

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
SPECIAL ESTABLISHMENT AND PROJECT REVIEW COMMITTEE
MEETING
TRANSCRIPT
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ALBANY

Peter Robinson Good morning, everyone. My name is Peter Robinson. I'm the Chair of the Establishment and Project Review Committee. I have the privilege to call to order this special Establishment and Project Review Committee meeting. Welcoming committee members, members of the council, participants and observers. I'd like to first remind council members, staff and the audience that this meeting is subject to the open meeting law and is broadcast over the internet. The webcasts are accessed at the Department of Health website NYHealth.Gov. The on demand webcast will be available no later than 7 days after the meeting for a minimum of 30 days, and then a copy will be retained in the department for 4 months. Just a few suggestions, let's call them ground rules. Make the meeting successful. Because there is synchronized captioning, it is important that people do not talk over each other. Captioning cannot be done correctly with two people speaking at the same time. The first time you speak, please state your name and briefly identify yourself as a council member or DOH staff, and that will be of assistance to the broadcasting company who records the meeting. I want to note that the microphones are hot, meaning they pick up every sound. I therefore ask that you avoid rustling of papers next to the microphone and also be sensitive about personal conversations or sidebars as the microphones will pick up this chatter. With regard to a record of appearance form, just as a reminder for our audience, there is a form that needs to be filled out before you enter the meeting room, which records your attendance at meetings. It is required by the Joint Commission on Public Ethics in accordance with Executive Law Section 166. The forms are also posted on the Department of Health's website NYHealth.Gov under Certificate of Need. In the future, you can fill out the form prior to the council meetings. Thank you for your cooperation as we do what we have to do here as prescribed by law. We have today a group of applications relating to residential health care facilities and to sort of tee up this group of applications, I'm going to turn it over to Shelly Glock from the department to give an overview on that.

Shelly Glock Thank you.

Shelly Glock Good morning, everyone. This is Shelly Glock from the department. As you are aware, the department has not brought applications for establishment before the committee or the council since approximately February 2020 due to the COVID public health emergency and then due to changes that the Legislature enacted to Article 28 of the public health law and more specifically, the Section 2801A, which were directed at nursing home establishment applications, and that legislation was effective in October of 2021. We are pleased to be at a point where we can now begin bringing these CON's forward. In today's meeting, we are presenting the first of those applications based on implementation of those changes. I'd like to take just a few minutes to briefly highlight those legislative and regulatory changes before we discuss today's applications. As you recall, there were three new additions to the public health 2801A law, which, one, involve transparency when a new nursing home establishment application is received by the department. Two, It granted a review and recommendation roll to the State Long Term Care Ombudsman program and three, it incorporated new character and competency

criteria for individuals that are subject to the nursing home establishment application process. In terms of the acknowledgment of a establishment application, DOH is notifying the Long Term Care Ombudsman program as required by the legislation of the application being placed on the agenda, as well as when it's acknowledged. The legislation required the department to promulgate new regulations under Title 10, Section 600.1 and 600.2, which we adopted at the February 10th Codes Committee and full meeting. I'm just going to do a couple of quick highlights of those regulation amendments. The first part was 600.1 was amended to address the statutory notice requirements. A new subdivision was added that defined the appropriate method and timing for those notice requirements when a new nursing home establishment application is acknowledged by the department. And then again, when placed on the EPRC agenda. Notices go to the state Long Term Care Ombudsman and for an existing nursing home and the resident staff union if applicable in other designated representatives. The department is responsible for notifying the Ombudsman in the case of an existing nursing home. The current operator and the applicant are responsible for notifying the residents, the staff, the union and the other designated reps. The other change was to section 600.2. A new paragraph five was added to specify information that will be used to determine when a consistently high level of care has been delivered at a nursing home operated by an applicant in the prior 7 years. You will recall that there were four occurrences that would trigger a determination that a consistently high level of care had not been rendered at a facility and those were; closures as a result of the settlement or decertification, license revocation and involuntary termination of a related facility, agency or program from the Medicare or the Medicaid program, and then violations that either threatened to directly affect patients resident health that were recurrent or not promptly corrected. The regulations flushed out that criteria to look at the number and the percentages of nursing homes in the applicant's portfolio with a 2 star or less rating. Those findings can trigger an automatic disapproval. If you remember there were three components we were looking at nursing home portfolios where there was membership interest for 48 months or longer for nursing home portfolios that had five or more nursing homes in it and then the 40 percent threshold, meaning that greater than 40 percent of the portfolio that the operator has owned for 48 months or longer cannot have a 2 star or less determination at the time that it's under review or by the department are presented to the committee. If there were nursing home operators with less than five nursing homes in that portfolio, that determination, those would be made on a case by case basis, and that determination would be based on the other occurrences which we have routinely provided to the council and the committee in the past. I just want to point out that a notice was sent out to the applicants regarding these notification requirements. The department, as part of the CON review, did request and receive copies of that notification to the required parties. That process continues to be developed, and we are currently in the process of developing a dear administrator operator letter that will further communicate these requirements to applicants. The legislation required that the Office of the Long Term Care would undertake a review of the proposed establishment action and make a recommendation to the department. The Long Term Care Ombudsman Program review is based upon a review of their program activities, cases and complaints within the proposed operator's existing nursing homes. The Department has worked with the Long Term Care Ombudsman Program to ensure that the required recommendations for each of these establishment applications were received. That recommendation has been referenced in the exhibits and included as an attachment. Additionally, all of today's applications were reviewed under these new CNC thresholds.

Shelly Glock I will pause there to see if there are any questions from any of the members on what I've highlighted.

Peter Robinson Thank you very much.

Peter Robinson The purpose behind that overview is to give members of the committee and the council an opportunity to ask general questions about these applications and the process they went through so that we don't tie the broader questions to individual applications. And then obviously, we'll give you the opportunity to comment and question on the individual proposals as well.

Peter Robinson Let me just open it up and see if there is anybody on the committee or the council that has a question about this or wants to make an observation.

Peter Robinson Yes, please go ahead.

Tom Holt Tom Holt, member of the council. Just a question generally about how bed need is going to be reviewed going forward. Obviously, we've seen a significant change in the dynamic of bed need. I don't think any of us has any sense of where it may settle out yet. Just wondering what the department's been contemplating as we go forward with all the applications relative to bed need.

Shelly Glock I will point out just generally, Tom, that in four of these eight applications today, they did not require a public need review based on they were transferring stock from an existing member. These are all existing facilities that currently are occupied with residents and there's no changes to better services in these applications, so that was taken under consideration with the public need review of these.

Peter Robinson Thank you.

Peter Robinson Seeing that there aren't any other questions we're going to move forward with the applications themselves.

Peter Robinson Calling application 2 0 2 0 5 4 E, Forest View Center for Rehabilitation and Nursing in Queens County. This is transferring 12.5 percent ownership interest from one withdrawing stockholder to one new stockholder. The department is recommending approval with a condition.

Peter Robinson May I have a motion?

Peter Robinson Thank you.

Peter Robinson I have a motion and a second.

Shelly Glock Thank you.

Shelly Glock The Center for Rehab and Nursing in Queens County is requesting approval to transfer 12.5 percent ownership interest from one withdrawing shareholder to a new shareholder. Elizabeth Goldblum is proposing to transfer her 12.5 percent interest to her son, Saul Elliott, pursuant to a deed of gift dated in 2020. In your exhibit, you can see the current and proposed membership of the operating entity. There will be no changes in beds, programs or physical plant as a result of this application. Discloses interest in a long term care plan that there are no enforcements with that long term care plan during the period that Mr. Goldblum has been a member. The Long Term Care Ombudsman program is recommending approval of this application and based upon a review of character and

competence and financial feasibility, the department is recommending approval with a condition.

Peter Robinson Thank you.

Peter Robinson Questions from the committee?

Peter Robinson Dr. Berliner.

Dr. Berliner Is the new stockholder above the age of majority?

Peter Robinson Could you repeat the question? It didn't come across clearly.

Dr. Berliner Is the new stockholder above the age of majority?

Jeffrey Kraut Is he over 21, I guess we're asking.

Shelly Glock Yes, he is.

Peter Robinson Any other questions from the committee or the council?

Peter Robinson Ms. Monroe

Ann Monroe Thank you.

Ann Monroe It's really a format question, Shelly. I really like that in this you talk about, you show the stars and the history, et cetera. Where would I find whether there was comment from the long term care? Would that be in this initial summary? Where would you put that? Where is that in this proposal?

Shelly Glock The ombudsman recommendation is included as an attachment A. It's in the attachment and it's a one page letter that is addressed to the Public Health and Health Planning Council.

Ann Monroe If they have a concern, could you put it in the summary on the first page in the future?

Shelly Glock Absolutely.

Shelly Glock If there were concerns expressed that needed to be addressed or if it was disapproval, that would certainly be indicated.

Ann Monroe Thank you.

Shelly Glock You're welcome.

Ann Monroe There's a lot of attachments.

Shelly Glock There were no concerns with this application, just for the record.

Ann Monroe Thank you.

Peter Robinson Other questions from the committee or the council?

Peter Robinson I see Eric Mendel from the applicant here. Is this for questions only or do you want to speak?

Peter Robinson Just questions only.

Peter Robinson Thank you.

Peter Robinson Is there anyone else from the public that wishes to comment?

Peter Robinson Seeing none, I'll call the question.

Peter Robinson All in favor?

All Aye.

Peter Robinson Any opposed?

Peter Robinson Any abstentions?

Peter Robinson The motion carries.

Peter Robinson Thank you.

Peter Robinson Application 2 1 1 2 3 3 E, Glen Ireland Centre for Nursing and Rehabilitation in Westchester County. This is transferring 90.01 percent interest from one withdrawing shareholder to the remaining shareholder. The department is recommending approval with a condition.

Peter Robinson I need a motion.

Peter Robinson Dr. Torres.

Peter Robinson Dr. Berliner seconds.

Peter Robinson Ms. Glock.

Shelly Glock Thank you.

Shelly Glock Relax Services Inc doing business as Glenn Island Center for Nursing and Rehab as stated is requesting approval to transfer from one existing shareholder to transfer her entire 90.01 percent shareholder interest to the other existing shareholders. The current ownership is Lea Friedman 90.01 percent, Maury at 9.99 percent. Discloses ownership interest in the subject facility Glenn Island Center for Nursing and Rehab. This application would transfer Lea Friedman's entire 90.01 percent to Maury. The applicant only has the ownership interest in the subject facility. The subject facility does have a below average overall star rating. The Long Term Care Ombudsman Program is recommending approval on the application and based on a review of character and competence and financial feasibility, the department is recommending approval.

Peter Robinson Thank you.

Peter Robinson Questions from the committee or the council?

Peter Robinson Anybody from the public? Applicant is questions only.

Peter Robinson We'll call the question on this one.

Peter Robinson All in favor?

All Aye.

Peter Robinson Any opposed?

Peter Robinson Any abstentions?

Peter Robinson The motion carries.

Peter Robinson Thank you.

Peter Robinson Application 2 1 1 2 7 6 E, J and H Operations LLC doing business as Swan Lake Nursing and Rehabilitation in Suffolk County. This is to establish J and H Operations LLC, doing business in Swan Lake Nursing and Rehabilitation as the new operator of Suffolk Center for Rehabilitation and Nursing, an existing 120 bed residential health care facility at 25 Schoenfeld Boulevard in Patchogue. The department is recommending approval with a condition and contingencies.

Peter Robinson Motion, please.

Peter Robinson Dr. Torres.

Peter Robinson Second Dr. Kalkut.

Shelly Glock Thank you.

Shelly Glock J and H Operations LLC, doing business as Swan Lake Nursing and Rehab, is requesting approval to be established as the new operator of Suffolk Center for Rehab and Nursing, located in Suffolk County. The current operator is Suffolk Center LLC. There will be no changes to beds or services as a result of this project. The proposed sole member is Jacob Hagler. Mr. Hagler's currently employed by Care Center, and discloses the following health facility interest in Luxor Nursing and Rehab at Saville, which is a 3 star facility, and Luxor Nursing and Rehab at Mills Pond, which is a 4 star CMS rated facility. The long term care program is recommending approval on this application. Based upon a review of character and competence, public need and financial feasibility, the department is recommending approval with a condition and contingencies.

Peter Robinson Thank you.

Peter Robinson Questions, please, from the committee or the council?

Peter Robinson I see the applicants for questions only.

Peter Robinson Anybody else from the public wishing to speak?

Peter Robinson Seeing none, we'll call the question.

Peter Robinson All in favor?

All Aye.

Peter Robinson Thank you.

Peter Robinson Any opposed?

Peter Robinson Any abstentions?

Peter Robinson That motion carries.

Peter Robinson Thank you.

Peter Robinson Application 202203 E, Kings Way Arms Nursing Center Inc in Schenectady County. This is transferring 19.0826 percent ownership to an existing member. Department is recommending approval with a condition and contingencies.

Peter Robinson A motion, please.

Peter Robinson Dr. Torres.

Peter Robinson Second, Dr. Berliner.

Shelly Glock This application proposes to transfer a 19.082 percent ownership interest in Kingsway Armed Nursing Centre to an existing shareholder. There are no changes in the beds, program or physical environment proposed as part of this application. James Peter McPartland, Junior, passed away in 2020, and part of his last will and testament, he bequeathed all of his ownership to his wife, Christina McPartland, who is a current shareholder. Does disclose ownership in the subject facility, which is the CMs of 5 star rated facility, as well as Kingsway Manor assisted living in Mohawk Ambulance, as depicted in your exhibit. Based upon a review of character and competence financial feasibility, the department is recommending approval with a condition.

Peter Robinson Thank you.

Peter Robinson Questions from the committee or the council?

Peter Robinson Questions only.

Peter Robinson Thank you.

Peter Robinson Anybody from the public wishing to speak?

Shelly Glock Peter, can I just correct? The application is being recommended for approval with a condition and contingencies.

Peter Robinson Correct.

Peter Robinson Thank you for that. I think that was the motion.

Peter Robinson All in favor?

All Aye.

Peter Robinson Opposed?

Peter Robinson Abstentions?

Peter Robinson Motion carries.

Peter Robinson Thank you.

Peter Robinson Application 202084 E, Lawrence Nursing Care Center Inc in Queens County, transferring 90.1 percent ownership interest from four withdrawing stockholders to four remaining stockholders, each of whom will own 25 percent ownership interest. Just a correction here that the exhibit states approval, but should state contingent approval. The department is recommending approval with a condition and contingencies.

Peter Robinson I need a motion.

Peter Robinson Dr. Berliner.

Peter Robinson Second, Dr. Torres.

Peter Robinson Ms. Glock.

Shelly Glock Thank you.

Shelly Glock Lawrence Nursing care Center, as stated, is requesting approval to transfer 90.1 percent owner interest from four withdrawing shareholders to four existing shareholders, each of whom will own 25 percent ownership interest after approval of the project. You can see in the exhibit those changes under the current and proposed membership alliance. Disclosed identical health care interest in both Lawrence Nursing Care Center and Brook Haven Care Center, which is an assisted living facility. Discloses health care interest in Lawrence Nursing Care Center, the subject facility, Beacon Nursing, Brookhaven Care Center Assisted Living, as well as the Diagnostic and Treatment Center. Also disclosed its membership interest, as you can see in the exhibit in the subject facility, Brookhaven Assisted Care Center Assisted Living and a diagnostic and treatment center. The subject facility, is a 4 star facility. The Long Term Care Ombudsman Program is recommending approval and based upon a review of character and competence in financial feasibility, the department is recommending approval with a condition and contingencies.

Peter Robinson Questions, please.

Peter Robinson Ms. Monroe.

Ann Monroe I just have a question. Under enforcement history, the facility was assessed federal CMP's. What are those? Because it looks like they've had quite a few of them

Shelly Glock Are the federal CMP's for failure to report COVID data and those CMP's from the federal side were imposed per occurrence. According to the applicant, the person who had coordinated all of that federal interaction had left the facility employment and due to the hectic situation with COVID that they were managing. Their duties were not reassigned. Upon receiving the notice from CMS of the fines, they were able to start submitting their data. As an aside, the facility did not have any DOH fines for the same type of report as they were making those reports in a timely fashion. I just want to point out that two COVID surveys in both May and August of 2020 from the department received that the facility did not receive any COVID related deficiencies.

Ann Monroe What do the initial CMP stand for?

Shelly Glock It refers to civil monetary penalty.

Ann Monroe Thank you.

Ann Monroe You were not concerned with these penalties in terms of the reallocation of ownership.

Shelly Glock We felt that the applicant had an explanation for them. They were unrelated to resident care and they were corrected and that they meet the requirements under public health law for character incompetence.

Ann Monroe Thank you.

Peter Robinson Seeing no other questions from the committee or the council.

Peter Robinson The applicant, questions only.

Peter Robinson Thank you.

Peter Robinson Anybody from the public wishing to comment on the application?

Peter Robinson Hearing none, I'll call the question.

Peter Robinson All in favor?

All Aye.

Peter Robinson Any opposed?

Peter Robinson Any abstentions?

Peter Robinson The motion carries.

Peter Robinson Thank you.

Peter Robinson Application 202066E, New Vanderbilt Rehabilitation and Care Center Inc in Richmond County, transferring 30.2 percent interest from one withdrawing member to the three remaining members. Department is recommending approval with a condition.

Peter Robinson A motion Dr. Torres.

Peter Robinson A second from Dr. Berliner.

Peter Robinson Ms. Glock.

Shelly Glock Thank you.

Shelly Glock New Vanderbilt Rehab and Care Center request approval to transfer 30.2 percent ownership from one deceased shareholder to three existing. Owner of the 30.2 percent stock, passed away in 2020. Prior to her death, she had to execute an assignment in assumption agreement to sell 5.1 percent of those interest and another 5.1. The remaining 20 percent will be transferred to Henry via the estate. There are no changes to beds or services. The current proposed ownership is depicted in your exhibit. Both Anna and Baron disclose a health facility interest in the subject facility, New Vanderbilt Rehab and Care Center, which is a 3 star facility. The Long Term Care Ombudsman program is recommending approval. Based upon a review and character and competence and financial feasibility, the department is recommending approval with a condition.

Peter Robinson Thank you.

Peter Robinson Questions, please.

Peter Robinson Questions only.

Peter Robinson Thank you very much.

Peter Robinson Anybody from the public wishing to comment?

Peter Robinson Seeing none, I'll call the question.

Peter Robinson All in favor?

All Aye.

Peter Robinson Any opposed?

Peter Robinson Any abstentions?

Peter Robinson The motion carries.

Peter Robinson Thank you.

Peter Robinson Application 201024 E, Brentwood LLC doing business as Maria Regina Rehabilitation and Nursing. This is in Suffolk County. To establish as the operators of the 188 bed residential health care facility located at 1725 Brentwood Road. Brentwood, currently operated by Maria Regina Residents Inc. The department is recommending approval with a condition and contingencies.

Peter Robinson May I have a motion?

Peter Robinson Dr. Torres.

Peter Robinson A second?

Peter Robinson Dr. Berliner.

Peter Robinson Ms. Glock.

Shelly Glock Thank you.

Shelly Glock The application seeks to establish Brentwood LLC is the operator of the facility currently operated by Maria Regina Residents Inc. The proposed ownership you could see in your exhibit. The proposed members is Alexander at 80 percent, Boris at 10 percent and then EMM Health Care Group LLC is the remaining 10 percent. The sole member of that LLC is Eric Mendel. There will be no changes to beds or services as a result of the project. The health care ownership interest and board memberships for each of the proposed members are disclosed in the exhibit. The proposed owner's portfolio includes ownership or board affiliations in five New York state nursing homes. All of them have a CMS overall quality rating of average or above. The Long Term Care Ombudsman program is recommending approval. Based upon a review of character and competence, public need and financial feasibility, the department is recommending approval with a condition and contingencies.

Peter Robinson Thank you.

Peter Robinson For the committee or the council, questions, please. .

Peter Robinson Questions only.

Peter Robinson Thank you.

Peter Robinson Anybody from the public here wishing to speak?

Peter Robinson Seeing none, we'll call the question on this application.

Peter Robinson All in favor?

All Aye.

Peter Robinson Any opposed?

Peter Robinson Any abstentions?

Peter Robinson Seeing none, the motion carries.

Peter Robinson Thank you.

Peter Robinson Our final application for this morning 1 9 2 2 8 E, Betsy Ross Operations LLC doing business as Betsy Ross Rehabilitation and Nursing. This is in Oneida County. To establish Betsy Ross Operations LLC as the new operator of the 120 bed residential health care facility located at 1 LC Street in Rome. The department is recommending approval with a condition and contingencies.

Peter Robinson A motion, please.

Peter Robinson Dr. Torres.

Peter Robinson Thank you.

Peter Robinson Dr. Berliner seconds.

Peter Robinson Ms. Glock.

Shelly Glock Thank you.

Shelly Glock Betsy Ross Operations LLC doing business as Betsy Ross Rehab and Nursing. Is requesting approval to be established as the operator of Betsy Ross Rehab Center, which is an existing 120 bed nursing home located in Oneida County. Ownership of the operations before and after the change is shown in the exhibit. The proposed members of Betsy Ross Operations LLC are Herbert. I'm sorry if I was pronounced that. There are no changes to beds or services as a result of the application. You can see in the exhibit Mr. Herbert has a total of nine nursing homes in the membership portfolio. The other two, do not disclose any ownership interest. They have no health facility interest. When you take a look at the proposed members portfolio, you'll see that 10 of the nursing homes in the portfolio they have. He has owned for 48 months or longer. Those are nursing homes that there are seven in New York State, one in Pennsylvania and four in Florida. Of those 10 nursing homes, there is only 20 percent of them that have a star rating below average. You'll see that there is a facility in New York State, a facility in Pennsylvania and then a facility in Florida, so just three facilities in the portfolio that have a below average star rating. Therefore, based upon a review of character and competence, public need and financial feasibility, the department is recommending approval with a condition and contingencies.

Peter Robinson Thank you.

Peter Robinson Questions?

Peter Robinson Questions only.

Peter Robinson Thank you.

Peter Robinson Anybody from the public wishing to comment?

Peter Robinson Seeing none, I'll call the question.

Peter Robinson All in favor?

All Aye.

Peter Robinson Any opposed?

Peter Robinson Any abstentions?

Peter Robinson Motion carries.

Peter Robinson Thank you.

Peter Robinson As we conclude this special Establishment and Project Review Committee meeting, I want to acknowledge that the department's work in both getting to work on the backlog. It's been there for quite a while and I really appreciate what's being done, particularly with the new requirements and the new process. Thank you for all the good work and we're looking forward to seeing more coming forward in coming meetings.

Peter Robinson So with that, I'm going to adjourn the meeting of the Establishment and Project Review Committee and turn it over to the Chair of the council.

Jeffrey Kraut Thank you very much, Peter.

Jeffrey Kraut Thank you, Councilmembers.