midwife. She has been employed as a Midwife at New York Presbyterian Lower Manhattan Hospital for over 3 years. She has over nine years of experience as a midwife in the clinic and hospital setting. She provides women's healthcare in an office and hospital setting. She is a member of the Quality Assurance Committee that reviews cases for compliance with standard of care within the Obstetrics Department. She has advised on the development, design, policies of the new in-hospital birth center. She is also involved in the training and education of the Labor and Delivery staff on the Birth Center protocols and procedures.

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.

Conclusion

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

Financial Analysis

Stock Purchase Agreement

The applicant has submitted the executed SPA for the purchase of 50% of the shares in the corporation, summarized below.

Date:	July 30, 2019
Seller:	Fred Weingarten
Buyers:	Amanda Weingarten
Purchase:	50% of common shares (5,000) to be purchased
Purchase Price:	\$1.00
Payment Method:	Cash at closing

Operating Budget

The applicant has submitted the current year 2018 results, and the first year and third year operating budget after the change in ownership, in 2020 dollars, summarized as follows:

	<u>Current Year (2018)</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$120.02	\$1,634,532	\$138.05	\$1,946,362	\$139.09	\$2,057,530
Medicare FFS	\$144.11	\$3,025,505	\$164.82	\$3,582,344	\$165.80	\$3,780,868
Medicaid FFS	\$261.01	\$1,520,145	\$299.69	\$1,806,805	\$301.77	\$1,909,001
Medicaid MC	\$218.01	\$5,830,175	\$248.81	\$6,888,615	\$250.13	\$7,265,941
Total Revenues:		\$12,010,357		\$14,224,126		\$15,013,340
<u>Expenses</u>						
Operating	\$153.66	\$10,323,283	\$178.05	\$12,383,465	\$177.43	\$12,947,520
Capital	\$16.73	\$1,123,381	\$14.27	\$992,000	\$14.45	1,054,020
Total Expenses	\$170.39	\$11,446,664	\$192.32	\$13,375,465	\$191.88	\$14,001,540
Net Income (Loss)		<u>\$563,693</u>		<u>\$848,661</u>		<u>\$1,011,800</u>
Cost Per Visit		\$170.39		\$192.32		\$191.88
Utilization (Visits)		67,181		69,549		72,972

Utilization by payor for the current year and first and third year after the 50% transfer of shareholder interest is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Payor</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	13,619	20.27%	14,099	20.09%	14,793	19.85%
Medicare FFS	20,995	31.25%	21,735	31.72%	22,804	32.34%
Medicaid FFS	5,824	8.67%	6,029	8.60%	6,326	8.45%
Medicaid MC	<u>26,743</u>	<u>39.81%</u>	<u>27,686</u>	<u>39.58%</u>	<u>29,049</u>	<u>39.36%</u>
Total	67,181	100.00%	69,549	100.00%	72,972	100.00%

The budgeted increased revenues and expenses for Years One and Three are related in part to increased volume associated with the opening of the 770 Flatbush Avenue extension clinic effective May 4, 2017, and the opening of the 200 Livingston Street extension clinic effective January 24, 2018.

Reimbursement rates are based on historical experience. The increase in payment rates in Year One and Year Three were adjusted for projected increases in inflation and increases in negotiated managed care rates. The rate increases also reflect additional reimbursement associated with forecasted capital purchases in Year One through Year Three deemed necessary to accommodate the increased patient volume at the new clinic sites. Expense and utilization assumption are based on the current and historical experience of the three D&TC locations.

Capability and Feasibility

The total purchase price for Amanda Weingarten's purchase of Fred Weingarten's 5,000 shares (50% ownership interest) is \$1.00 to be funded via equity by the new proposed shareholder.

The working capital requirement is estimated at \$2,382,850 based on two months of first year expenses. The applicant will finance \$1,191,425 at an interest rate of 6.5% for a five-year term. Chase Business has provided a letter of interest at the stated terms. The remaining \$1,191,425 will be provided by the liquid resources of Amanda Weingarten and Valentin Zusman plus the operations of Century Medical & Dental Center. BFA Attachments A and C are, respectively, the personal net worth statements of the propose new shareholder and the existing remaining shareholder (Mr. Zusman) and the internal financial statements of Century Medical & Dental Center as of June 30, 2019, which indicate the availability of sufficient funds to meet the working capital equity contributions.

The submitted budget reflects net income of \$848,661 and \$1,011,800 in the first and third years of operation, respectively, after the change in shareholder interest. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is Century Medical & Dental Center, Inc.'s 2018 certified financial statements. As shown, the facility had positive working capital, positive net asset position, net income before interest, depreciation and provision for taxes of \$1,038,213, and a net income of \$563,713.

BFA Attachment C is Century Medical & Dental Center, Inc.'s May 31, 2019 internal financial statements. As shown, the facility had a positive working capital position, a positive net asset position, and achieved a net income of \$668,076 through May 31, 2019.

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

Attachments

BFA Attachment A	Members net worth statement.
BFA Attachment B	2018 Certified Financial Statements, Century Medical & Dental Center, Inc.
BFA Attachment C	May 31, 2019 Internal Financial Statements, Century Medical & Dental Center, Inc.



**Project # 192042-B
Ohel Medical, Inc.**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** July 26, 2019

Executive Summary

Description

Ohel Medical, Inc. (the "Center"), an existing New York not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 1268 East 14th Street, Brooklyn (Kings County). The proposed Center will occupy approximately 2,160 GSF of leased space on the ground floor of OHEL Children's Home and Family Services, Inc.'s new four-(4)-story Jaffa Family Campus building. The Center will have four (4) exam rooms and the requisite support spaces. The applicant will offer adult and pediatric primary care services and outpatient radiology – diagnostic services.

OHEL Children's Home and Family Services, Inc. (OHEL) is the sole member and passive parent of Ohel Medical, Inc. The Board of Directors of the Center is comprised of three members, two of whom are also members of the Board of Directors of OHEL. OHEL provides a comprehensive array of residential and outpatient support and treatment programs that help individuals and families with lifelong disabilities, life cycle needs, traumatic events and situational crises. In particular, OHEL's two Article 31 clinics in Brooklyn and Far Rockaway, NY offer child and family therapy, parent counseling, psychological testing, psychiatric evaluation, medication management and trauma and grief counseling. The proposed Center will be located in the same building as OHEL's Brooklyn Article 31 clinic, providing opportunities for integrated primary care and mental health service delivery.

This proposal is an integral part of OHEL's plan to better serve the residents of Brooklyn. The Jaffa Family Campus consolidates a majority of OHEL's Brooklyn-based, non-residential community programs into a single location. The proposed D&TC will further enhance the continuum of services available at this central hub, which already includes an Article 31 outpatient mental health clinic, foster care services, domestic violence services, access to supportive housing, day programs and a case management continuum of vital health and human services.

Alan David Levenson, M.D, who is Board-Certified in Internal Medicine, will serve as Medical Director. Maimonides Medical Center, located 3.4 miles from the proposed Center, has provided a letter of interest to enter into a Transfer and Affiliation Agreement to serve as the backup hospital for the facility.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

The number of projected visits is 10,500 in Year One and 15,000 in Year Three. The center projects 71% Medicaid Utilization and is committed to serving all persons in need without regard to ability to pay or source of payment.

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 cost of \$130,172 will be financed with cash from Ohel.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,116,524	\$1,620,616
Expenses	<u>\$1,365,530</u>	<u>\$1,609,620</u>
Net Income	(\$249,006)	\$10,996

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 a photocopy of a list of the Board of Directors of OHEL Children's Home and Family Services, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of amended and executed Lease Agreement for Ohel Medical, Inc. (OMI), acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Certificate of Amendment to the Certificate of Incorporation of OMI, acceptable to the Department. [CSL]
7. Submission of a photocopy of the amended and executed bylaws of OMI, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicants amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application and an expiration of the approval. [PMU]
2. Construction must start on or before May 1, 2020 and construction must be completed by May 31, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 2, 2020

Need and Program Analysis

Project Proposal

Ohel Medical, Inc, a New York State not for profit corporation, seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 1268 East 14th Street in Brooklyn (Kings County). The proposed center will provide Primary Medical Care services and Outpatient Radiology.

Proposed Operator	Ohel Medical, Inc
To Be Known As	Ohel Medical, Inc
Site Address	1268 East 14 th Street Brooklyn, New York 11230 (Kings County)
Specialties	Medical Services – Primary Care Medical Services – Other Medical Specialties
Hours of Operation	Sunday: 10 AM - 6 PM Monday -Thursday: 8 AM - 1 PM Friday: 8 AM - 1 PM Saturday Evenings for 3 hours starting 30 minutes after sunset from September to mid-June
Staffing (1st Year / 3rd Year)	9.65 FTEs / 11.15 FTEs
Medical Director(s)	Alan D. Levenson, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 3.1 miles / 20 minutes away

The primary service area is Kings County. The population of Kings County was 2,504,700 in 2010. Per projection data from the Cornell Program of Applied Demographics, the population of Kings County is estimated to grow to 2,810,876 by 2025, an 12.2% increase.

The proposed center will be in the same building with an existing Article 31 clinic operating by OHEL Children's Home and Family Services, Inc. (the applicant's sole member and passive parent), providing opportunities for integrated primary medical and mental health services. The applicant estimates that one-third to one-half of the Article 31 patients will utilize the on-site primary care services of the proposed center. The center will implement a program that will pay special attention to the medical needs of the Hasidic Jewish population in Brooklyn. The center will provide primary care and radiology-diagnostic o/p services.

The projected number of visits is 10,500 in Year One and 15,000 in Year Three. The center is projecting 71% for Medicaid utilization. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The Board of Ohel Medical, Inc is comprised of:

Name

David Brecher
Lawrence Gabe
Jay Kestenbaum

Mr. David Brecher is the President and CEO of a home loan company for approximately 22 years. His job duties include making major corporate decisions, directing the company's short- and long-term strategy, managing the overall operations and resources of the company, and acting as the public face of the company. The company is a mortgage lender closing nearly \$2 billion yearly in loan transactions across the country.

Mr. Lawrence Gabe is an attorney with over 45 years of experience. He has counseled numerous clients in the health care industry. His primary area of law is Trusts and Estates, particularly tax and estate planning. He counsels clients regarding providing for care of the disabled and elderly. He has been an active volunteer of OHEL Children's Home and Family Services for 24 years and a trustee and the Secretary of the Lifetime Care Foundation during that time.

Mr. Jay Kestenbaum has been the senior Vice President of Sales and Purchasing of a refrigerant company for 11 years. His responsibilities include cross-functional team leadership, business strategy, and product development. He is the Vice President of the Board of Trustees of OHEL Children's Homes and Family Services and serves as the chair of the OHEL Development Committee for 27 years. He is experienced with the needs of the OHEL clients.

Dr. Alan Levenson is the proposed Medical Director. He earned his medical degree from the Royal College of Surgeons in Ireland. He completed his residency in general medicine at The Wittington Hospital in London and his Family Practice residency at St. Joseph's Hospital in New Jersey. He is board-certified in Internal Medicine and has 20 years of experience operating primary care practices. He also is the current Director of Utilization and Physician Advisor of Maimonides Medical Center.

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.

Conclusion

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

Financial Analysis

Lease Agreement

The applicant has submitted a draft lease agreement for the site to be occupied, as summarized below:

Premises:	1,774 rentable sq. ft. (2,160 GSF) located at 1268 East 14 th . Street, Brooklyn NY
Lessor:	OHEL Children's Home and Family Services, Inc.
Lessee:	Ohel Medical, Inc.
Term:	Initial term of 10 years
Rental:	\$62,090 annually (\$35.00 per sq. ft.)
Provisions:	Utilities, sewer service, hot and cold water, maintenance and security services included in base rent.

The proposed lease is a non-arm's length agreement. The applicant has submitted an affidavit indicating there is a relationship between the lessor and lessee in that OHEL Children's Home and Family Services, Inc. is the sole member and passive parent of Ohel Medical, Inc. Two NYS licensed realtors submitted letters attesting to the rent reasonableness.

Administrative Services Agreement (ASA)

The applicant has submitted an executed ASA, as summarized below:

Date:	June 12, 2019 (effective upon Article 28 licensure from DOH)
Company:	Ohel Medical, Inc.
Contractor:	OHEL Children's Home and Family Services, Inc.
Services Provided:	Financial services and reporting; licensing/certifications; provision of all professional and non-professional staff directly involved in the operation of the Company; payroll processing; purchasing; credentialing services; risk management; arranging insurance; billing and collection; preregistration services
Term:	One year with automatic one-year renewals. Either party may terminate with 120 days' notice.
Compensation:	\$172,800 annual fee, plus reimbursement for actual costs of services, including all salaries and related employee costs, and costs for equipment, services and supplies paid for by OHEL on Center's behalf.

The ASA is a non-arm's length agreement in that OHEL is the sole member and passive parent of Ohel Medical, Inc. The ASA provides that the Center will retain ultimate authority, responsibility and control in all final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers which must not be delegated, the applicant will not willfully engage in any illegal delegation, and the Department will hold the applicant accountable.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$130,172 broken down as follows:

Renovation and Demolition	\$20,000
Design Contingency	2,000
Construction Contingency	2,000
Architect/Engineering Fees	1,600
Moveable Equipment	76,371
Telecommunications	25,500
CON Fee	2,000
Additional Processing Fee	<u>701</u>
Total Project Cost	\$130,172

Project costs are based on a construction start date of May 1, 2020, and a one-month construction period. Project funds will be provided by OHEL.

Operating Budget

The applicant has submitted an operating budget, in 2020 dollars, which is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS+MC	\$82.52	\$155,959	\$90.28	\$243,767
Medicare FFS+MC	\$81.20	\$59,683	\$83.65	\$87,837
Medicaid FFS+MC	\$118.81	\$885,741	\$118.81	\$1,265,346
Private Pay	\$144.20	<u>\$15,141</u>	\$157.77	<u>\$23,666</u>
Total Revenues		\$1,116,524		\$1,620,616
<u>Expenses</u>				
Operating	\$122.66	\$1,287,944	\$102.14	\$1,532,034
Capital	<u>\$7.39</u>	<u>\$77,586</u>	<u>\$5.17</u>	<u>\$77,586</u>
Total Expenses	\$127.65	\$1,365,530	\$105.30	\$1,609,620
Net Income		<u>(\$249,006)</u>		<u>\$10,996</u>
Utilization (Visits)		10,500		15,000

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

	<u>Year One</u>	<u>Year Three</u>
Commercial FFS+MC	18.0%	18.0%
Medicare FFS + MC	7.0%	7.0%
Medicaid FFS + MC	71.0%	71.0%
Private Pay	1.0%	1.0%
Charity Care	3.0%	3.0%

Expenses are based on staffing of 9.7 FTEs in Year One and 11.2 FTEs in Year Three. Annual ASA and rent costs comprise most of the non-personnel expense forecast. Utilization assumptions are based in part on the expectation that one-third to one-half of OHEL's Article 31 patients will utilize the Center's services. Volume, rate and utilization assumptions are also based on recent historical trends for other facilities serving urban markets. Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid MC +FFS revenues in Year One and Year Three.

Capability and Feasibility

Project costs of \$130,172 will be met via equity from OHEL. Working capital cash requirements are estimated at \$268,270 based on two months of third year expenses and will be provided from OHEL's operations and cash on hand. OHEL has submitted a letter of support confirming the commitment of funds for project costs and working capital requirements. BFA Attachment B presents OHEL's certified financial statements for the years ended June 30, 2019 and June 30, 2018 and their interim financial statements as of December 31, 2019, which indicate the availability of sufficient funds for the equity contribution to meet the construction cost and working capital requirements.

BFA Attachment C is the pro forma balance sheet of the Center as of the first day of operation, which indicates a positive net asset position of \$927,234

The submitted budget indicates a net income of (\$249,006) and \$10,996 during the first and third years of operations, respectively. OHEL has submitted a letter confirming that it will support operating losses of the Center.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organization Chart
BFA Attachment B	Financial Statements for OHEL Children's and Family Services, Inc.
BFA Attachment C	Pro Forma Balance Sheet for Ohel Medical, Inc.
BHFP Attachment	Map



**Project # 192120-B
Kerestir Health, LLC d/b/a Kerestir Health Center**

Program: Diagnostic and Treatment Center County: Orange
Purpose: Establishment and Construction Acknowledged: September 17, 2019

Executive Summary

Description

Kerestir Health LLC d/b/a Kerestir Health Center, a New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located in leased space at 501 Route 208, Monroe (Orange County). The D&TC will be housed in an existing two-story vacant office building that is being renovated for fit-out of the D&TC. The applicant requests certification for Medical Services – Primary Care and Medical Services – Other Medical Specialties to be provided to both pediatric and adult patients. The proposed service area will be Orange County, with a specific emphasis on the communities surrounding the D&TC including the Village of Kiryas Joel, as well as the town of Monroe.

The proposed ownership of the Center is as follows:

Kerestir Health LLC	
Members	%
David Perlmutter	50%
Yoel Shtosel	50%

Vladimir Zelenko, M. D., who is Board-certified in Pediatrics, will serve as Medical Director. The applicant intends to enter into a Transfer and Affiliation Agreement with Orange Regional Medical Center.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

The number of projected visits is 10,787 in Year One and 21,348 in Year Three, with Medicaid at 65% 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

Total project costs of \$2,441,250 will be met via members' equity.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,296,337	\$2,565,668
Expenses	1,366,522	2,280,276
Gain/Loss	(\$70,185)	\$285,392

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed lease rental 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 State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. Submission of a photocopy of an amended and executed Certificate of Assumed Name, acceptable to the Department. (CSL)
8. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. (CSL)
9. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. (CSL)
10. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. (CSL)
12. Submission of a photocopy of an amended and executed Business Associate Agreement, acceptable to the Department. (CSL)
13. Submission of a photocopy of a Resume or relevant Outside Manager qualifications, acceptable to the Department. (CSL)

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application and an expiration of the approval. [PMU]
2. Construction must start on or before July 1, 2020 and construction must be completed by January 1, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the construction dates. [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.
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 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

April 2, 2020

Need and Program Analysis

Project Proposal

The proposed center will provide primary medical care services and other medical specialties, Orthopedics, Gastroenterology, Podiatry, Pain Management, Pulmonology, Oncology, Endocrinology, Cardiology, Urology, and Psychiatry, Gynecology, Dermatology, Infectious Disease, Radiology, Ophthalmology, Internal Medicine, specifically Pediatrics and other non- primary care clinical services.

Proposed Operator	Kerestir Health, LLC
To Be Known As	Kerestir Health Center
Site Address	501 Route 208 Monroe, NY 10950 (Orange County)
Specialties	Medical Services – Primary Care Medical Services-Other Medical Specialties
Hours of Operation	Monday through Friday 8 AM to 6 PM If needed will add Sunday 8:30 AM to 6 PM
Staffing (1st Year / 3rd Year)	14.30 FTEs / 24.80 FTEs
Medical Director(s)	Vladimir Zelenko, M.D..
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Orange Regional Medical Center 14.2 miles /13 minutes away

Background and Analysis

The proposed service area will be Orange County, with a specific emphasis on the communities surrounding the D&TC including the Village of Kiryas Joel. The population of Orange County was 372,813 in 2010 and is projected to grow to 391,144 by 2025, an increase of 4.9%.

Prevention Quality Indicators-PQIs

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

Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates: 2016	Service Area	New York State
All PQI's	1,508	1,363

Source: DOH, 2019

The Village of Kiryas Joel is a Medically Underserved Area per HRSA.

The number of projected visits is 10,787 in Year One and 21,348 in Year Three. The center is projecting Medicaid utilization of 65% for the first and third year. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The members of Kerestir Health, LLC are:

Name	Interest
Yoel Shtosel, Member	50%
David Perlmutter, Manager/Member	50%

Mr. Yoel Shtosel has approximately five years experience as the President of a marketing services business. He was the previous President/Owner of a grocery store. As the Owner/Manager of the two businesses, he has been responsible for operations including the hiring and firing of employees, setting of schedules, purchasing of materials, establishing budgets, and complying with applicable State and Federal laws.

Mr. David Perlmutter has been President/Manager of a computer supply company for approximately eight years. He is currently in charge of all facets of the computer supply business, including hiring, scheduling, purchasing and financial planning. He was previously employed at a computer supply business for approximately seven years as President/Manager and oversaw all aspect of business including staffing, purchasing, and finances. Mr. Perlmutter reports for the past 15 years he ran his own businesses and has been responsible for managing all aspects of a successful organization. He states that his experience, which is applicable to a health facility, includes hiring and managing employees, purchasing, and compliance with all applicable State and Federal regulations.

Dr. Vladimir Zelenko is the proposed Medical Director. Dr. Vladimir Zelenko is a Family Medicine Specialist in Monroe, New York. He has been employed as the Chief Executive Officer/President and Medical Director of Vladimir Zelenko MD, PC for approximately ten years. Prior to that, he was with Ezras Choilim Health Center as a primary care and family health physician for approximately five years. Dr. Zelenko has more than 19 years of diverse experiences, especially in Family Medicine. He graduated with honors from State University of New York at Buffalo School of Medicine in 2000.

The operator LIC also is requesting approval for an outside Manager. The outside Manager would be ABG Management, LLC whose sole member is Ari Gluck

Mr. Ari Gluck was a licensed Nursing Home Administrator but has not renewed his license since 2014. He is currently employed at Williamsburg Pediatrics, PC as Chief Operating Officer and has been for approximately 15 months. Responsibilities included the day to day operations of the medical practice and overseeing the compliance program. Mr. Gluck reports directly to the Chief Executive Officer. He is also currently employed at NDC Distributors, LLC (Drug Wholesaler) and has been there for approximately six years. He is responsible for day-to-day operations, including but not limited to purchasing, sales, proper record-keeping, recalls returns, quality control, customer service, and policies and procedures to ensure accurate inventory control, and implementing and enforcing full compliance with all Federal and State Regulatory Standards.

Mr. Gluck was previously employed at Meadow Park Rehabilitation and Health Care Center as Executive Director for approximately three years. He was responsible for overall operations of the facility, and was the direct liaison between ownership and facility administration.

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.

Conclusion

The addition of primary care and other medical specialties will enhance access to the population in the service area. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Administrative Services Agreement (ASA)

The applicant has provided a draft ASA, which is summarized below:

Operator:	ABG Management, LLC
Company:	Kerestir Health, LLC
Term:	Initial three-year term, and subsequently renewable annually
Services Provided:	Upon request by Operator, participate in any on-site inspections of Facility by any governmental authority or mortgagee; assist with facility maintenance and repair requirements and the Operator's obligations under the Mortgage and local codes, subject to any limitations imposed by Operator; assist in developing marketing data and community relations and outreach; assist in the selection and hiring of any replacement administrator and assistant administrator, if necessary; assist in the selection and hiring of any replacement Director of Medicine; assist in developing and implementing business development programs; assist in coordinating Operator related licensure and certification renewals; and consult with Operator regarding the types of insurance, amounts of coverage
Excluded Services:	Service provider shall NOT have responsibility for: supervision of care or care of patients; supervision of medical staff; medical decisions or outcomes; evaluating or ensuring quality of care; adequacy of staffing or training; adequacy of policies and procedures or ensuring proper implementation of same; adequate supervision of employees; coding, billing or collections; accounting or bookkeeping; human resources or payroll; compliance with laws, or anything else not expressly included herein, and is not a manager or Controlling Party of the Operator.
Compensation:	\$3,750 monthly for the first 24 months of the term and \$7,083.33 monthly for months 25-36.

Kerestir, LLC retains ultimate control in all financial decisions associated with the services. 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.

Lease Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Premises:	5,400 total sq. ft. located at 501 Route 208, Monroe, New York 10950, consisting of two floors: Floor 1 consists of 2,500 sq. ft. and Floor 2 consists of 2,900 sq. ft.
Landlord:	17M Goldstar, LLC
Tenant:	Kerestir Health LLC
Rental:	Floor 1: Base rent of \$87,500 per year (\$35.00 per sq. ft.) for the first year with a 1.5% increase thereafter. Floor 2: \$108,000 annualized (\$37.24 sq. ft.)
Term:	10 years
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, insurance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant as the respective entities have members in common. Letters from two New York real estate brokers were submitted attesting to the reasonableness of the rent.

Total Project Costs and Financing

Total project costs are estimated at \$2,441,250 broken down as follows:

Renovation & Demolition	\$1,620,232
Design Contingency	162,023
Construction Contingency	162,023
Planning Consultant Fees	31,461
Architect/Engineering Fees	125,843
Other Fees	100,000
Movable Equipment	199,326
Telecommunications	25,000
CON Application Fee	2,000
Additional CON Processing Fee	<u>13,342</u>
Total Project Cost	\$2,441,250

Project costs are based on a construction start date of July 1, 2020, with a six-month construction period. The applicant will fund the total project cost via equity (landlord contribution and members' equity). The landlord has provided a \$1,250,000 contribution. The remaining \$1,191,250 will be funded by the applicant members.

BFA Attachment A is a summary of the personal Net Worth Statements of the applicant members, which indicates sufficient liquid resources exist to fund the equity requirement for project costs.

Operating Budget

The applicant has submitted their first- and third-year operating budget, in 2020 dollars, as shown below:

Revenues	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Commercial-FFS	\$164.95	\$177,978	\$164.99	\$352,249
Medicare-FFS	\$150.00	242,698	\$150.01	480,339
Medicare-MC	\$120.07	64,719	\$120.05	128,090
Medicaid-FFS	\$140.31	75,627	\$140.28	149,677
Medicaid-MC	\$104.11	673,832	\$104.11	1,333,627
Private Pay	\$189.76	<u>61,483</u>	\$190.13	<u>121,686</u>
Total Revenues		\$1,296,337		\$2,565,668
<u>Expenses</u>				
Operating	\$101.56	\$1,095,477	\$93.99	\$2,006,586
Capital	<u>\$25.13</u>	<u>\$271,045</u>	<u>\$12.82</u>	<u>273,690</u>
Total Expenses	\$126.68	\$1,366,522	\$106.81	\$2,280,276
Net Income		<u>(\$70,185)</u>		<u>\$285,392</u>
Visits		10,787		21,348
Cost/Visit		\$126.68		\$106.81

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

<u>Payor</u>	<u>%</u>
Commercial - FFS	10%
Medicare - FFS	15%
Medicare - MC	5%
Medicaid - FFS	5%
Medicaid - MC	60%
Private Pay	3%
Charity	2%
Total	100%

The following is noted with respect to the submitted budget:

- Medicaid Fee for Service is based on the base Medicaid APG rate plus cost of capital as obtained from the Bureau of D&TC Reimbursement.
- Medicaid Managed Care is assumed at 75% of the Medicaid APG Fee for Service rate.
- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets
- Commercial Insurance and Medicare Fee for Service is based on Medicare Part B Fee Schedule. Medicare Managed Care is based on 80% of the Medicare Part B Fee Schedule.
- Expenses are based predominantly on labor costs for practitioners (mostly physician) with a staffing pattern that includes 3.85 FTE physicians in Year One and 7.62 physicians in Year Three as the facility ramps up utilization. Medical supplies account for \$59,326 of expenses in Year One, increasing to \$117,416 by Year Three consistent with the projected increased utilization. Capital cost includes rent expense (\$195,000 in year one) and depreciation on applicant's contribution to leasehold improvements and moveable equipment. The expenses appear reasonable.

Capability and Feasibility

The project costs of \$2,441,250 will met with \$1,250,000 in construction costs from the landlord and the remaining equity of \$1,191,250 provided by the members.

Working capital requirements are estimated at \$380,046 based on two months of third year expenses and will be satisfied via members' equity. BFA Attachment A provides the net worth of the proposed members, which indicates the availability of sufficient funds for the level of equity. The applicant has submitted an affidavit indicating that the equity will be provided disproportionate to ownership interests. BFA Attachment C, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$2,821,296.

The submitted budget indicates the facility will generate a loss of \$70,185 and income of \$285,392 in the first and third years, respectively. The first-year loss will be offset from working capital. Revenues are based on prevailing reimbursement methodologies for D&TC services. The submitted budget appears reasonable.

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

Attachments

BFA Attachment A	Net Worth of Proposed Members-
BFA Attachment B	Organizational Chart
BFA Attachment C	Pro Forma Balance Sheet, Kerestir Health Center
RNR Attachment A	Map



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

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

Executive Summary

Description

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

The D&TC will be housed in 2,700 sq. ft. of newly renovated space on the first floor of a building owned by Beach 50th Street, LLC (landlord) and leased to Cardiff Bay Center, LLC (lessee). The four-story building currently houses the Peninsula Nursing and Rehabilitation Center, a 200-bed skilled nursing facility (SNF) operated by Cardiff Bay Center, LLC, and Quality Kidney Care, an Article 28 chronic renal dialysis center operated by Peninsula Continuum Services, LLC. The D&TC will be a separate and distinct facility with a dedicated entrance separate from the SNF entry. The facility will consist of seven exam rooms, physical therapy space, and the requisite support spaces. The goal of this project is to complement the existing services available within the building to serve the residents of Queens County in general and the specific area of Rockaway and Broad Channel. The residents

of the SNF may also use the D&TC services. The applicant will sublease the D&TC space from Cardiff Bay Center, LLC. There is a relationship between landlord, lessee and sublessee in that the entities have members in common.

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

Members	%
Pasquale DeBenedictis	30%
Alex Solovey	30%
Leopold Friedman	30%
Soloman Rutenberg	10%

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

OPCHSM Recommendation
Contingent Approval

Need Summary

The number of projected visits is 5,185 in Year One and 10,260 in Year Three with Medicaid at 35% and Charity Care at 3% each year.

Program Summary

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

will personally fund any capital requirements to meet project costs if additional capital resources are needed. BFA Attachment A shows the ability of this member to meet project costs.

Financial Summary

The total project cost of \$1,276,882 for leasehold improvements to fit-out the space will be funded by the sublandlord via equity. Proposed member Pasquale DeBenedictis, who is a member of the landlord and sublandlord entities, has submitted an affidavit confirming he

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$724,502	\$1,433,910
Expenses	\$773,197	\$1,178,663
Gain/(Loss)	(\$48,695)	\$255,247

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 sublease (license) agreement, acceptable to the Department of Health.
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 for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. The submission of Engineering (MEP) Drawings, per SHC guidelines, for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
6. Submission of a photocopy of the applicant's Certificate of Assumed Name, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed proposed Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Lease Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.
2. Construction must start on or before June 1, 2020 and construction must be completed by August 30, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [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 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

April 2, 2020

Need and Program Analysis

Project Proposal

Beach Channel LLC d/b/a Beach Channel Diagnostic and Treatment Center seeks approval to establish and construct a new Article 28 Diagnostic & Treatment Center to be located at 5015 Beach Channel Drive, Far Rockaway (Queens County). Peninsula Nursing and Rehabilitation Center, a 200-bed residential health care facility, is also at this site.

The proposed center will provide primary care and other medical specialty services, which will include but not be limited to, infectious disease, gastroenterology, nutrition, pain management, orthopedics, physical and occupational therapy, oncology, cardiology, and urological services.

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

Analysis

The primary service area is the neighborhoods of Rockaway and Broad Channel. The general service area is Queens County. The population of Queens County was 2,230,772 in 2010 and is projected to grow to 2,508,764 by 2025, an increase of 12.5%. Medicaid-eligible Rockaway is a Health Professional Shortage Area for Primary Care services.

The number of projected visits is 5,185 in Year One and 10,260 in Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The members of Beach Channel, LLC are:

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

Mr. DeBenedictis has been employed as the Chief Financial Officer of a residential health care facility since 2012. Additionally, Mr. DeBenedictis lists employment as the Chief Financial Officer of one residential health care facility and the Controller of a residential health care facility and a certified home health agency over a period of 15 years. He was also employed in accounts and finance for an occupational therapy facility for 11 years. Mr. DeBenedictis is a managing member of numerous residential health care facilities and end-stage renal dialysis diagnostic and treatment centers as well as a certified home health agency. Mr. DeBenedictis was licensed as a certified public accountant until 2012 when his license expired.

Mr. Rutenberg has been employed as Chief Executive Officer of a residential health care facility since 2006. He indicates he has leveraged his experience into understanding the formal complexities of maintaining and updating various nursing homes. He works with key personnel to implement new programs within the ever-changing landscape of reimbursement. He has regular interaction with community administrators, Medical Directors, Directors of Nursing, and key staff to address challenges that are on the horizon. Mr. Rutenberg was previously employed as an Assistant Administrator at a residential health care facility and has ownership interests in multiple nursing homes, and dialysis centers, as well as a CHHA, a LHCSA, and an adult home.

Mr. Solovey has been employed as the Director of Rehabilitation of a rehabilitation and occupational therapy practice since 1999. He provides therapy services to and at various health entities and takes a keen interest in the operational components of therapy services at related nursing homes. He was previously employed as the Director of Operations of a certified home health agency for approximately one year and as the Chief Operating Officer of a residential health care facility for approximately one year. Mr. Solovey is a licensed Physical Therapist and has ownership interests in multiple nursing homes and dialysis centers, as well as a CHHA, a LHCSA, and an adult home.

Mr. Friedman has been employed as the Chief Executive Officer of a full-service staffing agency since 2006. He is responsible for the overall performance of the organization. The staffing agency services hospitals, nursing homes, and other healthcare facilities. Mr. Friedman also has ownership interests in multiple nursing homes dialysis centers and home care agencies.

Dr. Syed Samar Raza is the proposed Medical Director. He is the current Chief Medical Officer at Cassena Care, Woodbury, a residential health care facility. For over six months he has been providing oversight of all the physicians providing care at the facility and ensuring that the best care is being provided by focusing on standardization of processes, reviewing and providing current clinical guidelines to physicians, prioritizing quality improvement initiatives, and coordinating community relationships. Dr. Raza is also the current Site Medical Director of two residential health care facilities, East Neck Nursing & Rehabilitation Center, West Babylon and Luxor Nursing and Rehabilitation at Sayville. For over a year, he has been providing administrative oversight and coordination of medical care to all patients in each facility. Dr. Raza was previously the Director of Hospitalist Medicine at Southside Hospital and John T. Mather Meroial Hospital. Dr. Raza received his medical degree from Ross University School of Medicine in 1999. He is Board Certified in Internal Medicine with a focused practice in Hospital Medicine.

Mr. DeBenedictis, Mr. Friedman, Mr. Solovey, and MLAP Acquisition I, LLC disclosed a civil action filed on November 10, 2016 in the Supreme Court of New York State in Nassau County. The suit alleged negligence and medical malpractice. The case was dismissed on January 3, 2017 based on the plaintiff's failure to state a cause of action.

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 as well as information from other states. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Citations are listed below by facility.

The Grand Nursing and Rehabilitation at Barwell

- The Department issued a Stipulation and Order (S&O) dated October 3, 2019 and fined The Grand Nursing and Rehabilitation at Barnwell \$10,000 based on an investigation that was completed in June 21, 2019. Deficient practice was found in the following area: Quality of Care. Specifically, the nursing

home failed to document the monitoring of the resident. The resident was transferred to the hospital and expired.

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

East Neck Nursing and Rehabilitation and Center

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

Upper Eastside Rehabilitation and Nursing Center

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

Bronx Gardens Rehabilitation and Nursing Center

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

The Citadel Rehabilitation and Nursing Center at Kingsbridge

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

Sea Breeze Rehabilitation and Nursing Center

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

Oak Haven Rehabilitation and Nursing Center

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

The Sands at South Beach Center

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

Cassena Care at Stamford

- On August 16, 2018, the facility was fined \$3,060 based on deficiencies found during a survey for Quality of Care. Specifically, the facility failed to turn and position a patient and the resident developed a Stage 3 pressure ulcer. The resident was observed in the same position for four (4) hours.
- On August 23, 2018, the facility was fined \$11,000 for deficiencies related to Resident Behavior and Facility Practices. Specifically, the facility failed to protect the resident from the wrongful use of the resident's belongings or money. The resident gave money to two staff members.

Cassena Care at Norwalk

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

Cassena Care at New Britain

- On August 16, 2018, the facility was fined \$21,060 for deficiencies related to Quality of Care-Provide Care/Highest Well Being. Specifically, the facility failed to ensure vital signs and and/or an abdominal assessment were conducted when the resident was identified with a change in status. The patient

had critical labs. There was no RN assessment of the resident. The resident was transferred to the hospital where he expired.

- On September 15, 2016, the facility was fined \$17,821 for Quality of Care-Provide Care/Highest Well Being and Quality of Care-Free of Accident Hazards/Supervision/Devices. Specifically, the facility failed to document vital signs and ensure medications were ordered in a timely manner after an allergic reaction and failed to ensure that another resident received the appropriate care and supervision. The resident ate a peanut butter sandwich and began exhibiting signs of an anaphylactic reaction. The resident has a peanut allergy. The facility did use an epi pen and the patient was transferred to the hospital. The second resident eloped from the facility through an emergency exit door and was found outside the facility.

Conclusion

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

<h2>Financial Analysis</h2>

Total Project Costs and Financing

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

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

Project costs are based on a construction start date of June 1, 2020, and a 13-month construction period. Cardiff Bay Center, LLC (sublandlord) will fund the leasehold improvements/fit-out via \$1,276,882 cash. BFA Attachments B and C are, respectively, the 2017-2018 certified financial statements and the internal financial statement for Cardiff Bay Center, LLC as of October 31, 2019, which indicated liquid resources may not be sufficient to fund the leasehold improvements. Proposed member Pasquale DeBenedictis, who is also a member of the landlord and sublandlord entities, has submitted an affidavit confirming he will personally fund any capital requirements to meet project costs if additional resources are needed. BFA Attachment A shows the ability of this member to meet project costs.

Master Lease Rental Agreement

The applicant has submitted an executed amended and restated master lease for the building. The terms are summarized below:

Date:	April 7, 2014
Premises:	101,721 sq. ft. located at 50-15 Beach Channel Drive, Queens, New York 11797
Lessor:	Beach 50 th Street, LLC
Lessee:	Cardiff Bay Center, LLC
Term:	50-Year terminating on the 50 th anniversary of the commencement date of the facility.
Rent:	\$2,150,000 per annum increase annually by 2% for the term.

The master lease agreement is a non-arm's length arrangement as the landlord and tenant entities have identical membership. Specifically, the members of Beach 50th Street LLC and Cardiff Bay Center, LLC

are as follows: Pasquale DeBenedictis (25.05%), Alex Solovey (25.05%), Leopold Friedman (24.90%), Michael Melnicke (25%).

License Agreement

The applicant submitted a draft license agreement for the proposed D&TC space. The terms are summarized below:

Premises:	2,700 sq. ft. located at 50-15 Beach Channel Drive, Queens, New York 11797
Sublessor:	Cardiff Bay Center, LLC
Licensee:	Beach Channel D&TC, LLC
Term:	10 Years
Rental:	Years 1 & 2: \$175,793 (\$65.10 per sq. ft.); Year 3: \$186,341 (\$69.01 per sq. ft.) Year 4: \$190,999 (\$70.74 per sq. ft.); Year 5: \$195,774 (\$72.50 per sq. ft.); Year 6: \$200,669 (\$74.32 per sq. ft.); Year 7: 205,685 (\$76.17 per sq. ft.); Year 8: \$210,827 (\$78.08 per sq. ft.); Year 9: \$216,098 (\$80.03 per sq. ft.); Year 10: \$221,501 (\$82.03 per sq. ft.)
Provisions:	Either party may terminate this license upon sixty (60) days advance notice for any reason. In the case of breach of agreement, ten (10) days advance notice in writing is required. The license agreement is subject and subordinate to Peninsula N&RC's lease for the premises of which the licenses space is part, and to all mortgages, liens or other encumbrances upon the premises which Peninsula N&RC does business.

The license agreement is a non-arm's length agreement as there are common members between the sublessor and licensee. The applicant has submitted rent reasonableness letters from two New York licensed realtors attesting to the rental rate being of fair market value and that the leased space reflects current rates for property similar to this location and size.

Operating Budget

The applicant has submitted the year one and year three operating budget, in 2020 dollars, as summarized below:

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS	\$164.95	\$239,501	\$164.99	\$474,012
Medicare FFS	\$135.10	\$34,992	\$135.00	\$69,255
Medicare MC	\$107.98	\$111,974	\$108.00	\$221,616
Medicaid FFS	\$167.46	\$86,744	\$167.33	\$171,680
Medicaid MC	\$125.50	\$162,645	\$125.50	\$321,901
Private Pay	\$189.82	<u>\$88,646</u>	\$190.08	<u>\$175,446</u>
Total Revenue		\$724,502		\$1,433,910
<u>Expenses</u>				
Operating	\$108.53	\$562,612	\$93.33	\$957,530
Capital	<u>\$40.62</u>	<u>\$210,585</u>	<u>\$21.55</u>	<u>\$221,133</u>
Total Expenses	\$149.15	\$773,197	\$114.88	\$1,178,663
Gain/(Loss)		<u>(\$48,695)</u>		<u>\$255,247</u>
Visits		5,185		10,260

The following is noted with respect to the submitted budget:

- Medicaid revenue projections are based on the Medicaid Freestanding APG Base Rates using Full APG Investment as obtained from the Department's website effective 4/1/2015 for freestanding clinics downstate, excluding the capital component to be conservative in the projections.
- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected with the budgets.

- For other payors, the applicant identified the most prevalent HCPCS codes used for their Medicare recipients based on the operators' experience.
- The Medicare Part B fee schedule was used to determine the calculation for the Medicare composite rate.
- Expenses are based on the salaries and employee benefits expenses for 7.94 FTE staff in Year One and 13.13 FTE staff in Year Three, plus medical supplies and capital cost related to depreciation and rent. By Year Three, direct care staff will include: 1.13 FTE Physicians, 1.0 FTE RN, 0.5 FTE Physicians' Assistant, 0.5 FTE Nurse Practitioner and 1.03 FTE Physical Therapists.

Utilization by payor source for outpatient visits is as follows:

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

Capability and Feasibility

The total project cost of \$1,276,882 will be funded via equity from Cardiff Bay Center, LLC for the fit-out of existing space. BFA Attachment B, the 2017-2018 certified financial statements of Cardiff Bay Center, LLC, indicates enough funds to meet the equity requirement; however, BFA Attachment C, the entity's internal financial statements as of October 31, 2019, indicates additional resources may be needed.

Pasquale DeBenedictis submitted an affidavit confirming he will personally fund capital requirements if additional equity is needed for the construction and equipment costs. Review of BFA Attachment A, proposed members' net worth summaries, reveals sufficient equity to meet project costs.

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

The submitted budget reflects a net operating loss of \$48,695 and a net income of \$255,247 in Years One and Three, respectively. The first-year loss will be offset by operations represented in Attachment D. Revenues are based on the current reimbursement methodologies for Primary Care and Medical Services – Other Medical Specialties. Year One utilization is low due to the start-up operations of the newly established facility. The submitted budget appears reasonable.

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

Attachments

BFA Attachment A	Members Net-worth Statement
BFA Attachment B	Cardiff Bay Center, LLC Certified (2017-2018) Financial Statement
BFA Attachment C	Cardiff Bay Center, LLC October 2019, Internal Financial Statement.
BFA Attachment D	Pro Forma (Beach Channel D&TC)
BFA Attachment E	Organization Chart of Beach Channel D&TC, LLC
BHFP Attachment	Map



**Project # 192223-B
Care365, LLC**

Program: Diagnostic and Treatment Center **County:** Rockland
Purpose: Establishment and Construction **Acknowledged:** November 7, 2019

Executive Summary

Description

Care365, LLC, an existing New York limited liability company whose sole member is Zehava Goldenberg, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 1 Main Street, Monsey (Rockland County). The applicant requests certification for Medical Services – Primary Care, Medical Services – Other medical Specialties and CT Scanner services. The scope of services will include primary medical care, CT and other specialty medical services including diagnostic x-rays, infusion care, and cardio-care. Rockland County will be the primary service area with an emphasis on the Hamlet of Monsey, Town of Ramapo in which the Center will be located.

The D&TC will be housed in approximately 7,153 square feet of leased space in an existing one-story building. The D&TC will have two clinical areas, one for urgent care and another for patient infusions and cardio-care. The urgent care area will be comprised of seven exam rooms, one large treatment room for minor procedures, a separate X-Ray and CT Scan area, a lab and a nurse’s station. The second clinical area will contain four additional exam rooms, a nurse’s station and a small waiting area.

The sole member of Care 365, LLC is Zehava Goldenberg.

Seth Kurtz, M.D., who is Board-certified in Pediatrics and Emergency Medicine, will be the Medical Director. Nyack Hospital, located 3 miles (1-minute travel time), is expected to enter into a Transfer and Affiliation Agreement (TAA).

OPCHSM Recommendation
Contingent Approval

Need Summary

The number of projected visits is 7,452 in Year One and 14,752 in Year Three, with Medicaid utilization at 36% and Charity Care at 4.0% by the third year. The applicant will provide care sensitive to the cultural and religious needs of the Hasidic Orthodox Jewish Community.

Program Summary

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

Financial Summary

The total project cost of \$442,208 will be met via \$437,800 of leasehold improvements completed by the original tenant, Care 365 SBV, LLC, and \$4,408 in accumulated funds.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,110,439	\$2,139,295
Expenses	\$1,151,859	\$1,812,782
Net Income/(Loss)	(\$41,420)	\$326,513

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Assignment of Lease Agreement, acceptable to the Department of Health. [BFA]
4. Submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]
5. Submission of a complete and executed Lease Agreement that is acceptable to the Department. [CSL]
6. Submission of a complete and executed Operating Agreement that is acceptable to the Department. [CSL]
7. Submission of complete and executed Articles of Organization and Amendments that are acceptable to the Department. [CSL]
8. Submission of complete and executed Articles of Organization of Care 365 SBV, LLC that are acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before July 1, 2020 and construction must be completed by September 1, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [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

April 2, 2020

Need and Program Analysis

Project Proposal

The proposed center will provide primary medical care services, other medical specialties, diagnostic radiology, infusion care, and cardio-care.

Proposed Operator	Care365, LLC
To Be Know As	Care365, LLC
Site Address	1 Main Street Monsey NY 10952 (Rockland County)
Specialties	Medical Services – Primary Medical Care Medical Services-Other Medical Specialties CT Scanner
Hours of Operation	Monday through Friday 8:00 AM to 6:00 PM, as needed will expand Hours to Sunday at 8:30 AM to 6:00 PM
Staffing (1st Year / 3rd Year)	9.95 FTEs/ 17.18 FTEs
Medical Director(s)	Seth Kurtz, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Nyack Hospital 3.0 miles / 1 minute away

Background and Analysis

The proposed service area will be Rockland County, with a specific emphasis on the communities surrounding the D&TC including the area in the town of Monsey. The town of Monsey is made up predominantly of Orthodox Jewish families. The population of Rockland County was 311,687 in 2010 and is projected to grow to 346,928 by 2025, an increase of 11.3%.

The number of projected visits is 7,452 in Year One and 14,752 in Year Three. The center is projecting Medicaid utilization of 36% and Charity Care of 4.0% by the third year.

Character and Competence

The sole member of Care365, LLC is Zehava Goldenberg

Ms. Goldenberg has been employed at Care365 SBV, LLC, as executive director for approximately one year. Care365 SBV, LLC is a health service management company owned by her spouse. She is responsible for directing, supervising and coordinating staff, and office activities on a day to day basis at the medical facility to provide quality, cost effective patient care. She holds Operational, Fiscal, and Human Resource responsibilities and has knowledge of Department of Health Regulations as it involves the development of Policies and Procedures and Compliance. The position also requires addressing patient complaints and concerns and ensuring collaboration amongst staff. Her past employment includes Medicaid Coordinator at Cliffside Nursing and Rehabilitation Facility for approximately 18 years. Her responsibilities included assisting patients with the admissions process and ensuring continued medicaid coverage for all eligible residents. The position required continuous communication with families, attorneys, geriatric care managers and county DSS agencies with regard to Medicaid eligibility process.

Dr. Seth Kurtz is the proposed Medical Director. He is currently an Internal Medicine and Urgent Care Physician of an Article 28 Diagnostic and Treatment Center. He assists the current Medical Director with the day to day responsibilities and oversight of the facility. He was previously employed as an Emergency Medicine Physician. His responsibilities included supervising medical staff, physician assistants, and medical residents. He was the physician in charge of the Emergency Department during his scheduled shifts. He is Board Certified in Internal Medicine. He graduated with his medical degree from St. George's University School of Medicine in Grenada. He completed his Internal Medicine residency at New York Presbyterian Queens.

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. Kurtz disclosed a pending malpractice suit for a patient that died in the hospital but was seen in the practice six weeks prior. Dr. Kurtz has never seen or treated the patient. The case is currently pending.

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.

Manhattanville Health Care Center:

- The Department issued a Stipulation and Order (S&O) dated August 13, 2018 and fined Manhattanville Health Center \$12,000 based on deficiencies found during an inspection completed on May 14, 2018. Immediate Jeopardy was found and deficient practice was cited in the area of Cardiopulmonary Resuscitation and Administration. Specifically, the facility failed to initiate CPR in a timely manner to an unresponsive resident with a full code status and have a system in place to distinguish cardiac arrest emergencies from other types of emergencies.

Conclusion

The addition of primary care and other medical specialties will enhance access to the population in the service area. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

<h2>Financial Analysis</h2>

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$442,208 broken down as follows:

Renovation & Demolition	33,000
Movable Equipment	404,800
Application Fee	2,000
Additional Processing Fee	<u>2,408</u>
Total Project Cost	\$442,208

Project costs are based on a construction start date of July 1, 2020, with a two-month construction period.

The financing for this project will be as follows:

Tenant Leasehold Improvements	\$ 437,800
Cash	<u>4,408</u>
Total	\$ 442,208

The leasehold improvements were completed by the current holder of the lease, Care 365 SBV, LLC, whose sole member is Eugene Goldenberg. The site currently accommodates a physician group practice that will cease operation and vacate the premises upon 30 days' notice from Care 365 SBV, LLC. The dollar value of the movable equipment is based on the remaining useful life. BFA Attachments A shows sufficient resources to meet the equity requirement.

Lease Agreement (Master Lease)

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

Date:	May 1, 2017
Premises:	Approx. 7,153 sq. ft. located at 1 Main Street, Monsey, New York 10952
Landlord:	59306, LLC
Tenant:	Care365 SBV, LLC
Term:	10 Years
Rental:	Base rent for total leased space is \$262,000 per year (\$21,833.33 per month) for the 1 st year, increasing at 1.5% per year through the remainder of the lease term. Lessee shall deposit \$43,666.66 as a security deposit on or about the Lease Commencement Date
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 site currently accommodates a private physician group practice, QHC Upstate Medical PC, that is subleasing the space on a month-to-month basis. The private practice will cease operations at this location and vacate upon 30 days' notice from Care365 SBV, LLC. A Memorandum of Understanding (MOU) has been submitted by the applicant attesting to this agreement between the sublandlord and existing subtenant.

Assignment of Lease

The applicant has submitted a draft lease assignment agreement the terms of which are summarized below:

Premises:	Approx. 7,153 sq. ft. located at 1 Main Street, Monsey, New York 10952
Assignor:	Care365 SBV, LLC
Assignee:	Care365, LLC
Term:	10 Years to be coterminous with the existing Master Lease
Rental:	Base rent for total leased space is \$139,800 per year (\$11,650 per month) for the first five years. Rent will increase 2% per year beginning in year 6 and thereafter.
Provisions:	Tenant is responsible for utilities and maintenance.

There is a familial relationship between assignor and assignee in that Zehava Goldenberg, the sole member of Care365, LLC, is the spouse of Eugene Goldenberg, the sole member of Care365 SBV, LLC. Therefore, upon assignment of the lease the arrangement becomes a non-arm's length agreement. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental based on the Lease Agreement. However, it is noted that the assigned lease arrangement has a lower cost per square foot.

Operating Budget

The applicant has submitted an operating budget, in 2020 dollars, for years one and three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$175.00	\$273,875	\$175.00	\$490,525
Medicare FFS	\$175.00	130,375	\$175.00	129,150
Medicare MC	\$140.00	260,820	\$140.00	619,500
Medicaid FFS	\$167.33	62,414	\$167.33	49,362
Medicaid MC	\$125.50	271,205	\$125.50	629,508
Private Pay	\$250.00	<u>111,750</u>	\$250.00	<u>221,250</u>
Total Revenue		\$1,110,439		\$2,139,295
<u>Expenses</u>				
Operating	\$93.88	\$699,625	\$92.23	\$1,360,548
Capital	<u>60.69</u>	<u>452,234</u>	<u>30.65</u>	<u>452,234</u>
Total	\$154.57	\$1,151,859	\$122.88	\$1,812,782
Net Income / (Loss)		<u>(\$41,420)</u>		<u>\$326,513</u>
Total Visits		7,452		14,752
Cost per Visit		\$154.57		\$122.88

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	21.0%	19.0%
Medicare FFS	10.0%	5.0%
Medicare M/C	25.0%	30.0%
Medicaid FFS	5.0%	2.0%
Medicaid M/C	29.0%	34.0%
Private Pay	6.0%	6.0%
Charity	<u>4.0%</u>	<u>4.0%</u>
Total	100.0%	100.0%

The following is noted with respect to the submitted budget:

- The Medicaid Fee for Service rate is conservatively estimated based on the Medicaid APG base rate of \$169.02 base rate as obtained from the Department of Health's Bureau of D&TC Reimbursement.
- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets.
- Medicaid Managed Care is assumed to be 75% of the Medicaid APG Fee for Service rate.
- Commercial Insurance and Medicare Fee for Service is based on the Medicare Part B fee schedule.
- Medicare Managed Care is based on 80% of the Medicare Part B fee schedule.
- Expenses are based predominantly on the labor costs for the staffing model that includes: Physicians (2.5 FTEs by Year Three), Physicians' Assistants and Nurse Practitioners (each at 0.5 FTEs by Year Three), 1.0 - 1.5 FTE RNs and 1.1 – 1.65 FTE Technicians/Specialists, as well as medical supplies and rent expense as documented per the lease assignment agreement.
- Utilization is projected base on the target community that has experienced a 15.3% increase in population from 2010-2019 and is expected to increase by an additional 5.7% over the next five years. Many residents in Monsey (43.6%) have income below the Federal Poverty Level and the goal of the applicant is to provide care for those in need in the community.

Capability and Feasibility

Project cost of \$442,208 will be met with \$437,800 in tenant leasehold improvements from the original tenant, and accumulated funds of \$4,408.

Working capital requirements are estimated at \$302,130 based on two months of third year expenses. BFA Attachment A is the member's personal net worth statement, which indicates sufficient resources overall to fund the equity requirements. BFA Attachment B is the Pro-Forma balance sheet for Care365, LLC, which shows the operation will start with \$302,130 in members' equity.

The submitted budget projects a net loss of \$41,420 and net income of \$326,513 during Years One and Three of operations, respectively. Care365, LLC has provided an affidavit that they will cover the projected first year loss. The budget appears reasonable.

Attachments

BFA Attachment A	Net Worth Statement of Proposed Member of Care365, LLC
BFA Attachment B	Pro-Forma Balance Sheet
BHFP Attachment	Map



Project # 192048-B
**USRC Hamburg, LLC d/b/a U.S. Renal Care Hamburg
 Dialysis**

Program: Diagnostic and Treatment Center **County:** Erie
Purpose: Establishment and Construction **Acknowledged:** July 26, 2019

Executive Summary

Description

USRC Hamburg, LLC d/b/a U.S. Renal Care Hamburg Dialysis, a New York limited liability company, requests approval to establish and construct a 13-station, Article 28 End-Stage Renal Dialysis (ESRD) Center located at 3860 McKinley Parkway, Blasdell (Erie County). The proposed ESRD Center will occupy approximately 6,842 square feet of leased space in an existing building. The facility will be certified for in-center chronic renal dialysis, home hemodialysis training and support, and home peritoneal dialysis training and support services.

OPCHSM Recommendation

Contingent Approval

Need Summary

Erie County has a calculated unmet need of seven dialysis stations. The addition of 13 stations will exceed the calculated need of 316 stations by six stations, or approximately two percent. Erie County has seventeen operational dialysis facilities: fifteen are freestanding; two are hospital-based. The area is serviced by both national and independent operators. This center would be the only one in its zip code.

The ownership of the facility is as follows:

<u>USRC Hamburg, LLC</u>	
<u>Members</u>	<u>%</u>
U.S. Renal Care Inc.	51%
LEDP III LLC	49%
Heather Wheat, M.D. (16.67%)	
Kristin Matteson, D.O. (16.67%)	
Richard Steinacher, D.O. (16.67%)	
Arundathi Namassivaya, M.D. (16.67%)	
Maria C.V. Del Castillo, M.D. (16.66%)	
Imad Ahmed, M.D. (16.66%)	

Program Summary

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

Financial Summary

The total project costs of \$1,888,097 will be met via \$188,810 in members' equity, \$171,050 from a landlord construction allowance, and a seven-year intercompany loan from USRC for \$1,528,237 with interest at the 3 Month Libor rate plus 4.75% (two years interest only, then amortized over the remaining five-years). As of January 13, 2020, the 3 Month Libor rate was 1.88% for an estimated interest rate of 6.63%.

Imad Ahmed, M.D., who is board certified in Internal Medicine and Nephrology, will serve as the Center's Medical Director. The applicant intends to enter into an Affiliation Agreement for backup and emergency services with Kenmore Mercy Hospital, 18.8 miles (30 minutes travel time) from the Center. BFA Attachment B presents the post-closing organizational chart for USRC Hamburg, LLC.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$775,381	\$2,626,729
Expenses	<u>\$1,373,230</u>	<u>\$2,143,043</u>
Net Income/Loss	(\$597,849)	\$483,686

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 Intercompany Loan, acceptable to the Department of Health. [BFA]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Medical Director Services Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of an amended Lease Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of an amended and executed Articles of Organization for LEDP III LLC, acceptable to the Department. (CSL)
13. Submission of a photocopy of an amended and executed Operating Agreement for LEDP III LLC, acceptable to the Department. (CSL)
14. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
15. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before June 1, 2020 and construction must be completed by December 1, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [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 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

April 2, 2020

Need Analysis

Analysis

The primary service area for the new facility will be Erie County, which had a population estimate of 919,719 for 2018. The percentage of the population aged 65 and over was 17.9%. The nonwhite population percentage was 20.5%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Erie County and New York State are shown below.

Residents	Erie County	New York State
Ages 65 and Over	17.9%	16.4%
Nonwhite	20.5%	30.3%

Source: U.S. Census 2019

Projected Stations Calculation Through 2021							
County	Operational Stations	Pending Stations	Total Current Stations	Total Need	Unmet Need 2021	County-wide Stations Under Review	Unmet Need After Approval
	a	b	c	d	e	f	g
			(a + b)		(d - c)		(e - f)
Erie	301	8	309	316	7	13	-6
Operational and Pending Stations status refreshed January 17, 2020							
Column (b): Pending Stations: Includes projects with approval or contingent approval and projects, excluding this application, with recommendations of approval by the Bureau of Public Need Review, but not yet approved or contingently approved.							
Column (f): Stations Under Review includes Applicant and all other active CONs submitted but pending any level of approval or recommendation.							
Counts of Existing, Pending, and Total Current Stations display a blend of freestanding stations and hospital based stations counts. Hospital based stations have a 0.71 factor applied.							

In 2017 there were approximately 1,363 patients receiving dialysis treatment in Erie County. There are currently 301 existing stations which can treat approximately 1,355 patients based on the departmental standard of freestanding facilities: 4.5 patients utilizing 2.5 shifts, per station. The industry routinely runs approximately 3 shifts per station. There are 8 stations in the pipeline which can treat approximately 36 additional patients per established guidelines. Local factors submitted in support of this project include:

- Patient choice: Currently Davita is the only provider in Hamburg.
- Access: Public transportation is available only through 5pm limiting access to later shifts.
- Access: Extreme weather in the area often makes travel difficult for residents in need of treatment.

Currently, there are no operational clinics in the proposed center's zip code.

Approval is recommended after consideration of local factors. The applicant will provide home peritoneal dialysis training and support and home hemodialysis training and support.

Program Analysis

Project Proposal

Proposed Operator	USRC Hamburg, LLC
Doing Business As	U.S. Renal Care Hamburg Dialysis
Site Address	3860 McKinley Parkway Blasdell, NY 14219 (Erie County)
Approved Services	Chronic Renal Dialysis (13 Stations) Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Hours of Operation	Initially Monday, Wednesday, Friday 6 AM to 5 PM...then Monday through Saturday, 6 AM to 8 PM
Staffing (1st Year / 3rd Year)	8.0 FTEs / 14.0 FTEs
Medical Director(s)	Imad Ahmed, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Kenmore Mercy Hospital 18.8 mi. / 30 minutes

Character and Competence

The proposed membership of USRC Hamburg, LLC is provided in the chart below.

Name	Interest
US Renal Care, Inc Thomas L. Weinburg James D. Shelton David Eldridge	51.0%
LEDP III, LLC Kristin A. Matteson, D.O. (16.67%) Maria C.V. Del Castillo, M.D. (16.66%) Heather Wheat, M.D. (16.67%) Arundathi Namassivaya, M.D. (16.67%) Imad Ahmed, M.D. (16.66%) Richard Steinacher, D.O. (16.67%)	49.0%
	100.0%

The proposed Board of Managers and officers of USRC Hamburg, LLC have been identified as:

Thomas L. Weinberg, Manager, Chairman, President
James D. Shelton, Manager, Vice President, Treasurer
David Eldridge, Manager, Secretary
Kristin A. Matteson, D.O., Manager
Maria C.V. Del Castillo, M.D., Manager

Mr. Thomas Weinburg has been the Principle Legal Advisor for U.S. Renal Care, Inc. for 13 years. He has extensive experience with the management of dialysis clinics and of the larger company.

Mr. Shelton has been employed at U.S. Renal Care, Inc for over 11 years. He manages the company's accounting, finance, and information technology functions.

Mr. Eldridge has been employed at U.S. Renal Care for over 12 years. He is the Senior Vice President of Finance and manages the accounting and finance functions of the company.

Dr. Kristin Matteson is a practicing Nephrologist and managing partner in the practice. Her duties include diagnosis and managing nephrology patients including end stage renal disease and dialysis. As a partner she has experience with human resources and financial statements.

Dr. Maria Del Castillo is a practicing Nephrologist and partner with over 24 years of experience. She is board-certified in Nephrology. She has experience in the management of patients with end stage renal disease as well as all stages of primary and chronic kidney disease and acute kidney complications.

Dr. Heather Wheat is a practicing Nephrologist with over 12 years of experience. She is the Medical Director of the current nephrology practice she is working in. She has extensive experience in inpatient and outpatient nephrology.

Dr. Namassivaya Arundathi has been a practicing Nephrologist for over 18 years. He received his medical degree from Maine Medical Center. He completed his Nephrology fellowship at Maine Medical Center.

Dr. Imad Ahmed is the proposed Medical Director. He is a practicing Nephrologist with over 10 years of experience. He is board-certified in Internal Medicine with a sub-specialty in Nephrology. He completed his Internal Medicine residency at State University of New York Upstate Medical Center. He completed his fellowship in Nephrology at University of Rochester. He recently (2018) relocated from Michigan to New York to be closer to his family but was previously Medical Director of two dialysis facilities in Michigan.

Dr. Richard Steinacher is a practicing Nephrologist and a partner in a busy, nine physician practice in the Buffalo area. He provides both inpatient and outpatient nephrology care at four (4) local hospitals. He is currently the Medical Director of USRC Amherst Dialysis.

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.

Messrs., Eldridge, Shelton, and Weinburg disclosed in February 2010, an investigation from the Office of the Inspector General of the U.S. Department of Health and Human Services (OIG) related to alleged improper Medicare and Medicaid billing at certain Dialysis Corporation of America (DCA) clinics. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of the Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation relating to improper Medicare and Medicaid billing at certain DCA clinics. DCA fully cooperated with the inquiry. The investigation related to two (2) *qui tam* suits with the Department of Justice and private litigants. *U.S. Renal Care, Inc* acquired DCA in June 2010. *United States ex. rel Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md)*; and *United States ex. rel. Harris, et al. v. DCA, Case No. 1: 09-cv-02457-JKB (D. Md)*. The U.S. government intervened in the *Davis* case but declined to intervene in the *Harris* case. USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S. government and the private litigants. The two suits filed by the U.S. government were settled, the *Davis* case on May 17, 2013 and the *Harris* case September 12, 2014. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigations and litigation.

Dr. Matteson disclosed that she as named in a malpractice case filed in 2016. The suit was brought in connection with care and treatment during the hospitalization from November 12 to November 17, 2013. The patient was post-op from rectal surgery requiring a temporary ileostomy and ultimately passed away. *Dr. Matteson* was the patient's consulting nephrologist. The case was voluntarily discontinued in November 2017.

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 has taken the following enforcement action against **U.S. Renal Care, Inc. affiliated facilities**:

- *On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to Construction prior to Department of Health approval. Specifically, the operator started construction on this new ESRD facility prior to receiving an all contingencies satisfied letter and approval to begin construction from the Department.*

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 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 weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

U.S. Renal Care, Inc. operates over 300 dialysis centers, nine of which are located in New York State. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The star ratings for the New York State facilities are show below:

Facility Name	Address	Star Rating
DSI Dutchess Dialysis Inc. d/b/a DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Dutchess Dialysis Inc. d/b/a DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550-2124	****
USRC Cheektowaga Inc. d/b/a U.S. Renal Care Cheektowaga	2875 Union Road Suite 13 Cheektowaga, NY 14225	**
USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Building 5 Bronx, NY 10461	***
USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365-4105	****
USRC Tonawanda, Inc d/b/a U.S. Renal Care Tonawanda Dialysis	3161 Eggert Road Tonawanda, NY 14150	****
USRC West Cheektowaga, LLC d/b/a U.S. Renal Care Amherst Dialysis	2880 Sheridan Drive Tonawanda, NY 14150	N/A
USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga	2681 Harlem Road Cheektowaga, NY 14225	***
USRC Williamsville, Inc d/b/a U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14421	***

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

Total project costs for renovation and moveable equipment are estimated at \$1,888,097 broken down as follows:

Renovation & Demolition	\$1,165,000
Design Contingency	5,900
Construction Contingency	111,650
Architect/Engineering Fees	59,000
Movable Equipment	490,888
Telecommunications	43,342
Application Fees	2,000
Additional Processing Fees	<u>10,317</u>
Total Project Cost	\$1,888,097

Project costs are based on a construction start date of June 1, 2020, with a six-month construction period.

The total project costs will be funded as follows:

Equity-USRC Hamburg, LLC Members	\$188,810
Landlord construction allowance	171,050
USRCs intercompany loan (7-year term, interest at 3 Month Libor plus 4.75%)	<u>1,528,237</u>
Total	\$1,888,097

As of January 13, 2020, the 3 Month Libor rate was 1.88% for an estimated interest rate of 6.63%. The first two years of the intercompany loan are interest only, then amortized over the remaining five-year term

BFA Attachments A and C are, respectively, the net worth summary of USRC Hamburg, LLC's members and the Financial Statement of U.S. Renal Care, Inc., which reveals sufficient resources to meet the equity requirements. The applicant has provided a draft Intercompany Loan agreement with USRC.

Lease Rental Agreement

The applicant submitted a draft lease agreement; the terms are summarized below:

Premises:	6,842 sq. ft. located at 3860 McKinley Parkway, Blasdell, NY 14219
Landlord:	MCHIGH Development, LLC
Lessee:	USRC Hamburg, LLC
Term:	10 years with two 5-year renewal options.
Rental:	Years 1-5: \$150,524 per year (\$22.00 per sq. ft., \$12,543.67 per month) Years 6-10: \$165,576 per year (\$24.20 per sq. ft., \$13,798.03 per month) Years 11-15: \$182,134 per year (\$26.62 per sq. ft., \$15,177.84 per month) Years 16-20: \$200,334 per year (\$29.26 per sq. ft., \$16,694.48 per month)
Provisions:	Tenant will be responsible for maintenance, utilities and real estate taxes.

An affidavit has been submitted stating that the lease is an arm's length lease. The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

Administrative Services Agreement

The applicant submitted a draft administrative services agreement (ASA), as summarized below:

Facility:	USRC Hamburg, LLC
Contractor:	U.S. Renal Care, Inc.
Services Provided:	Personnel training, monitoring and oversight; arrangements of purchase and supplies to include vendor relations on behalf of the operator; billing/collections for services; bookkeeping/accounting services inclusive of reports; funds management to include operation and maintenance of clinics, disbursements of clinic funds as needed; Insurance premiums, equipment pricing and authorization with operators approval; deductibles, retention, and co-insurance attributable insurances; policies/procedures development as authorized by operator; quality control reviews; licenses, permits, accreditations and provider numbers; compliance assistant; back up to legal actions
Term:	10 years
Fee:	\$87,619

While U.S. Renal Care, Inc. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility, and control of the operations. There is common ownership between the applicant and the ASA provider, as shown on BFA Attachment B, post-closing organization chart. 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.

Operating Budget

The applicant submitted an operating budget, in 2020 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Treat.</u>	<u>Total</u>	<u>Per Treat.</u>	<u>Total</u>
Medicaid-FFS	\$220.62	\$25,812	\$207.38	\$91,869
Medicaid-MC	\$241.86	6,772	\$246.27	53,933
Medicare-FFS	\$289.59	337,657	\$306.71	1,496,444
Medicare-MC	\$301.62	22,320	\$374.66	193,700
Commercial-FFS	\$701.14	358,280	\$726.15	547,515
Commercial-MC	\$411.39	44,430	\$460.82	311,515
Bad Debt		<u>-19,890</u>		<u>-68,247</u>
Total		\$775,381		\$2,626,729
 <u>Expenses</u>				
Operating	\$475.95	\$953,797	\$231.46	\$1,733,196
Capital	<u>\$209.30</u>	<u>419,433</u>	<u>\$54.73</u>	<u>409,847</u>
Total	\$685.25	\$1,373,230	\$286.19	\$2,143,043
Net Income/(Loss)		<u>(\$597,849)</u>		<u>\$483,686</u>
Total Treatments		2,004		7,488
Cost per Treatment		\$685.25		\$286.19

Utilization broken down by payor source is as follows:

	<u>Year One</u>		<u>Year Three</u>	
<u>Payor</u>	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid-FFS	117	5.84%	443	5.92%
Medicaid-MC	28	1.40%	219	2.92%
Medicare-FFS	1,166	58.18%	4,879	65.16%
Medicare-MC	74	3.69%	517	6.90%
Commercial-FFS	511	25.50%	754	10.07%
Commercial-MC	<u>108</u>	<u>5.39%</u>	<u>676</u>	<u>9.03%</u>
Total	2,004	100%	7,488	100%

The following is noted with respect to the submitted budget:

- Revenues are based on the actual experience of similar outpatient dialysis centers owned by USRC and located in the proposed center's service area. Revenues assume bundled ESRD rates for Medicaid and Medicare per the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's services area.
- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment and professional fees.
- Utilization is based on USRC's standard utilization methodology for opening a new dialysis facility in a region, which includes conservative estimates during the initial start-up period.
- Breakeven utilization for the third year is 81.6% or 6110 treatments.

Capability and Feasibility

Project costs of \$1,888,097 will be met via \$188,810 in members' equity, \$171,050 from a landlord construction allowance, and a seven-year intercompany loan from USRC for \$1,528,237 at stated terms. The applicant has provided a draft of the USRC Intercompany Loan agreement.

Total working capital is estimated at \$955,023 based on two months of third year expenses of \$357,174 plus funding \$597,849 for the first year's loss. USRC will cover the first year projected operating loss of \$597,849 through a working capital contribution, plus any additional required funds. The remaining \$357,174 will be funded via \$178,587 from members equity and \$178,587 renewable one-year intercompany loan from USRC Inc. at 3 Month Libor plus 4.75%. The applicant has provided a draft Intercompany Loan agreement with USRC.

Review of BFA Attachment A, members' personal net worth statements, shows sufficient liquid resources to meet their portion of the project's equity requirements. Review of BFA Attachment C, USRC and Subsidiaries' 2017-2018 certified financial statements and independent auditors review report as of March 31, 2019, indicates the entity maintained positive working capital and net asset positions for the period, and generated net income after taxes of \$48,281,000 in 2018 and \$12,831,000 for the three months ending March 31, 2019. As shown above, USRC has sufficient liquid resources available to cover their portion of both equity requirements and to provide the funding for both intercompany loans.

BFA Attachment D is USRC Hamburg, LLC d/b/a USRC Hamburg Dialysis' pro forma balance sheet, which shows operations will start with \$290,528 in equity.

The submitted budget indicates a net loss of \$597,849 for Year One and a net income of \$483,686 for Year Three. Revenues are based on the current reimbursement methodologies for dialysis services. The year one loss is due to the start-up of operations. U.S Renal Care, Inc. has provided documentation stating they will contribute working capital to cover the loss, plus any additional needed funds. The submitted budget is reasonable.

BFA Attachment E is the U.S. Renal Care, Inc.'s NYS affiliated dialysis centers and their consolidated financial statement for 2018 and March 31, 2019, which shows positive working capital, positive net assets, and operating surpluses.

BFA Attachment F is the other ownership interests of LEDP III LLC members.

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

Attachments

BFA Attachment A	Net Worth Statements of the members' of USRC Hamburg, LLC
BFA Attachment B	Post- Closing Organizational Chart
BFA Attachment C	Financial Summary of USRC and Subsidiaries Certified 2017-2018 and Independent Auditors review report as of March 31, 2019.
BFA Attachment D	Pro-Forma Balance Sheet of USRC Hamburg, LLC
BFA Attachment E	Affiliated New York's' Dialysis Centers and New York State Consolidated Financial Statement for 2018 and March 31, 2019.
RNR Attachment	Map



Project # 192321-B
USRC North Flushing, LLC
d/b/a U.S. Renal Care North Flushing Dialysis

Program: Diagnostic and Treatment Center County: Queens
Purpose: Establishment and Construction Acknowledged: December 31, 2019

Executive Summary

Description

USRC North Flushing, LLC d/b/a U.S. Renal Care North Flushing Dialysis, an existing New York limited liability company, requests approval to establish and construct a 25-station, Article 28 chronic renal dialysis center to be located in a leased space at 2707 Francis Lewis Boulevard, Flushing (Queens County). The proposed facility will occupy 10,210 square feet of an existing building. The applicant requests certification for Renal Dialysis - Chronic O/P, Home Hemodialysis Training and Support, and Home Peritoneal Dialysis Training and Support services. The target population to be served includes the residents of Flushing, Queens, as well as the residents of the surrounding community within Queens County. The applicant will lease the clinic space from 2711 FLB Associates, LLC via an arm's length lease.

Celeste S. Chang, M.D., who is Board Certified in Nephrology and Internal Medicine, will serve as the Medical Director. Long Island Jewish Medical Center, located 8.2 miles (18 minutes) from the proposed center, is expected to serve as the backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

This clinic will offer in-center hemodialysis, home peritoneal training and support, and home hemodialysis training and support. Currently there is a need for 76 stations in Queens County. There are seven operating dialysis facilities in Flushing NY that total 134 stations. The addition of these 25 stations will help provide needed services in the county. Upon approval there will be a remaining need of 51 stations in Queens County.

Program Summary

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

The ownership of the facility is as follows:

Table with 2 columns: Member Name and Percentage. Includes Proposed Operator USRC North Flushing, LLC and Members: USRC North Flushing Holdings, LLC (75%), USRC Alliance, LLC (100%), Wei Y. Sun, M.D. (5%), Elizabeth Liang, M.D. (5%), Laurel Yap, M.D. (5%), Li Yang M.D. (5%), Celeste S. Chang, M.D. (5%).

USRC North Flushing Holdings, LLC is owned 100% by USRC Alliance, LLC, which is wholly owned by U.S. Renal Care, Inc.

Financial Summary

Total project costs of \$4,225,100 will be met via \$316,883 equity from U.S Renal Care, Inc., \$105,628 equity from the five physician members of USRC North Flushing, LLC, and the remaining \$3,802,589 will be met via a seven-year term loan at 7% interest. U.S. Renal Care, Inc. has provided a draft loan agreement at the stated terms.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,066,122	\$6,109,886
Expenses	<u>\$2,312,038</u>	<u>\$5,133,148</u>
Net Income/Loss	(\$1,245,916)	\$976,738

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 Administrative Services Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
7. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission DSG-1.0. [AER]
8. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
9. Submission of a photocopy of a Certificate of Assumed Name, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of an amended and executed Medical Director Services Agreement, acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
14. Submission of a photocopy of an amended Lease Agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of an amended and executed Articles of Organization for USRC North Flushing Holdings, LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of an amended and executed Operating Agreement for USRC North Flushing Holdings, LLC, acceptable to the Department. [CSL]
17. Submission of a photocopy of an amended and executed Articles of Organization for USRC Alliance, LLC, acceptable to the Department. [CSL]
18. Submission of a photocopy of an amended and executed Operating Agreement for USRC Alliance, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before December 1, 2020 and construction must be completed by April 1, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]

3. The submission of 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 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

April 2, 2020

Need Analysis

Analysis

The primary service area for the new facility will be Queens County, which had a population estimate of 2,278,906 for 2018. The percentage of the population aged 65 and over was 15.7%. The nonwhite population percentage was 52.1%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Queens County and New York State are shown below.

Demographic	Queens County	New York State
Ages 65 and Over	15.7%	16.4%
Nonwhite	52.1%	30.3%

Source: U.S. Census 2019

Need Projection

Chronic End Stage Renal Disease (Dialysis) Stations / Need Projected Through 2021							
County	Operational Stations	Pending Stations	Total Current Stations	Total Need 2021	Unmet Need 2021	County-wide Stations Under Review	Unmet Need After Approval
	a	b	c	d	e	f	g
			(a + b)		(d - c)		(e - f)
Queens	756	227	983	1059	76	25	51
Operational and Pending Stations status refreshed January 17, 2020							
Column (b): Pending Stations includes projects with approval or contingent approval and projects, excluding this application, with recommendations of approval by the Bureau of Public Need Review, but not yet approved or contingently approved.							
Column (f): Stations Under Review: Includes this project and all other active CONs submitted but pending any level of approval or recommendation.							
Counts of Operational, Pending, and Total Current Stations display a blend of freestanding stations and hospital-based stations counts. Hospital based stations have a 0.71 factor applied.							

According to the applicant, USRC South Flushing operates a dialysis facility in Flushing that is operating over-capacity and is no longer able to take additional patients. On average, the facility is denying four to five patients per month due to lack of capacity to accept new dialysis patients. There are patients currently at this facility who live closer to the proposed center and may opt to transfer there. The proposed center will also provide some flexibility for those patients who desire a more convenient shift (i.e. moving from late night to daytime or morning). USRC South Flushing has 40-50 patients that are dialyzing in the evening that may benefit by transferring to the proposed facility where they could receive treatment during daytime hours.

The applicant performed an extensive assessment of the characteristics of the Flushing area community, which includes a large Asian-born population, identified a number of public health challenges related to socioeconomic factors such as a higher percentage of the elderly, residents living below the FPL, and residents who lack proficiency in the English language. The applicant nephrologists also observed their patients' longstanding distrust of western medicine resulted in their preference to seek traditional Chinese medicine techniques, thereby delaying needed clinical interventions. Due to these factors and delays in care, the Asian-American communities in the greater Flushing area have historically been medically disenfranchised. The five Asian-American nephrologists (who are 25% members of the application) are bilingual and have practiced in the Flushing community for many years.

Conclusion

The addition of 25 stations will help provide needed services in the county. Upon approval there will be a remaining need of 51 stations in Queens County.

Program Analysis

Project Proposal

USRC North Flushing, LLC, d/b/a U.S. Renal Care North Flushing Dialysis Center limited liability company, requests approval to establish and construct a 25-station chronic renal dialysis center at 2707 Francis Lewis Boulevard, Flushing (Queens County).

Proposed Operator	USRC North Flushing, LLC
Doing Business As	U.S. Renal Care North Flushing Dialysis
Site Address	2707 Francis Lewis Boulevard, Flushing, NY 11358 (Queens County)
Approved Services	Chronic Renal Dialysis (25 Stations) Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Shifts/Hours/Schedule	Initially, the Center will be open: Monday, Wednesday and Friday. When fully operational, it will be open: Monday through Saturday, 5:30 am through 11:00 pm
Staffing (1st Year / 3rd Year)	10.0 FTEs / 26.0 FTEs
Medical Director(s)	Celeste Chang, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by LIJ-Forest Hills Hospital 16 miles /8.4 minutes away

Character and Competence

The proposed members of USRC North Flushing, LLC is provided in the chart below.

Name	Interest
USRC North Flushing Holdings, LLC Thomas L. Weinberg, Chairman and President James D. Shelton, Manager, Vice President, and Treasurer David Eldridge, Secretary	75%
Celeste S. Chang, MD, Medical Director	5%
Wei Yue Sun, MD	5%
Elizabeth Liang, MD	5%
Laurel Win Yap, MD	5%
Li Yang, MD	5%
Total	100%

USRC North Flushing Holdings, LLC is owned 100% by USRC Alliance, LLC, which is wholly owned by U.S. Renal Care, Inc.

The proposed managers and officers of USRC North Flushing LLC have been identified as:

Wei Yue Sun, Manager
Thomas Weinberg, Manager, Chairman & President
James Shelton, Manager, Vice President & Treasurer
David Elbridge, Secretary

The managers of USRC Alliance, LLC have been identified as ***Thomas Weinberg and James Shelton.***

All managers and officers have been reviewed for character and competence.

Mr. Weinburg is the Principle Legal Advisor for 13 years for U.S. Renal Care, Inc. He has extensive experience with the management of dialysis clinics and of the larger company.

Mr. Shelton has been employed at U.S. Renal Care, Inc for over 11 years. He manages the company's accounting, finance, and information technology functions.

Mr. Eldridge has been employed at U.S. Renal Care for over 12 years. He is the Senior Vice President of Finance and manages the accounting and finance functions of the company.

Dr. Sun has been employed since 2005 as a physician at a multi-specialty group private practice specializing in Nephrology in which he owns membership interest.

Dr. Liang has been employed since 2011 as a physician at a multi-specialty group private practice specializing in Nephrology in which she owns membership interest. Dr. Liang completed a Nephrology Fellowship in 2011.

Dr. Chang will serve as the Center's Medical Director. She has been employed since 2018 as a Nephrologist at a multi-specialty group private practice specializing in Nephrology in which she owns membership interest. She has affiliations with Mount Sinai-Beth Israel and NYU Langone Health, Brooklyn. Dr. Chang completed a Nephrology Fellowship in 2018. She is board-certified in Internal Medicine and Nephrology. Dr. Chang practiced in Taiwan as a Nephrologist for 11 years prior to moving to the United States.

Dr. Yap has been employed since 2015 as an attending Nephrologist at a multi-specialty group private practice specializing in Nephrology in which she owns membership interest. Dr. Yap lists prior employment as an attending Nephrologist at a renal private practice for one year. Dr. Yap completed a Nephrology Fellowship in 2014.

Dr. Yang has been employed since 2014 as a physician at a multi-specialty group private practice specializing in Nephrology in which he owns membership interest. He also sees dialysis patients at four other clinics. Dr. Yang is an attending physician at Beth Israel Hospital and Lutheran Hospital and is the Medical Director of Brooklyn Community Dialysis. Dr. Yang completed a Nephrology Fellowship in 2014.

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.

Messrs., Eldridge, Shelton, and Weinburg disclosed in February 2010, an investigation from the Office of the Inspector General of the U.S. Department of Health and Human Services (OIG) related to alleged improper Medicare and Medicaid billing at certain Dialysis Corporation of America (DCA) clinics. In February 2010, prior to the USRC's acquisition of DCA, DCA received a subpoena from the Office of the Inspector General of the U.S. Department of Health and Human Services (OIG) with respect to an investigation relating to improper Medicare and Medicaid billing at certain DCA clinics. DCA fully cooperated with the inquiry. The investigation related to two (2) qui tam suits with the Department of Justice and private litigants. U.S. Renal Care, Inc. acquired DCA in June 2010. United States ex. rel. Davis v. Dialysis Corporation of America, Inc., Case No. 1:08-cv-02829 (D. Md); and United States ex. rel. Harris, et al. v. DCA, Case No. 1: 09-cv-02457-JKB (D. Md). The U.S. government intervened in the Davis case but declined to intervene in the Harris case. USRC denied any impropriety or liability by DCA in both cases but determined that it should settle these cases with the U.S. government and the private litigants. The two suits filed by the U.S. government were settled, the Davis case on May 17, 2013 and the Harris case September 12, 2014. No non-DCA facilities owned by U.S. Renal Care were involved in the above-referenced investigations and litigation.

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 has taken the following enforcement action against **U.S. Renal Care, Inc. affiliated facilities**:

- *On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to Construction prior to Department of Health approval. Specifically, the operator started construction on this new ESRD facility prior to receiving an all contingencies satisfied letter and approval to begin construction from the Department.*

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 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 only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

U.S. Renal Care, Inc. operates over 300 dialysis centers, nine of which are located in New York State. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. The star ratings for the New York State facilities are show below:

Facility Name	Address	Star Rating
DSI Dutchess Dialysis Inc. d/b/a DSI Dutchess Dialysis	2585 South Road Poughkeepsie, NY 12601	***
DSI Dutchess Dialysis Inc. d/b/a DSI Newburgh Dialysis	39 North Plank Road Newburgh, NY 12550-2124	****
USRC Cheektowaga Inc. d/b/a U.S. Renal Care Cheektowaga	2875 Union Road Suite 13 Cheektowaga, NY 14225	**
USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis	1400 Pelham Parkway South Building 5 Bronx, NY 10461	***
USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis	71-12 Park Ave Flushing, NY 11365-4105	****
USRC Tonawanda, Inc d/b/a U.S. Renal Care Tonawanda Dialysis	3161 Eggert Road Tonawanda, NY 14150	****
USRC West Cheektowaga, LLC d/b/a U.S. Renal Care Amherst Dialysis	2880 Sheridan Drive Tonawanda, NY 14150	N/A
USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga	2681 Harlem Road Cheektowaga, NY 14225	***
USRC Williamsville, Inc d/b/a U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville, NY 14421	***

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 is estimated at \$4,225,100 broken down as follows:

Renovation & Demolition	\$3,065,217
Design Contingency	306,522
Construction Contingency	153,261
Architect/Engineering Fees	82,000
Moveable Equipment	550,000
Telecommunications	43,000
CON Fee	2,000
Additional Processing Fee	<u>23,100</u>
Total Project Cost	\$4,225,100

Project costs are based on a construction start date of December 1, 2020, and a four-month construction period. The applicant's financing plan appears as follows:

Equity (U.S Renal Care, Inc.)	\$316,883
Equity (physician members of USRC North Flushing, LLC)	\$105,628
Term loan (7-year term, 7% interest)	\$3,802,589

U.S. Renal Care, Inc. has provided a draft loan agreement at the stated terms. BFA Attachment A is the net worth statement of the physician members, which shows sufficient resources for the equity contribution. BFA Attachment B is the 2017 - 2018 certified financial statements of U.S. Renal Care, Inc. and Subsidiaries which supports positive net asset and working capital positions and positive net income from operations.

Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement (ASA).

Administrator:	U.S. Renal Care, Inc.
Licensed Operator:	USRC North Flushing, LLC
Services Rendered:	Personnel training, monitoring, and oversight; supplies and prescription drugs; coordinate billing and collections; bookkeeping and accounting; funds management; negotiate reasonable liability insurance; policy and procedure development; repairs and maintenance; provide access to proprietary software; quality assurance and review; obtain and maintain licenses, permits, accreditation, and provider numbers; compliance assistance; manage legal actions; staff and expenditure management.
Term:	Ten years
Compensation:	Year 1 \$90,384; Year 2 \$358,828; Year 3-10 \$561,416.

USRC North Flushing, LLC retains ultimate control in all final decisions associated with the services. 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.

Lease Agreement

The applicant has submitted a letter of intent which represents a draft lease agreement for the site.

Premises:	10,210 square feet at 2707 Francis Lewis Boulevard, Flushing, NY
Landlord:	2711 FLB Associates, LLC
Tenant:	USRC North Flushing, LLC
Term:	Ten years
Rent:	\$530,920 with 3% annual escalations
Provisions:	Insurance, maintenance and utilities will be paid for by applicant.

The applicant has indicated that the lease is an arm's length agreement and has submitted letters from two New York realtors attesting to the reasonableness of the per square foot rental.

Operating Budget

The applicant has submitted an operating budget for the first and third years, in 2020 dollars, which is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treat.</u>	<u>Total</u>	<u>Per Treat.</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$720.00	\$285,840	\$871.00	\$706,543
Commercial MC	\$650.00	163,150	\$786.50	1,433,790
Medicare FFS	\$268.73	431,313	\$285.10	2,608,350
Medicare MC	\$335.41	141,209	\$369.79	1,438,495
Medicaid FFS	\$227.90	101,416	\$223.36	593,257
Medicaid MC	\$237.39	25,875	\$233.66	219,399
Bad Debt		<u>(82,681)</u>		<u>(889,948)</u>
Total Revenues		\$1,066,122		\$6,109,886
<u>Expenses</u>				
Operating	\$309.04	\$997,573	\$197.30	\$3,802,441
Capital	<u>\$407.21</u>	<u>1,314,465</u>	<u>\$69.05</u>	<u>1,330,707</u>
Total Expenses	\$716.25	\$2,312,038	\$266.35	\$5,133,148
Net Income/(Loss)		<u>(\$1,245,916)</u>		<u>\$976,738</u>
Treatments		3,228		19,272
Cost per Treatment		\$716.24		\$266.35

The following is noted with respect to the submitted operating budget:

- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets.
- Revenue assumptions are based upon current reimbursement methodologies by payor for chronic renal dialysis services.
- Expense and utilization assumptions are based on the experience of other dialysis centers within the Buffalo market, and the percentage of treatments by payor are consistent through the years of census growth.
- The applicant indicated that there is a significant increase in utilization from the first year to the third year because of the following reasons:
 - The Flushing ESRD market anticipates a 3-5% forecasted growth in dialysis patients between 2018 and 2022. With each dialysis patient requiring three treatments per week, the market will need to expand capacity to accommodate 33,228 to 56,940 additional treatments by 2020. In the first year of operation, the facility will be in ramp-up phase and as the patient panel increases, the operator will bring on additional staff and expand the number of days of operation and shifts. By Year Three, USRC North Flushing anticipates serving approximately 122 patients annually, delivering 19,272 treatments when fully ramped up.

- Patient panels are expected to grow along with a general increase in ESRD and Chronic Kidney Disease prevalence. The existing USRC South Flushing facility will be unable to care for the number of “new to dialysis” patients expected in the service area.
- The proposed center will be a place where the Asian-born population will feel comfortable, and where the physicians and staff understand their cultural needs.
- Utilization by payor source for the first and third years is as follows:

Payor	Year One		Year Three	
	Treatments	%	Treatments	%
Commercial FFS	397	12%	811	4%
Commercial MC	251	8%	1,823	9%
Medicare FFS	1,605	50%	9,149	47%
Medicare MC	421	13%	3,890	20%
Medicaid FFS	445	14%	2,656	14%
Medicaid MC	109	3%	943	6%
Total	3,228	100%	19,272	100%

Capability and Feasibility

Total project costs of \$4,225,100 will be met via \$316,883 equity from U.S Renal Care, Inc., \$105,628 equity from the five physician members of USRC North Flushing, LLC, and the remaining \$3,802,589 will be met with debt financing via a seven-year term loan at 7% interest. The applicant has submitted a letter of interest at the stated terms.

Working capital requirements are estimated at \$855,525 based on two months of Year Three expenses and will be met via \$320,821 equity from U.S Renal Care, Inc., \$106,941 equity from the five physician members of USRC North Flushing, LLC, and the remaining \$427,763 via debt financing at 7% interest for five years. BFA Attachment A is the Net Worth Statements of the physician members (25% total membership) of USRC North Flushing, LLC, which indicates sufficient funds to meet both the total project cost and working capital equity requirements. BFA Attachment D is the pro forma balance sheet of USRC North Flushing, LLC as of the first day, which indicates the operations will begin with negative member’s equity of \$1,110,526

The submitted budget projects a net loss of \$1,245,916 for the first year and net income of \$976,738 for the third year. The applicant indicated that the net operating loss in Year One will be covered by USRC North Flushing, LLC by means of working capital contributions, and any additional funds as needed. Revenues are based on current reimbursement methodologies for chronic renal dialysis services. The budget appears reasonable.

BFA Attachment B is a summary of U.S. Renal Care, Inc. and Subsidiaries’ Certified Financial Statement as of December 31, 2017 and 2018. As shown, the entity maintained a positive working capital position, a positive net asset position, and achieved an average operating income of \$211,966,500 for the years 2017 and 2018.

BFA Attachment C is a summary of U.S. Renal Care, Inc. and Subsidiaries’ Internal Financial Statement as of September 30, 2019. As shown, the entity maintained a positive working capital position, a positive net asset position, and achieved a net operating income of \$52,562,000.

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

Attachments

BFA Attachment A	Net Worth Statements of proposed members of USRC North Flushing, LLC
BFA Attachment B	2017 and 2018 Certified Financials of U.S. Renal Care, Inc. and Subsidiaries.
BFA Attachment C	September 30, 2019 Internal Financials of U.S. Renal Care, Inc. and Subsidiaries.
BFA Attachment D	Pro Forma Balance Sheet of USRC North Flushing, LLC
BFA Attachment E	Organizational Chart -USRC North Flushing, LLC
RNR Attachment	Map



Project # 191265-E
Highland Operations, LLC d/b/a Highland Park Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Allegany
Acknowledged: May 31, 2019

Executive Summary

Description

Highland Operations, LLC d/b/a Highland Park Rehabilitation and Nursing Center, a New York limited liability company, requests approval to be established as the new operator of Highland Park Rehabilitation and Nursing Center, an 80-bed, proprietary, Article 28 Residential Health Care Facility (RHCF) at 160 Seneca Street, Wellsville (Allegany County). The facility has a 21-registrant Adult Day Health Care Program (ADHCP) off-site at 100 Chamberlain Street, Wellsville, which is included in this transfer of ownership request. HRNC, LLC is the current operator of the RHCF and ADHCP and 160 Seneca Street, LLC, a related entity, is the realty owner. Upon approval, the facility will be named Highland Park Rehabilitation and Nursing Center. There will be no change in beds or services provided.

On September 1, 2018, HRNC, LLC and 160 Seneca Street, LLC entered into an Asset Purchase Agreement (APA) with Highland Operations, LLC (operations purchaser) and Highland ZBLO Realty, LLC (realty purchaser) for the sale and acquisition of the RHCF's operating and realty interests. The total purchase price of \$7,000,000 for the APA transactions includes \$40,000 for the operations and \$6,960,000 for the realty. Upon PHHPC approval, Highland ZBLO Realty, LLC will lease the RHCF and ADHCP premises to Highland Operations, LLC for a term of ten years consisting of an initial term of five years, and an automatic extension of five additional years as provided in the respective RHCF and ADHCP lease agreements. Highland ZBLO Realty, LLC

and Highland Operations, LLC have common ownership.

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

Table with 2 columns: Members, Percentage. Title: Current Operator HRNC, LLC. Members: Uri Koenig (60.0%), Efraim Steif (39.9%), David Camerota (0.1%).

Table with 2 columns: Members, Percentage. Title: Proposed Operator Highland Operations, LLC. Members: Joel Leifer (40%), Marton Ornstein (25%), Cheskel Berkowitz (25%), Yitzchok (Isaac) Weiner (10%).

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

Table with 2 columns: Members, Percentage. Title: Current Realty Owner 160 Seneca Street, LLC. Members: Uri Koenig (60%), Efraim Steif (40%).

Table with 2 columns: Members, Percentage. Title: Proposed Realty Owner Highland ZBLO Realty, LLC. Members: Joel Leifer (40.0%), Marton Ornstein (25.0%), Joel Zupnick (12.5%), Cheskel Berkowitz (12.5%), Yitzchok (Isaac) Weiner (10.0%).

Concurrently under review is CON 191301 in which the proposed members of Highland Operations, LLC are also seeking approval to acquire Beechtree Center for Rehabilitation and Nursing, a 120-bed RHCF in Ithaca (Tompkins County).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Based upon weekly census data, occupancy as of January 15, 2020 was 96.3% for the facility and 91.1% for Allegany County.

Program Summary

All health care facilities are in substantial compliance with all applicable rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs associated with this application. The combined purchase price for the RHCF's operations and realty is \$7,000,000: \$40,000 for the operations to be met with equity from the proposed members, and \$6,960,000 for the realty to be met with \$1,785,000 equity from the proposed realty members and a \$5,175,000 bank loan at 5.50% interest for a ten-year term and a payout period of 25 years. The proposed realty members have submitted affidavits to fund the balloon payment of \$3,889,325 should terms acceptable to the Department be unavailable at the time of refinancing. Sterling National Bank has provided a letter of interest for the loan at the stated terms.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,023,264	\$7,073,240
Expenses	<u>6,909,695</u>	<u>6,957,995</u>
Net Income	\$113,569	\$115,245

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. The project must be completed within one years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

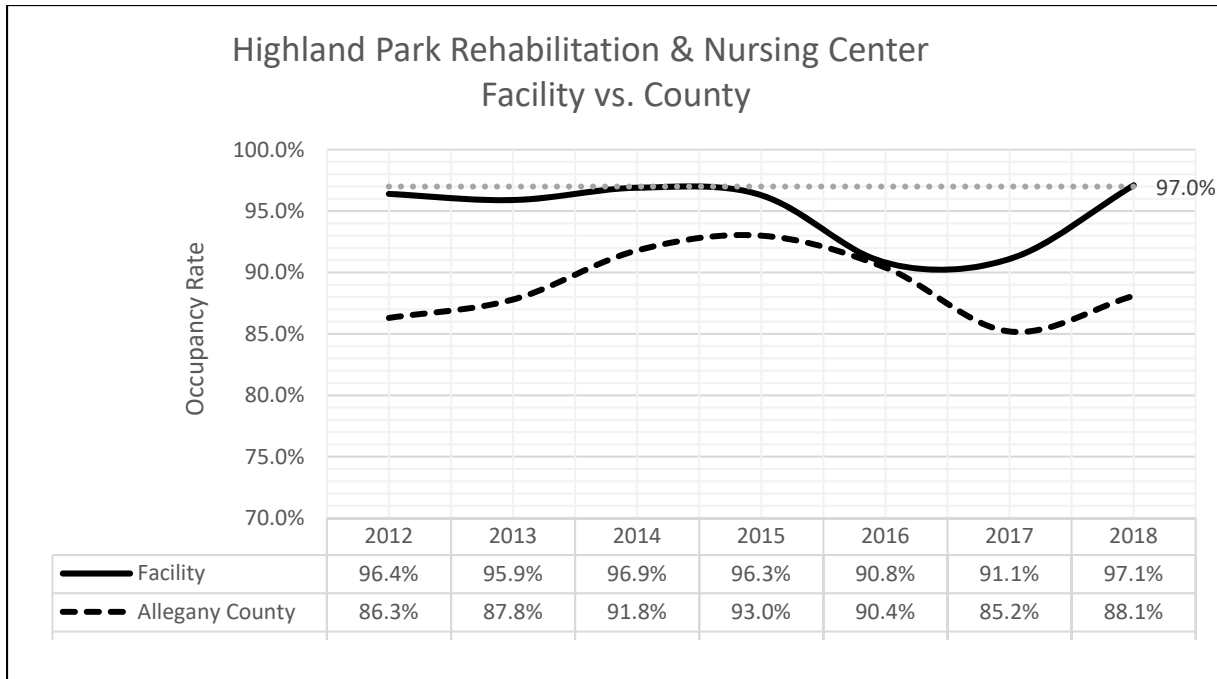
April 2, 2020

Need and Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Highland Park Rehabilitation and Nursing Center	Same
Address	160 Seneca Street Wellsville, NY 14895	Same
RHCF Capacity	80	Same
ADHC Capacity	Offsite - 21	NA
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	HRNC, LLC	Beech Tree Operations, LLC Membership: Joel Leifer * 40.0% Cheskel Berkowitz 25.0% Marton Ornstein 25.0% Yitzchok "Isaac" Weiner 10.0% * <i>Managing Member</i>

Utilization



The applicant states that the decline in the facility's occupancy during 2016 and 2017 was due to competition from other area facilities. During the latter part of 2016 and 2017, Highland Park implemented various cosmetic improvements including: flooring upgrades, new window treatments, and fresh paint throughout the facility. The new operator intends to maintain and optimize occupancy in the following ways:

- Hire experienced staff to help optimize operations;
- Raise the level of capability within the nursing department to be able to manage more complex cases;
- Establish a stronger relationship with the community by hosting events for local seniors to provide education on relevant topics, such as fall prevention, cardiac health and diabetes health.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Highland Park rehabilitation & Nursing Center's Medicaid admissions rate has exceeded the threshold of 75% of the Allegany County rate, as demonstrated in the table below.

Percent of New RHCF Admissions that are Medicaid	2017	2018
Allegany County 75% Threshold	27.6%	28.3%
Highland Park Rehabilitation & Nursing Center	38.5%	61.0%

Character and Competence

Cheskel Berkowitz is the President of Empro, Inc., a healthcare staffing company, and Vice President of Specialty RX, Inc., a long term care pharmacy. Mr. Berkowitz attended United Talmudic Academy and Bnei Shimer Yisroel. Mr. Berkowitz held a pharmacy license from New Jersey which expired on 6/30/2018. Mr. Berkowitz discloses the following health facility interests:

New York

Cypress Garden Center for Nursing and Rehabilitation [23.33%]	01/01/2015 to present
Briarcliff Manor Center for Rehabilitation and Nursing Care [12.5%]	07/12/2019 to present
Pella Care, LLC (LHCSA) [50%]	02/25/2010 to present
HDA Care (LHCSA) [40%]	12/01/2018 to present

Kentucky

The Grandview Nursing and Rehabilitation Facility [4.18%]	11/01/2016 to present
The Terrace Nursing and Rehabilitation Center [4.18%]	11/01/2016 to present
Letcher Manor [4.18%]	11/01/2016 to present
Maysville Nursing and Rehabilitation Facility [4.18%]	11/01/2016 to present
Somerset Nursing and Rehabilitation Facility [4.18%]	11/01/2016 to present
Middlesboro Nursing and Rehabilitation Facility [4.18%]	11/01/2016 to present
Oakmont Manor [4.18%]	11/01/2016 to present
Ridgeway Nursing and Rehabilitation Facility [4.18%]	11/01/2016 to present
Robertson County Health Care Facility [4.18%]	11/01/2016 to present
Martin County Health Care Facility [4.18%]	11/01/2016 to present
Woodland Oaks [4.18%]	11/01/2016 to present
The Heritage [4.18%]	11/01/2016 to present
Mills Health and Rehab Center [4%]	06/01/2018 to present
Princeton Health & Rehab Center [4%]	06/01/2018 to present
Bradford Heights Health and Rehab Facility [4%]	06/01/2018 to present
Creekwood Place Nursing and Rehab [4%]	06/01/2018 to present
Spring View Health and Rehab Center [4%]	06/01/2018 to present

Missouri

Golden Years Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Edgewood Manor Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Cassville Health Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Buffalo Prairie Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Country Aire Retirement Center (RHCF & RCF) [37.5%]	01/01/2019 to present

Georgian Gardens Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Big Spring Care Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Marshfield Care Center for Rehab and Healthcare [37.5%]	01/01/2019 to present

New Jersey

Lakeview Rehabilitation and Care Center [24%]	07/01/2018 to present
Anchor Care and Rehabilitation Center [10%]	06/11/2018 to present

Yitzchok Weiner lists his current employment as Assistant Administrator of Staten Island Care Center since June 2009, and Regional Administrator of Cypress Garden Care Center (8/2017), River Manor Corp. (7/2014), Tri-state Healthcare Management (1/2016), Nassau Extended Care Facility (3/2014), Throgs Neck Extended Care (10/2014) and Cold Spring Hills Center (12/2017). Mr. Weiner discloses the following health facility interests:

New Jersey

Lakeview Rehabilitation and Care Center [2%]	09/01/2015 to present
Anchor Care and Rehabilitation Center [5%]	06/11/2018 to present

Joel Leifer lists concurrent employment at four skilled nursing facilities: Administrative Director at both Atrium Center for Rehabilitation (NY) and Staten Island Care Center (NY); Controller at Nassau Extended Care Facility (NY); and Executive Director at Tri-State Healthcare Management (Lakeview Rehabilitation and Care Center) in Wayne, NJ. Mr. Leifer holds a bachelor's degree from Touro College. Mr. Leifer discloses the following health facility interests:

New York

Spring Creek Rehabilitation and Nursing Care Center [9.9%]	11/01/2017 to present
Ross Center for Nursing and Rehabilitation [55%]	06/01/2016 to present
Cedar Manor Nursing and Rehabilitation Center [16.6%]	04/01/2017 to present
Cold Spring Hills Center for Nursing and Rehabilitation [25%]	06/01/2016 to present
Staten Island Care Center [12.5%]	10/01/2016 to present
Atrium Center for Rehabilitation and Nursing [9.9%]	01/01/2018 to present
Throgs Neck Rehabilitation & Nursing Center [25%]	05/01/2018 to present
Nassau Rehabilitation & Nursing Center [9.9%]	05/01/2018 to present

Kentucky

The Grandview Nursing and Rehabilitation Facility [4.7%]	11/01/2016 to present
The Terrace Nursing and Rehabilitation Center [4.7%]	11/01/2106 to present
Letcher Manor [4.7%]	11/01/2106 to present
Maysville Nursing and Rehabilitation Facility [4.7%]	11/01/2106 to present
Somerset Nursing and Rehabilitation Facility [4.7%]	11/01/2106 to present
Middlesboro Nursing and Rehabilitation Facility [4.7%]	11/01/2106 to present
Oakmont Manor [4.7%]	11/01/2106 to present
Ridgeway Nursing and Rehabilitation Facility [4.7%]	11/01/2106 to present
Robertson County Health Care Facility [4.7%]	11/01/2106 to present
Martin County Health Care Facility [4.7%]	11/01/2106 to present
Woodland Oaks [4.7%]	11/01/2106 to present
The Heritage [4.7%]	11/01/2106 to present
Mills Health and Rehab Center [4.7%]	06/01/2018 to present
Princeton Health & Rehab Center [4.7%]	06/01/2018 to present
Bradford Heights Health and Rehab Facility [4.7%]	06/01/2018 to present
Creekwood Place Nursing and Rehab [4.7%]	06/01/2018 to present
Spring View Health and Rehab Center [4.7%]	06/01/2018 to present

Missouri

Golden Years Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Edgewood Manor Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Cassville Health Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Buffalo Prairie Center for Rehab and Healthcare [37.5%]	01/01/2019 to present

Country Aire Retirement Center [37.5%]	01/01/2019 to present
Georgian Gardens Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Big Spring Care Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Marshfield Care Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Country Aire Retirement Center (RHCF & RCF) [37.5%]	01/01/2019 to present

New Jersey

Lakeview Rehabilitation and Care Center [75%]	09/01/2015 to present
Anchor Care and Rehabilitation Center [10%]	06/11/2018 to present

Rhode Island


Crystal Lake Rehabilitation and Care Center [47.5%]	09/01/2019 to present
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Marton Ornstein lists his current employment as CEO of Hospitality Consulting and Supply, a purchasing company. Mr. Ornstein discloses no health facility ownership.

Quality Review

The CMS Special Focus Facility (SFF) program includes nursing homes that have a history of serious quality issues or are included in a special program to stimulate improvements in their quality of care.


The Grandview Nursing and Rehabilitation Facility, KY, was placed on the CMS Special Focus Facility (SFF) Candidate List (a list of nursing homes that qualify to be selected as an SFF) while the applicant owned the facility. As of January 2020, The Grandview Nursing and Rehabilitation Facility, KY, has been on this list for 7 months. Edgewood Manor Center for Rehab and Healthcare, MO, was placed on this list prior to the applicant acquiring ownership and has been on the list for 11 months while the applicant owned the facility.

The Nursing Home Compare website now includes information to alert consumers about abuse or neglect in nursing homes. Facilities that have been recently cited for resident harm or potential harm for abuse or neglect are indicated with an icon of a red circle with a hand in it . Maysville Nursing and Rehabilitation Facility, KY, and The Grandview Nursing and Rehabilitation Facility, KY, have been cited for resident harm or potential harm for abuse or neglect while the applicant owned these facilities.

The proposed owners have a large number of facilities in their portfolios. In the explanation of CMS star ratings for these facilities, they indicate that many have been recently purchased, and the health inspection and overall ratings are not wholly attributable to the members of the application. The CMS Health Inspection rating is a weighted average of three survey cycles, with the time between surveys ranging from 9 to 15 months at each nursing home. The applicant states that for facilities which have been recently purchased, survey results which occurred prior to their ownership should not be attributed to them.


Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Highland Park Rehabilitation and Nursing Center	<i>Subject Facility</i>	****	****	****	**
Atrium Center for Rehabilitation and Nursing	Current	*****	*****	*****	*
	01/2018	*****	*****	*****	*
Throgs Neck Rehabilitation & Nursing Center	Current	*****	*****	*****	*
	05/2018	*****	*****	****	*
Cedar Manor Nursing and Rehabilitation Center	Current	****	****	***	**
	04/2017	*****	****	*****	**
Cypress Garden Center for Nursing and Rehab	Current	****	***	*****	**
	01/2015	*****	*****	*****	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Briarcliff Manor	Current	***	***	*****	*
	07/2019	**	*	*****	*
Staten Island Care Center	Current	***	***	*****	*
	10/2016	*****	*****	*****	*
Cold Spring Hills Nursing and Rehabilitation Center	Current	**	*	*****	**
	06/2016	**	*	*****	***
Ross Center for Nursing and Rehabilitation	Current	**	**	*****	*
	06/2016	****	***	*****	**
Spring Creek Rehabilitation and Nursing Center	Current	*	*	***	**
	11/2017	****	****	*****	*
Nassau Rehabilitation & Nursing Center	Current	*	**	****	*
	05/2018	****	***	*****	**
New Jersey					
Anchor Care and Rehabilitation Center	Current	**	*	**	****
	06/2018	****	***	*****	***
Lakeview Rehabilitation and Care Center	Current	*	*	***	***
	09/2015	*	*	***	***
Kentucky					
Middlesboro Nursing and Rehabilitation Facility	Current	*****	*****	*****	***
	11/2016	****	****	**	***
The Terrace Nursing and Rehabilitation Center	Current	*****	*****	**	**
	11/2016	*****	****	*****	***
Robertson County Health Care Facility	Current	*****	*****	****	***
	11/2016	****	****	**	***
Oakmont Manor	Current	****	****	****	**
	11/2016	*****	****	*****	****
The Heritage	Current	****	***	****	****
	11/2016	****	****	****	***
Woodland Oaks	Current	***	****	****	*
	11/2016	***	****	*	***
Mills Health and Rehab Center	Current	***	***	**	***
	06/2018	***	***	****	***
Ridgeway Nursing and Rehabilitation Facility	Current	***	***	**	**
	11/2016	*	**	*	**
Spring View Health and Rehab Center	Current	**	***	*	***
	06/2018	**	**	**	***
Letcher Manor	Current	**	**	***	***
	11/2016	*****	*****	*****	****
Princeton Health & Rehab Center	Current	**	**	**	***
	06/2018	***	**	*****	***
The Grandview Nursing and Rehabilitation Facility	Current	**	*	**	****
	11/2016	***	****	*	***
Bradford Heights Health and Rehab Facility	Current	*	**	*	**
	11/2016	*	*	**	***
	Current	*	**	*	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Creekwood Place Nursing and Rehab	06/2018	*	**	*	***
Maysville Nursing and Rehabilitation Facility 	Current	*	*	**	**
	11/2016	**	**	****	***
Martin County Health Care Facility	Current	*	*	**	***
	11/2016	****	****	****	***
The Somerset Nursing and Rehabilitation Facility	Current	*	*	**	***
	11/2016	***	****	*	****
Missouri					
Country Aire Retirement Center	Current	****	****	****	***
	01/2019	****	**	*****	****
Georgian Gardens Center for Rehab and Nursing	Current	****	****	***	***
	01/2019	***	***	*	****
Buffalo Prairie Center for Rehab and Healthcare	Current	***	***	**	***
	01/2019	****	***	***	****
Cassville Health Center	Current	***	**	***	****
	01/2019	****	**	*****	****
Big Spring Care Center for Rehab and Nursing	Current	***	***	*	****
	01/2019	**	***	**	*
Marshfield Care Center for Rehab and Healthcare	Current	**	**	**	**
	01/2019	*****	*****	***	**
Golden Years Center for Rehab and Healthcare	Current	**	**	***	**
	01/2019	**	**	****	***
Edgewood Manor Center for Rehab and Nursing †	Current	*	*	**	*
	01/2019	*	*	****	*
Rhode Island					
Crystal Lake Rehabilitation and Care Center	Current	****	****	****	****
	09/2019	*****	****	*****	*****

Data date: 01/2020

† Special Focus Facility Candidate

 Resident harm or potential harm for abuse or neglect

Enforcement History

A review of the operations of the applicants' affiliated facilities, for the relevant periods, reveals the following enforcement history.

New York

Cold Springs Hills Nursing and Rehabilitation

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 20-005 for surveillance findings on 9/17/2019. Deficiencies were found under 10 NYCRR 415.12 (c)(1)-Pressure Sores-Prevention.
- A Civil Monetary Penalty (CMP) of \$59,020 has been imposed for the 9/17/19 survey.

Missouri

Edgewood Manor Center for Rehab and Healthcare:

- The facility received an immediate jeopardy citation with a tag of F689 (Free of Accident Hazards/Supervision/Devices) for the survey dated February 1, 2019.

New Jersey

Lakeview Rehabilitation and Care Center:

- The facility paid a CMP of \$9,304 for the survey dated October 4, 2017.

Kentucky

Ridgeway Nursing and Rehabilitation Facility:

- The facility paid a CMP of \$7,150 for the survey dated September 13, 2018.

Maysville Nursing and Rehabilitation Facility:

- The facility paid a CMP of \$13,905 for the survey dated May 10, 2019.
- The facility paid a CMP of \$12,250 for the survey dated February 21, 2019.

The Grandview Nursing and Rehabilitation Facility:

- The facility paid a CMP of \$732,827 for the survey dated July 20, 2018.

Letcher Manor:

- The facility paid a CMP of \$6,500 for the survey dated October 11, 2018.

Martin County Health Care Facility:

- The facility paid a CMP of \$34,580 for the survey dated March 16, 2018.
- The facility paid a CMP of \$8,778 for the survey dated March 16, 2018.

Somerset Nursing and Rehabilitation Facility:

- The facility paid a CMP of \$20,965 for the survey dated November 8, 2018.

Bradford Heights Health and Rehab Facility:

- The facility paid a CMP of \$7,153 for the survey dated September 6, 2018.
- The facility paid a CMP of \$7,329 for the survey dated September 6, 2018.

Project Review

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

There will be no change in beds or services as a result of this application. 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).

<h2>Financial Analysis</h2>

Asset Purchase Agreement

The applicant has submitted an executed APA for the RHCF's operating and realty interests. The terms of the agreement are summarized below:

Date:	September 1, 2018
Seller:	HRNC, LLC (operations) and 160 Seneca Street, LLC (realty)
Buyer:	Highland Operations, LLC (operations) and Highland ZBLO Realty, LLC (realty)
Purchased Assets:	<i>Operational Assets:</i> Operations seller's rights, title, and interest in and to the licenses, registrations, certificate of need, authorizations, permits, and all regulatory approvals necessary to own and operate the facility; the business and operations, intellectual property rights, inventory, supplies, Medicare and Medicaid provider numbers, Medicaid Provider Agreements and all systems and codes required to access and billing, copies of all financial books and records in the possession of Seller, all deposits and prepayments for resident's room and

	<p>service charge, resident's files and other medical records, copies of personnel and payroll records, all contracts associated with the facility, all warranties and guaranties made by or received, telephone numbers and telefax numbers, any and all goodwill associated with the facility, all other assets of operations seller.</p> <p><i>Real Property Assets:</i> Realty seller's rights, title, and interest in the parcels of land comprising the premises, all buildings and improvements, all building plans, floor plans, architectural and engineering drawings, specifications and surveys, tangible assets located on or within the real property or otherwise related to the facility.</p>
Excluded Assets: (Operational & Real Property)	Cash, cash equivalents, investments, or deposits in banks, accounts receivable, funds from all rate adjustments and appeals relating to dates of service prior to the Closing Date, universal settlement proceeds, seller's claims, credits, refunds, original financial book and records of seller, insurance policy and rights, claims for refund of government charges, non-transferable permits, seller's rights.
Purchase Price:	\$40,000 for the operations and \$6,960,000 for the real property for a combined total of \$7,000,000
Payment of Purchase Price:	\$1,000,000 cash deposit as follows: \$500,000 upon agreement execution and \$33,333.34 per month for 15 months, payable on the first of each month starting November 1, 2018, and counting until the deposit is paid in full. The remaining \$6,000,000 due at closing by immediately available funds.

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

Equity (Highland Operations, LLC members)	\$ 40,000
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The purchase price of the real property is proposed to be satisfied as follows:

Equity (Highland ZBLO Realty, LLC members)	\$ 1,785,000
Loan (10 years, 25-year amortization, 5.50% interest)	<u>5,175,000</u>
Total	\$ 6,960,000

BFA Attachment A is the net worth summary for the proposed members of the operating and realty entities, which shows sufficient liquid assets overall to cover the equity requirements for the purchases. Joel Leifer has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interests to cover any member's equity shortfall. Sterling National Bank has provided a letter of interest for the realty loan at the stated terms.

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 February 13, 2020, the facility had a nominal outstanding Medicaid overpayment liability of \$44,769.

Lease Agreement

The applicant submitted an executed lease agreement for the RHCF.

Date:	March 26, 2019
Premises:	80-bed RHCF located at 160 Seneca Street, Wellsville, New York
Landlord:	Highland ZBLO Realty, LLC
Tenant:	Highland Operations, LLC
Terms:	5 years with consecutive 5-year extensions
Rental:	\$707,700 (\$58,975 monthly)
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

The applicant submitted a draft lease agreement for the ADHCP.

Premises:	100 Chamberlain Street, Wellsville, New York
Landlord:	Highland ZBLO Realty, LLC
Tenant:	Highland Operations, LLC
Terms:	5 years with consecutive 5-year extensions.
Rental:	\$120 (\$10 monthly)
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

The parcel of land/premises on which the ADHCP is located (100 Chamberlain Street, Wellsville) is owned by 160 Seneca Street, LLC, the current RHCF realty owner. 160 Seneca Street, LLC leases the space to HRNC, LLC, the current operator of the ADHCP. Per the APA, 160 Seneca Street, LLC will sell this parcel to Highland ZBLO Realty, LLC, the proposed landlord in this transaction. Highland ZBLO Realty, LLC will then lease this parcel to Highland Operations, LLC.

The applicant has submitted an affidavit stating that the lease agreements are non-arm's length arrangements in that Highland ZBLO Realty, LLC and Highland Operations, LLC have common ownership.

Operating Budget

The applicant has provided an operating budget, in 2020 dollars, for the first and third years subsequent to the change of ownership. The budget is summarized below:

	<u>Current Year (2018)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Inpatient Revenues</u>						
Medicare FFS	\$474.23	\$795,756	\$475.11	\$801,035	\$474.97	\$807,444
Medicare MC	\$316.60	364,727	\$451.16	522,439	\$451.26	526,619
Medicaid FFS	\$197.02	3,064,324	\$172.02	2,688,842	\$172.02	2,710,352
Medicaid MC	\$183.03	1,244,432	\$161.79	1,105,490	\$161.78	1,114,334
Private Pay	\$285.51	902,222	\$285.50	906,733	\$285.53	913,987
Other- Assessment		<u>263,619</u>		<u>486,070</u>		<u>487,849</u>
Total Inpatient Rev.		\$6,635,080		\$6,510,609		\$6,560,585
Less Bad Debt		<u>(11,402)</u>		<u>(11,402)</u>		<u>(11,402)</u>
		\$6,623,678		\$6,499,207		\$6,549,183
<u>ADHCP Revenues</u>						
Medicaid FFS	\$118.41	\$501,922	\$117.22	\$496,903	\$117.22	\$496,903
Other	\$122.87	<u>27,154</u>	\$122.87	<u>27,154</u>	\$122.87	<u>27,154</u>
Total Outpt Rev.		\$529,076		\$524,057		\$524,057
Total Revenues		\$7,152,754		\$7,023,264		\$7,073,240
<u>Inpatient Expenses</u>						
Operating	\$213.94	\$6,051,986	\$209.91	\$5,967,751	\$209.94	\$6,027,793
Capital	<u>\$20.56</u>	<u>582,712</u>	<u>\$29.18</u>	<u>831,107</u>	<u>\$28.54</u>	<u>819,365</u>
Total Inpatient Exp.	\$234.50	\$6,634,698	\$239.09	\$6,798,858	\$238.48	\$6,847,158
<u>ADHCP Expenses</u>						
Operating	\$24.61	\$109,740	\$24.85	\$110,837	\$24.85	\$110,837
Capital	<u>\$0.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Outpt Exp.	\$24.61	\$109,740	\$24.85	\$110,837	\$24.85	\$110,837
Total Expenses	\$258.70	\$6,744,438	\$263.54	\$6,909,695	\$263.33	\$6,957,995
Net Income/Loss		<u>\$408,316</u>		<u>\$113,569</u>		<u>\$115,245</u>

	<u>Current Year (2018)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Total Patient Days		28,342		28,484		28,712
Total ADHCP Visits		4,460		4,460		4,460
Occupancy		97.06%		97.55%		98.33%
Breakeven		91.5%		96.0%		96.7%

The following is noted with respect to the submitted budget:

- The Medicare and Private Pay rates are projected based upon current market rates.
- The current year Medicaid rate is based on the facility's Medicaid rate per the 2018 RHCF-4 cost report information. Historical utilization for base year 2018 was 97.06%.
- For budget Year One and Year Three, Medicaid rates are based on the facility's most recent 2019 Medicaid Rate sheet (June 18, 2019), which reflects a decrease in the Medicaid Rate compared with the current year (2018) due to a change in the Case Mix Index (CMI) calculation as a result of recent legislative changes made by the New York State Office of the Medicaid Inspector General. All other revenues assume current payment rates for the respective payors.
- Medicare FFS per diems are based on the Medicare FFS rates experienced by the facility during the period of January 1, 2019 through October 31, 2019.
- Medicare MC per diems are estimated at 95% of the Medicare FFS rate. It is noted that the current year (2018) Medicare MC rate is substantially lower (at \$316.60 per day). The applicant provided documentation for the last quarter of 2019 indicating that the Medicare MC rate has increased substantially ranging from an average rate of \$513 per day to \$592 per day. The projection based on 95% of the Medicare FFS rate is in the interest of conservatism.
- The annual lease expense of \$707,700 consists of the following: \$385,793 in annual debt service that the landlord will pay on the realty loan; \$280,000 in estimated depreciation expense that will be incurred by the landlord; and \$41,907 in other fees that the landlord is expected to incur as a result of managing the real property.
- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.
- Other operating revenue in the first and third year represents assessment revenues.
- Utilization by payor source (current, and years one and three are identical) is as follows:

<u>Payor</u>	<u>Inpatient</u>	<u>Outpatient</u>
Medicare FFS	5.92%	-
Medicare MC	4.06%	-
Medicaid FFS	54.88%	95.04%
Medicaid MC	23.99%	-
Private Pay	11.15%	-
Other	<u>0.00%</u>	<u>4.96%</u>
Total	100.00%	100.00%

Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the acquisition of the operating interest and realty is \$7,000,000. The purchase price for the acquisition of the operating interests is \$40,000 and will be met with equity from the proposed members. The purchase price for the real estate is \$6,960,000 and will be met with \$1,785,000 cash down payment with the remaining \$5,175,000 to be financed with a bank loan at 5.50% interest for a ten-year term and a payout period of 25 years. Sterling National has provided a letter of interest at the stated terms.

The working capital requirement is \$1,151,616 based on two months of the first year's expenses. Working capital will be satisfied with \$575,808 equity from proposed members and the remaining \$575,808 will be financed through a bank loan for three years, with an option to extend for two additional years, with principal and interest repayment based on the amortization time period of the master loan, and an estimated rate of Wall Street Journal (WSJ) Prime + 1.00% (5.75% as of February 14, 2020).

Sterling National Bank has provided a letter of interest for the working capital financing. BFA Attachment A is the net worth of the proposed members of Highland Operations, LLC, which reveals sufficient resources for the stated levels of equity. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$615,808.

The submitted budget indicates a net income of \$113,569 and \$115,245 will be generated for the first and third year, respectively. BFA Attachment F shows that the proposed members of both Highland Operations, LLC and Highland ZBLO Realty, LLC have enough equity to fund both CON 191265, and CON 191301. The budget appears reasonable.

BFA Attachment C is a financial summary of Highland Park Rehabilitation and Nursing Center from December 31, 2016 through June 31, 2019 which indicates that in 2016, the facility experienced a negative working capital, negative equity position and maintained net operating income of \$80,000. In 2017, the facility experienced a negative equity position, positive working capital position and net operating income of \$111,401. The negative equity position in years 2016 and 2017 were due to low utilization. For the year ending December 31, 2018, the facility experienced a positive working capital, positive equity position and net operating income of \$408,317. For the ten months ending June 30, 2019, the facility experienced positive working capital, positive equity positions and maintained net operating income of \$228,445.

BFA Attachment E, a financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained a positive net operating income in 2019 and a positive working capital position in 2019, with the exception of Cedar Manor Nursing and Rehabilitation Center, Ross Center for Nursing and Rehabilitation, Cypress Garden Care Center, and Seagate Rehabilitation and Nursing Center. Negative working capital at Cedar Manor, Ross Center, Cypress Garden, and Seagate facilities are attributable to large liabilities which will not be due within the next 12 months. Reclassification of these liabilities as long-term liabilities in the 2019 Certified Financial Statements will result in positive working capital at the facilities.

Conclusion

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

Attachments

BFA Attachment A	Highland Operations, LLC- Proposed Members Net Worth Statement Highland ZBLO Realty, LLC-Proposed Members' Net Worth Statement
BFA Attachment B	Organizational Chart-Highland Operations, LLC and Highland ZBLO Realty, LLC
BFA Attachment C	Highland Park Rehabilitation and Nursing Center-Financial Summary
BFA Attachment D	Pro Forma Balance Sheet for Highland ZBLO Realty, LLC and Highland Operations, LLC
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Highland Park and Beechtree-Equity Requirements for Operations & Realty



Project # 191301-E
Beech Tree Operations, LLC d/b/a Beechtree Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Tompkins
Acknowledged: June 12, 2019

Executive Summary

Description

Beach Tree Operations, LLC d/b/a Beechtree Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Beechtree Center for Rehabilitation and Nursing, a 120-bed plus one respite bed, proprietary, Article 28 Residential Health Care Facility (RHCF) at 318 South Albany Street, Ithaca (Tompkins County). BTRNC, LLC is the current operator of the RHCF and 318 South Albany Street, LLC, a related entity, is the realty owner. Upon approval of this application, the facility will be named Beechtree Center for Rehabilitation & Nursing. There will be no change in beds or services provided.

On September 1, 2018, BTRNC, LLC and 318 South Albany Street, LLC entered into an Asset Purchase agreement (APA) with Beach Tree Operations, LLC (operations purchaser) and Beach Tree Realty, LLC (realty purchaser) for the sale and acquisition of the RHCF's operating and realty interests. The total purchase price of \$10,500,000 for the APA transactions includes \$60,000 for the operations and \$10,440,000 for the realty. Upon PHHPC approval, Beach Tree Realty, LLC will lease the RHCF to Beach Tree Operations, LLC for an initial term of five years. The term shall automatically be extended for consecutive five-year periods as described in the lease agreement. Beach Tree Realty, LLC and Beach Tree Operations, LLC have common ownership.

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

Table with 2 columns: Member Name, Percentage. Includes Current Operator BTRNC, LLC and members Uri Koenig (60.0%), Efraim Steif (39.9%), David Camerota (0.1%).

Table with 2 columns: Member Name, Percentage. Includes Proposed Operator Beach Tree Operations, LLC and members Joel Leifer (40%), Marton Ornstein (25%), Cheskel Berkowitz (25%), Yitzchok (Isaac) Weiner (10%).

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

Table with 2 columns: Member Name, Percentage. Includes Current Realty Owner 318 South Albany Street, LLC and members Uri Koenig (60%), Efraim Steif (40%).

Table with 2 columns: Member Name, Percentage. Includes Proposed Realty Owner Beach Tree Realty, LLC and members Joel Leifer (40.0%), Marton Ornstein (25.0%), Joel Zupnick (12.5%), Cheskel Berkowitz (12.5%), Yitzchok (Isaac) Weiner (10.0%).

Concurrently, under review is CON 191265 in which the proposed members of Beach Tree Operations, LLC are also seeking approval to acquire Highland Park Rehabilitation and Nursing Center, an 80-bed RHCf located in Allegany County.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no impact on service area beds, services, or utilization through this project. Although the facility has seen a decline in occupancy from 93.5% in 2014 to 80.7% in 2018, the occupancy of Beechtree Center for Rehabilitation and Nursing has met or exceeded that of Tompkins County from 2012 to 2017.

Program Summary

All health care facilities are in substantial compliance with all applicable rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs associated with this application. The combined purchase price for the RHCf's operations and realty is \$10,500,000. The purchase price for the operations of \$60,000 will be met with cash from proposed members' equity. The purchase price for the real estate of \$10,440,000 will be met with equity of \$2,610,000 from the proposed realty owners and a \$7,830,000 bank loan at 5.50% interest for a 10-year term, and a payout period of 25 years. The proposed realty members have submitted affidavits to fund the balloon payment of \$5,884,717 should terms acceptable to the Department be unavailable at the time of refinancing. Sterling National Bank has provided a letter of interest for the loan at the stated terms.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,330,233	\$9,375,742
Expenses	<u>9,322,632</u>	<u>9,343,592</u>
Net Income	\$7,601	\$32,150

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

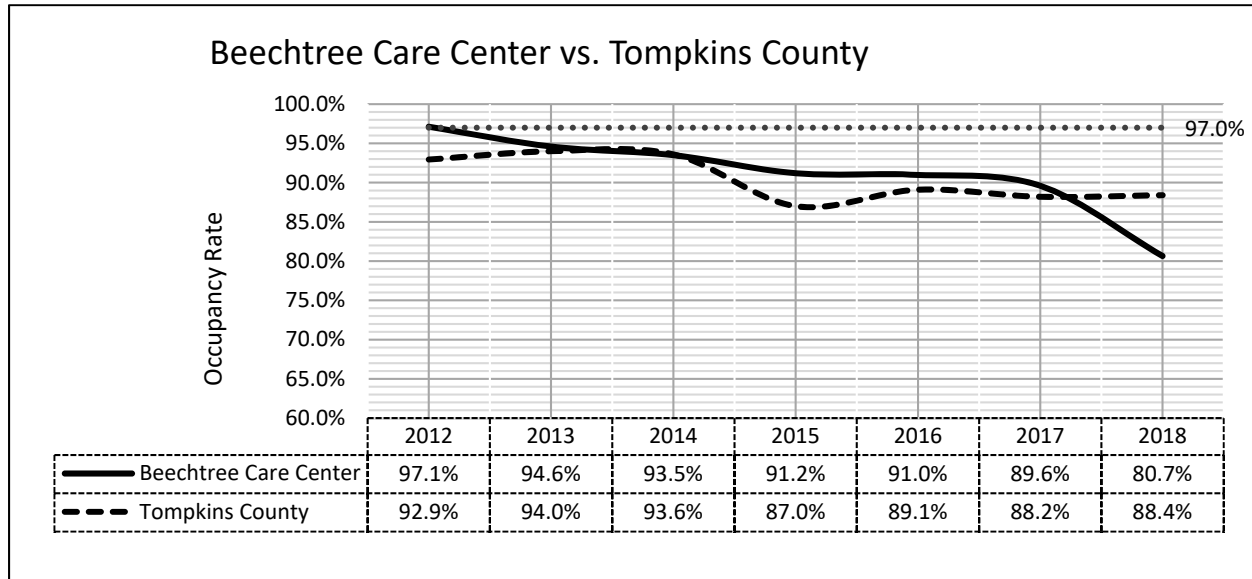
April 2, 2020

Need and Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Beechtree Center for Rehabilitation and Nursing	Same
Address	318 South Albany Street, Ithaca, NY 14850	Same
RHCF Capacity	120	Same
ADHC Capacity	NA	NA
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	BTRNC, LLC	Beech Tree Operations, LLC *Joel Leifer 40.0% Cheskel Berkowitz 25.0% Marton Ornstein 25.0% Yitzchok "Isaac" Weiner 10.0% <i>*Managing Member</i>

Utilization



Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Beechtree has exceeded the Medicaid threshold of Tomkins County for the last two certified years.

Percent of New RHCf Admissions that are Medicaid	2017	2018
Beechtree Care Center	93.7%	54.9%
Tompkins County – 75% Medicaid Admissions Threshold	28.7%	30.5%

Character and Competence

Cheskel Berkowitz is the President of Empro, Inc., a healthcare staffing company, and Vice President of Specialty RX, Inc., a long term care pharmacy. Mr. Berkowitz attended United Talmudic Academy and Bnei Shimer Yisroel. Mr. Berkowitz held a pharmacy license from New Jersey which expired on 6/30/2018. Mr. Berkowitz discloses the following health facility interests:

New York

Cypress Garden Center for Nursing and Rehabilitation [23.33%]	01/01/2015 to present
Briarcliff Manor Center for Rehabilitation and Nursing Care [12.5%]	07/12/2019 to present
Pella Care, LLC (LHCSA) [50%]	02/25/2010 to present
HDA Care (LHCSA) [40%]	12/01/2018 to present

Kentucky

The Grandview Nursing and Rehabilitation Facility [4.18%]	11/01/2016 to present
The Terrace Nursing and Rehabilitation Center [4.18%]	11/01/2106 to present
Letcher Manor [4.18%]	11/01/2106 to present
Maysville Nursing and Rehabilitation Facility [4.18%]	11/01/2106 to present
Somerset Nursing and Rehabilitation Facility [4.18%]	11/01/2106 to present
Middlesboro Nursing and Rehabilitation Facility [4.18%]	11/01/2106 to present
Oakmont Manor [4.18%]	11/01/2106 to present
Ridgeway Nursing and Rehabilitation Facility [4.18%]	11/01/2106 to present
Robertson County Health Care Facility [4.18%]	11/01/2106 to present
Martin County Health Care Facility [4.18%]	11/01/2106 to present
Woodland Oaks [4.18%]	11/01/2106 to present
The Heritage [4.18%]	11/01/2106 to present
Mills Health and Rehab Center [4%]	06/01/2018 to present
Princeton Health & Rehab Center [4%]	06/01/2018 to present
Bradford Heights Health and Rehab Facility [4%]	06/01/2018 to present
Creekwood Place Nursing and Rehab [4%]	06/01/2018 to present
Spring View Health and Rehab Center [4%]	06/01/2018 to present

Missouri

Golden Years Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Edgewood Manor Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Cassville Health Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Buffalo Prairie Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Country Aire Retirement Center (RHCf & RCF) [37.5%]	01/01/2019 to present
Georgian Gardens Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Big Spring Care Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Marshfield Care Center for Rehab and Healthcare [37.5%]	01/01/2019 to present

New Jersey

Lakeview Rehabilitation and Care Center [24%]	07/01/2018 to present
Anchor Care and Rehabilitation Center [10%]	06/11/2018 to present

Yitzchok Weiner lists his current employment as Assistant Administrator of Staten Island Care Center since June 2009, and Regional Administrator of Cypress Garden Care Center (8/2017), River Manor Corp. (7/2014), Tri-state Healthcare Management (1/2016), Nassau Extended Care Facility (3/2014), Throgs Neck Extended Care (10/2014) and Cold Spring Hills Center (12/2017). Mr. Weiner discloses the following health facility interests:

New Jersey

Lakeview Rehabilitation and Care Center [2%]	09/01/2015 to present
Anchor Care and Rehabilitation Center [5%]	06/11/2018 to present

Joel Leifer lists concurrent employment at four skilled nursing facilities: Administrative Director at both Atrium Center for Rehabilitation (NY) and Staten Island Care Center (NY); Controller at Nassau Extended Care Facility (NY); and Executive Director at Tri-State Healthcare Management (Lakeview Rehabilitation and Care Center) in Wayne, NJ. Mr. Leifer holds a bachelor's degree from Touro College. Mr. Leifer discloses the following health facility interests:

New York

Spring Creek Rehabilitation and Nursing Care Center [9.9%]	11/01/2017 to present
Ross Center for Nursing and Rehabilitation [55%]	06/01/2016 to present
Cedar Manor Nursing and Rehabilitation Center [16.6%]	04/01/2017 to present
Cold Spring Hills Center for Nursing and Rehabilitation [25%]	06/01/2016 to present
Staten Island Care Center [12.5%]	10/01/2016 to present
Atrium Center for Rehabilitation and Nursing [9.9%]	01/01/2018 to present
Throgs Neck Rehabilitation & Nursing Center [25%]	05/01/2018 to present
Nassau Rehabilitation & Nursing Center [9.9%]	05/01/2018 to present

Kentucky

The Grandview Nursing and Rehabilitation Facility [4.7%]	11/01/2016 to present
The Terrace Nursing and Rehabilitation Center [4.7%]	11/01/2106 to present
Letcher Manor [4.7%]	11/01/2106 to present
Maysville Nursing and Rehabilitation Facility [4.7%]	11/01/2106 to present
Somerset Nursing and Rehabilitation Facility [4.7%]	11/01/2106 to present
Middlesboro Nursing and Rehabilitation Facility [4.7%]	11/01/2106 to present
Oakmont Manor [4.7%]	11/01/2106 to present
Ridgeway Nursing and Rehabilitation Facility [4.7%]	11/01/2106 to present
Robertson County Health Care Facility [4.7%]	11/01/2106 to present
Martin County Health Care Facility [4.7%]	11/01/2106 to present
Woodland Oaks [4.7%]	11/01/2106 to present
The Heritage [4.7%]	11/01/2106 to present
Mills Health and Rehab Center [4.7%]	06/01/2018 to present
Princeton Health & Rehab Center [4.7%]	06/01/2018 to present
Bradford Heights Health and Rehab Facility [4.7%]	06/01/2018 to present
Creekwood Place Nursing and Rehab [4.7%]	06/01/2018 to present
Spring View Health and Rehab Center [4.7%]	06/01/2018 to present

Missouri

Golden Years Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Edgewood Manor Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Cassville Health Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Buffalo Prairie Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Country Aire Retirement Center [37.5%]	01/01/2019 to present
Georgian Gardens Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Big Spring Care Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Marshfield Care Center for Rehab and Healthcare [37.5%]	01/01/2019 to present
Country Aire Retirement Center (RHCF & RCF) [37.5%]	01/01/2019 to present

New Jersey

Lakeview Rehabilitation and Care Center [75%]
Anchor Care and Rehabilitation Center [10%]

09/01/2015 to present
06/11/2018 to present

Rhode Island

Crystal Lake Rehabilitation and Care Center [47.5%]


09/01/2019 to present

Marton Ornstein lists his current employment as CEO of Hospitality Consulting and Supply, a purchasing company. Mr. Ornstein discloses no health facility ownership.

Quality Review



The CMS Special Focus Facility (SFF) program includes nursing homes that have a history of serious quality issues or are included in a special program to stimulate improvements in their quality of care.

The Grandview Nursing and Rehabilitation Facility, KY, was placed on the CMS Special Focus Facility (SFF) Candidate List (a list of nursing homes that qualify to be selected as an SFF) while the applicant owned the facility. As of January 2020, The Grandview Nursing and Rehabilitation Facility, KY, has been on this list for 7 months. Edgewood Manor Center for Rehab and Healthcare, MO, was placed on this list prior to the applicant acquiring ownership and has been on the list for 11 months while the applicant owned the facility.

The Nursing Home Compare website now includes information to alert consumers about abuse or neglect in nursing homes. Facilities that have been recently cited for resident harm or potential harm for abuse or neglect are indicated with an icon of a red circle with a hand in it . Maysville Nursing and Rehabilitation Facility, KY, and The Grandview Nursing and Rehabilitation Facility, KY, have been cited for resident harm or potential harm for abuse or neglect while the applicant owned these facilities.

The proposed owners have a large number of facilities in their portfolios. In the explanation of CMS star ratings for these facilities, they indicate that many have been recently purchased, and the health inspection and overall ratings are not wholly attributable to the members of the application. The CMS Health Inspection rating is a weighted average of three survey cycles, with the time between surveys ranging from 9 to 15 months at each nursing home. The applicant states that for facilities which have been recently purchased, survey results which occurred prior to their ownership should not be attributed to them.


Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Beechtree Center for Rehabilitation and Nursing	<i>Subject Facility</i>	*	*	***	***
Atrium Center for Rehabilitation and Nursing	Current	*****	*****	*****	*
	01/2018	*****	*****	*****	*
Throgs Neck Rehabilitation & Nursing Center	Current	*****	*****	*****	*
	05/2018	*****	*****	****	*
Cedar Manor Nursing and Rehabilitation Center	Current	****	****	***	**
	04/2017	*****	****	*****	**
Cypress Garden Center for Nursing and Rehab	Current	****	***	*****	**
	01/2015	*****	*****	*****	**
Briarcliff Manor	Current	***	***	*****	*
	07/2019	**	*	*****	*
Staten Island Care Center	Current	***	***	*****	*
	10/2016	*****	*****	*****	*
Cold Spring Hills Nursing and Rehabilitation Center	Current	**	*	*****	**
	06/2016	**	*	*****	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Ross Center for Nursing and Rehabilitation	Current	**	**	*****	*
	06/2016	****	***	*****	**
Spring Creek Rehabilitation and Nursing Center	Current	*	*	***	**
	11/2017	****	****	*****	*
Nassau Rehabilitation & Nursing Center	Current	*	**	****	*
	05/2018	****	***	*****	**
New Jersey					
Anchor Care and Rehabilitation Center	Current	**	*	**	****
	06/2018	****	***	*****	***
Lakeview Rehabilitation and Care Center	Current	*	*	***	***
	09/2015	*	*	***	***
Kentucky					
Middlesboro Nursing and Rehabilitation Facility	Current	*****	*****	*****	***
	11/2016	****	****	**	***
The Terrace Nursing and Rehabilitation Center	Current	*****	*****	**	**
	11/2016	*****	****	*****	***
Robertson County Health Care Facility	Current	*****	*****	****	***
	11/2016	****	****	**	***
Oakmont Manor	Current	****	****	****	**
	11/2016	*****	****	*****	****
The Heritage	Current	****	**	****	****
	11/2016	****	****	****	***
Woodland Oaks	Current	***	****	****	*
	11/2016	***	****	*	***
Mills Health and Rehab Center	Current	***	***	**	***
	06/2018	***	***	****	***
Ridgeway Nursing and Rehabilitation Facility	Current	***	***	**	**
	11/2016	*	**	*	**
Spring View Health and Rehab Center	Current	**	***	*	***
	06/2018	**	**	**	***
Letcher Manor	Current	**	**	***	***
	11/2016	*****	*****	*****	****
Princeton Health & Rehab Center	Current	**	**	**	***
	06/2018	***	**	*****	***
The Grandview Nursing and Rehabilitation Facility  †	Current	**	*	**	****
	11/2016	***	****	*	***
Bradford Heights Health and Rehab Facility	Current	*	**	*	**
	11/2016	*	*	**	***
Creekwood Place Nursing and Rehab	Current	*	**	*	***
	06/2018	*	**	*	***
Maysville Nursing and Rehabilitation Facility 	Current	*	*	**	**
	11/2016	**	**	****	***
Martin County Health Care Facility	Current	*	*	**	***
	11/2016	****	****	****	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
The Somerset Nursing and Rehabilitation Facility	Current	*	*	**	***
	11/2016	***	****	*	****
Missouri					
Country Aire Retirement Center	Current	*****	*****	*****	***
	01/2019	****	**	*****	****
Georgian Gardens Center for Rehab and Nursing	Current	****	****	***	***
	01/2019	***	***	*	****
Buffalo Prairie Center for Rehab and Healthcare	Current	***	***	**	***
	01/2019	****	***	***	****
Cassville Health Center	Current	***	**	***	****
	01/2019	****	**	*****	****
Big Spring Care Center for Rehab and Nursing	Current	***	***	*	****
	01/2019	**	***	**	*
Marshfield Care Center for Rehab and Healthcare	Current	**	**	**	**
	01/2019	*****	*****	***	**
Golden Years Center for Rehab and Healthcare	Current	**	**	***	**
	01/2019	**	**	****	***
Edgewood Manor Center for Rehab and Nursing †	Current	*	*	**	*
	01/2019	*	*	****	*
Rhode Island					
Crystal Lake Rehabilitation and Care Center	Current	*****	****	*****	****
	09/2019	*****	****	*****	*****

Data date: 01/2020

† Special Focus Facility Candidate

 Resident harm or potential harm for abuse or neglect

Enforcement History

A review of the operations of the applicants' affiliated facilities, for the relevant periods, reveals the following enforcement history.

New York

Cold Springs Hills Nursing and Rehabilitation

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 20-005 for surveillance findings on 9/17/2019. Deficiencies were found under 10 NYCRR 415.12 (c)(1)-Pressure Sores-Prevention.
- A Civil Monetary Penalty (CMP) of \$59,020 has been imposed for the 9/17/19 survey.

Missouri

Edgewood Manor Center for Rehab and Healthcare:

- The facility received an immediate jeopardy citation with a tag of F689 (Free of Accident Hazards/Supervision/Devices) for the survey dated February 1, 2019.

New Jersey

Lakeview Rehabilitation and Care Center:

- The facility paid a CMP of \$9,304 for the survey dated October 4, 2017.

Kentucky

Ridgeway Nursing and Rehabilitation Facility:

- The facility paid a CMP of \$7,150 for the survey dated September 13, 2018.

Maysville Nursing and Rehabilitation Facility:

- The facility paid a CMP of \$13,905 for the survey dated May 10, 2019.
- The facility paid a CMP of \$12,250 for the survey dated February 21, 2019.

The Grandview Nursing and Rehabilitation Facility:

- The facility paid a CMP of \$732,827 for the survey dated July 20, 2018.

Letcher Manor:

- The facility paid a CMP of \$6,500 for the survey dated October 11, 2018.

Martin County Health Care Facility:

- The facility paid a CMP of \$34,580 for the survey dated March 16, 2018.
- The facility paid a CMP of \$8,778 for the survey dated March 16, 2018.

Somerset Nursing and Rehabilitation Facility:

- The facility paid a CMP of \$20,965 for the survey dated November 8, 2018.

Bradford Heights Health and Rehab Facility:

- The facility paid a CMP of \$7,153 for the survey dated September 6, 2018.
- The facility paid a CMP of \$7,329 for the survey dated September 6, 2018.

Project Review

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

There will be no change in beds or services as a result of this application. 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

Lease Agreement

The applicant has submitted an executed lease agreement for the RHCF.

Date:	August 22, 2019
Premises:	120-bed RHCF located at 318 South Albany Street, Ithaca, New York
Landlord:	Beach Tree Realty, LLC
Tenant:	Beach Tree Operations, LLC
Terms:	Five years (initial term), plus automatic consecutive extensions of five-year periods
Rental:	\$1,061,556 (\$88,463 monthly)
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

The applicant has submitted an affidavit stating that the lease arrangement is a non-arm's length agreement in that Beach Tree Realty, LLC and Beach Tree Operations, LLC have common ownership.

Operating Budget

The applicant has provided an operating budget, in 2020 dollars, for the first and third years subsequent to the change of ownership. The budget is summarized below:

	<u>Current Year (2018)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
Medicare FFS	\$390.35	\$1,050,039	\$390.40	\$1,265,297	\$390.31	\$1,271,623
Medicare MC	\$390.35	300,178	\$390.20	361,715	\$390.47	363,523
Medicaid FFS	\$194.66	2,207,010	\$181.32	2,530,171	\$181.31	2,542,557
Medicaid MC	\$194.66	3,452,029	\$170.53	3,644,136	\$170.53	3,662,357
Private Pay	\$325.12	908,385	\$325.10	999,669	\$325.13	1,004,667
Other (Assessment)		<u>0</u>		<u>354,245</u>		<u>356,015</u>
Total Patient Rev.		\$7,917,641		\$9,155,233		\$9,200,742
Other Oper. Rev.		<u>(\$103,660)</u>		<u>\$175,000</u>		<u>\$175,000</u>
Total Revenue		\$7,813,981		\$9,330,233		\$9,375,742
<u>Expenses</u>						
Operating	\$236.42	\$8,351,684	\$193.16	\$8,222,119	\$193.03	\$8,257,430
Capital	<u>22.63</u>	<u>799,562</u>	<u>25.85</u>	<u>1,100,513</u>	<u>25.39</u>	<u>1,086,162</u>
Total Expense	\$259.06	\$9,151,246	\$219.01	\$9,322,632	\$218.42	\$9,343,592
Net Income		<u>(\$1,337,265)</u>		<u>\$7,601</u>		<u>\$32,150</u>
Total Patient Days		35,325		42,566		42,778
Occupancy		80.65%		97.18%		97.67%
Breakeven		94.27%		97.10%		97.33%

The following is noted with respect to the submitted budget:

- Private and Medicare rates are projected based upon current market rates. Medicaid FFS rates are based on the 2019 Medicaid Rate Sheet and the Medicaid MC rates are based on an estimated 95.0% of the Medicaid FFS rate.
- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.
- Other operating revenue consists of Prior Period adjustments, Universal Settlement and other miscellaneous revenue.
- Breakeven utilization is 97.1% for the first year.
- Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Years One & Three</u>
Medicare FFS	7.6%	7.6%
Medicare MC	2.2%	2.2%
Medicaid FFS	32.1%	32.8%
Medicaid MC	50.2%	50.2%
Private Pay	<u>7.9%</u>	<u>7.2%</u>
	100.0%	100.0%

The applicant's plan to increase patient revenues is driven primarily by their strategy to increase occupancy at the facility. This plan to maintain and optimize occupancy includes the following initiatives:

- Administration and Compliance - The facility will benefit from individuals who have extensive experience in nursing home administration and compliance to ensure that the facility is providing a consistently high level of patient care. As they earn a reputation for high quality care, referral sources in the area will be more confident to send patients to the facility, which will increase occupancy.
- Quality of Life - Aside from a clinical perspective, the members of the new operator recognize that the facility is the residents' home. Therefore, they will seek to improve the facility's infrastructure and add environmental and design features that will improve the residents' quality of life.
- Marketing - The new operator will invest significant resources to effectively market the facility. This extensive marketing campaign will focus on communication and relationship building with area

doctors, hospitals and residents' family members regarding improvements being made at the facility. Similar marketing plans have been successfully implemented at the applicant's members' affiliated facilities. The marketing plan will focus on:

- o Daily visits to all local acute care hospitals;
- o Presentations made to community senior centers;
- o Participation in eldercare events; and
- o Foster community participation in facility activities (i.e., multigenerational programs, multiple sclerosis community meetings, dementia support groups, etc.).

To evaluate the effectiveness of the marketing programs, the Admissions Director will utilize a tracking log that will be reviewed monthly by the Administrator, Marketing Consultant and Admissions Director. The Admissions Director will present a statistical review of referral sources, payor sources and any individual or organization responsible for referral, as well as assist in identifying the effectiveness of the overall marketing program. This team will continue to establish reasonable goals for each marketing initiative and will evaluate the success or failure of such efforts.

- Beechtree Unions - The new operator will work with the facility's unions to reach new agreements that should improve the overall compensation package for the facility's staff. The applicant members' philosophy recognizes that if staff are well taken care of, an improvement of patient care and customer service will likely be experienced by the residents. This improvement of care and customer service should also drive an increase in occupancy at the facility.
- Concierge Program - The facility will add a concierge program to personalize the services offered to each resident.
- Recreation - Several new exciting recreational programs are in development that should make the residents' experience at the facility more enjoyable. The facility will have regular entertainment and activities for the enjoyment of its residents.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the acquisition of the operating interest and realty is \$10,500,000. The amount allocated to the acquisition of the operating interests is \$60,000 and will be met with equity from proposed members. The purchase price for the real estate is \$10,440,000 and will be met with a \$2,610,000 cash down payment with the remaining \$7,830,000 to be financed with a bank loan at 5.50% interest for a 10-year term, and a payout period of 25 years. Sterling National has provided a letter of interest at the stated terms. Joel Leifer, Marton Ornstein, Joel Zupnick, Cheskel Berkowitz and Yitzchok (Isaac) Wiener have all submitted affidavits committing to personally fund the balloon payment of \$5,884,717 should terms acceptable to the Department be unavailable at the time of refinancing.

The working capital requirement is \$1,553,772 based on two months of the first year's expenses. Working capital will be satisfied with \$776,886 equity from proposed members and the remaining \$776,886 will be financed through a bank loan for three years (with an option for an additional 2 years), principal and interest repayment, at an estimated interest rate based on the Wall Street Journal (WSJ) prime rate + 1.00%. As of February 6, 2020, the WSJ prime rate is 4.75%. The exact terms of the loan must await the receipt and completion of due diligence materials, including relevant third-party reports. Sterling National Bank has provided a letter of interest for the working capital financing. BFA Attachment A, net worth of the proposed members of Beach Tree Operations, LLC, reveals sufficient resources for stated levels of equity. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$842,394.

The submitted budget indicates a net gain of \$7,601 and \$32,150 will be generated for the first and third years, respectively. BFA Attachment F is a budget sensitivity analysis based on current utilization of the facility as of October 31, 2019, which was 84.87%. The sensitivity analysis shows the budgeted revenues would decrease by \$1,281,238 resulting in a potential operating loss in Years One and Three. The applicant has provided an affidavit stating that the proposed members will cover any operating losses during years one through three. BFA Attachment G shows that the proposed members of both Beach Tree Operations, LLC and Beach Tree Realty, LLC have enough equity to fund both CON 191265 and CON 191301. The budget appears reasonable.

BFA Attachment C, the financial summary of Beach Tree Center for Rehabilitation and Nursing, indicates that the facility experienced negative working capital, net deficit position and experienced an annual net operating loss of \$1,337,000 as of December 31, 2018. The Center also experienced negative working capital, net deficit position and experienced an annual net operating loss of \$664,675 as of October 31, 2019. The loss is due to lower than expected occupancy. The applicant's proposed operating budget shows positive operating income in years one and three, which is driven by the forecasted increase in utilization, as compared with current year, that is expected to result from this project.

BFA Attachment E, a financial summary of the proposed members' affiliated RHCFs, shows the facilities have maintained a positive net operating income in 2019 and a positive working capital position in 2019, with the exception of Cedar Manor Nursing and Rehabilitation Center, Ross Center for Nursing and Rehabilitation, Cypress Garden Care Center and Seagate Rehabilitation and Nursing Center. Negative working capital at Cedar Manor, Ross Center, Cypress Garden and Seagate facilities are attributable to large liabilities which will not be due within the next 12 months. Reclassification of these liabilities as long term liabilities in the 2019 Certified Financial Statements will result in positive working capital at the facilities.

Conclusion

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

Attachments

- BFA Attachment A Beach Tree Operations, LLC - Proposed Members Net Worth Statement and Beach Tree Realty, LLC - Proposed Members' Net Worth Statement
- BFA Attachment B Organizational Chart
- BFA Attachment C Beach Tree Center for Rehabilitation and Nursing - Financial Summary
- BFA Attachment D Pro Forma Balance Sheet for Beach Tree Realty, LLC and Beach Tree Operations, LLC
- BFA Attachment E Affiliated Residential Health Care Facilities
- BFA Attachment F Beechtree Center for Rehabilitation and Nursing – Budget Sensitivity
- BFA Attachment G Beechtree and Highland Park – Equity Requirements for Operations & Realty



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) 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. Folts Home is the current licensed operator of the facility. 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, become the current receiver of the RHCF. Folts Adult Home, Inc., a related 80-bed adult care facility (ACF or Adult Home) located on the RHCF premises, is also in receivership and 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 into 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. Concurrently, Cedar Care Holdings LLC will assign the RHCF operations to JAG Operating LLC and the ACF operations to Claxton Manor LLC. 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 1 column: Current Operator. Content: Folts Home, Inc (Not-for-Profit)

Table with 2 columns: Current Receiver (FoltsCare LLC) and Members. Content: Aryeh Grinspan (65%), Gedaliah Wielgus (15%), Joshua Peckman (10%), Menachem Yifat (5%), Yosef Farkas (5%)

<u>Proposed Operator</u> JAG Operating LLC	
<u>Members</u>	
Aryeh Grinspan	15%
Gedaliah Wielgus	15%
Joshua Peckman	5%
Yosef Farkas	5%
Folts SNF Partners LLC	60%
Leah Sod	(22%)
Esther Mishkowitz	(15%)
Zahava Bobker	(15%)
Baila Mann	(15%)
Aharon Bleier	(18%)
Paul Rust	(15%)

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Based upon weekly census data, current occupancy, as of December 11, 2019 was 93.3% for the facility and 91.4% for Herkimer County.

Program Summary

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

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. The loan repayment terms are interest only at 5% plus one-month Libor or 6.74% as of December 13, 2019, with principal due at the end of the term. It is the intent of the property owners to refinance with 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 fix floor of 5.25% and a 25-year amortization schedule.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$12,951,931	\$13,007,331
Expenses	<u>11,659,850</u>	<u>11,696,869</u>
Net Income	\$1,292,081	\$1,310,462

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment Agreement for the skilled nursing facility operations transfer, acceptable to the Department of Health. [BFA]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
5. Submission of a photocopy of applicant's executed Operating Agreement, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's second-level member's executed Restated Articles of Organization, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's second-level member's executed Operating Agreement, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Lease Agreement between Cedarcare Holdings, LLC and the applicant, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Assignment between Cedarcare Holdings LLC and JAG Operating LLC, which is acceptable to the Department. [CSL]
10. Submission of an updated Schedule 14B reflecting the correct membership in Section VIII of Folts SNF Partners, LLC. [CSL]

Approval conditional upon:

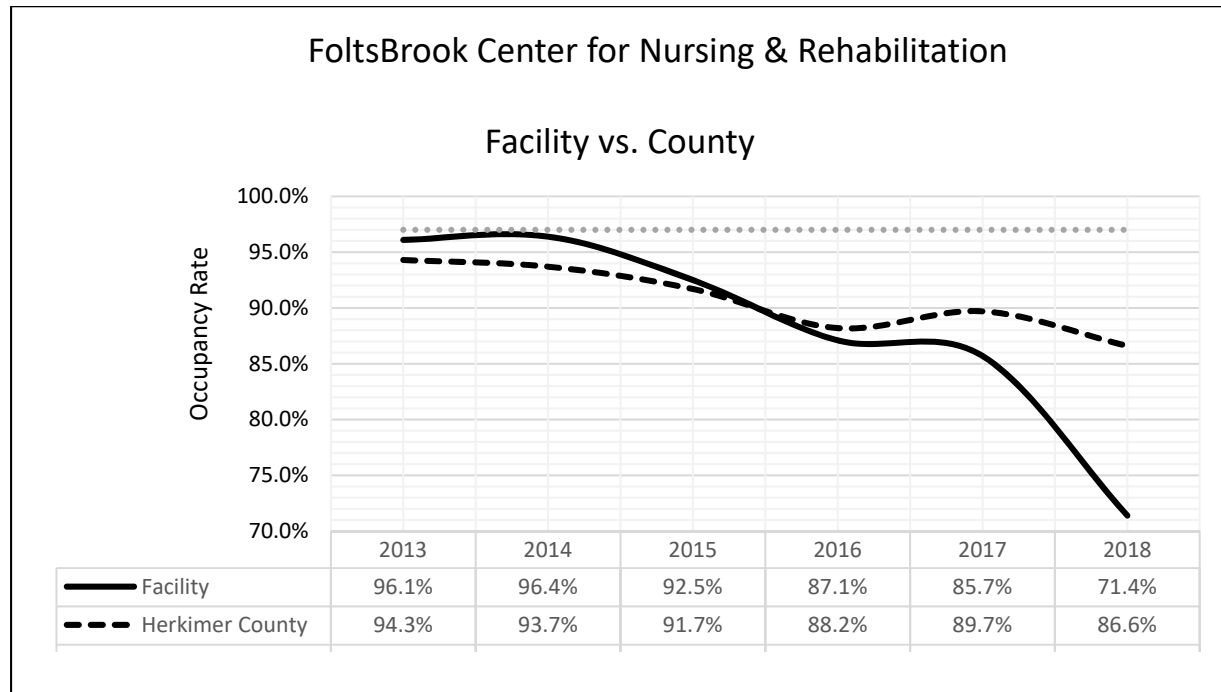
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

April 2, 2020

Need Analysis

Utilization



When the current receiver was appointed several steps were taken to improve conditions at the facility, resulting in an improved occupancy rate of 93.3% of December 11, 2019. The new operator has renovated two floors to improve living conditions for the residents, increased staffing levels, purchased new equipment for residents and other improvements to the physical plant.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Foltsbrook Center for Nursing & Rehabilitation's Medicaid admissions rate as compared to the threshold of 75% of the Herkimer County rate is below.

Percent of New RHCFA Admissions that are Medicaid	2017	2018
Herkimer County 75% Threshold	32.0%	32.5%
Foltsbrook Center for Nursing & Rehabilitation	50.9%	30.0%

Conclusion

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

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 health care 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	Voluntary	Limited Liability Company
Class of Operator	Not-for-profit	Proprietary
Operator	Folts Home, Inc.	JAG Operating LLC
Receiver	FoltsCare LLC	<u>Membership</u> Aryeh Grinspan* 15.0% Gedaliah Wielgus* 15.0% Joshua Peckman 5.0% Yosef Farkas 5.0% Folts SNF Partners LLC 60.0% Leah Sod (22.0%) Esther Mishkowitz (15.0%) Zahava Bobker (15.0%) Baila Mann (15.0%) Aharon Bleier (18.0%) Paul Rust (15.0%) *Managing Member

Character and Competence – Assessment

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

Receivership

Foltsbrook Center for Nursing and Rehabilitation (60%)	07/2018 to present
Foltsbrook Center for Senior Living (5%)	07/2018 to present

Pending

Diamond Hill Nursing and Rehabilitation was contingently approved on 10/10/2019. Mr. Grinspan will have 20% interest after this transaction is fully executed.

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 current employment as Chief Financial Officer with Elm Manor Nursing & Rehabilitation Center and Diamond Hill Nursing & Rehabilitation Center. Mr. Wielgus is a Certified Public

Accountant in good standing. Mr. Wielgus holds a bachelor's degree in accounting from Touro College. Mr. Wielgus discloses the following health facility interests:

Receivership

Foltsbrook Center for Nursing and Rehabilitation (15%)	07/2018 to present
Foltsbrook Center for Senior Living (5%)	07/2018 to present

Pending

Diamond Hill Nursing and Rehabilitation was contingently approved on 10/10/2019. Mr. Wielgus will have 20% interest after this transaction is fully executed.

Yosef Farkas discloses he is currently employed at Genesee Senior Living, which is an Adult Home. His duties are raising the census, switching payors from SSI to private payer, handling finances, and payroll. He holds a New York State Real Estate Broker license in good standing and a Public Insurance Adjuster license. Mr. Farkas has a bachelor's degree in business from Touro College. Mr. Farkas discloses the following health facility interests:

Receivership

Foltsbrook Center for Nursing and Rehabilitation (5%)	7/2018 to present
Foltsbrook Center for Senior Living (5%)	7/2018 to present

Joshua Peckman is the current owner and manager of JSP Management LLC. The primary purpose of his position is to consult with physician's practices and contracting with managed care organizations. Mr. Peckman has a bachelor's degree from SUNY Albany and discloses the following health facility interests:

Westchester Center for Rehabilitation & Nursing (18%)	05/2013 to 02/2019
Greene Meadows Nursing & Rehab (4%)	12/2015 to 02/2019

Aharon Bleier is the current Director of Purchasing for Highfield Gardens Care Center. His duties are overseeing and managing the skilled nursing facility's overall chain, logistics strategy, and operations. Mr. Bleier holds a Rabbinical degree from Tiferes Israel. Mr. Bleier discloses the following health facility interests:

Massapequa Center for Nursing (5%)	11/2017 to present
Sunset Nursing & Rehabilitation (9.9%)	02/2019 to present

Zahava Bobker lists employment since March 2016 as Administrative Assistant at Premier Healthcare Management LLC in Great Neck, NY. She also lists current employment as a Customer Service Assistant at Fairmont Insurance Brokers Ltd in Brooklyn, NY. Ms. Bobker does not disclose any licenses or degrees. Ms. Bobker discloses the following health facility interests:

Sterling Care at Frostburg Village (0.12%) [MD]	01/2018 to present
Sterling Care at South Mountain (0.12%) [MD]	01/2018 to present
Sterling Care Harbor Pointe (Asst. Living) (0.12%) [MD]	01/2018 to present

Baila Mann is self-employed with an Occupational Therapy Practice in Miami, FL. She also lists employment as an Occupational Therapist for Rohr Middle School in Miami, FL. Ms. Mann holds a Florida Occupational Therapist license in good standing. She has a Master of Science from Touro School of Health Sciences. Ms. Mann discloses the following health facility interest:

Sandalwood Rehabilitation and Nursing Center (8.5%) [FL]	04/2017 to present
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Esther Mishkowitz lists volunteering as an office manager and serving on the board of her neighborhood's Bikur Cholim. Ms. Mishkowitz discloses no licenses, education, or health care facility ownership.


Leah Sod has not had active employment in 10 years. She does not disclose any licenses. Ms. Sod holds a bachelor's degree in psychology from Queens College. Ms. Sod discloses the following health facility interest:

Massapequa Center for Nursing (5%)	11/2017 to present
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Paul Rust is the current Regional Director of Marketing for ReNew Health in Monrovia, California. Mr. Rust discloses no education, licenses, or health care facility ownership.

Quality Review

The Nursing Home Compare website now includes information to alert consumers about abuse or neglect in nursing homes. Facilities that have been recently cited for resident harm or potential harm for abuse or neglect are indicated with an icon of a red circle with a hand in it .

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Foltsbrook Center for Nursing and Rehabilitation	<i>Subject Facility</i>	*	*	***	**
	<i>07/2018 Date of Receivership</i>	*	*	****	***
Wedgewood Nursing and Rehab	Current	****	****	****	****
	12/2017	**	***	****	*
Massapequa Center Rehabilitation and Nursing Center 	Current	**	**	*****	*
	11/2017	***	**	*****	***
Elm Manor Nursing and Rehab	Current	*	*	*	*
	12/2017	**	***	**	*
The Brook at High Falls Nursing and Rehab	Current	*	**	**	*
	10/2019	*	*	**	***
Sunset Nursing and Rehabilitation Center	Current	*	**	****	*
	02/2019	**	***	***	*
Greene Meadows Nursing & Rehab	<i>02/2019 End of Ownership</i>	**	*	*****	***
	02/2015	*	*	**	***
Westchester Center for Rehab & Nursing	<i>02/2019 End of Ownership</i>	**	**	*****	*
	05/2013	****	**	*****	****
Florida					
Sandalwood Rehabilitation and Nursing Center	Current	*	*	****	N/A
	04/2017	*	**	*	**
Maryland					
Sterling Care at South Mountain	Current	****	****	****	**
	01/2018	**	*	**	****
Sterling Care at Frostburg Village	Current	*	*	***	**
	01/2018	*	*	*	*

Data date: 01/2019

 Resident harm or potential harm for abuse or neglect

Enforcement History

A review of the operations of the affiliated health care facilities for the relevant time periods revealed:

Massapequa Center Rehabilitation & Nursing

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-027 for surveillance findings on 03/01/19. Deficiencies were found under 415.4 Resident Behavior and Facility Practices.
- A federal CMP in the amount of \$7,036.25 assessed for the surveillance findings above.

Foltsbrook Center for Nursing and Rehabilitation

- 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 assessed for the surveillance findings above. CMS has granted the facility the ability to make payments on this CMP over an extended time period.

Sandalwood Rehabilitation and Nursing Center (FL)

- The facility was fined \$12,012 for two harm level, scope and severity "G" enforcements, tag 281 Ensure services provided by the nursing facility meet professional standards of quality, and tag 309 Provide necessary care and services to maintain or improve the highest well being of each resident, on 08/08/17.

Greene Meadows Nursing and Rehabilitation Center

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-17-036 for surveillance findings on 07/21/16. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

Project Review

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

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

Purchase Agreement (PA)

The applicant submitted an executed PA to acquire the personal property and real property associated with the RHC and Adult Home. The sale associated with the RHC will become effective upon PHHC 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 order of the Bankruptcy Court. Includes Leases, tangible property, contracts, accounts receivables, universal settlement, names Folts Home & Folts Adult Home-Claxton, licenses, records, computer applications, phone numbers, e-mail address, insurance proceeds, warranties, deposits, Medicare and Medicaid provider agreements.
Excluded Assets:	Accounts receivable from services provide by the Current Receivers, funds left at the end of the current receivership, personal items, tax refunds, 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 a \$900,000 in Accounts Payables and \$237,000 in accrued payroll offset by \$2,875,000 in accounts receivables as of August 31, 2019

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
Mortgage (2-year term ending 9/7/20 with two six-month extension options, interest only at 5% plus one-month Libor or 6.74% as of 12/13/19) *	14,704,200
Total	\$16,600,000

*Excludes closing costs.

BFA Attachment A2 is 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 February 5, 2019, the facility had no 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 of assignor's right, 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:	\$1,160,000 for 1 st Yr.; \$1,460,000 for 2 nd Yr.; and then 1% increase over the previous year's annual Base Rent
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. There is a relationship between JAG Operating LLC and Cedarcare Holdings LLC in that they are related entities through family membership.

Operating Budget

The applicant has provided the current year (2018 for 184 days annualized) and the first- and third-year operating budgets subsequent to the change in ownership, in 2020 dollars, summarized as follows:

	Current Year		First Year		Third Year	
Revenues RHCf	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid-FFS	\$197.79	\$6,289,722	\$181.30	\$8,095,131	\$181.30	\$8,095,131
Medicare-FFS	\$604.53	1,062,167	\$506.75	1,718,400	\$511.88	1,735,800
Commercial-FFS	\$394.14	690,131	\$305.95	1,383,500	\$309.09	1,397,700
Private	\$305.54	853,685	\$280.59	1,110,000	\$283.32	1,120,800
All Other		<u>324,679</u>		<u>1,200</u>		<u>1,200</u>
Sub-Total RHCf		\$9,220,384		\$12,308,231		\$12,350,631
Revenues Outpt	Per Visit	Total	Per Visit	Total	Per Visit	Total
Medicaid-ADHCP	\$113.04	\$352,465	\$45.99	\$143,400	\$47.11	\$146,900
Medicare-Therapy	\$42.77	<u>1,104,371</u>	\$42.77	<u>500,300</u>	\$42.77	<u>509,800</u>
Sub-Total Outpt		\$1,456,836		\$643,700		\$656,700
Total Revenues		\$10,677,220		\$12,951,931		\$13,007,331
Expenses						
Operating		\$8,987,519		\$9,987,100		\$9,989,500
Capital		<u>641,303</u>		<u>1,672,750</u>		<u>1,707,369</u>
Total Expenses		\$9,628,822		\$11,659,850		\$11,696,869
Net Income (Loss)		<u>\$1,048,398</u>		<u>\$1,292,081</u>		<u>\$1,310,462</u>
Patient Days		38,102		56,520		56,520
Utilization %		64.04%		95.0%		95.0%
ADCHP Visits		3,118		3,118		3,118
Outpatient Visits		25,820		11,697		11,920

The following is noted with respect to the submitted RHCf operating budget:

- The current year reflects 184 days of audited revenue and expense results (annualized).
- 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 1% per annum increase. Private and Other rates are projected based on similar facilities in the same geographical area plus 1% per annum increase.
- Effective January 1, 2020, Medicaid payments have been reduced by 1% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budgets.
- Expenses are based on historical data adjusted by inflation and utilization.

- Average utilization for 184 days ending 12/31/18 was 71.35%, average utilization for 2019 thru 10/31/19 was 81.87%, and utilization for the 60 days ending 10/31/19 was at 90.93%. As of December 4, 2019, occupancy was 93.3%.
- The applicant plans to improve occupancy by meeting with local community leaders, hospitals, and physicians to determine community specific needs. Once all the information is compiled, the operator will implement programs that are responsive to the community's need.
- The RHCf breakeven utilization is projected at 84.98% in the first year.
- Utilization by payor for the first and third year after the change in ownership is summarized below:

<u>RHCf</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
Medicaid	31,800	83.46%	44,651	79.0%	44,651	79.0%
Medicare	1,757	4.61%	3,391	6.0%	3,391	6.0%
Commercial	1,751	4.60%	4,522	8.0%	4,522	8.0%
Private Pay	<u>2,794</u>	<u>7.33%</u>	<u>3,956</u>	<u>7.0%</u>	<u>3,956</u>	<u>7.0%</u>
Total RHCf	38,102	100%	56,520	100%	56,520	100%

<u>Outpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
Medicaid	3,118	10.77%	3,118	21.05%	3,118	20.73%
Medicare	<u>25,820</u>	<u>89.23%</u>	<u>11,697</u>	<u>78.95%</u>	<u>11,920</u>	<u>79.27%</u>
Total Outpatient	28,938	100%	14,815	100%	15,038	100%

Capability and Feasibility

The \$16,600,000 purchase price was allocated as follows: \$13,900,000 for the personal and real property of Folts Home and \$2,700,000 for the personal 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 two-year mortgage with two, six-month extensions options from Capital Funding LLC. The remaining \$235,800 balance due was contributed by the members of Cedarcare Holdings LLC as additional equity. The loan repayment terms are interest only at 5% plus one-month Libor or 6.74% as of December 13, 2019, with principal due at the end of the term. It is the intent of the property owners to refinance with 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 fix floor of 5.25% and a 25-year amortization schedule.

The working capital requirement is estimated at \$205,348 based on two months of first year expenses of approximately \$1,943,308 plus \$1,137,000 in assumed liabilities (Accounts Payable \$900,000 & Accrued Payroll \$237,000) offset by \$2,875,000 in assumed accounts receivables as of August 31, 2019. The applicant will fund the working capital requirement with existing members' equity. BFA Attachment A1 is 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 \$1,292,081 and \$1,310,462, respectively. Revenues are expected to increase by \$2,357,980, primarily due to an increase in occupancy. Overall expenses are expected to increase by \$2,031,028 coming from a \$999,581 increase in operating expenses and a \$1,031,447 increase in capital expenses (primarily from rent). The increase in operating expenses comes mainly from wages and benefits, supplies and other direct expenses. Employee benefits decline slightly going from 22.71% to 22%. BFA Attachment B is JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation pro forma balance sheet, which shows the entity will start with \$1,923,000 in members' equity (which includes \$1,137,000 in assumed liability). The budget appears reasonable.

BFA Attachment C is the Financial Summary of Folts Home for 2016 and 2017 under the previous receiver (HomeLife at Folts, LLC) and 184 days in 2018 for which the current receiver (FoltsCare LLC) was in charge. The RHCf went from negative assets, negative working capital and an operating loss under the previous receiver to positive assets, positive working capital and an operating surplus of \$528,510 under the current receiver, FoltsCare LLC.

BFA Attachment D is the proposed members' ownership interest in the affiliated RHCs and their financial summaries. Three of four RHCs were acquired in late 2017 and one was acquired in early 2019. There is no financial summary for the RHC acquired in 2019.

- Massapequa Center, LLC d/b/a Massapequa Center Rehabilitation Nursing shows positive working capital, positive net assets, positive average operating income of \$1,922,321.
- LFG Operating, LLC d/b/a Wedgewood Nursing and Rehabilitation Center shows negative working capital, negative assets and average operating loss of \$211,817. The loss is related to one-time start-up charges for legal and consulting. Due to the facility's small bed count they are working through staffing and overtime issues.
- ILF Operating, LLC d/b/a Elm Manor Nursing and Rehabilitation Center shows negative working capital, negative assets and operating loss. The working capital position improved from 2018 to 2019. The applicant has been working on staffing to reduce overtime costs. In the past few months additional staff have been hired and they expect to see savings in the first half of 2020.

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


Attachments

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 of Two Members of Cedarcare Holdings Group, LLC
BFA Attachment B	Pro Forma Balance Sheet, EN Operations Acquisitions, LLC
BFA Attachment C	Financial Summary FoltsCare LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation and FoltsCare LLC (current receiver) certified financial statement for 184 days in 2018
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCs and Financial Summary
BFA Attachment E	Members of Landlord, Cedarcare Holdings LLC



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahneleuter
General Counsel 

Date: March 3, 2020

Subject: Massena Memorial Hospital Foundation, Inc.
Certificate of Amendment of Certificate of Incorporation

Massena Memorial Hospital Foundation, Inc. ("MMH Foundation") proposes to amend its Certificate of Incorporation to broaden the corporate purpose and the geographic scope of the foundation to allow it to remain financially viable in order to continue its charitable mission. The MMH Foundation also proposes a name change and change of address for purposes of service of process of receiving service of process.

The MMH Foundation was formed to provide financial support to the municipal Massena Memorial Hospital. Massena Memorial Hospital has reorganized and is now a member of the St. Lawrence Health System ("St. Lawrence"). St. Lawrence has its own charitable foundation, the Canton-Potsdam Memorial Foundation and it is anticipated that the MMH Foundation and the Canton-Potsdam Foundation will overlap in their respective charitable missions. This overlap will make it more difficult for the MMH Foundation to raise funds and remain operational, unless its corporate purposes are broadened to include a wider geographic scope of operations to allow it to pursue different health initiatives. The proposed amendments will allow MMH Foundation to maintain its current donors while expanding and attracting new donors for different health initiatives. The MMH Foundation will continue to support the hospital in Massena and its broader purpose will allow it to explore new currently underfunded initiatives, including initiatives on the St. Regis Mohawk Reservation and underserved areas that surround the town of Massena.

Part of the legal review of the application involved reviewing the Certificate of Amendment of the Certificate of Incorporation for the MMH Foundation to allow it to amend its Certificate of Incorporation to change its corporate purposes. The Certificate cannot be filed with the New York State Department of State without having PHHPC's consent to file attached thereto. Therefore, PHHPC is being asked to grant consent to the filing.

The document has been reviewed. There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation of the MMH Foundation and it is in legally acceptable form.

Attachments



Division of Corporations,
State Records and
Uniform Commercial Code

New York State
Department of State
DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.

(Name of Domestic Corporation)

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

FIRST: The name of the corporation is:

MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed by the Department of State on:
October 3, 1984

THIRD: The law the corporation was formed under is:
the Not-for-Profit Corporation Law

FOURTH: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of
Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph 1 of the certificate of incorporation regarding
the name of the corporation

is hereby [*check the appropriate box*] added amended to read in its entirety as follows:

"1. The name of the corporation is Massena Hospital Foundation, Inc."

Paragraph 3 of the certificate of incorporation regarding

the purposes for which the corporation is formed

is hereby [*check the appropriate box*] added amended to read in its entirety as follows:

"3. The charitable purposes for which the corporation is formed and the powers which may be exercised by the corporation are as follows:

- a) to provide funding for the future development, construction, rehabilitation, modernization, equipping and expansion of Massena Memorial Hospital in the Town of Massena, St. Lawrence County, New York or such other entity as shall operate the hospital;
- b) to provide funding for health care initiatives to address the health needs in St. Lawrence County and Franklin County;
- c) to solicit donations from the public and organizations to fund the corporation's charitable purposes; and
- d) to engage in any and all lawful activities incidental to any of the foregoing purposes of the corporation.

Paragraph 9 of the certificate of incorporation regarding the address to which the Secretary of State shall mail a copy of process against it is amended to read in its entirety as follows:

"9. The Secretary of State of the State of New York is hereby designated as agent of the corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of process against it is: One Hospital Drive, Massena, New York 13662."

(Remove this page if not needed)

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

One Hospital Drive, Massena, New York 13662.

SEVENTH: The certificate of amendment was authorized by: *(Check the appropriate box)*

- a vote of a majority of the members at a meeting.
- the unanimous written consent of the members entitled to vote thereon.
- a vote of a majority of the entire board of directors. The corporation has no members.

X Miriam S. Catapano
(Signature)

President
(Capacity of Signer)

Miriam Catapano
(Print or Type Signer's Name)

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.

(Name of Domestic Corporation)

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

Filer's Name Philip J. Murphy, Esq.

Address Hinman Straub P.C., 121 State Street

City, State and Zip Code Albany, New York 12207

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. The certificate must be submitted with a \$30 filing fee.
3. This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores.
4. The Department of State recommends that all documents be prepared under the guidance of an attorney.
5. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.

For Office Use Only

STATE OF NEW YORK

DEPARTMENT OF STATE

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

WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
June 11, 2019.



Whitney Clark

Whitney Clark
Deputy Secretary of State for Business and
Licensing Services

CERTIFICATE OF INCORPORATION

OF

MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned hereby certify:

1. The name of the corporation is MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.

2. The corporation is a corporation as defined in subparagraph (a)(5), of Section 102 of the Not-For-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person except to the extent permissible under the Not-For-Profit Corporation Law.

3. The purposes for which the corporation is formed are exclusively charitable, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, to wit:

a) to establish a fund for the future development, construction, rehabilitation, modernization, equipping and expansion of the municipal owned Massena Memorial Hospital in the Town of Massena, St. Lawrence County, New York;

b) to solicit donations from the public and other charitable organizations so as to accumulate sufficient funds to minimize the amount of taxpayer dollars needed to expand, modernize, equip or rehabilitate the Massena Memorial Hospital;

c) to receive, by gift, grant, devise or bequest, or to acquire by purchase or otherwise, properties, real, personal and mixed of whatsoever character and wheresoever situate, to promote and support the development and financial well being of the Massena Memorial Hospital and the physical well-being of its patients; and

d) anything to the contrary notwithstanding, the purpose or purposes for which this corporation is organized are limited to such as will qualify it as an exempt organization under Internal Revenue Code Section 501-subdivision (c)(3) including, for such purposes, the making of distributions to other organizations that so qualify.

5148202

This corporation shall not, as a substantial part of its activities, carry on propaganda or otherwise attempt to influence legislation; nor shall it participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

4. It is the intention of this corporation at all times to qualify and remain qualified as exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as the same may from time to time be amended. Accordingly:

a) the corporation is not to have authority to issue capital stock;

b) the corporation shall not be conducted or operated for profit, and no part of the net earnings of the corporation shall inure to the benefit of any member or private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes as permitted under Article 5 of the Not-For-Profit Corporation Law); nor shall any net earnings nor any of the property or assets of the corporation be used other than for the purposes of the corporation as aforesaid; and

c) in the event of liquidation, dissolution, termination or winding up of the corporation (whether voluntary, involuntary or by operation of law), and after the payment of just debts and liabilities, none of the property or assets of the corporation shall be made available in any way to any private individual, corporation or other organization except to corporations or other organizations described in Section 501(c)(3) of the Internal Revenue Code, as the same may from time to time be amended, in furtherance of the purposes for which the corporation is created, subject to the order of the Supreme Court of the State of New York, as provided by law.

d) Nothing herein contained shall authorize the corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital service or health related service, or to operate a drug maintenance program, a certified home health agency, or a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 33, 36 and 44 respectively, of the Public Health Law.

5. The corporation is a Type B corporation under Section 207 of the Not-For-Profit Corporation Law.

6. The office of the corporation shall be located in the Town of Massena, County of St. Lawrence, State of New York.

7. The territory in which the corporation's activities is principally to be conducted is in St. Lawrence and Franklin Counties, New York.

8. The names and addresses of the initial directors are:

<u>Name</u>	<u>Address</u>
James M. Murphy	5 Churchill Avenue, Massena, New York
Armen Markarian	90 Stoughton Avenue, Massena, New York
Floyd T. Richey	29 Highland Avenue, Massena, New York

9. The Secretary of State of the State of New York is hereby designated as agent of the corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of process against it is: Maple Street, Massena, New York, 13662.

IN WITNESS WHEREOF, the undersigned incorporators, each being at least nineteen years of age, have made, subscribed and acknowledged this certificate the 17th day of May, 1983.

James M. Murphy
Name: James M. Murphy
Address: 5 Churchill Avenue
Massena, New York

Armen Markarian
Name: Armen Markarian
Address: 90 Stoughton Avenue
Massena, New York

Floyd T. Richey
Name: Floyd T. Richey
Address: 29 Highland Avenue
Massena, New York

STATE OF NEW YORK)
COUNTY OF ST. LAWRENCE) SS.

On this 17th day of May, 1983, before me personally came James N. Murphy, Arsen Markarian and Floyd T. Richey to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation and they duly acknowledged to me that they severally and independently executed the same.

Eugene L. Miccilli

Eugene L. Miccilli
Notary Public in the State of New York
My Commission Expires March 30, 1985

I, CAROL S. WALSH, JR., a Justice of the Supreme Court of the State of New York, Fourth Judicial District, do hereby approve the foregoing Certificate of Incorporation of the Massena Memorial Hospital Foundation, Inc. and consent that the same be filed.

Dated: AUGUST 14, 1983
Supreme Court, St. Lawrence
County, Special Term,
Canton, New York

Carol S. Walsh, Jr.
Supreme Court Justice
Fourth Judicial District

The undersigned, Floyd T. Richey, being the duly elected Supervisor of the Town of Massena, County of St. Lawrence, State of New York does hereby approve the foregoing Certificate of Incorporation of the Massena Memorial Hospital Foundation, Inc., and consent that the same be filed as provided by law. This approval was authorized by unanimous consent of the Town Board of the Town of Massena on the 10th day of August, 1983.

Dated: AUGUST 13, 1983
Massena, New York

Floyd T. Richey
FLOYD T. RICHEY, Supervisor
Town of Massena

The undersigned, being the duly elected
of the Public Health Council of the State of New York does hereby
approve the foregoing certificate of Incorporation of the Massena
Memorial Hospital Foundation, Inc. and consent that the same be
filed as provided by law.

Dated: _____, 1983

PUBLIC HEALTH COUNCIL

By

We, C.D. Alexander, P. Michael Henderson, Jerome A. Lemieux,
Dwight Mayne, Martha McLean, James M. Murphy, Robert Peterson,
Thomas E. Piche, Bruce Smith, Ada Stolber, Ross Violi and Walter
Wilnhurst, being all of the members of the hospital board of the
Massena Memorial Hospital, Town of Massena, County of St.
Lawrence, State of New York do hereby approve the foregoing
certificate of Incorporation of the Massena Memorial Hospital
Foundation, Inc. and consent that the same be filed as provided
by law.

Dated: July 12, 1983

C. D. Alexander
C. D. Alexander

P. Michael Henderson
P. Michael Henderson

Jerome A. Lemieux
Jerome A. Lemieux

Dwight Mayne
Dwight Mayne

Martha McLean
Martha McLean

James M. Murphy
James M. Murphy

Robert Peterson
Robert Peterson

Thomas E. Piche
Thomas E. Piche

Bruce Smith
Bruce Smith

Ada Stolber
Ada Stolber

Ross Violi
Ross Violi

Walter Wilnhurst
Walter Wilnhurst



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

March 27, 1984

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 March, 1984, I hereby certify that the Certificate of Incorporation of Massena Memorial Hospital Foundation, Inc., dated May 17, 1983, 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
Secretary

Sent to: Eugene Nicandri, Esq.
LaVigne and Nicandri
57 East Orvis Street
Massena, New York 13662

cc: Mr. Arsen Harkarian
90 Stoughton Avenue
Massena, New York 13662

RECEIVED

MAR 28 1984

Eugene & Nicandri Att'ys
Massena, N. Y.

6

State of New York
SUPREME Court, County of ST. LAWRENCE

Index No. 76740
Year 1984

CERTIFICATE OF INCORPORATION OF
MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.
UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

17

9/27/83

3149202

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED UNIT 5150
AMT. OF CHECK \$50.00
FILING FEE \$
TAX COUNTY FEE \$
COPY \$
CERT \$
REFUND \$
SINCE 1/1/83

LaVIGNE & NICANDRI
ATTORNEYS FOR Massena Memorial Hospital

Office and Post Office Address
57 EAST ORVIS STREET
MASSENA, NEW YORK 13662-2004
(315) 764-0560

Post Lawrence

Due and timely service of a copy of the within is hereby admitted.
Dated, _____
Attorney(s) for _____

11/151

NOTICE OF ENTRY:
Sir: Please take notice that the within is a true copy of a
duly entered in the office of the clerk of the within named court on _____, 19____

NOTICE OF SETTLEMENT:
Sir: Please take notice that an order of which the within is a true copy will be presented for settlement to the
Hon. _____ one of the judges of the within named Court,
at _____
on the _____ day of _____, 19____ at _____ M.
Dated, _____ Yours, etc. _____


LaVIGNE & NICANDRI
ATTORNEYS FOR

To _____
Attorney(s) for _____
Office and Post Office Address
57 EAST ORVIS STREET
MASSENA, NEW YORK 13662 2004
(315) 764-0560

OFFICER CERTIFICATION

I, Margery Schneider, do hereby certify that I am the duly qualified and acting Secretary of Massena Memorial Hospital Foundation, Inc.; that below is a copy of a Resolution duly adopted at a meeting of the Board of Directors held on the 29th day of October, 2018, and that such Resolution is in full force and effect.

Dated: November 5, 2019


Margery Schneider, Secretary

RESOLVED, that the Board of Directors of Massena Memorial Hospital Foundation, Inc. (the "Foundation") hereby approve the proposed amendment to the certificate of incorporation of the Foundation in substantially the same form as set forth on the certificate of incorporation attached hereto and with such modifications as are deemed appropriate by the officers of the Foundation.



Division of Corporations,
State Records and
Uniform Commercial Code

New York State
Department of State
DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.

(Name of Domestic Corporation)

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

FIRST: The name of the corporation is:

MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed by the Department of State on:

October 3, 1984

THIRD: The law the corporation was formed under is:

the Not-for-Profit Corporation Law

FOURTH: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph 1 of the certificate of incorporation regarding
the name of the corporation

is hereby [check the appropriate box] added amended to read in its entirety as follows:

"1. The name of the corporation is Massena Hospital Foundation, Inc."

Paragraph 3 of the certificate of incorporation regarding

the purposes for which the corporation is formed

is hereby [check the appropriate box] added amended to read in its entirety as follows:

"3. The charitable purposes for which the corporation is formed and the powers which may be exercised by the corporation are as follows:

- a) to provide funding for the future development, construction, rehabilitation, modernization, equipping and expansion of Massena Memorial Hospital in the Town of Massena, St. Lawrence County, New York or such other entity as shall operate the hospital;
- b) to provide funding for health care initiatives to address the health needs in St. Lawrence County and Franklin County;
- c) to solicit donations from the public and organizations to fund the corporation's charitable purposes; and
- d) to engage in any and all lawful activities incidental to any of the foregoing purposes of the corporation.

Paragraph 9 of the certificate of incorporation regarding the address to which the Secretary of State shall mail a copy of process against it is amended to read in its entirety as follows:

"9. The Secretary of State of the State of New York is hereby designated as agent of the corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of process against it is: One Hospital Drive, Massena, New York 13662."

(Remove this page if not needed)

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

One Hospital Drive, Massena, New York 13662.

SEVENTH: The certificate of amendment was authorized by: *(Check the appropriate box)*

- a vote of a majority of the members at a meeting.
 the unanimous written consent of the members entitled to vote thereon.
 a vote of a majority of the entire board of directors. The corporation has no members.

x Miriam S. Catapano
(Signature)

President
(Capacity of Signer)

Miriam Catapano
(Print or Type Signer's Name)

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
MASSENA MEMORIAL HOSPITAL FOUNDATION, INC.

(Name of Domestic Corporation)

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

Filer's Name Philip J. Murphy, Esq.

Address Hinman Straub P.C., 121 State Street

City, State and Zip Code Albany, New York 12207

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. The certificate must be submitted with a \$30 filing fee.
3. This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores.
4. The Department of State recommends that all documents be prepared under the guidance of an attorney.
5. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.

For Office Use Only

**HINMAN
STRAUB** 
ATTORNEYS AT LAW

121 STATE STREET
ALBANY, NEW YORK 12207-1693
TEL: 518-436-0751
FAX: 518-436-4751

PHILIP J. MURPHY
DIRECT PHONE: 518-689-7218
E-MAIL: PMURPHY@HINMANSTRAUB.COM

February 14, 2020

John M. Walters
Senior Attorney
Bureau of Health Facility Planning and Development
Division of Legal Affairs
New York State Department of Health
Room 2480, Tower Building
Empire State Plaza
Albany, New York 12237

Via FedEx

Re: Massena Memorial Hospital Foundation, Inc.
Certificate of Amendment of Certificate of Incorporation

Dear Mr. Walters:

In response to your correspondence of January 24, 2020, please be advised that the proposed amendments to the Certificate of Incorporation of Massena Memorial Foundation, Inc. (the MMH Foundation") that broaden the corporate purpose and geographic scope of the Foundation are necessary in order for the Foundation to remain financially viable and able to continue its charitable mission.

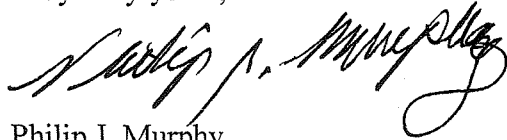
The Foundation was originally formed to provide financial support to the municipal Massena Memorial Hospital. As you are aware, Massena Memorial Hospital has reorganized and became a member hospital of the St. Lawrence Health System that has its own charitable foundation, the Canton-Potsdam Hospital Foundation. It is anticipated that the overlap of the charitable missions of the MMH Foundation and the Canton-Potsdam Hospital Foundation will make it more difficult for the MMH Foundation to raise funds unless the corporate purposes of the MMH Foundation are broadened to include different health initiatives and a larger geographic scope.

In order for the MMH Foundation to continue its charitable mission, it is necessary to not only maintain current donors but to also attract new donors by funding health initiatives that go beyond only supporting the hospital in the town of Massena. The MMH Foundation will continue to support the hospital in Massena and the broader charitable purposes will permit the MMH Foundation to fund new health care initiatives that are currently underfunded, including health initiatives on the St. Regis Mohawk Reservation and in the underserved areas that surround the town of Massena. Such activities will attract new donors beyond the current base of donors that support the MMH Foundation. The proposed amendments will also facilitate the

partnering of the MMH Foundation with other community-based groups and health providers to promote the health of a larger population of individuals than is currently served by the MMH Foundation.

Please contact me if you require any further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Philip J. Murphy". The signature is written in a cursive style with a large, looping "M" at the end.

Philip J. Murphy

PJM:sd



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: March 3, 2020

Subject: Certificate of Amendment to the Certificate of Incorporation of Phelps Community Corporation

The Phelps Community Corporation (PCC) was created to carry out activities exclusively for the benefit of the Phelps Memorial Hospital Association (PMHA) in North Tarrytown New York. PCC is categorized as a supporting organization under § 509(a)(3) of the Internal Revenue Code. Following the recent acquisition of the Phelps Memorial Center of PMHA by Northwell Health, PCC seeks to amend its Certificate of Incorporation to pivot the scope of the organization to its surrounding communities. The proposed amendments to the Certificate of Incorporation are comprised of an update to the description of the organization to specify which entities the organization may make grants to and clarify the geographic areas served by the organization. Specifically, PCC desires to carry on activities to serve the health care needs and/or promote the wellness of, residents of Westchester and Rockland counties and not serve exclusively for the benefit of PMHA.

PCC wishes to continue to solicit contributions for their communities, including organizations which fall under New York Public Health Law (PHL) articles 28, 36 and 44, as detailed in PHL § 2801-a(6). The proposed amendments to the Certificate of Incorporation necessitate the Public Health and Health Planning Council's (PHHPC's) consent to file with the New York State Department of State. Therefore, PHHPC's approval and consent is sought in the filing of the Certificate of Amendment of the Certificate of Incorporation of PCC.

The document has been reviewed. There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation of PCC, and it is in legally acceptable form.

Attachments

Attachment 1: The proposed Certificate of Amendment of the Certificate of Incorporation of Phelps Community Corporation and abridged history of prior Amendments

Attachment 2: Historical copies of Amendments to the original Certificate of Incorporations and previous correspondence between The New York State Department of Health and The Public Health Council.

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021
TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

CODY KEETCH

Associate

Email: ckeetch@garfunkelwild.com

Direct Dial: (516) 393-2224

FILE NO.: 15378.0002

December 3, 2019

Colleen Leonard, Executive Secretary
New York State Department of Health
Public Health and Health Planning Council
Empire State Plaza, Corning Tower
Albany, New York 12238

Re: Phelps Community Corporation

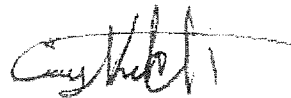
Dear Colleen:

Our firm is legal counsel to Phelps Community Corporation (the "Corporation"). Enclosed on behalf of the Corporation is an executed copy of the proposed Certificate of Amendment of the Certificate of Incorporation of the Corporation for your review and approval. In addition, enclosed is a complete copy of all documents on file with the NYS Department of State.

The Certificate of Incorporation of the Corporation is being amended and restated to revise the Corporation's corporate purposes to update the description of the organizations to which the Corporation may make grants as well as the geographic areas served by such organizations. These revisions reflect the change in relationship between the Corporation and Phelps Memorial Hospital Association.

Please review the proposed Certificate of Amendment of the Certificate of Incorporation of the Corporation and, if acceptable, enclose the appropriate consent and return the original Amended and Restated Certificate of Incorporation to us so that we may complete the filing process.

Best regards,



Cody Keetch

cc: Christina Van Vort, Esq.

NEW YORK

NEW JERSEY

CONNECTICUT

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

December 16, 2019

Cody Keetch
Garfunkel Wild, P.C.
Attorneys at Law
111 Great Neck Road
Great Neck, NY 11021

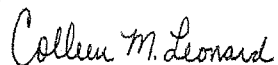
Re: Certificate of Amendment of the Certificate of Incorporation of Phelps Community Corporation

Dear Mr. Keetch:

I have received your letter dated December 3, 2019, requesting approval of the Certificate of Amendment of the Certificate of Incorporation of Phelps Community Corporation 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

/cl

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
PHELPS COMMUNITY CORPORATION

Under Section 803 of the Not-for-Profit Corporation Law.

Kenneth Taber, being the Chairman of Phelps Community Corporation, does hereby certify as follows:

1. The name of the corporation is Phelps Community Corporation (hereafter, the "Corporation").

2. The Corporation's Certificate of Incorporation was filed with the Secretary of State on October 10, 1984.

3. The law the corporation was formed under is the Not-for-Profit Corporation Law of the State of New York (the "NPCL").

4. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the NPCL.

5. The Certificate of Incorporation is hereby amended to effect the following changes, as authorized under subparagraph (b)(2) of Section 801 of the NPCL:

a) Section THIRD(a) of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is revised to update the description of the organizations to which the Corporation may make grants and the geographic areas served by such organizations to reflect the change in the relationship between the Corporation and Phelps Memorial Hospital Association. Section THIRD(a) shall be amended in its entirety to read as follows:

"a. Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the Not-for-Profit Corporation Law or any other law of the State of New

York, to render assistance and make grants to (i) Phelps Memorial Hospital Association (the "Hospital") (or any successor organization to the Hospital), and/or (ii) organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any successor statute (the "Code"), that serve the health care needs and/or promote wellness of residents of Westchester County, New York and/or Rockland County, New York, if such organizations are not a general hospital (other than the Hospital) formed under Article 28 of the New York State Public Health Law."

- b) Section FOURTH of the Certificate of Incorporation, which states that the Corporation is a Type B corporation, is revised to reflect the corporation's charitable status. Section FOURTH shall be amended in its entirety to read as follows:

"FOURTH: The Corporation shall be a charitable corporation under Section 201 of the Not-for-Profit Corporation Law."

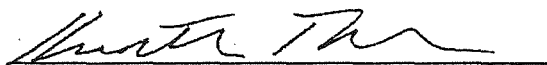
6. This Amendment of the Certificate of Incorporation of the Corporation was authorized by unanimous vote at a meeting of the board of directors of the Corporation.

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

Phelps Community Corporation
701 North Broadway
Sleepy Hollow, New York 10591
Attn: President

[Signature Page Follows]

IN WITNESS WHEREOF, this Certificate has been signed this 2nd day of December, 2019, by the undersigned who affirms that the statements made herein are true under the penalties of perjury.


Name: Kenneth Taber
Title: Chairman, Board of Directors

*State of New York }
Department of State }^{cc}*

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

Witness my hand and seal of the Department of State DEC 02 1998



A handwritten signature in cursive script, appearing to read "J. Clark", followed by a horizontal line.

Special Deputy Secretary of State

FILING RECEIPT

ENTITY NAME: PHELPS COMMUNITY CORPORATION

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PURPOSES PROCESS PROVISIONS RESTATED

COUNTY: WEST

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FILED: 12/01/1998 DURATION: ***** CASH#: 981201000708 FILM #: 981201000686

ADDRESS FOR PROCESS

THE CORPORATION
ATTN: PRESIDENT
SLEEPY HOLLOW, NY 10591

701. NORTH BROADWAY

REGISTERED AGENT



FILER	FEE	AMOUNT	PAYMENTS	TOTAL
		65.00		65.00
	FILING :	30.00	CASH :	0.00
	TAX :	0.00	CHECK :	0.00
	CERT :	0.00	BILLED:	65.00
	COPIES :	10.00		
	HANDLING:	25.00		
			REFUND:	0.00

GARFUNKEL WILD & TRAVIS, P.C.
111 GREAT NECK ROAD
GREAT NECK, NY 11021

CERTIFICATE OF INCORPORATION

OF

PHELPS COMMUNITY CORPORATION

Under Section 402 of the Not-for-Profit Corporation Law.

The undersigned, a natural person of the age of eighteen years or over, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law, does hereby certify as follows:

FIRST: The name of the corporation is PHELPS COMMUNITY CORPORATION, hereafter the "Corporation".

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law in that the purposes of the Corporation are not for pecuniary profit or financial gain and that no part of the assets, income or profits shall be distributable to or inure to the benefit of its members, trustees or officers except to the extent permitted under the Not-for-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed are:

- (a) to carry on activities, directly or indirectly, exclusively for the benefit of Phelps Memorial Hospital Association in North Tarrytown, New York, as a supporting organization under Section 509(a)(3) of the Internal Revenue Code of 1954, as amended (the "Code"), or the corresponding provision of any future United States Internal Revenue law;
- (b) to respond, in any manner that the Corporation's Board of Trustees may deem appropriate, to the needs and requirements of Phelps Memorial Hospital Association;

(c) to support, at the request of the Board of Trustees of Phelps Memorial Hospital Association and in any manner deemed appropriate by the Corporation's Board of Trustees, the hospital, educational, scientific and charitable purposes as now or hereafter carried on by Phelps Memorial Hospital Association;

(d) to do any and all things deemed necessary, suitable, convenient or appropriate in connection with or incidental to the accomplishment of the purposes of the Corporation to the extent not forbidden by statute or by this Certificate of Incorporation or the By-Laws of the Corporation.

Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals as specified in Section 501(c)(3) of the Code.

FOURTH: The Corporation shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

FIFTH: The initial office of the Corporation is to be located in the Town of Mt. Pleasant, Village of North Tarrytown, County of Westchester, State of New York. 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:

c/o James J. Daly, Esq.
DeForest & Duer
20 Exchange Place
New York, New York 10005

SIXTH: The territory in which the activities of the Corporation are to be conducted shall encompass the State of New York, but the operations of the Corporation shall not be limited to such area.

SEVENTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee 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 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. The Corporation shall not organize, operate, or conduct an institution of the kind referred to in Section 404(b)-(t) of the Not-for-Profit Corporation Law. In addition, nothing herein shall authorize the Corporation to operate a public television and/or radio station.

EIGHTH: Upon the dissolution of the Corporation, the Board of Trustees shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for benefit of, or to, Phelps Memorial Hospital Association, provided, however, that if at the time of such dissolution Phelps Memorial Hospital Association is no longer in existence or is not a tax-exempt organization under Sections 501(c)(3) and 170(b)(1)(A)(iii) of the Code, to such organization or organizations organized and

operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Trustees shall determine. Any of such assets not so disposed of shall be disposed of by the Supreme Court of the County in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

NINTH: As a means of accomplishing the foregoing purposes, the Corporation shall, subject to the limitations prescribed by statute, have the following powers:

1. To manage, accept, acquire, receive, take, and hold by bequest, devise, grant, gift, purchase, exchange, lease, transfer, judicial order or decree, or otherwise, for any of its objects and purposes, any property, both real and personal, of whatever kind, nature or description and wherever situated.

2. To manage, sell, exchange, convey, mortgage, lease, transfer or otherwise dispose of any such property, both real and personal, either as broker or for its own account as the objects and purposes of the Corporation may require, subject to such limitations as may be prescribed by law.

3. To borrow money, and from time to time, to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, bills of exchange, and other obligations of the Corporation for moneys borrowed or in payment for property acquired or for any of the other purposes of the Corporation, and to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any part of the property rights, or privileges of the Corporation wherever situated, whether now owned or hereafter to be acquired.

4. To execute agreements with governmental agencies, Federal, State and local, and to execute any and all other agreements and undertakings with such agencies as may be

necessary to enable the Corporation to secure the benefits of governmental-assisted financing.

5. In general to exercise such other powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the Corporation, subject to such limitations as are or may be prescribed by law.

TENTH: The number of trustees of the Corporation shall not be less than three nor more than thirty-five.

ELEVENTH: The names and places of residence of the initial trustees of the Corporation are as follows:

James J. Daly 141 Stratford Avenue
Garden City, New York 11530

Margaret Keller Holmes 28 West 89th Street
New York, New York 10024


John M. O'Connor 523 East 14th Street, Apt. 1F
New York, New York 10009

TWELFTH: No substantial part of the activities of the Corporation shall involve the dissemination of propaganda or other attempts to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of such Code. Furthermore, for those periods (if any) during which the Corporation is a private foundation within the meaning of Section 509 of such Code, the income of the Corporation shall be distributed at such time and in such manner as not to subject the Corporation to tax under Section 4942 of such Code, and the

corporation shall not engage in any act of self-dealing (as defined in Section 4941(d) of such Code), shall not retain any excess business holdings (as defined in Section 4943(c) of such code), shall not make any investments in such manner as to be subject to tax under Section 4944 of such Code, and shall not make any taxable expenditures (as defined in Section 4945(d) of such Code). All the foregoing references to sections of the Internal Revenue Code of 1954 are intended to apply to corresponding provisions of any future United States Internal Revenue Law.

THIRTEENTH: Prior to delivery to the Department of State for filing, all approvals and consents required under the Not-for-Profit Corporation Law will be endorsed upon or annexed to this Certificate.

IN WITNESS WHEREOF, this Certificate has been signed this 20th day of August, 1984, at New York, New York.


James J. Daly
Incorporator
20 Exchange Place
New York, New York 10005

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

On this 20th day of August, 1984 before me personally came JAMES J. DALY, to me known to be the individual described in and who executed the foregoing Certificate, and he duly acknowledged to me that he executed the same.

Helen Mercado
Notary Public

Helen Mercado
Notary Public, State of New York
No. 41-4643648 Gen. In Court Court
Commission Expires March 30, 1985

I, _____, a Justice of the
Supreme Court of the State of New York, Ninth Judicial District,
Second Department, do hereby approve the foregoing Certificate of
Incorporation of PHELPS COMMUNITY CORPORATION and consent that
the same be filed.

Dated:

Justice of the Supreme Court
of the State of New York

State of New York
Department of State

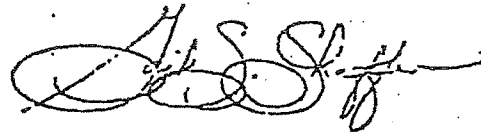
st.:

59254

I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that the same is a correct transcript of said original.

Witness my hand and seal of the Department of State on

OCT 10 1934



Secretary of State

282507-004:12/321

Will Beale

FILING RECEIPT

INCORPORATION (NOT FOR PROFIT)

CORPORATION NAME

PHELPS COMMUNITY CORPORATION

<u>DATE FILED</u> 10/10/84	<u>DURATION & COUNTY CODE</u> P WEST	<u>FILM NUMBER</u> B147748-10	<u>CASH NUMBER</u> 418643
<u>NUMBER AND KIND OF SHARES</u>		<u>LOCATION OF PRINCIPAL OFFICE</u> NORTH TARRYTOWN	

COMMENTS:

TYPE: R, RES. 08/24/84 B135528-1

<u>ADDRESSES FOR PROCESS</u> S/S JAMES J. DALY, ESQ. DEFOREST & DUER 20 EXCHANGE PLACE NEW YORK NY 10005	<u>REGISTERED AGENT</u>
--	-------------------------

IF ENDOR TAX PAID AS FOLLOWS:

<u>AMOUNT OF CHECK \$</u> 00056.50	<u>AMOUNT OF MONEY ORDER \$</u>	<u>AMOUNT OF CASH \$</u>
\$ 6.00 DOLLAR FEE TO COUNTY	\$ 050.00 FILING	\$ TAX
<u>FILE NAME AND ADDRESS</u> DE FOREST & DUER 20 EXCHANGE PLACE NEW YORK NY 10005	\$ 06.50 CERTIFIED COPY	\$ CERTIFICATE
	TOTAL PAYMENT \$ 000056.50	REFUND OF \$

TO FOLLOW

*State of New York }
Department of State }^{sr.}*

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

Witness my hand and seal of the Department of State DEC 02 1998



A handwritten signature in cursive script, appearing to read "J. Clark", followed by a horizontal line.

Special Deputy Secretary of State

August 14, 1998

Sharlene Gianfortune
Garfunkel, Wild & Travis, P.C.
111 Great Neck Road
P.O. Box 220602
Great Neck, New York 11021

Re: Proposed Amended Restated Certificate of Incorporation of Phelps Community Corporation

Dear Ms. Gianfortune:

The proposed certificate of incorporation of the above referenced corporation, as executed on the 17th day of July, 1998, does not require the formal approval of the Department or the Public Health Council because the purposes set forth therein do not authorize the corporation to engage in any activities or ventures which require approval from the Department or the Public Health Council other than those which have already been approved by a resolution of the Public Health Council.

The above referenced certificate does not alter the powers and purposes of the corporation as regards Article 28 of the Public Health Law from a previous certificate, executed on the 22nd day of April, 1998, and approved by the Public Health Council. This letter and the official consent certification from the Public Health Council dated July 1, 1998 should accompany the revised certificate when it is filed with the Secretary of State.

Furthermore, it is the understanding of this Department that by filing the proposed certificate of incorporation and this letter with the Secretary of State, the corporation acknowledges and agrees that it must obtain the formal approval of the Public Health Council

E-12

F 981201000 *lrb*
AMENDED AND RESTATED

E-12

CERTIFICATE OF INCORPORATION

OF

PHELPS COMMUNITY CORPORATION

Under Section 805 of the Not-for-Profit Corporation Law.

Keith F. Safian and Dr. Robert Bauer, being respectively President and Secretary of Phelps Community Corporation, do hereby certify as follows:

1. The name of the corporation is PHELPS COMMUNITY CORPORATION (hereafter, the "Corporation").
2. The Corporation's Certificate of Incorporation was filed with the Secretary of State pursuant to Section 402 of the Not-for-Profit Corporation Law on October 10, 1984.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of § 102 of the Not-For-Profit Corporation Law and is a Type B Corporation under § 201 of said law.
4. The Certificate of Incorporation is amended to effect the following changes authorized by the Not-for-Profit Corporation Law:
 - (a) all references to the Corporation's "Board of Trustees" shall be changed to "Board of Directors."
 - (b) the corporate purposes shall be amended to delete the restriction on the Corporation's ability to raise funds for Phelps Memorial Hospital Association by restating Section "THIRD" to read as follows:

THIRD: The purposes for which the Corporation is formed are exclusively charitable, educational and scientific in nature and more particularly:

(a) Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the Not-for-Profit Corporation Law or any other law of the State of New York, to render assistance and make grants to Phelps Memorial Hospital Association (the "Hospital") if Phelps Community Corporation is the sole member of the Hospital or, if it is not, to render assistance and make grants to the Hospital and/or organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any successor statute (the "Code"), that are not private foundations pursuant to Section 509(a) thereof, and that serve the health care needs of the residents of communities located in the following geographic areas: Ardsley-on-Hudson, Crompond, Buchanan, Croton-on-Hudson, Briarcliff Manor, Crugers, Dobbs Ferry, Elmsford, Irvington, Maryknoll, Millwood, Montrose, Ossining, Peekskill, Pleasantville, Tarrytown/Sleepy Hollow, Verplanck and Hastings on Hudson.

(b) To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources to further the corporate purposes.

(c) To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes.

Notwithstanding any other provision of this Certificate of Incorporation to the contrary, nothing contained herein shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital service or health related service or to operate a drug maintenance program, a certified home health agency, a hospice, a health maintenance organization, or to provide a comprehensive health services plan, as defined and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law.

Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment), as specified in Section 501(c)(3) of the Code."

- (c) Section "FIFTH" of the Certificate of Incorporation, said section relating to the address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is hereby amended to read as follows:

"FIFTH: The initial office of the Corporation is to be located in the Town of Mt. Pleasant, Village of Sleepy Hollow, County of Westchester, State of New York. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Phelps Community Corporation
701 North Broadway
Sleepy Hollow, New York 10591
Attn: President

3

- (d) Section "TENTH" shall be amended to read as follows to provide that the number of Directors shall be determined as set forth in the Corporation's Bylaws:

"TENTH: The number of directors of the Corporation shall be determined as set forth in the Corporation's Bylaws."

5. This restatement of the Certificate of Incorporation was authorized by the majority vote of the Members entitled to vote thereon at a meeting of the Members.

6. The text of the Certificate of the Corporation, as amended heretofore, is hereby restated as further amended to read as herein set forth in full:

"FIRST: The name of the corporation is PHELPS COMMUNITY CORPORATION, hereafter the "Corporation".

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law in that the purposes of the Corporation are not for pecuniary profit or financial gain and that no part of the assets, income or profits shall be distributable to or inure to the benefit of its members, directors or officers except to the extent permitted under the Not-for-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed are exclusively charitable, educational and scientific in nature and more particularly:

(a) Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the Not-for-Profit Corporation Law or any other law of the State of New York, to render assistance and make grants to Phelps Memorial Hospital Association (the "Hospital") if

Phelps Community Corporation is the sole member of the Hospital or, if it is not, to render assistance and make grants to the Hospital and/or organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any successor statute (the "Code"), that are not private foundations pursuant to Section 509(a) thereof, and that serve the health care needs of the residents of communities located in the following geographic areas: Ardsley-on-Hudson, Crompond, Buchanan, Croton-on-Hudson, Briarcliff Manor, Crugers, Dobbs Ferry, Elmsford, Irvington, Maryknoll, Millwood, Montrose, Ossining, Peekskill, Pleasantville, Tarrytown/Sleepy Hollow, Veplanck and Hastings on Hudson.

(b) To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources to further the corporate purposes.

(c) To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes.

Notwithstanding any other provision of this Certificate of Incorporation to the contrary, nothing contained herein shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital service or health related service or to operate a drug maintenance program, a certified home health agency, a hospice, a health maintenance organization, or to provide a comprehensive health services plan, as defined and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law.

Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment), as specified in Section 501(c)(3) of the Code.

FOURTH: The Corporation shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

FIFTH: The initial office of the Corporation is to be located in the Town of Mt. Pleasant, Village of Sleepy Hollow, County of Westchester, State of New York. 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 upon him is:

Phelps Community Corporation
701 North Broadway
Sleepy Hollow, New York 10591
Attention: President

SIXTH: The territory in which the activities of the Corporation are to be conducted shall encompass the State of New York, but the operations of the Corporation shall not be limited to such area.

SEVENTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, 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, 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. The Corporation shall not organize, operate, or conduct an institution of the kind referred to in Section 404(b) - (v) of the Not-for-Profit Corporation Law provided, however, that the Corporation may solicit contributions for the maintenance of a hospital or facility providing health related services. In addition, nothing herein shall authorize the Corporation to operate a public television and/or radio station.

EIGHTH: Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for benefit of, or to, such organization or organizations organized

and operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, upon approval of a Justice of the Supreme Court of the State of New York. Any of such assets not so disposed of shall be disposed of by the Supreme Court of the County in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

NINTH: As a means of accomplishing the foregoing purposes, the Corporation shall, subject to the limitations prescribed by statute, have the following powers:


1. To manage, accept, acquire, receive, take, and hold by bequest, devise, grant, gift, purchase, exchange, lease, transfer, judicial order or decree, or otherwise, for any of its objects and purposes, any property, both real and personal, of whatever kind, nature or description and wherever situated.
2. To manage, sell, exchange, convey, mortgage, lease, transfer or otherwise dispose of any such property, both real and personal, either as broker or for its own account as the objects and purposes of the Corporation may require, subject to such limitations as may be prescribed by law.
3. To borrow money, and from time to time, to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, bills of exchange, and other obligations of the Corporation for moneys borrowed or in payment for property acquired or for any of the other purposes of the Corporation, and to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any part of the property rights, or privileges of the Corporation wherever situated, whether now owned or hereafter to be acquired.
4. To execute agreements with governmental agencies, Federal, State and local, and to execute any and all other agreements and undertakings with such agencies as may be necessary to enable the Corporation to secure the benefits of governmental-assisted financing.
5. In general to exercise such other powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the Corporation, subject to such limitations as are or may be prescribed by law.

TENTH: The number of directors of the Corporation shall be determined as set forth in the Corporation's Bylaws.

ELEVENTH: No substantial part of the activities of the Corporation shall involve the dissemination of propaganda or other attempts to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code. Furthermore, for those periods (if any) during which the Corporation is a private foundation within the meaning of Section 509 of the Code, the income of the Corporation shall be distributed at such time and in such manner as not to subject the Corporation to tax under Section 4942 of the Code, and the Corporation shall not engage in any act of self-dealing (as defined in Section 4941(d) of the Code), shall not retain any excess business holdings (as defined in Section 4943(c) of the Code), shall not make any investments in such manner as to be subject to tax under Section 4944 of the Code, and shall not make any taxable expenditures (as defined in Section 4945(d) of the Code). All the foregoing references to sections of the Code are intended to apply to corresponding provisions of any future United States Internal Revenue Law.

IN WITNESS WHEREOF, this Certificate has been signed this 17 day of JULY, 1998, by the undersigned who affirm that the statements made herein are true under the penalties of perjury.



Name: Keith F. Safian
Title: President


Name: Dr. Robert Bauer
Title: Secretary

CONSENT TO AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

The undersigned, a Justice of the Supreme Court of the State of New York, Ninth Judicial District, wherein is located the principal office of Phelps Community Corporation, hereby approves the within Amended and Restated Certificate of Incorporation of Phelps Community Corporation and the filing thereof.

Dated: Westchester County, New York
November 27, 1998.


Justice of the Supreme Court
HON. JOHN P. DELASI
SUPREME COURT JUSTICE

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

Attorney General
New York State

By: _____

Dated: 10/14, 1998.

THE UNDERSIGNED HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVA-
HEREON AND WAIVES STATUTORY NOTICE
DENNIS C. VACCO
ATTORNEY GENERAL
STATE OF NEW YORK

BY: 
ASSISTANT ATTORNEY GENERAL



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Carbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Dennis P. Whalen
Executive Deputy Commissioner

August 14, 1998

Sharlene Gianfortune
Garfunkel, Wild & Travis, P.C.
111 Great Neck Road
P.O. Box 220602
Great Neck, New York 11021

Re: Proposed Amended Restated Certificate of Incorporation of Phelps Community Corporation

Dear Ms. Gianfortune:

The proposed certificate of incorporation of the above referenced corporation, as executed on the 17th day of July, 1998, does not require the formal approval of the Department or the Public Health Council because the purposes set forth therein do not authorize the corporation to engage in any activities or ventures which require approval from the Department or the Public Health Council other than those which have already been approved by a resolution of the Public Health Council.

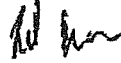
The above referenced certificate does not alter the powers and purposes of the corporation as regards Article 28 of the Public Health Law from a previous certificate, executed on the 22nd day of April, 1998, and approved by the Public Health Council. This letter and the official consent certification from the Public Health Council dated July 1, 1998 should accompany the revised certificate when it is filed with the Secretary of State.

Furthermore, it is the understanding of this Department that by filing the proposed certificate of incorporation and this letter with the Secretary of State, the corporation acknowledges and agrees that it must obtain the formal approval of the Public Health Council

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or this Department, whichever is necessary, before engaging in any activity for which official approval is required.

Sincerely,



Joel Isaacson
Senior Attorney

cc: K. Westervelt w/attachments



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

July 1, 1998

Lynn R. Feldman, Esq.
Garfunkel, Wild & Travis, P.C.
Attorneys at Law
111 Great Neck Road
P.O. Box 110602
Great Neck, New York 11021

Re: Amended and Restated Certificate of Incorporation of Phelps Community Corporation

Dear Ms. Feldman:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 26th day of June, 1998, I hereby certify that the Public Health Council consents to the filing of the Amended and Restated Certificate of Incorporation of Phelps Community Corporation, dated April 22, 1998.

Sincerely,

Karen S. Westervelt
Executive Secretary

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RESOLUTION

RESOLVED, that the Public Health Council, on this 26th day of June, 1998, approves the filing of the Amended and Restated Certificate of Incorporation of Phelps Community Corporation, dated April 22, 1998.