

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

**AGENDA**

*June 20, 2024*

*Immediately following the Committee on Codes, Regulations, and Legislation Meeting and the  
Special Establishment and Project Review Committee Meeting  
(Codes scheduled to begin at 9:30 a.m.)*

*90 Church Street, 4<sup>th</sup> Floor, Conference Rooms 4 A/B, NYC, 10007*

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chair

**II. 2023 PHHPC ANNUAL REPORT**

For Informational Purposes

**III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

**A. Report of the Department of Health**

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

**B. Report of the Office of Primary Care and Health Systems Management**

Douglas G. Fish, M.D., Acting Deputy Commissioner, Office of Primary Care and Health Systems Management

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

Tina Kim, MSPH, Acting Deputy Commissioner, Office of Health Equity and Human Rights

**IV. PUBLIC HEALTH SERVICES**

**Report on the Activities of the Public Health Committee**

Jo Ivey Boufford, M.D., Chair of Public Health Committee

**V. HEALTH POLICY**

**Report on the Activities of the Health Planning Committee**

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

**VI. REGULATION**

**Report of the Committee on Codes, Regulations and Legislation**

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

**For Adoption**

23-21 Amendment of Part 300 of Title 10 NYCRR (Statewide Health Information Network for New York (SHIN-NY))

**For Information**

24-03 Amendment of Part 12 of Title 10 NYCRR and Section 505.2(e) of Title 18 NYCRR (Reproductive Health Care Standards)

24-02 Amendment of Section 2.6 of Title 10 NYCRR (Disease Outbreak Investigation and Response Clarifications)

23-24 Addition of Subpart 98-5 to Title 10 NYCRR (Program for All-Inclusive Care for the Elderly (PACE) Licensure)

**VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**A. Report of the Committee on Establishment and Project Review**

Peter Robinson, Chair of Establishment and Project Review Committee

**APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Acute Care Services – Construction**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	241112 C	BronxCare Hospital Center (Bronx County)	Contingent Approval
2.	241115 C	Montefiore Medical Center - Henry & Lucy Moses Div (Bronx County)	Contingent Approval

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Application**

**Acute Care Services – Construction**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231324 C	Northern Westchester Hospital (Westchester County) Mr. Kraut - Recusal	Contingent Approval

- |    |          |  |                     |
|----|----------|--|---------------------|
| 2. | 231339 C | Long Island Jewish Medical Center<br>(Queens County)<br>Mr. Kraut – Recusal<br>Dr. Lim- Interest | Contingent Approval |
|----|----------|--|---------------------|

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**NO APPLICATIONS**

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

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

**CON Applications**

**Acute Care Services - Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	231286 B	Carthage Area Hospital Inc. (St. Lawrence County)	Contingent Approval

### **Ambulatory Surgery Centers - Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	232204 E	St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's Surgery and Endoscopy Center (Albany County)	Contingent Approval
2.	232243 E	Advanced Surgery Center (Rockland County)	Contingent Approval
3.	241100 B	Holistic Birth Center New York (Kings County)	Contingent Approval
4.	241153 E	Digestive Disease Center of Central New York, LLC (Onondaga County)	Contingent Approval

### **Diagnostic and Treatment Centers – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	241024 B	WellMed NY LLC d/b/a WellMed (Kings County)	Contingent Approval
2.	241028 B	1771 Utica, LLC d/b/a/ Care Plus Health Center (Kings County)	Contingent Approval

### **Home Care Service Agency Licensures**

#### **New Licensed Home Care Services Agencies**

1.	222202 E	Priority Cares Home Services, LLC (Please see exhibit for list of Geographical Service Area)	Contingent Approval
2.	231058 E	Excel Homecare Inc. (Please see exhibit for list of Geographical Service Area)	Approval

#### **Changes of Ownership**

1.	222208 E	Caregiver Pro Homecare, Inc (Please see exhibit for list of Geographical Service Area)	Contingent Approval
2.	222209 E	Galaxy Home Care Inc. (Please see exhibit for list of Geographical Service Area)	Approval
3.	222110 E	Pentec Infusions Of New York, LLC (Please see exhibit for list of Geographical Service Area)	Approval
4.	231012 E	Long Life Home Care Inc	Approval

		(Please see exhibit for list of Geographical Service Area)	
5.	231034 E	Golden Age Home Care Inc. (Please see exhibit for list of Geographical Service Area)	Approval
6.	231097 E	Key to Life Homecare, Inc. (Please see exhibit for list of Geographical Service Area)	Approval

**Certificates**

**Certificate of Dissolution**

**Applicant**

Bridge Regional Health System, Inc.

Moses-Ludington Nursing Home Company, Inc.

**E.P.R.C. Recommendation**

Approval

Approval

**Restated Certificate of Incorporation**

**Applicant**

First Chinese Presbyterian Community Affairs Home Attendant Corp.

**E.P.R.C. Recommendation**

Approval

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

**Applicant**

Seniors First Foundation, Inc.

**E.P.R.C. Recommendation**

Approval

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Application**

**Ambulatory Surgery Centers – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	231328 B	HSS Long Island ASC, LLC t/b/k/a HSS Long Island Ambulatory Surgery Center, LLC (Nassau County) Dr. Lim – Interest Dr. Kalkut -Interest	Contingent Approval

**CATEGORY 3:** Applications Recommended for Approval with the Following:

- ❖ No PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or

- ❖ Contrary Recommendations by HSA

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**Residential Health Care Facilities – Establish/Construct**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 232025 E	Palmer Avenue SNF Operations LLC d/b/a Sarah Neuman Center for Rehabilitation and Nursing (Westchester County) <b>**To be distributed under separate cover**</b>	Application was presented at the June 20, 2024 Special Establishment and Project Review Committee Meeting

**VIII. NEXT MEETINGS**

August 22, 2024 (Albany)  
September 12, 2024 (Albany)

**IX. ADJOURNMENT**

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

**Public Health and Health Planning Council  
2023 Annual Report**

**I. General Council Activities in 2023**

The Public Health and Health Planning Council (PHHPC) held a total of 20 meetings.

<b><u>Meeting Dates</u></b>	<b><u>Meeting</u></b>	<b><u>PHHPC Meeting Location</u></b>
1/26/2023	Committee on Codes, Regulations and Legislation Special Full Council Establishment and Project Review Committee	Albany NYC
2/8/2023	Joint Meeting of the Public Health Committee and Health Planning Committee Health Planning Committee	Albany NYC
2/9/2023	Special Establishment and Project Review Committee Committee on Codes, Regulations and Legislation Annual Full Council	Albany NYC
3/30/2023	Committee Day: Establishment and Project Review Committee Committee on Codes, Regulations and Legislation	NYC
4/3/2023	Joint Meeting of the Public Health Committee and the Ad Hoc to Lead the Prevention Agenda	Albany Buffalo NYC
4/18/2023	Full Council	NYC
5/4/2023	Health Planning Committee Workgroup	Zoom
6/8/2023	Health Planning Committee Workgroup	Zoom
6/15/2023	Committee Day: Establishment and Project Review Committee Committee on Codes, Regulations and Legislation	NYC

6/26/2023	Joint Meeting of the Public Health Committee and Health Planning Committee	Albany Rochester
6/29/2023	Full Council	NYC
7/13/2023	Ad Hoc to Lead the State Health Improvement Plan	Albany NYC Zoom
8/23/2023	Health Planning Committee Workgroup	Albany Zoom
8/24/2023	Committee Day: Public Health Committee Establishment and Project Review Committee	Albany
9/7/2023	Committee on Codes, Regulations and Legislation Full Council	Albany
9/21/2023	Ad Hoc to Lead the State Health Improvement Plan	Albany NYC Zoom
11/2/2023	Committee Day: Establishment and Project Review Committee	NYC
11/15/2023	Public Health Committee	NYC
11/16/2023	Committee on Codes, Regulations and Legislation Special Establishment and Project Review Committee Full Council	NYC
12/5/2023	Public Health Committee	NYC



## Membership

Jeffrey Kraut, Chair	Mario Ortiz, R.N., Ph.D., F.A.A.N.
Jo Ivey Boufford, M.D., Vice Chair	Peter Robinson
John Bennett, Jr., M.D., F.A.C.C., F.A.C.P.	John Ruge, M.D., MPP
Howard Berliner, SC.D.	Denise Soffel, Ph.D.
Thomas Holt	Nilda Soto, MS Ed
Gary Kalkut, M.D.	Theodore Strange, M.D.
Scott La Rue	Hugh Thomas, Esq.
Harvey Lawrence	Anderson Torres, Ph.D., LCSW-R
Roxanne Lewin, M.D.	Kevin Watkins, M.D., M.P.H.
Sabina Lim, M.D.	Patsy Yang, Dr.P.H.
Ann Monroe	Dr. James McDonald, Commissioner of Health, Ex-Officio

The PHHPC consists of the following Standing Committees and Ad Hoc Committee

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

## **II. Major Accomplishments of Committees in 2023**

### **A. Committee on Codes, Regulations and Legislation**

#### **Members**

Thomas Holt, Chair	John Ruge, M.D., MPP
Patsy Yang, Dr.P.H., Vice Chair	Denise Soffel, Ph.D.
Jeffrey Kraut	Kevin Watkins, M.D., M.P.H.
Roxanne Lewin, M.D.	

## Work Conducted in 2023

### **EMERGENCY ADOPTION**

**In 2023, the Codes Committee recommended, and the Council subsequently approved, the following regulatory proposals for emergency adoption. These regulatory changes addressed critical public health concerns.**

**20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements):** In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is

critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile. Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak. **This regulation was on the Codes agenda on January 26, 2023, March 30, 2023, and June 15, 2023.**

**20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease):** These regulations update, clarify and strengthen the Department's authority, as well as that of local health departments, to take specific actions to control the spread of disease, including actions related to investigation and response to a disease outbreak, as well as the issuance of isolation and quarantine orders. **This regulation was on the Codes agenda on March 30, 2023, June 15, 2023 and September 7, 2023.**

**23-07 Amendment of Section 405.45 of Title 10 NYCRR (Trauma Centers – Resources for Optimal Care of the Injured Patient):** The criteria and standards in the Resources for the Optimal Care of the Injured Patient are used to ensure that trauma center applications are compliant with the most current standards and the ACS uses these standards to issue the verification of trauma center status. The current edition of the Resources for Optimal Care of the Sick and Injured Patient (2014) is out-of-date and the proposed rule change would update the edition of Resources for Optimal Care of the Sick and Injured Patient to the most current version dated 2022. This change is necessary because the American College of Surgeons (ACS) will be using the updated edition to perform hospital trauma center verifications and re-verifications starting on September 1, 2023. **This regulation was on the Codes agenda on September 7, 2023 and November 16, 2023.**

## ADOPTION

**In 2023, the Codes Committee recommended, and the Council subsequently approved, the following regulatory proposals. These regulatory changes were designed to promote health and safety, expand access to services, and align state policies with transformative changes in health care. The following provisions of Title 10 of the New York Codes Rules and Regulations (NYCRR) were amended:**

**22-21 Amendment of Section 23.1 of Title 10 NYCRR (Mpox to the List of Sexually Transmitted Diseases (STDs)):** This amendment adds mpox to Group B of the existing list of STDs. County LHDs already have an obligation to control the spread of mpox under PHL Article 6 communicable disease guidance. Consistent with such guidance, this regulation requires STD clinics operated by LHDs or providing services through contractual arrangements to provide diagnosis and treatment, including prevention services, to persons diagnosed or at risk for mpox,

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

**21-17 Amendment of Parts 400 and 405 of Title 10 (Clinical Staffing in General Hospitals):**

Rulemaking was necessitated by the addition of Section 2805-t to the Public Health Law under Chapter 155 of the Laws of 2021. These regulations are needed to incorporate the statutory clinical staffing committee requirements and factors for consideration regarding staffing of the intensive and critical care units into the general hospital operational standards regulations.

**23-05 Addition of Section 400.26 to Title 10 NYCRR & Amendment of Sections 600.1 & 710.2 of Title 10 NYCRR (Inclusion of a Health Equity Impact Assessment as Part of the Certificate of Need (CON) Process):**

These regulations are necessary to implement PHL § 2802-b. Specifically, the regulations set forth criteria that: (1) qualifies an independent entity to conduct an objective health equity impact assessment; (2) defines a conflict of interest such that it would prevent an otherwise independent entity from performing an objective health equity impact assessment; (3) specifies requirements for meaningful engagement with stakeholders as part of the health equity impact assessment; (4) defines the type of applications for which a health equity impact assessment is and is not required; and (5) clarifies standards for completion of the health equity impact assessment, including the use of a template issued by the Department and inclusion of a narrative statement from the facility in response to the findings of the assessment. In addition, the regulations require facilities to integrate health equity into their decision making and planning processes to promote the maximum utilization of resources and ensure that medically underserved groups are not negatively impacted by proposed establishment, ownership, construction, renovation, and/or change in service applications.

**20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements):**

In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile. Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak.

**23-09 Repeal of Section 2.61 from Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR and Sections 487.9, 488.9 & 490.9 of Title 18 NYCRR (Removal of the COVID-19 Vaccine Requirement for Personnel in Covered Entities):** In response to changes in federal recommendations for COVID-19 vaccination and the overall pandemic landscape, the proposed regulation would repeal the requirement that covered entities ensure that personnel are fully vaccinated against COVID-19, as well as repeal the requirement that covered entities document evidence thereof in appropriate records. In lieu of a regulation, covered entities may now individually consider how to implement their own internal policies regarding COVID-19 vaccination, provided they remain in compliance with other applicable state and federal laws and regulations.

**20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease):** These regulations update, clarify and strengthen the Department's authority, as well as that of local health departments, to take specific actions to control the spread of disease, including actions related to investigation and response to a disease outbreak, as well as the issuance of isolation and quarantine orders.

### **REGULATORY PROPOSALS FOR INFORMATION**

**In 2023, the following proposals to amend provisions of Title 10 NYCRR were presented to the Codes Committee and the Council for information after they were filed in the State Register for a Notice of Proposed Rulemaking.**

**20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease):** These regulations update, clarify and strengthen the Department's authority, as well as that of local health departments, to take specific actions to control the spread of disease, including actions related to investigation and response to a disease outbreak, as well as the issuance of isolation and quarantine orders.

**23-05 Addition of Section 400.26 to Title 10 NYCRR & Amendment of Sections 600.1 & 710.2 of Title 10 NYCRR (Inclusion of a Health Equity Impact Assessment as Part of the Certificate of Need (CON) Process):** These regulations are necessary to implement PHL § 2802-b. Specifically, the regulations set forth criteria that: (1) qualifies an independent entity to conduct an objective health equity impact assessment; (2) defines a conflict of interest such that it would prevent an otherwise independent entity from performing an objective health equity impact assessment; (3) specifies requirements for meaningful engagement with stakeholders as part of the health equity impact assessment; (4) defines the type of applications for which a health equity impact assessment is and is not required; and (5) clarifies standards for completion of the health equity impact assessment, including the use of a template issued by the Department and inclusion of a narrative statement from the facility in response to the findings of the assessment. In addition, the regulations require facilities to integrate health equity into their decision making and planning processes to promote the maximum utilization of resources and ensure that medically underserved groups are not negatively impacted by proposed establishment, ownership, construction, renovation, and/or change in service applications.

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**23-07 Amendment of Section 405.45 of Title 10 NYCRR (Trauma Centers – Resources for Optimal Care of the Injured Patient):** The criteria and standards in the Resources for the Optimal Care of the Injured Patient are used to ensure that trauma center applications are compliant with the most current standards and the ACS uses these standards to issue the verification of trauma center status. The current edition of the Resources for Optimal Care of the Sick and Injured Patient (2014) is out-of-date and the proposed rule change would update the edition of Resources for Optimal Care of the Sick and Injured Patient to the most current version dated 2022. This change is necessary because the American College of Surgeons (ACS) will be using the updated edition to perform hospital trauma center verifications and re-verifications starting on September 1, 2023.

**23-18 Amendment of Section 2.1 of Title 10 NYCRR (Communicable Diseases Reporting and Control - Adding Respiratory Syncytial Virus (RSV) and Varicella):** The proposed amendments to Section 2.1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), would add required reporting of laboratory-confirmed cases of respiratory syncytial virus (RSV), pediatric deaths from RSV, and cases of varicella (not zoster/shingles) to the list of reportable communicable disease conditions. The proposed amendment would provide critical surveillance data that could be used to help anticipate hospital bed capacity challenges and could also help quantify the impact of newly approved RSV vaccines.

**20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements):** In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile. Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is

available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak.

**23-20 Addition of Section 405.46 to Title 10 NYCRR (Hospital Cybersecurity Requirements):** These regulations will ensure all hospitals develop, implement, and maintain minimum cybersecurity standards, including cybersecurity staffing, network monitoring and testing, policy and program development, employee training and remediation, incident response, appropriate reporting protocols and records retention.

**21-21 Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care):** The proposed rule provides clear guidance to the operators of ADHC facilities, reflecting Centers for Medicare & Medicaid Services' (CMS) intent to ensure that individuals receiving services and supports through Medicaid's home and community-based services 34 (HCBS) programs have full access to the benefits of community living and are able to receive services in the most integrated setting.

**B. Committee on Establishment and Project Review**

**Members**

Peter Robinson, Chair  
Gary Kalkut, M.D., Vice Chair  
John Bennett, Jr., M.D.  
Howard Berliner  
Thomas Holt  
Jeffrey Kraut  
Scott LaRue

Harvey Lawrence  
Sabina Lim, M.D.  
Ann Monroe  
Hugh Thomas, Esq.  
Anderson Torres, Ph.D.  
Patsy Yang, Dr.P.H.



**TABLE I**

**Median Processing Times**

*(Acknowledgement to Director Action in Days)*

	Admin	Full	LHCSA	Ltd
<b>2019</b>	87	148	186	28
<b>2020</b>	84	216	165	52
<b>2021</b>	98	152	0	62
<b>2022</b>	83	193	0	63
<b>2023</b>	94	157	208	59

**TABLE I (A)**

**Historical Project Volume and Values**

Year	Number of Actions						Value of Actions <i>(in thousands)</i>					Average Value <i>(in thousands)</i>			
	Admin	Full	LHCSA	Ltd	Notice	Total	Admin	Full	Ltd	Notice	Total	Admin	Full	Ltd	Notice
2019	97	101	18	305	399	920	492,504	657,505	528,747	1,080,223	2,758,980	5,077	6,510	1,734	2,707
2020	86	56	2	189	295	628	346,232	1,561,724	359,591	586,177	2,853,724	4,026	27,888	1,903	1,987
2021	101	42	0	217	359	719	433,342	562,628	404,613	414,448	1,815,031	4,291	13,396	1,865	1,154
2022	108	82	0	165	329	684	607,503	1,888,166	411,429	872,998	3,780,095	5,625	23,026	2,494	2,653
2023	100	66	17	236	318	737	531,155	571,151	509,198	662,134	2,273,638	5,312	8,654	2,158	2,082

**TABLE I (B)**  
**Projects Reviewed and Related Capital Expenditures by Region**  
**Last Two Calendar Years**

<b>2023</b>								
Region	Number of Projects				Value of Projects ( <i>in thousands</i> )			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	11	4	10	25	16,857	25,000	14,415	56,272
Finger Lakes	4	1	27	32	10,581	0	24,844	35,424
Central	8	6	19	33	16,469	51,465	17,872	85,806
NY Penn	0	3	4	7	0	13,643	3,705	17,348
Northeast	12	4	23	39	11,134	3,753	19,980	34,868
Hudson Valley	12	8	32	52	68,782	52,453	89,537	210,772
New York City	44	29	90	163	349,118	338,917	285,171	973,205
Long Island	9	11	31	51	58,214	85,921	53,675	197,809
<b>Total</b>	<b>100</b>	<b>66</b>	<b>236</b>	<b>402</b>	<b>\$531,155</b>	<b>\$571,151</b>	<b>\$509,198</b>	<b>\$1,611,505</b>

<b>2022</b>								
Region	Number of Projects				Value of Projects ( <i>in thousands</i> )			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	11	11	8	30	10,980	14,232	25,343	50,555
Finger Lakes	13	3	18	34	79,112	591,512	33,538	704,163
Central	7	13	10	30	18,199	91,309	13,065	122,574
NY Penn	2	0	3	5	2,797	0	1,227	4,024
Northeast	5	1	17	23	18,255	0	16,770	35,025
Hudson Valley	13	11	16	40	91,202	286,381	19,542	397,126
New York City	37	34	74	145	324,685	320,555	266,823	912,063
Long Island	20	9	19	48	62,272	584,177	35,120	681,569
<b>Total</b>	<b>108</b>	<b>82</b>	<b>165</b>	<b>355</b>	<b>\$607,503</b>	<b>\$1,888,166</b>	<b>\$411,429</b>	<b>\$2,907,098</b>



**TABLE II (A)**  
**Disapprovals**  
**2023**

202086	Coit House, LLC Establish and construct a Midwifery Birth Center to be located at 414 Virginia Street, Buffalo	\$0
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**TABLE II (B)**  
**Withdrawals**  
**2023**

Withdrawals by Applicant	34
Withdrawals by Department	<u>4</u>
<b>Total</b>	<b>38</b>

**TABLE III**  
**Bed Changes by Facility Type by Region**  
**2023**

<b>HOSPITALS</b>	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
<b>Bed Category</b>									
Bone Marrow Transplant	0	0	0	0	0	0	0	3	3
Chemical Dependency, Detox	0	0	0	0	0	0	0	0	0
Chemical Dependency, Rehab	0	0	0	0	0	0	0	0	0
Coma Recovery	0	0	0	0	0	0	0	0	0
Coronary Care	0	0	0	0	0	0	-4	0	-4
Intensive Care	0	0	0	0	-6	0	43	0	37
Maternity Beds	0	-12	0	0	0	0	0	0	-12
Medical/Surgical	0	0	0	0	-39	-1	-6	-3	-49
Neonatal Intensive Care	0	0	0	0	0	0	0	0	0
Neonatal Continuing Care	0	0	0	0	0	0	0	0	0
Neonatal Intermediate Care	0	0	0	0	0	0	0	0	0
Pediatric	0	0	0	0	0	0	-14	0	-14
Pediatric ICU	0	0	0	0	0	0	0	0	0
Physical Medicine & Rehabilitation	0	0	0	0	0	0	6	0	6
Psychiatric	0	0	0	0	0	20	12	0	32
Transitional Care	0	0	0	0	0	0	-6	0	-6
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0
<b>New York State Total</b>	<b>0</b>	<b>-12</b>	<b>0</b>	<b>0</b>	<b>-45</b>	<b>19</b>	<b>31</b>	<b>0</b>	<b>-7</b>

<b>RESIDENTIAL HEALTH CARE FACILITIES</b>	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
<b>Bed Category</b>									
AIDS	0	0	0	0	0	0	-40	0	-40
RHCF Beds	-62	0	0	0	0	0	-104	0	-166
Behavioral Intervention	0	0	0	0	0	0	0	0	0
Pediatric	-3	0	0	0	0	0	0	0	-3
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0
Ventilator, Adult	10	0	0	0	0	0	0	0	10
Ventilator, Pediatric	3	0	0	0	0	0	0	0	3
<b>New York State Total</b>	<b>-52</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-144</b>	<b>0</b>	<b>-196</b>

**TABLE IV**  
**Projects Receiving Commissioner Action by Facility Type**  
**2023**

**TABLE IV (A)**

**Administrative Review Projects**

Region	CHHA	DTC	MBC	HOSPICE	HOSPITAL	RHCF	TOTAL
Western	0	6	0	0	4	1	11
Finger Lakes	0	0	0	0	4	0	4
Central	0	2	0	0	6	0	8
NY-Penn	0	0	0	0	0	0	0
Northeastern	0	6	0	0	6	0	12
Hudson Valley	0	6	0	0	4	2	12
New York City	0	27	0	0	16	1	44
Long Island	0	0	0	0	9	0	9
<b>New York State Total</b>	<b>0</b>	<b>47</b>	<b>0</b>	<b>0</b>	<b>49</b>	<b>4</b>	<b>100</b>

**TABLE IV (B)**

**Full Review Projects**

Region	CHHA	DTC	MBC	HOSPICE	HOSPITAL	LHCSA	RHCF	TOTAL
Western	0	4	0	0	0	1	0	5
Finger Lakes	0	0	0	0	0	3	1	4
Central	1	2	0	0	1	2	2	8
NY-Penn	0	2	0	0	1	0	0	3
Northeastern	0	2	0	0	0	4	2	8
Hudson Valley	1	5	0	0	1	0	1	8
New York City	1	22	0	0	5	5	1	34
Long Island	0	7	0	0	4	2	0	13
<b>New York State Total</b>	<b>3</b>	<b>44</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>17</b>	<b>7</b>	<b>83</b>

**TABLE IV (C)**

**Limited Review Projects**

Region	DTC	MBC	HOSPITAL	RHCF	TOTAL
Western	4	0	5	1	10
Finger Lakes	5	0	20	2	27
Central	7	0	12	0	19
NY-Penn	0	0	3	1	4
Northeastern	2	0	20	1	23
Hudson Valley	4	0	23	5	32
New York City	18	0	63	9	90
Nassau-Suffolk	4	0	24	3	31
<b>New York State Total</b>	<b>44</b>	<b>0</b>	<b>170</b>	<b>22</b>	<b>236</b>

**TABLE V**  
**Public Health and Health Planning Council**  
**Establishment Projects Reviewed by Facility Type**  
**2023**

Facility Type	Current Year				2022	2021	2020
	Approval	Disapproval	Deferral	Total	Total	Total	Total
Hospitals	1	0	0	1	0	2	2
Residential Health Care Facilities	7	0	1	8	22	0	1
Diagnostic and Treatment Centers	38	0	0	38	43	21	24
Midwifery Birth Centers	0	1	0	1	0	0	24
Certified Home Health Agencies	2	0	0	2	2	5	2
Hospices	0	0	0	0	0	0	0
Licensed Home Care Services Agency	17	0	0	17	0	0	2
<b>New York State Total</b>	<b>65</b>	<b>1</b>	<b>1</b>	<b>67</b>	<b>67</b>	<b>28</b>	<b>55</b>

## Project Review 2023

The following projects were reviewed by the Establishment and Project Review Committee and forwarded to the Public Health and Health Planning Council in 2023.

### HOSPITALS

#### Hospital Establishments

231288 E Our Lady of Lourdes Memorial Hospital  
Establish the Guthrie Clinic as the active parent and co-operator of Our Lady of Lourdes Memorial Hospital

#### Hospital Mergers

222087 C Mount Sinai Beth Israel  
Certify New York Eye and Ear Infirmary of Mount Sinai as a new division of Mount Sinai Beth Israel with no change to beds or services

#### Hospital Modernizations or Expansions

231240 C Lenox Hill Hospital \$ 87,417,007  
Certify a new oncology extension clinic at 1345 Third Avenue, New York

231108 C NYU Langone Hospital-Long Island \$ 46,849,859  
Certify a new extension clinic at 101 Mineola Boulevard, Mineola

231325 C NYU Langone Hospitals \$ 30,167,000  
Certify a new hospital extension clinic at 210 Crossways Park Drive, Woodbury, and perform renovations to create an Ambulatory Radiation Oncology facility

231254 C Rome Memorial Hospital, Inc \$ 36,349,278  
Perform renovations to update and expand surgical space - SW 3

#### Cardiac Surgery

231103 C NYU Langone Hospital-Brooklyn \$ 840,099  
Certify adult cardiac surgery services

#### Certification of Cardiac Catheterization Laboratories

182144 C Nassau University Medical Center \$ 4,079,015  
Certify Cardiac Catheterization - Electrophysiology (EP) and Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services with requisite renovations

#### Hospital Ambulatory Surgery Centers

231049 C Montefiore Nyack \$ 19,293,934  
Certify a new dual single-specialty ambulatory surgery extension clinic for Orthopedics and Pain Management at 3 Centerock Road, West Nyack

#### Hospital Beds

231273 C Flushing Hospital Medical Center \$ 13,919,628  
Convert 2 Medical/Surgical beds, 4 Pediatric beds, and 6 Transitional Care beds to 12 Psychiatric beds, and perform renovations to create an involuntary inpatient psychiatric unit and relocate and update a medical/surgical unit - SW 3

221082 C Jamaica Hospital Medical Center \$ 155,270,341  
Construct an addition to accommodate an Emergency Department expansion and two new critical care units, convert 4 Coronary Care beds to Intensive Care (ICU) beds, and certify 36 additional ICU beds

## Project Review 2023

231001 C NYU Langone Hospital-Long Island \$ 3,429,234  
Convert 3 Medical/Surgical beds to Bone Marrow Transplant beds and perform renovations to construct a Bone Marrow Transplant inpatient sub-unit.

### RESIDENTIAL HEALTH CARE FACILITIES

#### RHCF Establishments

231011 E Fairport SNF LLC d/b/a Fairport Skilled Nursing & Rehab  
Establish Fairport SNF LLC as the new operator of a 142-bed residential health care facility currently operated by Fairport Baptist Home at 4646 Nine Mile Point Road, Fairport

192204 E Highland Nursing Home, Inc. d/b/a North Country Nursing & Rehabilitation Center  
Transfer 100% ownership interest to nine new shareholders

192237 E JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation  
Establish JAG Operating LLC as the new operator of Foltsbrook Center for Nursing and Rehabilitation, a 163-bed skilled nursing facility located at 104 North Washington Street, Herkimer

212117 E Livingston Two Operations LLC d/b/a Livingston Hills Nursing and Rehabilitation Center  
Establish Livingston Two Operations LLC as the new operator of Livingston Hills Nursing and Rehabilitation Center, a 120-bed residential health care facility at 2781 Route 9, Livingston

231044 E Sunset SNF Operations LLC d/b/a Sunset Lake Center for Rehabilitation and Nursing  
Establish Sunset SNF Operations LLC as the new operator of Sullivan County Adult Care Center, a 146-bed Residential Health Care Facility currently operated by The County of Sullivan at 256 Sunset Lake Road, Liberty

222123 E The Knolls at Goshen, Inc.  
Establish The Knolls at Goshen, Inc. as the new operator of the 40-bed residential health care facility, which is part of a Continuing Care Retirement Community at 214 Harriman Drive, Goshen, currently operated by Glen Arden, Inc.

231259 E Tupper Lake Center LLC d/b/a Tupper Lake Center for Nursing and Rehabilitation  
Establish Tupper Lake Center LLC as the new operator of Mercy Living Center, a 60-bed Residential Health Care Facility currently operated by Adirondack Medical Center at 114 Wawbeek Avenue, Tupper Lake

222124 E Woodcrest Rehabilitation & Residential Health Care Center  
Transfer 20% ownership interest from one withdrawing member to one new member

## Project Review 2023

### DIAGNOSTIC AND TREATMENT CENTERS

#### Diagnostic and Treatment Center Establishments

222258	B	Association to Benefit Children d/b/a ABC Little Clinic Establish and construct a new Diagnostic and Treatment Center at 1841 Park Avenue, New York	\$	258,786
231208	B	Bronx Community Health Network, Inc. Establish and construct a new Diagnostic and Treatment Center at 3763 White Plains Road, Bronx, and certify a mobile van extension clinic to be parked at 3676 White Plains Road, Bronx (amends and supercedes CON 212219)	\$	8,012,137
231233	E	Buffalo Surgery Center, LLC Transfer 24% ownership interest from existing members to six new members		
221185	E	City Wide Health Facility Inc. Transfer 100% of shareholder interest from four withdrawing shareholders to two new shareholders		
231111	B	C & T Health Clinic Establish and construct a new Diagnostic and Treatment Center at 74-15 37th Avenue, Jackson Heights	\$	1,730,938
221123	E	Community Inclusion, Inc. d/b/a TRC Community Health Center of Western New York Establish Community Inclusion, Inc. as the operator of an extension clinic currently operated by NYSARC, Inc. at 890 East 2nd Street, Jamestown, and certify a new extension clinic at 186 Lakeshore Drive West, Dunkirk - Safety Net		
231095	B	Fairview Care Center, LLC d/b/a Marton Care Health Center Establish and construct a new Diagnostic and Treatment Center at 12 Fairview Place, Brooklyn	\$	2,123,939
231137	E	Gastroenterology Care, Inc Transfer 100% ownership interest from the sole withdrawing member to four new members		
231265	B	GMZY Health Management Establish and construct a new Diagnostic and Treatment Center at 745 State Route 17M, Monroe	\$	1,165,967
221281	B	Integrity Care Services Establish and construct a new diagnostic and treatment center at 1426 39th Street, Brooklyn	\$	1,220,814
231223	B	JAY Health, Inc. Establish and construct a new Diagnostic and Treatment Center to be constructed at 107-15 71st Avenue, Forest Hills	\$	4,991,599
221277	E	Medcare LLC Transfer 100% membership interest from the current sole and withdrawing member to a new member LLC		
222274	B	Modern Associates, LLC d/b/a Dr K Health Center Establish and construct a new Diagnostic and Treatment Center at 63-18 Austin Street, Rego Park	\$	758,110

## Project Review 2023

231218	B	Moses Health Center Establish and construct a new Diagnostic and Treatment Center at 871 Westchester Avenue, Bronx	\$	1,853,400
222032	B	Mount Valley Care LLC Establish and construct a new diagnostic and treatment center at 290 Route 59, Spring Valley	\$	220,125
222133	B	NY PACE Facility, Inc. Establish and construct a diagnostic and treatment center at 5521 8th Avenue, Brooklyn, to solely serve the PACE program operated by Welbe Health NYC PACE, LLC	\$	900,781
222250	B	Pesach Tikvah Hope Development, Inc. d/b/a Pesach Tikvah Diagnostic and Treatment Center Establish and construct a new diagnostic and treatment center at 340 Broadway, Brooklyn - SW 2	\$	11,285,345
221280	E	Specialists' One-Day Surgery Center, LLC Transfer 100% ownership interest to a new member LLC comprised of the current members and one new member, and then immediately transfer 25% ownership interest to a new not-for-profit corporation member		
221200	E	Suffolk Surgery Center, LLC Transfer 68% ownership interest from one withdrawing member LLC to a new member PLLC		
231113	E	WNY Medical Management Transfer 16.67% ownership interest from one withdrawing member to one new member		
<b><u>Freestanding Ambulatory Surgery Centers</u></b>				
222024	B	787 Ortho ASC LLC d/b/a Peakpoint Midtown West ASC Establish and construct a new multi-specialty ambulatory surgery center at 787 11th Avenue, New York	\$	15,131,060
222181	B	Bronx Vascular Surgical Center, LLC Establish and construct a new single-specialty ambulatory surgery diagnostic and treatment center for vascular surgery at 1733 Eastchester Road, Bronx	\$	2,426,989
222234	C	Atlantic Surgery Center Certify a second ambulatory surgery single-specialty for pain management and install a C-Arm machine	\$	135,229
222036	B	Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery Center Establish and construct a new multi-specialty ambulatory surgery center at 833 65th Street, Brooklyn	\$	9,165,990
222011	B	Flushing Endoscopy Center, LLC Certify a three-single-specialty ambulatory surgery center extension clinic for gastroenterology, otolaryngology, and urology at 168 Centre St, New York, and transfer 38.65% ownership interest from 3 members to 2 existing and 4 new members	\$	3,452,058



## Project Review 2023

222254	B	Greater Binghamton Surgery Center Convert a single-specialty freestanding ambulatory surgery center to multi-specialty, transfer 65% ownership interest from the sole member to one new member LLC, and rename the facility	\$	577,477
231026	B	Maplemere Ventures, LLC Establish and construct a multi-specialty ambulatory surgery diagnostic and treatment center at 111 Maplemere Drive, Amherst.	\$	22,651,625
231380	B	Mohawk Valley Surgery Center Establish and construct a multi-specialty ambulatory surgery center at 601 State Street, Utica	\$	15,115,379
231274	C	New Hyde Park Endoscopy Convert a single-specialty ambulatory surgery center to multi-specialty and perform renovations to add two new operating rooms	\$	3,130,560
222089	B	Peakpoint Flatiron LLC d/b/a New York Eye and Ear of Mount Sinai Surgery Center Establish and construct a dual single-specialty ambulatory surgery center at 1115 Broadway, New York, for ophthalmology and otolaryngology/head and neck surgical services	\$	12,989,358
222270	C	PrecisionCare Surgery Center Certify a second ambulatory surgery single-specialty for pain management	\$	22,110
231161	B	Queens Endovascular Center LLC Establish and construct a single-specialty ambulatory surgery diagnostic and treatment center for vascular access at 30-30 Northern Boulevard, 5th Floor, Long Island City	\$	3,257,226
222227	B	Southern Tier Surgery Center, LLC Establish and construct a dual single-specialty ambulatory surgery diagnostic and treatment center for Orthopedics and Pain Management at 601 Harry L Drive, Johnson City	\$	13,065,769
222213	B	Staten Island GSC, LLC d/b/a Ambulatory Surgery Center of Staten Island Establish and construct a single-specialty ambulatory surgery diagnostic and treatment center for Gastroenterology to be constructed at 2043 Richmond Avenue, Staten Island	\$	3,742,864
212260	B	SurgiCore Suffolk, LLC Establish and construct a multi-specialty ambulatory surgery center at 1050 Old Nichols Road, Islandia	\$	6,629,110
222012	C	The New York Eye Surgical Center Convert from single-specialty (ophthalmology) ambulatory surgery to multi-specialty ambulatory surgery with no construction	\$	119,141
221252	B	Upstate Endoscopy Associates, LLC d/b/a Upstate Endoscopy Center Establish and construct a single-specialty ambulatory surgery center for gastroenterology at 112 McChesney Avenue, Troy	\$	3,636,925

## Project Review 2023

231369 E Westside ASC LLC d/b/a Westside Ambulatory Surgery Center  
Establish a new Multi-Specialty Ambulatory Surgery Center to be shared with Hudson Specialty Surgery Center in a temporally distinct arrangement at 450 West 31st Street, New York

### **Establishment of New Dialysis Providers (Change of Ownership)**

211108 E Empress Dialysis, LLC d/b/a Brooklyn Community Dialysis  
Establish Empress Dialysis, LLC as the new operator of Brooklyn Community Dialysis, a 24-station dialysis center currently operating as an extension clinic of Bronx Dialysis Center

211109 E Latsch Dialysis, LLC d/b/a Westchester Home Training  
Establish Latsch Dialysis, LLC as the new operator of Westchester Home Training, a Home Training and Support only dialysis center currently operating as an extension clinic of Bronx Dialysis Center

201222 E True North III DC, LLC d/b/a Grand Boulevard Dialysis  
Establish True North III DC, LLC as the new operator of the 20-station chronic renal dialysis center located at 860 Grand Boulevard, Deer Park that is currently operated as an extension clinic of Bronx Dialysis Center

211244 E True North VI DC, LLC d/b/a Peconic Bay Dialysis  
Establish True North VI DC, LLC d/b/a Peconic Bay Dialysis as the new operator of Peconic Bay Dialysis, a 13-station chronic renal dialysis facility at 700 Old Country Road, Suite 4, Riverhead, currently operated by Knickerbocker Dialysis, Inc.

### **Diagnostic and Treatment Center Modernizations and Expansions**

221257 C Open Door Family Medical Center, Inc \$ 15,169,784  
Certify an extension clinic at 2 Church Street, Ossining, to provide Medical Services-Primary Care and Medical Services-Other Medical Specialties - Safety Net

231066 C Open Door Family Medical Center, Inc \$ 16,646,745  
Perform renovations to expand the facility - Safety Net

## MIDWIFERY BIRTH CENTERS

### **Midwifery Birth Center Establishments**

202086 B Coit House, LLC  
Establish and construct a Midwifery Birth Center to be located at 414 Virginia Street, Buffalo

## **Project Review 2023**

### **CERTIFIED HOME HEALTH AGENCIES**

- 231016 E Advent Health Care Services LLC  
Establish Advent Health Care Services LLC as the new operator of a certified home health agency currently operated by Selfhelp Special Family Home Care, Inc., and relocate it from 520 Eighth Avenue, New York, to 419 Church Avenue, Brooklyn
- 231104 C Health Quest Home Care, Inc. (Certified)  
Acquire the Hudson Valley Certified Home Health Agency currently operated by Hudson Valley Care Partners, LLC, and add Ulster County to Health Quest Home Care's service area
- 231234 E Visiting Nurse Service of Ithaca & Tompkins County Inc  
Transfer 100% ownership interest to a new not-for-profit corporate member

### **LICENSED HOME HEALTH CARE AGENCIES**

- 222086 E Aimer Home Care Corp.  
Establish a new licensed home care services agency at 5 Springfield Avenue, East Greenbush
- 222195 E Assistcare Home Health Services LLC d/b/a Preferred Home Care of New York/Preferred Gold  
Transfer 100% membership interest to a new member LLC
- 222238 E Auburn Assisted Living LLC  
Establish Auburn Assisted Living LLC as the new operator of a Licensed Home Care Services Agency currently operated by Northbrook Heights Home for Adults, Inc. at 170 Murray Street Extension, Auburn
- 231028 E Cirrus Manor Residential Center, LLC d/b/a Cirrus Manor Home Care  
Establish Cirrus Manor Residential Center, LLC as the new operator of a Licensed Home Care Services Agency currently operated by Shire Senior Living, LLC, at 2515 Culver Road, Rochester
- 222183 E Elder Care Homecare Inc.  
Transfer 77% ownership interest from one shareholder to an existing shareholder
- 222232 E Good Samaritan Home Health Agency, Inc,  
Transfer 70.3% ownership interest from two withdrawing shareholders to the three remaining shareholders
- 222242 E Hearthstone Care, LLC  
Establish a new Licensed Home Care Services Agency at 1187 Route 23A, Catskill
- 222196 E Horizons at Canandaigua, LLC  
Establish Horizons at Canandaigua, LLC as the new operator of a licensed home care services agency currently operated by DePaul Adult Care Communities, Inc. at 3132 State Route 21 South, Canandaigua

## Project Review 2023

- 222220 E Kris Agency And Home Care, Inc.  
Transfer 90.10% ownership interest from one current shareholder to an existing shareholder
- 222159 E Maples Assisted Living Facility, LLC d/b/a The Maples Adult Living Community  
Establish a new Licensed Home Care Services Agency at 453 Park Street, Fulton, to exclusively serve the residents of their Assisted Living Program.
- 222102 E NAE Edison, LLC d/b/a Edison Home Health Care/Concierge Living  
Transfer 100% ownership interest to a new member LLC
- 222215 E Premier Upstate Properties LLC d/b/a Visiting Angels  
Establish a new Licensed Home Care Services Agency at 168 Miller Street, B103, Horseheads
- 222156 E Right At Home Nassau North Shore  
Establish EQ Health, Inc. as the new operator of Right at Home Nassau North Shore, a Licensed Home Care Services Agency currently operated by Funzalo & Canteet, Inc.
- 222255 E Riverside Select Services, LLC d/b/a Cottage Homecare Services  
Establish Riverside Select Services, LLC as the new operator of a licensed home care services agency currently operated by Cottage Homecare Services, Inc.
- 231010 E Vilas Home Care, LLC  
Establish a new Licensed Home Care Services Agency at 61 Beekman Street, Plattsburgh
- 222263 E Visiting Nurses Home Care  
Establish Albany Visiting Nurse Home Care Services Group, Inc. as the parent and Albany Med Health System as the grandparent of Visiting Nurse Association of Albany Home Care Corporation
- 231136 E Welbe Health NY PACE, LLC  
Establish a new licensed home care services agency at 5521 8th Avenue, Brooklyn, to exclusively serve Welbe Health NY PACE, LLC's PACE program

# Ambulatory Surgery Centers - Limited Life Report

Created March 2024

<b>Original Limited Life Projects</b>																	
<i>Reports required - Annually</i>																	
							Approved Target %		Year Two			Year Three			Year Four		
CON #	Fac ID	Facility Name	OpCert Start Date	OpCert Exp Date	Specialty Type	Charity Care	Medicaid	Actual Visits	Actual Charity Care	Actual Medicaid	Actual Visits	Actual Charity Care	Actual Medicaid	Actual Visits	Actual Charity care	Actual Medicaid	
122051	10301	Rockaways ASC Development LLC <sup>1,2,3</sup>	5/23/2019	5/22/2024	Multi	3.4%	14.6%	3,122	N/A	0.0%	7,484	N/A	0.0%	10,435	N/A	0.0%	
131050	10373	New York Center for Ambulatory Surgery	12/13/2019	12/12/2024	Multi	2.2%	6.0%	480	1.2%	1.7%	939	0.3%	9.6%	1,042	1.4%	5.1%	
132134	10412	Moshenyat Gastroenterology Center <sup>3</sup>	4/10/2020	4/9/2025	Gastroenterology	2.0%	12.0%				2,355	N/A	0.4%				
161234	10423	Hudson Specialty Surgery Center	6/30/2020	6/29/2025	Ophthalmology	2.0%	6.0%	1,183	2.5%	12.4%							
181066	10432	Cornerstone Surgery Center	8/31/2020	8/30/2025	Ophthalmology	2.0%	3.0%	1,507	0.4%	0.3%	4,917	0.3%	3.6%				
171198	13961	Star Surgical Suites	10/20/2020	10/19/2025	Gastroenterology	2.0%	3.2%	1,317	11.6%	0.2%	2,325	5.9%	0.0%				
162011	13957	Queens Surgical Center <sup>4</sup>	10/21/2020	10/20/2025	Multi	2.0%	5.0%	620	0.0%	36.9%	1,440	0.0%	41.5%				
171077	13982	CitiMed Surgery Center	11/20/2020	11/19/2025	Multi	2.0%	6.0%	2,023	0.0%	0.0%	4,963	0.0%	0.0%				
182326	13981	Triborough Ambulatory Surgery Center	12/24/2020	12/24/2025	Multi	2.0%	10.0%	2,174	0.1%	0.0%	2,466	0.7%	0.0%				
141290	13983	Surgicare of Westside <sup>3</sup>	12/16/2020	12/15/2025	Multi	2.0%	5.0%	156	1.9%	0.0%	453	N/A	0.0%				
191137	15164	Greater Binghamton Eye Surgery Center	5/18/2021	5/17/2026	Ophthalmology	2.0%	5.0%	1,724	0.2%	0.1%							
192021	15189	Northeast Endoscopy, LLC <sup>3</sup>	7/14/2021	7/13/2026	Gastroenterology	2.0%	13.0%	486	N/A	3.9%							
191189	15171	Upper West Side Endoscopy	7/21/2021	7/20/2026	Gastroenterology	2.0%	15.0%	6,168	6.9%	0.1%							
201240	15229	Fifth Avenue Surgery <sup>3</sup>	7/20/2021	7/19/2026	Multi	1.0%	2.0%	4,461	N/A	0.0%							
182327	15262	Hudson Surgery Center	1/13/2022	1/12/2027	Multi	2.0%	20.0%	Year Two data not yet due									
192309	15264	The Derfner Foundation	2/22/2022	2/21/2027	Multi	2.0%	5.0%	Year Two data not yet due									
191164	15277	Harlem Road Ambulatory Surgery Center	3/17/2022	3/16/2027	Urology	2.0%	7.9%	Year Two data not yet due									
182205	15285	Atlas Surgery Center	4/21/2022	4/20/2027	Multi	2.0%	16.2%	Year Two data not yet due									
191212	15289	Atlantic Surgery Center	4/26/2022	4/25/2027	Gastroenterology	3.0%	15.0%	Year Two data not yet due									
192298	15290	Renal Focus ASC Plainview	5/6/2022	5/5/2027	Vascular Access	1.5%	9.6%	Year Two data not yet due									
192069	15300	Crotona Parkway Ambulatory Surgery Center	6/10/2022	6/9/2027	Multi	2.0%	10.0%	Year Two data not yet due									
211054	15338	Ainsworth Ambulatory Surgery Center	8/2/2022	8/1/2027	Pain Management	2.0%	5.0%	Year Two data not yet due									
191283	15335	NY Endovascular Center	8/16/2022	8/15/2027	Endovascular Access	4.0%	10.0%	Year Two data not yet due									
202090	15358	Intrepid Lane Endoscopy & Surgery Center	10/4/2022	10/3/2027	Multi	2.0%	5.1%	Year Two data not yet due									
201225	15399	Sunrise Surgery Center	3/9/2023	3/8/2028	Ophthalmology	2.0%	7.0%	Year Two data not yet due									
		<sup>1</sup> 2020 data is from SPARCS.															
		<sup>2</sup> 2021 data is from SPARCS															
		<sup>3</sup> 2022 data is from SPARCS															
		<sup>4</sup> New information from 2021 AHCF cost report															
						<b>Data Sources (based on OpCert Start Year in table below, except for footnoted facilities):</b>											
						<b>OpCert start year for 2019 and after- Data is from AHCF Cost or Annual reports, unless otherwise noted</b>											
						<b>DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS</b>											
						<b>Submitted AHCF cost reports may inconsistently display Medicaid Managed Care</b>											
						<b>OpCert Start Year</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>								
						2019	2020	2021	2022								
						2020	2021	2022	2034								
						2021	2022	2023	2024								
						2022	2023	2024	2025								

# Ambulatory Surgery Centers - Limited Life Report

Created march 2024

## Limited Life Extension Projects

Reports required - Annually

								Approved Target %		2021			2022			
CON #	PFI Number	Facility Name	Opcert #	County	Opcert Start Date	Opcert Exp Date	Specialty Type	Charity Care	Medicaid	Actual visits	Charity care	Medicaid	Actual visits	Charity care	Medicaid	
202093	9958	Richmond Pain Management ASC	7004213R	Richmond	8/4/2021	8/3/2023	Pain Management	1.2%	13.5%	2,892	0.1%	0.0%	3,248	0.7%	3.8%	
211143	9996	Downtown Bronx ASC	7000289R	Bronx			Multi	2.0%	45.3%	2,232	0.0%	14.6%	1,831	0.4%	2.5%	
221213	9229	Performance Surgical Center	7001130R	Kings	6/15/2023	6/14/2028	Multi	10.0%	25.3%	436	0.0%	32.4%	197	0.0%	23.4%	
212013	6869	Long Island Center for Digestive Health	2905203R	Nassau	11/29/2021	11/28/2024	Gastroenterology	2.0%	2.3%	7,405	0.0%	2.9%	7,237	0.1%	2.3%	
231137	9223	Gastroenterology Care <sup>1</sup>	7001128R	Kings			Gastroenterology	1.0%	40.8%	3,177	0.0%	40.9%	2,119	N/A	65.6%	
221200	6184	Suffolk Surgery Center	5151207R	Suffolk			Multi	2.1%	5.4%	6,614	0.0%	0.2%	6,198	0.0%	0.1%	
231315	10266	Manhattan Reproductive Surgery Center	7002299R	New York	9/25/2023	9/24/2026	Gynecology	2.0%	0.4%	3,029	5.6%	0.0%	3,233	3.2%	0.0%	
231113	10344	WNY Medical Management	1401236R	Erie			Multi	3.6%	4.8%	1,544	0.0%	3.4%	2,910	0.0%	1.0%	
231233	6158	Buffalo Surgery Center	1401231R	Erie			Multi	2.1%	10.8%	18,293	0.0%	10.1%	18,366	0.0%	8.8%	
		<sup>1</sup> 2022 data is from SPARCS														
								Data Source is from AHCF cost or Annual reports, unless otherwise noted								
								Submitted AHCF cost reports may inconsistently display Medicaid Managed Care								
								DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS								

# Ambulatory Surgery Centers - Permanent Life Report

Created March 2024

Permanent Life Projects														
Annual Reports no longer required after approval														
						Approved Target %		2021			2022			
CON #	PFI Number	Facility Name	Opcert #	County	Date Permanent Life Granted	Specialty Type	Charity Care	Medicaid	Actual visits	Charity care	Medicaid	Actual visits	Charity care	Medicaid
122223	7768	Hudson Valley Endoscopy Center	1320200R	Dutchess	12/20/2013	Gastroenterology	0.0%	8.1%	5,576	0.0%	18.0%	5,965	0.0%	19.0%
141069	9034	Greater NY Endoscopy Surgical Center	7001124R	Kings	9/5/2014	Gastroenterology	8.5%	25.7%	7,727	0.0%	1.4%	5,329	1.4%	2.7%
151201	9119	Crystal Run ASC of Middletown	3501205R	Orange	12/4/2015	Multi	2.0%	15.4%	9,676	0.0%	12.4%	9,047	0.0%	11.5%
152036	9181	Endoscopy Center of Central NY	3328200R	Onondaga	12/4/2015	Gastroenterology	0.9%	4.5%	4,436	0.0%	6.5%	4,436	0.4%	6.0%
152002	9089	Upstate Orthopedics ASC	3321200R	Onondaga	9/28/2015	Multi	2.0%	13.0%	6,262	0.2%	18.2%	5,875	0.1%	17.0%
152327	9115	East Side Endoscopy	7002192R	New York	1/7/2016	Management	2.8%	10.7%	11,476	0.0%	9.6%	11,544	0.0%	9.9%
161116	9120	New York Endoscopy Center <sup>3</sup>	5902211R	Westchester	3/30/2016	Gastroenterology	5.4%	12.2%	2,584	5.7%	10.6%	1,530	N/A	13.6%
161307	8614	Meadowbrook Endoscopy <sup>1</sup>	2914200R	Nassau	6/27/2016	Gastroenterology	2.0%	20.0%	9,553	N/A	20.5%	8,595	0.0%	13.0%
161220	9231	Surgical Specialty Care of Westchester <sup>1,3</sup>	5945200R	Westchester	8/5/2016	Multi	4.1%	7.4%	3,330	N/A	7.7%	3,329	N/A	11.5%
161175	9244	Mohawk Valley Endoscopy Center <sup>3</sup>	3202208R	Oneida	8/24/2016	Gastroenterology	1.2%	9.5%	6,971	0.0%	6.6%	7,382	N/A	4.3%
161456	9274	Manhattan Endo, LLC	7002800R	New York	12/13/2016	Gastroenterology	1.9%	3.5%	14,307	0.2%	4.3%	15,211	0.3%	4.5%
161415	9313	Carnegie Hill Endo, LLC	7002801R	New York	10/14/2016	Gastroenterology	2.3%	3.1%	16,044	0.0%	1.3%	16,847	0.0%	2.1%
162428	9290	Heritage One Day Surgery, LLC	3335202R	Onondaga	4/7/2017	Pain Management	0.4%	14.7%	16,721	0.2%	11.4%	15,986	0.3%	10.3%
162445	9322	Putnam Endoscopy ASC, LLC	3950202R	Putnam	4/7/2017	Gastroenterology	3.6%	4.8%	3,888	0.7%	8.4%	3,344	0.7%	9.2%
171020	9379	West Side GI, LLC <sup>1,3</sup>	7002802R	New York	5/10/2017	Gastroenterology	1.3%	20.7%	11,401	N/A	27.4%	13,811	N/A	28.1%
171110	9358	Upstate Gastroenterology, LLC	3301224R	Onondaga	6/16/2017	Gastroenterology	0.0%	23.0%	803	0.0%	23.0%	720	0.1%	23.3%
171407	9118	South Brooklyn Endoscopy	7001125R	Kings	7/11/2017	Gastroenterology	1.3%	35.1%	14,566	0.2%	23.3%	14,811	0.3%	44.0%
172082	9185	South Shore Surgery Center	5154210R	Suffolk	9/11/2017	Multi	1.8%	13.4%	3,919	0.6%	12.8%	3,463	0.2%	13.7%
172169	9150	The Rye ASC, LLC	5908200R	Westchester	12/4/2017	Multi	1.3%	3.8%	4,977	0.0%	4.6%	5,101	0.0%	2.4%
171297	9340	Syracuse Surgery Center <sup>1</sup>	3301223R	Onondaga	2/2/2018	Ophthalmology	0.0%	1.6%	1,975	N/A	1.7%	6,382	0.0%	0.0%
172304	9463	Queens Boulevard GI, LLC	7003276R	Queens	2/12/2018	Gastroenterology	0.5%	46.5%	12,102	1.8%	30.4%	10,751	2.4%	24.9%
172363	9493	Flushing Endoscopy Center, LLC	7003278R	Queens	4/13/2018	Gastroenterology	1.6%	46.0%	10,558	0.0%	33.8%	11,560	1.5%	32.5%
181131	9149	Advanced Surgery Center	4352202R	Rockland	6/28/2018	Plastic &	7.0%	4.7%	257	2.7%	1.6%	529	3.0%	0.0%
181152	9490	Manhattan Surgery Center	7002199R	New York	8/3/2018	Multi	0.2%	5.8%	5,104	0.0%	12.7%	4,856	0.0%	13.0%
172395	9473	Queens Endoscopy ASC, LLC	7003277R	Queens	11/30/2018	Gastroenterology	2.8%	23.8%	11,728	0.2%	29.0%	13,675	0.2%	28.7%
181448	9589	Brooklyn SC, LLC <sup>1,3</sup>	7001136R	Kings	10/15/2018	Multi	2.0%	19.4%	9,862	N/A	15.8%	9,088	N/A	16.9%
181438	9518	New York Eye Surgical	4569200R	Saratoga	10/15/2018	Ophthalmology	0.1%	4.0%	4,503	0.0%	2.6%	4,320	0.0%	5.0%
181277	9526	The Surgery Ctr at Orthopedic Associates	1363200R	Dutchess	12/18/2018	Multi	0.1%	12.2%	5,104	0.0%	13.2%	4,778	0.0%	11.4%
181248	9148	SurgiCare of Manhattan, LLC <sup>1,3</sup>	7002194R	New York	10/16/2018	Multi	0.7%	2.9%	2,655	N/A	0.2%	3,321	N/A	1.0%
182183	9635	Endoscopy Center of Niagara	3102207R	Niagara	2/20/2019	Gastroenterology	0.5%	7.8%	5,431	0.0%	10.1%	5,904	0.0%	10.9%
182298	9680	Island Digestive Health Center	5154211R	Suffolk	2/22/2019	Gastroenterology	0.8%	18.4%	7,739	1.7%	19.1%	8,874	1.7%	21.9%
182240	9263	Griffiss Eye Center, LLC	3201201R	Oneida	2/21/2019	Multi	0.9%	6.7%	6,715	0.0%	10.7%	6,968	0.0%	10.9%
191032	9693	Advanced Surgery Center of LI <sup>1,3</sup>	5151208R	Suffolk	4/23/2019	Gastro/Pain Mgmt	2.0%	6.5%	8,932	N/A	9.9%	9,555	N/A	9.6%
191096	9710	Great South Bay Endoscopy	5151209R	Suffolk	4/23/2019	Gastroenterology	0.3%	15.7%	9,693	0.1%	18.8%	11,519	0.6%	19.8%
181259	9498	Mohawk Valley Eye Surgery <sup>1,3</sup>	2850200R	Montgomery	6/10/2019	Ophthalmology	0.0%	16.1%	834	N/A	14.6%	761	N/A	23.4%
191172	9733	Cortland Surgical Center	1101202R	Cortland	7/3/2019	Otolaryngology(ENT)	2.1%	36.8%	968	0.0%	33.9%	1,006	0.0%	36.1%
191237	9744	PBGS, LLC <sup>1,3</sup>	7002805R	Kings	9/11/2019	Gynecology	0.8%	57.8%	7,331	N/A	47.0%	7,067	N/A	59.4%
192303	9804	Empire State Ambulatory <sup>3</sup>	7000284R	Bronx	2/18/2020	Multi	2.1%	18.3%	8,014	0.0%	17.0%	7,333	N/A	0.0%

192212	9792	Mason Eye Surgery Center <sup>1,3</sup>	7003281R	Queens	2/18/2020	Ophthalmology	2.3%	62.2%	1,630	N/A	17.4%	1,273	N/A	25.3%
201125	9816	Apex Surgical Center	3274200R	Oneida	6/10/2020	Multi	1.0%	12.3%	3,683	0.0%	13.4%	5,004	0.0%	11.2%
201135	9448	The Endoscopy Center of New York	7001300R	New York	6/16/2020	Gastroenterology	2.8%	4.8%	18,973	1.6%	5.4%	19,212	1.5%	4.0%
201177	9820	GoldStep Ambulatory Surgery <sup>1,3</sup>	7001800R	Kings	7/20/2020	Multi	2.1%	56.9%	1,489	N/A	50.3%	1,570	N/A	60.8%
192220	9800	Island Ambulatory Surgery	7001140R	Kings	7/20/2020	Multi	2.0%	19.0%	9,518	2.2%	7.1%	9,873	3.2%	1.3%
202007	9849	The Northway Surgery & Pain Center	4552201R	Saratoga	9/14/2020	Pain Management	0.0%	8.4%	11,210	0.0%	6.5%	9,113	0.0%	5.2%
201261	9848	Northern GI Endoscopy	5601202R	Warren	10/23/2020	Gastroenterology	0.0%	10.8%	4,513	0.0%	13.0%	5,390	0.0%	0.4%
201115	9784	North Queens Surgical Center <sup>3</sup>	7003280R	Queens	11/16/2020	Multi	0.3%	16.8%	9,982	0.0%	13.7%	8,774	N/A	0.0%
202103	9863	OMNI Surgery Center <sup>1,2,3</sup>	3202209R	Oneida	2/18/2021	Multi	0.0%	12.4%	693	N/A	14.9%	1,917	N/A	13.3%
211011	9892	Ambulatory Surgery Center of Niagara	3102208R	Niagara	4/2/2021	Ophthalmology	0.3%	3.5%	1,716	0.0%	10.8%	2,462	0.0%	0.9%
202015	9793	Eye Center of New York <sup>1,3</sup>	7000283R	Bronx	5/4/2021	Ophthalmology	1.5%	32.3%	2,713	N/A	22.4%	3,333	N/A	29.2%
211071	9783	Avicenna ASC, Inc.	7000282R	Bronx	5/19/2021	Multi	3.5%	56.4%	4,702	0.0%	75.3%	3,565	0.0%	75.3%
211147	9897	The Endoscopy Center of Queens	7003263R	Queens	7/16/2021	Gastroenterology	1.3%	20.9%	10,456	1.2%	24.3%	10,378	0.3%	16.0%
212062	10009	Liberty Endoscopy Center	7002808R	New York	10/1/2021	Gastroenterology	2.0%	3.8%	6,738	1.8%	3.4%	7,772	0.2%	3.5%
212075	9947	Southtowns Surgery Center	1460200R	Erie	11/24/2021	Multi	2.4%	1.8%	2,343	N/A	4.2%	2,810	0.0%	4.2%
221076	10075	Mid-Bronx Endoscopy Center	7000291R	Bronx	4/4/2022	Gastroenterology	0.1%	57.5%	6,244	0.0%	59.7%	8,341	0.0%	61.2%
221122	10078	HSS ASC of Manhattan	7002809R	New York	6/10/2022	Orthopedics	0.2%	1.6%	3,659	0.2%	0.8%	3,621	0.3%	0.5%
221198	10050	Gastroenterologyof Westchester <sup>4</sup>	5907210R	Westchester	8/16/2022	Gastroenterology	4.1%	31.0%	3,063	22.2%	35.2%	2,699	0.0%	0.0%
221253	10110	New Hyde Park Endoscopy <sup>3</sup>	2963202R	Nassau	9/29/2022	Gastroenterology	1.4%	9.9%	9,050	0.7%	16.9%	7,676	N/A	18.2%
222158	10117	Specialty Eye Surgery & Laser Center of the Capital Region	0153205R	Albany	1/23/2023	Ophthalmology	0.8%	4.6%	3,556	0.8%	4.6%	2,847	0.2%	4.3%
231225	10175	Premier Ambulatory Surgery Center	1465200R	Erie	9/28/2023	Gastroenterology/ Ophthalmology	0.0%	11.8%	1,815	0.0%	9.4%	2,259	0.0%	11.8%
231290	10241	Yorktown Center for Specialty Surgery	5968200R	Westchester	1/5/2024	Multi	2.8%	7.8%	2,737	2.7%	7.8%	3,019	1.0%	7.8%
231370	10225	Bay Ridge Surgi-Center	7001152R	Kings	10/17/2023	Multi	0.0%	12.4%	2,219	0.0%	11.9%	3,874	0.0%	12.0%
211200	9909	Surgery of Tomorrow	7001143R	Kings	1/16/2024	Gynecology	2.5%	36.3%	609	3.8%	62.4%	671	3.7%	51.4%
232149	10239	Surgical Pain Center of the Adirondacks	0901206R	Clinton	1/22/2024	Pain Management	2.5%	12.6%	3,777	6.2%	16.0%	3,456	2.5%	12.6%
241002	10250	OrthoNY Surgical Suites	4552202R	Saratoga		Multi	0.0%	15.1%	4,088	0.0%	15.7%	4,643	0.0%	15.1%
		<sup>1</sup> 2021 data is from SPARCS												
		<sup>2</sup> 2021 data is for a partial year.					Data Source is from AHCF cost or Annual reports, unless otherwise noted							
		<sup>3</sup> 2020 data is from SPARCS					Submitted AHCF cost reports may inconsistently display Medicaid Managed Care							
		<sup>4</sup> data self reported. No cost report filed					DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS							



# Ambulatory Surgery Centers - Hospital-owned Report

Created March 2024

<b>Hospital-Owned ASCs</b>															
<i>Establishment of ASCs not covered by limited life process</i>															
							Approved Target %		2021			2022			
CON #	PFI Number	Facility Name	Opcert #	County	Date ASC Opened	Specialty Type	Charity Care	Medicaid	Actual visits	Charity care	Medicaid	Actual visits	Charity care	Medicaid	
860440	4009	Millard Fillmore Surgery Center <sup>1</sup>	1451202R	Erie	12/28/1988	Multi			3,973	0.0%	6.7%	3,602	0.0%	6.7%	
992612	6405	St. Peter's Surgery & Endoscopy Center	0101221R	Albany	5/15/2002	Multi	0.0%	3.9%	18,752	0.2%	9.3%	19,868	0.1%	9.0%	
991288	6480	Digestive Health Center of Huntington <sup>1</sup>	5153212R	Suffolk	12/23/2002	Gastroenterology	0.0%	5.9%	4,571	0.0%	2.6%	4,054	4.0%	4.8%	
021342	6678	Unity Linden Oaks Surgery Center <sup>1</sup>	2701242R	Monroe	7/2/2004	Multi	0.0%	6.0%	30,696	0.0%	12.7%	38,694	0.0%	11.9%	
051145	6920	New York GI Center	7000274R	Bronx	2/27/2007	Gastroenterology	3.0%	10.0%	9,222	0.0%	19.9%	10,780	0.1%	23.7%	
031047	6949	Hudson Valley Ambulatory Surgery, LLC <sup>1,2,3</sup>	3501204R	Orange	4/2/2007	Multi	0.0%	5.5%	2,449	N/A	10.0%	2,201	N/A	15.3%	
041132	6953	Advanced Endoscopy Center	7000275R	Bronx	5/15/2007	Gastroenterology	3.0%	7.0%	12,736	0.0%	31.9%	12,402	0.0%	31.6%	
122071	9705	Bridgeview Endoscopy <sup>2,3</sup>	1302213R	Dutchess	7/15/2014	Gastroenterology	2.0%	4.8%	8,215	N/A	7.6%	8,338	N/A	12.2%	
152294	10102	East Hills Surgery Center	2977200R	Nassau	12/4/2017	Multi	2.0%	2.8%	4,885	0.0%	1.4%	5,559	0.0%	3.7%	
161170	10134	Port Jefferson Ambulatory Surgery Center	5151210R	Suffolk	2/13/2018	Multi	2.0%	4.0%							
162552	10302	HSS West Side ASC	7002815R	New York	7/16/2019	Orthopedic	2.0%	2.0%	2,167	0.2%	0.5%	2,211	0.2%	0.5%	
182125	10366	Everett Road Surgery Center <sup>2,3</sup>	0153206R	Albany	12/11/2019	Multi	1.9%	10.3%	612	N/A	9.5%	2,690	N/A	14.9%	
162358	10393	North Fork Surgery Center <sup>2,3</sup>	5159200R	Suffolk	2/14/2020	Gastroenterology /Pain Management	2.0%	3.0%	2,968	N/A	0.0%	2,793	N/A	0.2%	
191117	13987	Center for Advanced Ambulatory Surgery <sup>2,3</sup>	4560201R	Saratoga	3/16/2021	Multi	2.0%	4.0%	797	N/A	0.1%	3,156	N/A	0.9%	
182236	15157	PrecisionCare Surgery Center <sup>2,3</sup>	5151211R	Suffolk	4/20/2021	Orthopedic	2.0%	2.4%	628	N/A	0.6%	2,120	N/A	0.8%	
191095	15209	The Center for Advanced Spine & joint Surgery <sup>3</sup>	5155206R	Suffolk	8/30/2021	Multi	2.0%	3.2%				835	N/A	2.4%	
		<sup>1</sup> Ownership has changed since the center started operations													
		<sup>2</sup> 2021 data is from SPARCS													
		<sup>3</sup> 2022 data is from SPARCS													
							<b>Data Source is AHCF cost reports, unless otherwise noted</b>								
							<b>Submitted AHCF cost reports may inconsistently display Medicaid Managed Care</b>								
							<b>DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS</b>								

## C. Health Planning Committee

### Members

John Ruge, M.D. MPP - Chair  
Ann Monroe, Vice Chair  
John Bennett, Jr., M.D.  
Howard Berliner  
Jo Ivey Boufford, M.D.  
Jeffrey Kraut  
Scott LaRue

Harvey Lawrence  
Roxanne Lewin, M.D.  
Mario Ortiz, R.N., Ph.D., F.A.A.N.  
Peter Robinson  
Denise Soffel, Ph.D.

### Work Conducted in 2023

The PHHPC Health Planning Committee (Committee) serves to advise the full Council on health care needs, service plans, and emerging issues and to assist the Governor and Commissioner in identifying opportunities and approaches for health care improvement.

In early 2023, the State Emergency Medical Advisory Committee (SEMAC) and State Emergency Medical Services Council (SEMSCO) jointly brought to the attention of PHHPC a concern regarding delays in transfer from Emergency Medical Services' (EMS) care to hospital care. SEMAC and SEMSCO expressed that such delays were not only slowing hospital treatment of patients, but also having a compounding impact on EMS agencies' ability to respond to further calls. These entities therefore called upon the Department of Health (Department) and PHHPC to investigate this issue and explore possible solutions to relieve the EMS system.

Through discussions with stakeholders, including the New York State Dental Association, hospital associations, the Center for Health Workforce Studies, and the Office of Mental Health, the Department identified three key issues contributing to ED overcrowding and/or longer EMS wait times:

1. poor utilization of EMS services for non-emergent conditions;
2. preventable, non-traumatic oral health conditions presenting in the ED; and
3. complex mental health conditions presenting in the ED.

While there may be multiple contributing factors, the Committee identified these three issues for initial consideration given the potential for the greatest and/or soonest impact on reducing ED overcrowding and EMS wait times. The Committee is currently finalizing its report to the Commissioner and Governor with key recommendations and takeaways from these meetings.

## **D. Public Health Committee**

### **Members**

Jo Ivey Boufford, M.D., Chair	Denise Soffel, Ph.D.
Anderson Torres, Ph.D., Vice Chair	Nilda Soto
John Bennett, Jr., M.D.	Theodore Strange, M.D.
Sabina Lim, M.D.	Kevin Watkins, M.D., M.P.H.
Mario Ortiz, R.N., Ph.D., F.A.A.N.	Patsy Yang, Dr.P.H.
Ann Monroe	

### **Work Conducted in 2023**

In 2023, the Public Health Committee, led by Chairperson Jo Ivey Boufford, M.D., has continued its dedicated efforts in collaboration with the New York State Department of Health, Office of Public Health and key stakeholders across the state to advance the New York State Prevention Agenda. Building upon the foundation laid in 2019, when the plan was honored with a prestigious Vision Award from the Association of State and Territorial Health Officials, the Committee has remained steadfast in its commitment to improving the health and well-being of all New Yorkers. The ongoing collaboration with over 114 statewide stakeholders underscores the collective determination to address the state's most urgent health concerns and implement effective strategies that promote health equity and support healthy aging.

### **Public Health Committee's Work on the 2025-2030 New York State Prevention Agenda**

In February 2023, the Public Health Committee embarked on a pivotal journey to shape the future of public health in New York State by initiating the planning cycle for the 2025-2030 New York State Prevention Agenda. This critical task began with the reconstitution of the Ad Hoc Committee to Support the New York State Prevention Agenda, marking the first step in a comprehensive process aimed at enhancing the state's health improvement plan.

Central to the Committee's efforts was a briefing from the State Department of Health on the current status of Prevention Agenda priorities and health status indicators. Armed with this information, the Committee engaged in robust discussions to identify opportunities to strengthen the Prevention Agenda's focus on health equity, recognizing the importance of ensuring that all New Yorkers have equal access to health-promoting resources and opportunities.

A significant milestone in the Committee's work was the systematic evaluation and review of 51 state health improvement plans from across the U.S. and its territories. This comprehensive analysis provided valuable insights and best practices that informed the Committee's guidance to the Department in developing multiple structural frameworks for the 2025-2030 Prevention Agenda cycle. These frameworks aimed to enhance the incorporation of the Social Determinants of Health, healthy aging, and health equity, reflecting the Committee's commitment to addressing the root causes of health disparities.

Furthermore, the Committee played a pivotal role in facilitating alignment between the Prevention Agenda and the emerging New York State Master Plan for Aging, recognizing the interconnectedness of health and aging and the need for a holistic approach to address the needs of older adults.

In its ongoing efforts to ensure the relevance and effectiveness of the Prevention Agenda at the local level, the Committee sought feedback from county health officials on the utility of the plan in guiding local health efforts. This feedback will be instrumental in shaping the final framework for the 2025-2030 Prevention Agenda cycle.

As the Committee looks ahead to 2024, it is currently reviewing the Department's framework proposals for the 2025-2030 Prevention Agenda cycle and will provide valuable guidance and advice to the Department as it finalizes the new framework. The Committee's dedication and commitment to improving the health and well-being of all New Yorkers are evident in its tireless efforts to shape a more equitable and inclusive future for public health in the state.

### **Ad Hoc Committee's Work on the 2025-2030 New York State Health Improvement Plan**

In April 2023, the Ad Hoc Committee to Support the Prevention Agenda reconvened under the auspices of the Public Health Committee and the State Department of Health to embark on a critical mission: to initiate the planning cycle for the 2025-2030 New York State Health Improvement Plan. This committee, comprising over 114 statewide and regional stakeholders from diverse sectors including state and local government, community-based organizations, healthcare, academia, and business, represents a broad spectrum of perspectives essential for shaping a comprehensive and inclusive plan.

Central to the committee's mandate was a thorough examination of the history and impact of the Prevention Agenda. Deliberations focused on its effectiveness in addressing the state's most pressing health priorities and its overall impact on the health status of New Yorkers. These discussions laid the foundation for informed decision-making and strategic planning.

The committee engaged in several panel discussions with core partners, including the New York State Office of Mental Health, Office for Aging, Office of Addiction Services and Support, New York State Association of County Health Officials, Greater New York Hospital Association, and the Healthcare Association of New York State. These discussions provided valuable insights into key issues and challenges facing the healthcare system and informed the committee's recommendations for the next Prevention Agenda cycle.

Furthermore, the committee received a briefing from the New York Department of State on the role of smart growth community planning and development programs in achieving mental and physical health outcomes. This presentation highlighted the importance of holistic approaches to community planning and development in promoting health and well-being.

A significant focus of the committee's deliberations was on investing in community health through hospital Community Benefit spending. The committee explored innovative strategies to leverage these resources to improve community health outcomes and enhance collaboration between hospitals, local health departments, and other stakeholders.

As the committee continues its work into 2024, key takeaways include the need for the next Prevention Agenda to align more closely with the social determinants of health and to prioritize collaboration between hospitals, local health departments, and other stakeholders at both the community and state levels. These insights will inform the finalization of the 2025-2030 state health improvement plan, ensuring that it reflects the diverse needs and perspectives of all New Yorkers

### **Specialty Topics**

**Maternal Mortality** – The committee upheld its enduring commitment to enhancing maternal health outcomes across New York State. Updates from the New York State Division of Family Health provided the committee with a comprehensive overview of the current maternal mortality landscape in the state. The committee extensively reviewed proposals to seamlessly incorporate preconception and interconception care into standard outpatient services for all women of reproductive age. Additionally, the committee assessed strategies to enhance pregnancy planning and prevent unintended pregnancies, particularly among women with serious chronic conditions and risk factors. Furthermore, the committee deliberated on the implementation of robust systems and protocols for the early identification and management of high-risk pregnancies.

**Public Health Workforce** - In preparation for its agenda in 2024, the committee solicited suggestions from the Department for a new focal area. The Department recommended prioritizing the Public Health Workforce, a proposal that was enthusiastically embraced by the committee. During the session, the committee was briefed on the Department's receipt of a \$133 million CDC Public Health Infrastructure Grant. This grant aims to bolster the public health workforce by focusing on recruitment, retention, support, and training; enhancing foundational capabilities through system and process strengthening; and modernizing data practices through the deployment of scalable, flexible, and sustainable technologies. The committee has committed to giving heightened attention to this critical topic throughout 2024.

#### **E. Committee on Health Personnel and Interprofessional Relations**

##### **Members**

Hugh Thomas, Esq., Chair  
Thomas Holt

Mario Ortiz, R.N., Ph.D., F.A.A.N.

The Committee reviewed and decided on two health personnel cases in Executive Session.

**NYS Department of Health  
Public Health and Health Planning Council  
Deputy Commissioner Executive Report  
June 20, 2024**

**OFFICE OF PUBLIC HEALTH**

**Wadsworth Center**

**Rebuilding the State's public health research programs through aggressive recruiting of promising scientists.**

In 2023, the Wadsworth Center was able to reach a significant portion of the public health research and laboratory communities about opportunities at the Department of Health and the Wadsworth Center through our attendance at major national conferences, including those of the Association of Public Health Laboratories (APHL) and the American Society for Microbiology (ASM). This is evidenced by our recent recruitment cycle for senior scientific staff. Strong recruitments are vital to continue the rebuilding of our public health research programs post-Covid-19 pandemic and as we make progress towards relocating to our new, consolidated public health laboratory on the Harriman Campus in 2030. Three new investigators will join the Wadsworth Center family this summer.

**Dr. George Donati** will join the Division of Environmental Health Sciences in August 2024. Dr. Donati is currently a professor at Wake Forest University in North Carolina and is a subject matter expert in trace element analysis. Trace elements play critical roles in the development of new drugs and next-generation materials but can also serve as significant environmental contaminants. Dr. Donati will conduct research on developing new strategies to improve the performance of existing methods for trace element analysis, develop novel, portable instrumentation for trace element analysis that can be deployed outside of laboratories, and conduct research on leveraging modern analytic methods with machine learning and artificial intelligence for diagnostics and drug development.

**Dr. Siân Owen** will join the Division of Genetics in August 2024. Dr. Owen is currently a senior research fellow at Harvard University Medical School and is a subject matter expert in the evolution of antibiotic resistance in bacteria and the role of bacterial viruses in this process. Her work has included the discovery of bacterial virus defense systems (an ancient version of the immune system), understanding the impact of viruses on antibiotic sensitivity in bacteria; and exploration of viruses that parasitize antibiotic resistance plasmids. She is a leader in the application of experimental evolution and computational approaches to study the phenomenon of antibiotic resistance in bacteria.

**Dr. Tom Bartlett** will join the Division of Genetics in August 2024. Dr. Bartlett is currently a senior research fellow at Harvard University Medical School and is a subject matter expert in how bacteria organize their growth, a fundamental and essential process that allows them to multiply and spread and also resist certain antibiotics. His research focuses on the bacteria, *Staphylococcus aureus*, and the mechanisms of antibiotic resistance underlying the infamous methicillin-resistant *S. aureus* (MRSA) strains, a highly important clinical pathogen that is resistant to most antibiotics. His research combines classical microbial genetic approaches with artificial intelligence and high-resolution imaging.

All three of these new principal investigators have strong track records in working with students from the high school through the graduate school levels, which is critical to developing strong, local pipelines to encourage the next generation to pursue scientific and public health careers in New York State.

### **Supporting the development of Wadsworth's workforce and enhancing our community outreach to strengthen integration with the public.**

Two key lessons from the recent COVID-19 pandemic were the need to offer better career development programs for laboratory staff and to strengthen engagement with local communities in order to build trust and respect for public health science. To address these gaps, the Wadsworth Center recently launched a new initiative called WC-CARE, for Wadsworth Center - Community. Advancement. Recruitment. Engagement. The overarching goal for this office is to foster a Wadsworth Center workforce that leads all aspects of public health laboratory science and that is connected with the communities and public that the Center serves across New York State.

Established at the level of the Director's Office, WC-CARE has two tasks. The first is internal – developing career path guidance by working with early and mid-career staff on their personal career development. The second is external – community outreach, ranging from local health departments, the community at large, schools and universities – to share and educate and listen around topics in public health in all its forms and flavors as related to the Wadsworth Center and its core missions. WC-CARE is working to accomplish these two tasks through four lanes:

#### Community:

- Enable initiatives that bring people together within Wadsworth.
- Build broader Wadsworth community that includes alumni.
- Partner with external organizations to foster long-term relationships.

#### Advancement:

- Invest in universal support of career growth for all staff.
- Provide accessibility to professional development programming.
- Re-establish Wadsworth as a premier training institution across career trajectories.

#### Recruitment:

- Develop strategies and execute targeted recruitment efforts to promote quantity/quality of applicants to all positions.
- Increase visibility of the Center as a workplace.

#### Engagement:

- Increase public engagement by sharing information, fostering trust, and building mutually beneficial relationships.
- Involve the Center's workforce to develop shared priorities that support common goals and improve visibility to the community.

The Wadsworth Center is the leading public health research laboratory in the country but must adapt to meet the needs of the public in the 21<sup>st</sup> century. The WC-CARE office is part of a broader institutional process to position the Wadsworth Center for this century and beyond and will be critical to its future as it relocates to the new, consolidated public health laboratory being built on the Harriman Campus.

## **Center for Community Health**

**The Division of Epidemiology** is working with the New York State Department of Ag & Markets, conducting internal planning, and preparing guidance for local health departments in the event of a case of Bird Flu (H5N1) in a cow or human in NYS. We currently have no known dairy cow herds infected with H5N1 and no known human cases in NYS.

**The Division of Family Health** has been operationalizing Senate Bill 470 that authorized the Commissioner of the New York State Department of Health to conduct a study and issue a report examining the unmet health and resource needs facing pregnant people in New York State and the impact of limited-service pregnancy centers on the ability of pregnant people to access a comprehensive range of reproductive and sexual health care services.

Along with the study, this legislation initiates a task force that includes nine members (3 appointed by the Governor, 3 appointed by the president of the Senate, and 3 appointed by the speaker of the Assembly), representing diverse geographical regions of the state. The Division of Family Health has completed a draft of the study report and on May 7th, 2024, convened the first meeting of the task force members appointed to date (3 of the 9 have been appointed). The task force will review the study findings and establish specific recommendations and solutions to address any service gaps or negative impacts identified as a result of the study.

**Wanda Chatbot** - In January 2024, the New York State Department of Health State Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) launched Spanish-speaking “Wanda,” an expansion of the WIC Program’s current virtual assistant, which successfully helps people learn about and easily connect to WIC.

Wanda offers a quick and easy online chat where people can check their eligibility for the WIC Program and request a referral to the WIC office of their choice in less than three minutes. The virtual assistant has become integral to New York State WIC outreach and enrollment efforts. On average, Wanda sends about 1,500 referrals per month to WIC local agencies around the state and has generated nearly 30,000 referrals since the launch in April 2021. Currently, approximately 30% of the referrals are requested in Spanish.

## **Center for Environmental Health**

The Center for Environmental Health is advancing several initiatives involving legislative or regulatory changes that will better safeguard New York State residents from contaminants in their water, homes, and environment. The following is a summary of four of our current priorities:

### **Addressing Childhood Lead Poisoning through Proactive Rental Inspections**

Creation of Public Health Law §1377 set the stage for Center for Environmental Health to implement a proactive rental registry in identified communities of concern to combat childhood lead poisoning. The Center for Environmental Health is currently drafting regulations to administer, coordinate, and enforce lead safety inspections and remediation of conditions conducive to lead poisoning. These regulations will require lead safety inspections of all pre 1980 multi-dwelling rental units in communities of highest risk across the state, starting in Fall of 2025. We expect these regulations will be released for public comment in 2024 and look forward to providing updates as the regulations and programs roll out. These draft regulations are not required to go before Public Health and Health Planning Council and reflect important work in the Center for Environmental Health.



## **Addressing Potential Radiological Exposure in Medical Settings**

The Center for Environmental Health is working to redesign and modernize Title 10 Part 16 focused on Ionizing Radiation. These updates are required to incorporate and reference changes to multiple sections of the Federal Code of Regulations, including 10 CFR 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material. The proposed regulations also: I. Modernize regulations to reflect changes in medical practice, e.g., moving from film to digital imaging. II. Add quality assurance requirements for dental cone-beam CT units to bring them in line with quality assurance requirements for other medical units. III. Raise fees for the first time in over 20 years to cover operation costs. Average fee increases will be around 68%, below the level of inflation in the same time frame. These draft regulations, which were posted for public comment on April 10, 2024, are required to go before the Public Health and Health Planning Council and reflect important work ongoing in the Center for Environmental Health.

## **Adopting Model Food Code**

The Center for Environmental Health has drafted revisions to State Sanitary Code Part 14 Food Service Establishments. The changes adopt the 2022 Model Food Code by reference. The New York State Department of Health is working with New York State Department of Agriculture and Markets to align and synchronize our code updates for consistent adoption of Model Food Code. The Department looks forward to presenting the details of the code in a future Public Health and Health Planning Council meeting.

## **Addressing Lead Service Lines in public water systems**

The Center for Environmental Health developed templates for public water systems across the state to document inventories of lead service lines. These inventories are required to be submitted to New York State Department of Health by October 2024 by both Environmental Protection Agency's Lead and Copper Rule Revisions and by New York State Public Health Law 1114-b/ Lead Right to Know Act. These templates have been shared with Local Health Departments and public water systems to document lead service lines, an important step toward replacement of lead service lines to limit New Yorkers' exposure to lead from their drinking water.

## **Implementing Adaptations to Reduce the Public Health Risks of Climate Change**

As part of the 2022 State of the State, Governor Hochul directed state agencies to develop a State Multiagency Extreme Heat Action Plan to coordinate interagency investments and efforts to help mitigate community climate impacts and prioritize assistance to disadvantaged communities that may have greater vulnerability to the effects of extreme heat. During the development of the plan, on-track to be released in June 2024, NYSDOH staff participated in workgroups to draft recommended actions the State will take to build resilience and adapt to extreme heat, build local capacities, and support local communities in taking action. NYSDOH will be the lead agency on eight recommended actions and support another 12 actions that align with current NYSDOH activities that respond to the impact climate change will have on communities. This State-level plan complements ongoing work by DOH, in partnership with NYSACHO, to encourage local level climate and health adaptations.

## **Office of Public Health Practice**

The Office of Public Health Practice has been diligently advancing the development of the framework and guidance documents for the 2025-2030 New York State Prevention Agenda. This strategic effort aims to enhance public health outcomes statewide over the next six years. In a significant step forward, the Office recently presented its framework proposal to the New York State Association of County Health Officials. The proposal was met with positive reception, particularly for its alignment with Healthy People 2030 and the incorporation of social determinants of health as key focus areas.

To ensure a comprehensive and integrated approach, the Prevention Agenda coordination team continues to meet bi-weekly with colleagues coordinating the Master Plan for Aging. This collaboration is crucial in addressing the interconnected health needs of New York's aging population.

Furthermore, the Office of Public Health Practice is finalizing the final chapters of the New York State Health Assessment, which are currently in draft form. These chapters are on track to be completed by August, providing a robust foundation for the upcoming Prevention Agenda.

## **OFFICE OF PRIMARY CARE AND HEALTH SYSTEMS MANAGEMENT**

### **Public Health and Health Planning Council Educational Session**

Thank you for attending the educational session of the Public Health and Health Planning Council on May 8-9 and for your valuable input. The Department is grateful for your participation.

### **Safe Staffing**

The Department of Health actively enforces Public Health Law 2805-t by investigating complaints. The types of allegations investigated are not limited to staffing concerns and include failure to:

- establish and maintain a Clinical Staffing Committee,
- follow the requirements in creating a Clinical Staffing Plan,
- adopt all or part of the approved Clinical Staffing Plan,
- have a twice-a-year review of a Clinical Staffing Plan,
- submit to the Department a Clinical Staffing Plan on an annual basis,
- submit to the Department updates made to a Clinical Staffing Plan,
- resolve complaints that have been submitted to the Clinical Staffing Committee.
- resolve patterns of complaints or a pattern of failure to reach consensus on the Clinical Staffing Plan, or
- carry out a clinical staffing plan.
- 

During an investigation the Department requests additional information from the complainant and/or facility to ensure both parties have supplied complete documentation. If a facility is found to be out of compliance, a Statement of Deficiency is issued. A plan of correction must be submitted to the Department within 45 calendar days after the Statement of Deficiency is issued. If the plan of correction is not submitted or if the approved plan is not implemented, a fine may be issued.

## Statewide IV Grants

### Office of Primary Care and Health Systems Management

- Applications for the \$250 M Statewide general capital funding RFA (#20244) closed on April 24<sup>th</sup>.
- The Department received a large number of qualifying submissions and reviews are underway.
- As set forth in the Request for Applications and the applicable statute (PHL section 2825-g), the Department will prioritize applications from financially distressed providers as well as those applications from provider types specifically designated to receive minimum funding amounts under the statute, including:
  - \$25 M to community-based health care providers;
  - \$25 M to Mental Hygiene Law Article 31 mental health clinics, Article 32 alcohol and substance use disorder treatment clinics, Article 16 clinics, day programs and residential facilities, and certain community-based programs defined under Article 41 of the Mental Hygiene Law; and
  - \$25 M to residential health care facilities or adult care facilities.
- The Department anticipates announcing awards later this year.

### Office of Aging & Long-Term Care

Applications for the \$50 M Statewide Health Care Facility Transformation Program IV – Residential and Community-based Alternatives to the Traditional Model of Nursing Home closed on May 2<sup>nd</sup>.

- The Department received a large number of qualifying submissions, totaling far more dollars than are available, reviews of applications are underway

### Office of Health Services and Quality Analytics

- Applications for the \$650 M Statewide Health Information Technology, Cybersecurity, and Telehealth Transformation RFA (#20258) closed on March 28<sup>th</sup>.
- The Department received a large number of qualifying submissions, totaling far more dollars than are available, reviews of applications are underway.
- The Department anticipates announcing awards later this year.

## Safety Net Transformation

- A new law under [Public Health Law \(PHL\) Section 2825-i](#) authorized the Department of Health to accept applications for funding under the Safety Net Transformation Program, a new grant program for eligible safety net hospitals which have proposed a transformational project in coordination with at least one partner organization.
- The Program was enacted through the State Fiscal Year 2025 Budget (HMH, Part S) and codified in [PHL Section 2825-i](#). The law took effect on April 1, 2024.
- The Safety Net Transformation Program aims to support the transformation of safety net hospitals (as defined under the new statute) to improve access, equity, quality, and outcomes while increasing the financial sustainability of safety net hospitals.
- This Program further aims to encourage collaborative partnerships between safety net hospitals and a partner organization to achieve these goals in the long term.

- In addition to authorizing grants, the Program also allows the Commissioner of Health to waive certain regulations for the life of the project (or such shorter time period as determined by the Commissioner) if doing so would allow applicants to more effectively or efficiently implement the proposed project. However, certain regulations cannot be waived, such as but not limited to, regulations pertaining to minimum standards for hospitals, including patient safety, patient rights, or patient safety, among others.
- The Department is developing a webpage and application specific to this new program; we encourage interested parties to watch the Department's website for updates.
- In the meantime, interested facilities should familiarize themselves with this law to better understand the Program's purpose and eligibility criteria to ensure that the facility is eligible, and that their proposal is sufficiently developed for the Department's consideration.

## **OFFICE OF AGING & LONG-TERM CARE**

### **SFY 2024-2025 Long-Term Care Budget Initiatives**

The 2024-2025 State Fiscal Year Budget makes permanent the Special Needs Assisted Living Residence voucher demonstration program for adults with Alzheimer's disease and related dementias and removes the cap of 200 program participants. Additionally, the State Budget includes \$7.2 million for respite care in Assisted Living Residences and \$6.3 million for Community Aging in Place – Advancing Better Living for Elders, also known by its acronym CAPABLE, a national Johns Hopkins School of Nursing program which integrates the services of an occupational therapist, registered nurse, and handy worker to improve the health, safety, and independence of older adults through education, skill building and home modification. Implementation of these important support programs is underway.

### **Long Term Care Residential Surveillance and Program Support**

The Center for Residential Surveillance has regulatory oversight responsibility for over 550 adult care facilities, 600 nursing homes, and 320 intermediate care facilities for the intellectually disabled. To improve quality of life in residential centers, the Office of Aging and Long Term Care's Center for Residential Surveillance has begun a project to identify complaint outliers, i.e., those facilities that have a volume of complaints outside the average, to identify best grievance process practices that can be used to plan possible educational opportunities for facility staff. Additionally, the Center's teams are advancing the availability of opioid overdose reversal medication in facilities, offering additional opioid trainings for facility administration, recommending regulatory changes to support the maintenance of reversal treatments, and encouraging support groups to address opioid use in regulated long-term care settings. These activities target improved quality of life and satisfaction at these regulated facilities.

### **Adult Care Facilities (ACF) Licensure Modernization Workgroup**

Since August of 2023, the Office for Aging and Long-Term Care has responsibility for licensure for Long Term Care Facilities, including Adult Care Facilities which are licensed under Article 7 of the Social Services Law and, as such, do not fall under the traditional purview of the Public Health and Health Care Council (PHHPC). However, Adult Care Facilities play a vital role in the

long-term care facility infrastructure, and starting in July, the Office of Aging and Long-Term Care will be holding bi-weekly workgroup meetings with Adult Care Facility stakeholders to discuss and develop potential ways to modernize the current method Adult Care Facility licenses are reviewed and processed. This effort will seek to create efficiencies by updating the Adult Care Facility need methodology, streamlining the financial review process, and consolidating review components. Completion of this effort is targeted for this fall.

## **Hospice and Palliative Care**

The Center for Hospice and Palliative Care within the Office of Aging and Long-Term Care is operational, providing a focal point for caregiving and self-determination when there is terminal or life-limiting disease or condition. The Center staff are engaged in updating the hospice need methodology as well as the Medical Orders for Life Sustaining Treatment (MOLST) form. The Department is also reviewing the options for the electronic registry for the Medical Orders for Life Sustaining Treatment which currently reside with Excellus Blue Cross Blue Shield. Over the coming months, the Center will focus on broad public education related to Advanced Care Planning and hospice utilization, reactivating the Palliative Care Education and Training Council, and identifying ways in which appropriate hospice utilization can be increased.

## **OFFICE OF HEALTH EQUITY AND HUMAN RIGHTS**

### **AIDS Institute**

#### **Hepatitis C Elimination Efforts**

Effective May 3, 2024, New York State requires all adults and all persons under the age of 18 with an identified risk, receiving services in a primary care, hospital inpatient or outpatient setting, or emergency department, to be offered a hepatitis C screening test. New York State requires all providers attending to a pregnant person to order a hepatitis C screening test during each pregnancy. To promote these new hepatitis C screening requirements, the New York State Department of Health has launched a statewide campaign, [Test4Hep C](#), created new consumer and provider materials, and plans to host webinars across the state and with provider membership organizations. A frequently asked questions document is also being developed.

On May 15, 2024, the AIDS Institute hosted the second New York State Hepatitis C Elimination Annual Progress Report Meeting for over 380 virtual and in-person attendees. Dr. Rachael Fleurence, Senior Advisor to the White House on the National Plan for Hepatitis C Elimination, gave the keynote address. The meeting provided New York City and State updates on the progress towards hepatitis C elimination and reviewed innovative and promising hepatitis C practices from across New York State.

#### **Syphilis Test for all Pregnant Persons**

Effective May 3, 2024, New York State requires a syphilis test on all pregnant persons during the third trimester of pregnancy under Public Health Law §2308, as amended by sections 4 and 5 of Part AA of Chapter 57 of the Laws of 2023. Before, syphilis testing was only required at the time of the first examination and again at delivery under 10 NYCRR section 69-2.2.

With the addition of third trimester testing, the law now effectively requires at least three syphilis screenings during pregnancy. Additional screening may be warranted; more frequent screening during pregnancy is best made through a shared clinical decision-making process between the patient and provider. To meet this additional syphilis screening requirement, pregnant persons should be tested for syphilis at 28 weeks of pregnancy, or as soon thereafter as reasonably possible, but no later than at 32 weeks of pregnancy. For pregnant persons who screen negative at their first exam, this third trimester screen will ensure adequate time for persons who seroconvert during their pregnancy to be appropriately treated prior to delivery. Interim Guidance was issued in July of 2023. [Interim Guidance for Public Health Law §2308 to require additional third trimester syphilis screening for pergnant persons: Chapter 57 of the Laws of 2023 \(ny.gov\)](https://www.health.ny.gov/diseases/communicable/std/). It is strongly recommended that the third trimester screening for syphilis be coupled with the recommended third trimester screening for HIV. Please refer to Frequently Asked Questions available on the New York State Department of Health website: <https://www.health.ny.gov/diseases/communicable/std/>

### **New Lecture and Learn Discussion Series for New York State Department of Health Employees**

In partnership with the Office of Minority Health and Health Disparities Prevention, the AIDS Institute's Office of Lesbian Gay Bisexual Transgender and Queer Services launched a new lecture and learn discussion series for New York State Department of Health employees. This multi-part series began in January 2024 and continues to present several topics impacting Lesbian Gay Bisexual Transgender and Queer (LGBTQ+) health outcomes in New York State and provide opportunities for group discussion. A goal of this series is to increase opportunities for New York State Department of Health staff to learn about and discuss health and health equity issues related to the Lesbian Gay Bisexual Transgender and Queer community to inform our work and programs. In addition to presentations on relevant topics, the group will act as resource to questions as they arise over time.

### **June is Pride Month**

June is Pride Month. The New York State Department of Health is taking part in a number of Pride Month activities throughout the state, including marching in the Albany Capital Pride Parade on June 9, 2024.

The AIDS Institute's Office of Lesbian Gay Bisexual Transgender, and Queer Services, in collaboration with the Office of Sexual Health and Epidemiology and the Bureau of HIV and Sexually Transmitted Disease Field Services, will be conducting outreach and providing information at several Pride events in June. Staff will have a presence at Buffalo Pride, Rochester Pride, Black, Indigenous and People of Color Pride in Albany, and Capital Pride in Albany.

### **Office of Gun Violence Prevention**

### **June is Gun Violence Awareness Month**

June is Gun Violence Awareness Month. The Office of Gun Violence Prevention within the New York State Department of Health is recognizing the occasion through various speaking events and awareness campaigns that will take place across the state.

## **Office of Minority Health and Health Disparities Prevention**

### **New York State Office of Language Access Simultaneous Interpreter Services Resource**

In order to continue to support the implementation and provision of services as required by New York State Language Access Law, New York State Office of Language Access (OLA) collaborated with the Project Management and Legal Services Offices at the New York State Office of General Services (OGS) and the New York State Office of Information Technology Services (ITS), to provide State agencies with free Simultaneous Interpreter Services technology for where spoken language interpreters provide communication between speakers of different languages.

As the designated Language Access Coordinator for the New York State Department of Health, the Office of Minority Health and Health Disparities Prevention has been awarded this resource no cost to distribute to programs with current or anticipated high utilization of interpretation services for signed or spoken languages. The New York State Department of Health will review programs who have already received services via the Video Relay Interpreting Tablet Program in order to further identify the linguistically diverse needs of New Yorkers. The Office of Minority Health and Health Disparities will provide information related to data utilization and best practices received by the identified program to the New York State Office of General Services' Office of Language Access. These resources support New York State Department of Health's commitment to providing equitable access to the Department's programs and initiatives.

### **Office of Management and Budget Standards / Asian American Pacific Islander Data Disaggregation Group**

On March 28, 2024, the national Office of Management and Budget published a set of updates to Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15) and is available on [Federal Register](#) and on [spd15revision.gov](http://spd15revision.gov), combining the two race and ethnicity questions into one question, and adding the Middle East and North African category. The impact is unclear regarding the absence of information from the US Census Bureau, the combination of these categories, and the addition of the Middle East and North African Categories.

Following up on preliminary internal discussions with the New York State Department of Health's Office of Science, Public Health Information Group, the Office of Minority Health and Health Disparities Prevention met with the Asian American Pacific Islander Data Disaggregation departmentwide workgroup it oversees. Staff discussed concerns related to the [SPD 15](#) changes and how it may impact existing data collection efforts. It will be helpful to review the [NYS Open Data Handbook](#). This assists with providing guidance on publishable data and it contains definitions and criteria.

### **New York State American Indian Health Program (AIHP) Funding**

The Office of Minority Health and Health Disparities Prevention oversees the continued distribution of the New York State Department of Health's Fiscal Year 2024 \$5 million Executive Initiative Funding allocation in last year's Enacted Budget for three Nations (Onondaga, Tonawanda Seneca, and Tuscarora). The Department has contracts executed with the respective health care providers Upstate University Medical (Onondaga Nation), United Memorial Medical (Tonawanda-Seneca Nation), and Niagara Falls Memorial Medical Center (Tuscarora Nation).

The Office of Minority Health and Health Disparities Prevention is also overseeing the distribution of the FY2025 \$2.5 million in dental funding for the Nations. The Office of Minority Health and Health Disparities has been in communication with the Nations and will continue to support the Nations with further guidance and instruction.



## **SUMMARY OF EXPRESS TERMS**

Public Health Law sections 206(18-a)(d) and 2816 give the Department broad authority to promulgate regulations, consistent with federal law and policies, that govern the Statewide Health Information Network for New York (SHIN-NY).

These amendments support the development of the statewide data infrastructure, thereby increasing interoperability and providing the flexibility necessary for the SHIN-NY to adapt in a constantly evolving technological environment. The goal of these amendments is to ensure consistency across the SHIN-NY in how SHIN-NY participants connect and exchange data, to support public health during emergencies and to assist with Medicaid reporting in support of the Medicaid program's Social Security Act section 1115 waiver (see 42 USC § 1315).

In order to promote efficiency through the development of network-wide policies, processes, and solutions, these amendments create a process to develop the statewide data infrastructure that will facilitate the exchange of data among SHIN-NY participants. Relevant activities required of the Department or its contracted vendor under the amendments include enhancement of the data matching process for patient demographic information submitted by SHIN-NY participants, creation of a statewide provider directory to serve as a standardized resource for resolving provider and facility identities, development of a statewide patient consent management system, and the aggregation of data from SHIN-NY participants in a secure statewide repository.

In addition, under these regulations, the Department will create a statewide common participation agreement to be used by each qualified entity and which will allow SHIN-NY participants to connect to the statewide data infrastructure by agreeing to participate in the SHIN-NY and adhering to SHIN-NY policy guidance. This will allow patient data to be

contributed to the statewide data infrastructure and used for statewide reporting and analytics for public health activities and Medicaid purposes, to the extent authorized by law. Any disclosure of data from the statewide data repository, a component of the statewide data infrastructure, will be in accordance with the SHIN-NY policy guidance reviewed and approved by relevant stakeholders through the statewide collaboration process.

This will further promote consistency and efficiency across the SHIN-NY by requiring the qualified entities to use and accept network-wide agreements and patient consent decisions. The statewide common participation agreement will eliminate the current variation in the terms and conditions applicable to participating in the SHIN-NY through one qualified entity versus another. The amendments also reduce ambiguity by requiring qualified entities to honor and implement patient consent decisions that authorize data access by treating providers across the network, regardless of which qualified entity such providers have contracted with, to participate in the SHIN-NY.

This amendment will further the Legislature's intent under chapter 54 of the Laws of 2023, which appropriated an additional \$2.5 million "for modernizing health reporting systems." By clarifying the data reporting and aggregation responsibilities applicable to the qualified entities, the proposed amendments will transform the SHIN-NY into a functional resource for the analysis and reporting of statewide health information for authorized public health and health oversight purposes.

Pursuant to the authority vested in the Commissioner of Health and the Public Health and Health Planning Council by sections 201, 206(1) and (18-a)(d), 2803, 2816, 3612, 4010, 4403, and 4712 of the Public Health Law, Part 300 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to read as follows:

Section 300.1 Definitions. For the purposes of this Part, these terms shall have the following meanings:

- (a) “*Statewide Health Information Network for New York*” or “*SHIN-NY*” means the technical infrastructure and the supportive policies and agreements that:
  - (i) make possible the electronic exchange of clinical information among [qualified entities and qualified entity] SHIN-NY participants for authorized purposes to improve the quality, coordination and efficiency of patient care, reduce medical errors and carry out public health and health oversight activities, while protecting patient privacy and ensuring data security; and
  - (ii) enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records, personal health records, health care claims, payment and other administrative data, and public health information systems, while protecting patient privacy and ensuring data security.
- (b) “*Qualified entity*” means a not-for-profit regional health information organization or other entity that has been certified under section 300.4 of this Part.
- (c) “[*Qualified entity*] SHIN-NY participant” means any health care provider, health

plan, governmental agency or other type of entity or person that has executed a statewide common participation agreement with a qualified entity or with the entity that facilitates their connection to the SHIN-NY statewide data infrastructure, pursuant to which it has agreed to participate in the SHIN-NY.

\* \* \*

- (g) “*Patient information*” means health information that is created or received by a [qualified entity] SHIN-NY participant and relates to the past, present, or future physical or mental health or condition of an individual or the provision of health care to an individual, and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

\* \* \*

- (m) “*Statewide common participation agreement*” means a common agreement, developed using a statewide collaboration process, consistent with any minimum standards set forth in the SHIN-NY policy guidance and approved by the New York State Department of Health, that is used statewide by each qualified entity or by SHIN-NY participants, allowing them to connect to the SHIN-NY statewide data infrastructure either directly or through a contractor, and pursuant to which SHIN-NY participants agree to participate in the SHIN-NY and adhere to SHIN-NY policy guidance, including but not limited to causing patient data to be contributed to the statewide data infrastructure and authorizing the use of patient data for statewide reporting and analytics for public health activities and Medicaid purposes, consistent with applicable law.

- (n) “Statewide data infrastructure” means the information technology infrastructure provided by the New York State Department of Health, either directly or through contract, to support the aggregation of data provided by qualified entities and SHIN-NY participants, statewide reporting and analytics for public health activities and Medicaid purposes, consistent with applicable law.
- (o) “Public health activities” means purposes for which a SHIN-NY participant is permitted to disclose protected health information to a public health authority without an authorization or opportunity to agree or object under federal standards for uses and disclosures for public health activities.
- (p) “Medicaid purposes” means purposes related to the administration of the Medicaid program, including but not limited to reporting to support any Social Security Act section 1115 waiver approved by the Centers for Medicare and Medicaid Services.

Section 300.2 Establishing the SHIN-NY. The New York State Department of Health shall:

- (a) oversee the implementation and ongoing operation of the SHIN-NY;
- (b) implement the infrastructure and services to support the private and secure exchange of health information among [qualified entities and qualified entity] SHIN-NY participants;
- (c) provide, either directly or through contract, statewide data infrastructure and any other SHIN-NY services that the New York State Department of Health deems necessary to effectuate the purposes of this Part;
- (d) administer the statewide collaboration process and facilitate the development, regular review and [update] amendment of SHIN-NY policy guidance;

[(d)](e) perform regular audits, either directly or through contract, of qualified entity and SHIN-NY participant functions and activities as necessary to ensure the quality, security and confidentiality of data in the SHIN-NY;

[(e)](f) provide [technical services], either directly or through contract, [to ensure the quality, security and confidentiality of data in the SHIN-NY;] strategic leadership on the use of the statewide data infrastructure to ensure health information exchange services are efficiently deployed in the SHIN-NY to support:

- (1) the exchange of data among SHIN-NY participants;
- (2) the matching of patient demographic information submitted by SHIN-NY participants;
- (3) a statewide provider directory;
- (4) a statewide consent management system; and
- (5) aggregation of data from SHIN-NY participants in a statewide repository;

[(f)](g) assess qualified entity and SHIN-NY participant participation in the SHIN-NY and, if necessary, suspend a qualified [entity's] entity or SHIN-NY participant's access to or use of the SHIN-NY, as provided in the statewide common participation agreement, or when it reasonably determines that the qualified entity or SHIN-NY participant has created, or is likely to create, an immediate threat of irreparable harm to the SHIN-NY, to any person accessing or using the SHIN-NY, or to any person whose information is accessed or transmitted through the SHIN-NY;

[(g)](h) publish reports on health care provider participation and usage, system performance, data quality, the qualified entity certification process, and SHIN-NY security;

[(h)](i) take such other actions, including but not limited to the convening of appropriate advisory and stakeholder workgroups, as may be needed to promote development of the SHIN-NY;

(j) approve the statewide common participation agreement under which SHIN-NY participants supply patient information to the SHIN-NY using qualified entities or the entity that facilitates their connection to the statewide data infrastructure, and qualified entities supply patient information using the statewide data infrastructure. Any such qualified entity or third-party entity that facilitates a SHIN-NY participant's connection must be the "business associate," as defined in 42 USC § 17921, of any SHIN-NY participant that supplies patient information and is a health care provider, and must be a qualified service organization of any SHIN-NY participant that supplies patient information and is an alcohol or drug abuse program required to comply with federal regulations regarding the confidentiality of alcohol and substance abuse patient records. 42 USC § 17921, effective February 17, 2009, which has been incorporated by reference in this Part, has been filed in the Office of the Secretary of State of the State of New York. The section of the United States Code incorporated by reference may be examined at the Records Access Office, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237 or can be directly obtained from the Office of the Law Revision Counsel of the United States House of Representatives.

Section 300.3 Statewide collaboration process and SHIN-NY policy guidance.

(a) SHIN-NY policy guidance. The New York State Department of Health shall

establish SHIN-NY policy guidance as set forth below:

- (1) The New York State Department of Health shall establish [or designate a policy committee] a statewide collaboration process, which may include the designation of committees, representing qualified entities, SHIN-NY participants, relevant stakeholders, and healthcare consumers to make recommendations on SHIN-NY policy guidance and standards.
  - (2) Policy committee agendas, meeting minutes, white papers and recommendations shall be made publicly available.
  - (3) The New York State Department of Health shall consider SHIN-NY policy guidance recommendations made through the statewide collaboration process and may accept or reject SHIN-NY policy guidance recommendations at its sole discretion.
- (b) Minimum contents of SHIN-NY policy guidance. SHIN-NY policy guidance standards shall include, but not be limited to policies and procedures on:
- (1) privacy and security;
  - (2) monitoring and enforcement;
  - (3) [minimum] core service requirements;
  - (4) organizational characteristics of qualified entities; [and]
  - (5) qualified entity certification;
  - (6) technical standards for interoperability and data sharing among SHIN-NY participants, qualified entities, and the New York State Department of Health or its designated contractor; and
  - (7) requirements and procedures for the disclosure of data, using the statewide



data infrastructure, to the New York State Department of Health or its designated contractor, and for the use and re-disclosure of such data to support statewide reporting and analytics for public health activities and Medicaid purposes.

Section 300.4 Qualified entities.

(a) Each qualified entity shall:

- (1) maintain and operate a network of [qualified entity] SHIN-NY participants seeking to securely exchange patient information;
- (2) connect to the statewide data infrastructure to allow [qualified entity] SHIN-NY participants to exchange information with [qualified entity] SHIN-NY participants of other qualified entities and with the New York State Department of Health or its designated contractor to support statewide reporting and analytics for public health activities and Medicaid purposes;
- (3) submit to regular audits of qualified entity functions and activities by the New York State Department of Health or its designated contractor as necessary to ensure the quality, security, and confidentiality of data in the SHIN-NY;
- (4) ensure that data from [qualified entity] SHIN-NY participants is only made available through the SHIN-NY in accordance with applicable law;
- (5) enter into agreements, including the statewide common participation agreement, with [qualified entity] SHIN-NY participants that supply patient information to, or access patient information from, the qualified entity. A

qualified entity must be the “business associate,” as defined in 42 USC § 17921, of any [qualified entity] SHIN-NY participant that supplies patient information and is a health care provider, and must be a qualified service organization of any [qualified entity] SHIN-NY participant that supplies patient information and is an alcohol or drug abuse program required to comply with Federal regulations regarding the confidentiality of alcohol and substance abuse patient records;

- (6) allow participation of all health care providers in the geographical area served by the qualified entity that are seeking to become [qualified entity] SHIN-NY participants, list the names of such [qualified entity] SHIN-NY participants on its website, and make such information available at the request of patients;
- (7) submit data, including patient information, using the statewide data infrastructure, to the New York State Department of Health or its designated contractor, according to specifications provided by the New York State Department of Health;
- (8) submit reports on health care provider participation and usage, system performance and data quality, in a format determined by the New York State Department of Health;
- [(8)](9)adopt policies and procedures to provide patients with access to their own patient information that is accessible directly from the qualified entity, except as prohibited by law;
- [(9)](10)implement policies and procedures to provide patients with information

identifying [qualified entity] SHIN-NY participants that have obtained access to their patient information using the qualified entity, except as otherwise prohibited by law.

- (b) Each qualified entity shall have procedures and technology:
- (1) to exchange patient information for patients of any age, consistent with all applicable laws regarding minor consent patient information;
  - (2) to allow patients to approve and deny access to [specific qualified entity] SHIN-NY participants; and
  - (3) to honor a minor's consent or revocation of consent to access minor consent patient information.
- (c) Each qualified entity shall provide [the following minimum set of] such core services to [qualified entity] SHIN-NY participants as required by the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part. Such core services shall include, but not be limited to:
- (1) allow [qualified entity] SHIN-NY participants to search existing patient records on the network;
  - (2) make available to [qualified entity] SHIN-NY participants and public health authorities a clinical viewer to securely access patient information;
  - (3) [permit secure messaging among health care providers;
  - (4)] provide tracking of patient consent;
  - [(5) provide notification services to establish subscriptions to pre-defined events and receive notifications when those events occur;
  - (6)](4) provide identity management services to authorize and authenticate users in a

manner that ensures secure access;

(5) submit data using the statewide data infrastructure, to the New York State Department of Health or its designated contractor, to support the aggregation of data, statewide reporting and analytics for public health activities and Medicaid, consistent with applicable law;

[(7)](6) support Medicaid and public health reporting to public health authorities;

[(8) deliver diagnostic results and reports to health care providers.]

(7) provide SHIN-NY participants with appropriate access to data using the statewide data infrastructure.

(d) The New York State Department of Health shall certify qualified entities that demonstrate that they meet the requirements of this section to the satisfaction of the New York State Department of Health. The New York State Department of Health may, in its sole discretion, select a certification body to review applications and make recommendations to the New York State Department of Health regarding certification. The New York State Department of Health shall solely determine whether to certify qualified entities. To be certified, a qualified entity must demonstrate that it meets the following requirements:

\* \* \*

(3) The qualified entity has technical infrastructure, privacy and security policies and processes in place to: manage patient consent for access to health information consistent with section 300.5 of this Part and the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part; support the authorization and authentication of users who access the

system; audit system use; and implement remedies for breaches of patient information.

\* \* \*

Section 300.5 Sharing of Patient Information.

(a) General standard. [Qualified entity] SHIN-NY participants may only exchange patient information as authorized by law and consistent with their statewide common participation agreements [with qualified entity participants]. Under section 18(6) of the Public Health Law, individuals who work for a qualified entity or the entity that facilitates SHIN-NY participants' connection to the statewide data infrastructure are deemed personnel under contract with a health care provider that is a [qualified entity] SHIN-NY participant. As such, a [qualified entity] SHIN-NY participant may disclose to such a qualified entity necessary patient information without a written authorization from the patient of the [qualified entity] SHIN-NY participant. [Qualified entity] SHIN-NY participants may, but shall not be required to, provide patients the option to withhold patient information, including minor consent patient information, from the SHIN-NY. Except as set forth in paragraph (b)(2) or subdivision (c) of this section, a qualified entity shall only allow access to patient information by [qualified entity] SHIN-NY participants with a written authorization from:

- (1) the patient; or
- (2) when the patient lacks capacity to consent, from:
  - (i) another qualified person under section 18 of the Public Health Law;

- (ii) a person with power of attorney whom the patient has authorized to access records relating to the provision of health care under General Obligations Law article 5, title 15; or
  - (iii) a person authorized pursuant to law to consent to health care for the individual.
- (b) Written authorization.
- (1) Written authorizations must [specify to whom disclosure is authorized] be obtained using a statewide form of consent, approved by the New York State Department of Health, that allows patients to approve and deny access to information in the SHIN-NY by SHIN-NY participants.
    - (i) Patient information may not be disclosed to persons who, or entities that, become [qualified entity] SHIN-NY participants subsequent to the execution of a written authorization unless:
      - (a) the name or title of the individual or the name of the organization are specified in a new written authorization; or
      - (b) the patient's written authorization specifies that disclosure is authorized to persons or entities becoming [qualified entity] SHIN-NY participants subsequent to the execution of the written authorization and the qualified entity has documented that it has notified the patient, or the patient has declined the opportunity to receive notice, of the persons or entities becoming [qualified entity] SHIN-NY participants subsequent to the execution of the written authorization.

- (ii) Any written authorization shall remain in effect until it is revoked in writing or explicitly superseded by a subsequent written authorization. A patient may revoke a written authorization in writing at any time by following procedures established by the qualified entity consistent with the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part.
  - (2) Qualified entities shall permit access to all of a patient's information by all persons or entities authorized to access information in the SHIN-NY, or any other general designation of who may access such information, after consent is obtained.
  - (3) A minor's parent or legal guardian may authorize the disclosure of the minor's patient information, other than minor consent patient information.
- [(3)](4) Minor consent patient information.
- (i) In general, a minor's minor consent patient information may be disclosed to a [qualified entity] SHIN-NY participant if the minor's parent or legal guardian has provided authorization for that [qualified entity] SHIN-NY participant to access the minor's patient information through the SHIN-NY. Such access shall be deemed necessary to provide appropriate care or treatment to the minor. However, if federal law or regulation requires the minor's authorization for disclosure of minor consent patient information or if the minor is the parent of a child, has married or is otherwise emancipated, the disclosure may not be made without the minor's

authorization.

- (ii) In no event may a [qualified entity] SHIN-NY participant disclose minor consent patient information to the minor's parent or guardian without the minor's authorization.

[(4)](5) Minor consent patient information includes, but is not limited to, patient information concerning:

\* \* \*

- (x) emergency care as provided in section 2504(4) of the Public Health Law[.];

- (xi) treatment provided with the consent of no person other than the minor patient, where the patient is a homeless youth as defined in section 532-A of the executive law, or receives services at an approved runaway and homeless youth crisis services program or transitional independent living support program as defined in section 532-A of the executive law.

\* \* \*

Section 300.6 Participation of health care facilities.

- (a) [One year from the effective date of this regulation, general hospitals as defined in subdivision ten of section two thousand eight hundred one of the Public Health Law, and two years from the effective date of this regulation, all health] Health care facilities as defined in section 18(c)(1) of the Public Health Law, including those who hold themselves out as urgent care providers[, utilizing certified electronic health record technology under the federal Health Information Technology for



Economic and Clinical Health Act (HITECH),] must become [qualified entity] SHIN-NY participants in order to connect to the SHIN-NY through a qualified entity, and must allow private and secure bi-directional access to patient information by other [qualified entity] SHIN-NY participants authorized by law to access such patient information. [Bi-directional] As used in this subdivision, bi-directional access means that a [qualified entity] SHIN-NY participant has the technical capacity to upload its patient information to the qualified entity so that it is accessible to other [qualified entity] SHIN-NY participants authorized to access the patient information and that the [qualified entity] SHIN-NY participant has the technical capacity to access the patient information of other [qualified entity] SHIN-NY participants from the qualified entity when authorized to do so, consistent with the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part.

(b) All health care facilities required to become SHIN-NY participants pursuant to subdivision (a) of this section must supply patient information to the statewide data infrastructure.

(c) The New York State Department of Health may waive the requirements of [subdivision] subdivisions (a) or (b) of this section for health care facilities that demonstrate, to the satisfaction of the New York State Department of Health:

- (1) economic hardship;
- (2) technological limitations or practical limitations to the full use of certified electronic health record technology that are not reasonably within control of the health care provider; [or]
- (3) other exceptional circumstances demonstrated by the health care provider to

the New York State Department of Health as the Commissioner may deem appropriate; or

- (4) the facility has the technical capacity for private and secure bi-directional access, executes a statewide common participation agreement, connects to the SHIN-NY and supplies patient information to the statewide data infrastructure in accordance with this Part and the SHIN-NY policy guidance. As used in this paragraph, bi-directional access means that a SHIN-NY participant has the technical capacity to upload its patient information to the SHIN-NY so that it is accessible to other SHIN-NY participants authorized to access the patient information and that the SHIN-NY participant has the technical capacity to access the patient information of other SHIN-NY participants when authorized to do so, consistent with the SHIN-NY policy guidance under subdivision (b) of section 300.3 of this Part.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law (PHL) § 206(18-a)(d) authorizes the Commissioner to make such rules and regulations as may be necessary to enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records, personal health records, health care claims, payment and other administrative data and public health information systems, while protecting patient privacy and ensuring data security. In addition, PHL sections 201, 206(1), 2803, 2816, 3612, 4010, 4403, and 4712 authorize the Commissioner to make such rules and regulations as may be necessary to effectuate the provisions and purposes of PHL Articles 28 (hospitals), 36 (home care services), 40 (hospice), 44 (health maintenance organizations) and 47 (shared health facilities) and provide additional authority for the Commissioner to create and make use of the Statewide Health Information Network for New York (SHIN-NY).

### **Legislative Objectives:**

The explicit legislative objective of PHL § 206(18-a) is the promotion of widespread, non-duplicative interoperability among disparate health information systems and data types, including electronic health records, personal health records, health care claims, payment and other administrative data and public health information systems, while protecting patient privacy and ensuring data security. Such interoperability is intended to improve patient outcomes, minimize unnecessary service utilization, and reduce health care costs by fostering efficiency and supporting care coordination.

Existing regulations at 10 NYCRR Part 300 advanced these legislative objectives by establishing requirements for the regional health information organizations (RHIOs) that

were created as health information exchanges in New York State. Under the provisions of Part 300, the RHIOs became the qualified entities (QEs) that facilitate the exchange of health information in the SHIN-NY. These regulatory amendments will further the legislative intent by making it easier for health care providers, health plans, and governmental agencies to become SHIN-NY participants and access the SHIN-NY through the use of a statewide common participation agreement, while ensuring patient privacy and data security.

**Needs and Benefits:**

Pursuant to the current regulation, responsibility for the development and maintenance of SHIN-NY policies and technical infrastructure is divided between the QEs and the Department. In practice, this division of oversight and operational responsibilities has resulted in the deployment of disparate forms, processes, and technology solutions across the network. The proposed amendments are necessary to support the development of the statewide data infrastructure, thereby increasing interoperability and providing the flexibility necessary for the SHIN-NY to adapt in a constantly evolving technological environment. The goal of these amendments is to ensure consistency across the SHIN-NY in how SHIN-NY participants connect and exchange data, and to support the sharing of information for public health purposes, such as the Medicaid program's Social Security Act section 1115 waiver (see 42 USC § 1315).

In order to promote efficiency through the development of network-wide policies, processes, and solutions, these amendments create a process to develop the statewide data infrastructure that will facilitate the exchange of data among SHIN-NY participants by enhancing the matching of patient demographic information submitted by SHIN-NY

participants, with a statewide provider directory, and statewide consent management system.

In addition, under these regulations, the Department will create a statewide common participation agreement to be used statewide by each qualified entity whether the participant connects through a qualified entity or directly through the statewide infrastructure. This will enable SHIN-NY participants to connect with the statewide data infrastructure and contribute patient data. Furthermore, the statewide common participation agreement will allow the use of such data for statewide reporting and analytics for public health activities and Medicaid purposes, consistent with applicable law. The regulations define the terms “public health activities” and “Medicaid purposes” and the [SHIN-NY policy guidance](#) sets forth the instances in which a participant may disclose protected health information to the Department, without affirmative consent of the patient.

The regulations will further promote consistency and efficiency across the SHIN-NY by requiring the QEs to use and accept network-wide agreements and patient consent decisions. The statewide common participation agreement will eliminate the current variation in the terms and conditions applicable to participating in the network through one QE versus another. The regulatory amendments will also reduce ambiguity by requiring QEs to honor and implement patient consent decisions that authorize data access by treating providers across the network, regardless of which QE such providers have contracted with to participate in the SHIN-NY.

These amendments will also further the Legislature’s intent under chapter 54 of the Laws of 2023, which appropriated an additional \$2.5 million “for modernizing health reporting systems.” As the COVID-19 and requirement to use the Hospital Emergency

Reporting Data System (HERDS) for crucial public health reporting pandemic demonstrated, the current framework for SHIN-NY data collection and reporting is insufficient to enable timely analysis and decision making in situations involving an emergent public health concern. By providing for a statewide data infrastructure and explicitly requiring all SHIN-NY participants to submit data for aggregation, these amendments will ensure that facilities and the Department are not required to navigate and implement an ad-hoc or emergency data collection procedure during future public health scenarios of urgent concern. Additionally, it will enable more efficient reporting for healthcare facilities.

Moreover, interoperability and analytics based on data from the SHIN-NY will be a key component of the Department's mandatory reporting in relation to the Medicaid program's Social Security Act section 1115 demonstration project and associated waiver. Whereas the current regulation merely authorizes the QEs to disclose patient information without written consent to a public health authority or health oversight agency, the proposed amendments will require the QEs and SHIN-NY participants to submit data using the statewide data infrastructure, both on a regular basis and in response to ad-hoc requests from the Department or its designated contractor. By clarifying the data reporting and aggregation responsibilities applicable to the QEs and the permissible uses of such data by the Department or its designated contractor, the proposed amendments will transform the SHIN-NY into a functional resource for the analysis and reporting of statewide health information for authorized public health and health oversight purposes.

Beyond supporting interoperability and consistency across the network for QEs and SHIN-NY participants and clarifying the data reporting obligations of both, these

regulations also address the need to allow for providers to connect directly to the statewide data infrastructure and participate in SHIN-NY data exchange and data reporting without a qualified entity acting as intermediary. To that end, the definition of “qualified entity participant” has been changed to refer to “SHIN-NY participants,” which will account for the possibility that provider organizations may participate in the SHIN-NY without contracting with one of the qualified entities. In such circumstances, the provider organization would enter into the statewide common participation agreement with the Department or its designated contractor, under which the organization would agree to adhere to applicable SHIN-NY policies and provide data to other SHIN-NY participants and the Department for data reporting and aggregation. To create an option for such direct connection to the statewide data infrastructure as an alternative to connecting through one of the qualified entities, subdivision 300.6(c)(4) is amended to exempt a health care facility that demonstrates “the technical capacity for private and secure bi-directional access, executes a statewide common participation agreement, and connects to the SHIN-NY using the statewide data infrastructure” from the requirement to enter into a participation agreement with a qualified entity. These changes reflect the fact that health information technology has rapidly advanced since the inception of the SHIN-NY, to the point where most larger health systems now possess the technical capacity to connect to and retrieve data from a statewide network without the assistance of a dedicated health information exchange partner or may exchange through electronic health record networks established at the national level.

These regulations account for the possibility that the Department, its designated contractor, and/or other types of health care organizations or other national networks might

provide data and/or services through the SHIN-NY in the future. Data and services may be provided through the SHIN-NY by the Department, by its designated contractor, or by other SHIN-NY participants that meet the minimum technical, security, privacy, organizational and other requirements set forth by the Department. Along with the provisions that authorize providers to connect directly to the SHIN-NY, this change will support the shift to an ecosystem model for New York's health information system in favor of the current system under which participation is restricted to those organizations that contract and follow the policies of the certified QEs.

Finally, these amendments will promote the development of a statewide provider directory and consent management system, both of which have been longstanding goals for the Department and will contribute substantially to the modernization of New York's health reporting system once implemented.

## **COSTS**

### **Costs to Private Regulated Parties:**

The private parties subject to the proposed amendments are the QEs and SHIN-NY participants. To the extent that any expenditures are necessary by QEs in order to comply with these amendments, such expenditures are expected to continue to be reimbursed using money appropriated to the Department's designated contractor. It is not anticipated that SHIN-NY participants will incur any costs as a result of these amendments. Most regulated facilities are currently connected to the SHIN-NY via a qualified entity. The amendments are also intended to allow the alignment of SHIN-NY interoperability requirements with interoperability requirements from the federal Department of Health and Human Services. By aligning with federal interoperability requirements, this should create more efficiency



by leveraging interoperability standards currently built into electronic health records.

**Costs to Local Government:**

This proposal will not impact local governments unless they operate a health care facility, in which case the impact would be the same as outlined above for private parties.

**Costs to the Department of Health:**

While there will be costs to build the statewide data infrastructure initially, those costs have already been budgeted. It is anticipated there will be greater efficiency in how technology is deployed in the SHIN-NY. Initial outlays will be funded through a \$2.5million increase in the budget appropriation that occurred in the SFY 2023-2024 budget.

**Costs to Other State Agencies:**

The proposed regulatory changes will not result in any additional costs to other State agencies.

**Local Government Mandates:**

Health facilities operated by local governments will be required to comply with these amendments in the same manner as other facilities. The regulation is not anticipated to impose any direct costs on SHIN-NY participants, including local health departments.

**Paperwork:**

No new paperwork requirements would be imposed under the proposed amendments. Any consent forms that are developed will replace current consent forms and deployed can be done electronically. Additionally, there will be less variation in consent forms because of a consistent consent form developed by the Department.

**Duplication:**

This regulation will not conflict with any state or federal rules.

**Alternatives:**

An alternative to the proposed regulation would be not to make any amendments to 10 NYCRR Part 300 regulations. However, these amendments are necessary to fulfill the legislature's objective of creating an efficient statewide health information network that serves as a resource for patients, providers, and public health officials across the State. These regulations are essential to improve the long-term efficacy of the SHIN-NY and therefore the alternative of not making any amendments to the regulation was not considered viable.

**Federal Standards:**

The proposed amendments do not duplicate or conflict with any federal regulations. These amendments will complement the Office of the National Coordinator for Health Information Technology (ONC) Final Rule implementing certain provisions of the 21st Century Cures Act (85 Fed. Reg. 25642, May 1, 2020), which requires patient information to be accessible under application programming interface (API) requirements and prohibits actions that constitute information blocking. See 42 USC § 300jj-11 et seq.

**Compliance Schedule:**

The amendments will be effective upon publication of a Notice of Adoption in the New York State Register.

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## **STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments. By having a standard participation agreement across the state, SHIN-NY participants will have a consistent participation agreements that will not vary by region. This should result lower costs compared to current variation across the state.

## **STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis for this amendment is not being submitted because the amendment will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. By having a standard participation agreement across the state, SHIN-NY participants will have a consistent participation agreements that will not vary by region. This should result lower costs compared to current variation across the state. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

## **STATEMENT IN LIEU OF JOB IMPACT STATEMENT**

A Job Impact Statement for the proposed regulatory amendments is not being submitted because it is apparent from the nature and purposes of the amendment that it will not have a substantial adverse impact on jobs and/or employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 206 and 225 of the Public Health Law, Part 12 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 12.13 is REPEALED.

Section 12.20 is REPEALED.

A new section 12.21 is added, under the new title “REPRODUCTIVE HEALTHCARE STANDARDS,” to read as follows:

Section 12.21. Determination of blood group and Rh type and administration of Rh immune globulin.

(a) It shall be the duty of the physician, licensed midwife or nurse practitioner attending a pregnant person to take or cause to be taken a sample of their blood to determine blood group and Rh type in accordance with evidence based clinical guidelines.

(b) It shall further be the duty of the attending physician, licensed midwife or nurse practitioner to evaluate every such patient for the risk of sensitization to Rho (D) antigen in accordance with evidence based clinical guidelines and if the use of Rh immune globulin is indicated, and the patient consents, to cause an appropriate dosage thereof to be administered as clinically indicated.

Pursuant to the authority vested in the Commissioner of Health by sections 363-a(2) and 365-a(2) of the Social Services Law, subdivision (e) of section 505.2 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

505.2 Physicians' services.

\* \* \*

(e) Abortion.

(1) Definition. [An abortifacient act is the procedure or procedures by which an abortion is induced and completed; this being either medical, surgical or both, the words abortifacient act refer to either or both.] For purposes of this section, an abortion shall include medication and procedural abortion that both a pregnant person and provider agree are needed.

[(2) Where care may be provided. An abortifacient act shall be performed subject to the requisites set forth in 10 NYCRR 12.20.]

[(3)](2) Who may provide service. [(i)] Abortion may be performed by a health care practitioner licensed, certified, or authorized under title eight of the Education Law, acting within their lawful scope of practice. [An abortifacient act is an obstetrical procedure and shall be performed only by a physician with a currently valid license to practice medicine and surgery in the State of New York and in accordance with the medical staff rules of the hospital or qualifying facility where the abortifacient act is performed.]



(ii) No physician or other person shall be required to perform or participate in a medical procedure which may result in the termination of a pregnancy.]

[(4)] (3) Establishment of diagnosis of pregnancy. Prior to the performance of an abortion[al act], the health care practitioner must determine and document the estimated duration of the pregnancy in accordance with evidence based clinical guidelines and section 2599-bb of the Public Health Law. [positive evidence of pregnancy by test result, history and physical examination or other reliable means shall be recorded on the patient's medical chart, with an estimate of the duration of the pregnancy.]

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The statutory authority for the proposed revisions is set forth in Public Health Law (PHL) sections 201, 206 and 225, as well as Social Services Law (SSL) sections 363-a(2) and 365-a(2). Section 201(1)(l) of the PHL establishes the powers and duties of the New York State Department of Health (Department), which include promoting diagnostic and therapeutic services for maternal health, as well as acting as the single state agency for the provision of the medical assistance program, also known as Medicaid. Section 206 of the PHL requires the Commissioner of Health to establish rules and regulations for the determination of asymptomatic conditions including Rh sensitivity, and establishes the Commissioner's authority to enforce the PHL, the State Sanitary Code and the requirements of the medical assistance program. Section 225 of the PHL sets forth the powers and duties of the Public Health and Health Planning Council (PHHPC), which include the authority to establish, amend and repeal the regulations known as the State Sanitary Code, subject to the approval of the Commissioner of Health. Further, section 225(5)(a) of the PHL allows the State Sanitary Code to address any matter affecting the security of life or health, or the preservation or improvement of public health, in New York State.

Additionally, SSL section 363-a(2) establishes the Department's authority to promulgate regulations needed to implement the medical assistance program, and SSL section 365-a(2) requires the Department to determine the scope of standard coverage under the medical assistance program.

**Legislative Objective:**

The legislative objective of sections 201, 206 and 225 of the PHL are to ensure that the Department of Health, through the Commissioner of Health and PHHPC, protect public health by adopting regulations in the State Sanitary Code (SSC) that effectively promote diagnostic and therapeutic services for maternal health and establish rules for the determination of asymptomatic conditions such as Rh sensitivity. In accordance with that objective, this regulation amends the SSC by revising Title 10 of New York Codes, Rules and Regulations (NYCRR) Part 12 to accord with provisions of the Reproductive Health Act of 2019.

Additionally, SSL section 363-a(2) establishes the Department's authority to promulgate regulations needed to implement the medical assistance program, and SSL section 365-a(2) requires the Department to determine the scope of standard coverage under the medical assistance program.

**Needs and Benefits:**

Neither Part 12 of Title 10 nor Part 505 of Title 18 has been modified since the passage of the Reproductive Health Act of 2019, and the provisions subject to amendment in this proposal derived their authority from PHL, section 4164, which was repealed by the Reproductive Health Act. Consequently, the proposed amendments are necessary to reconcile the regulations with the statute in its current form.

The Reproductive Health Act added a new Article 25-A to the PHL that expanded the types of otherwise qualified health care practitioners who may perform abortions, enshrined a fundamental right to carry a pregnancy to term, give birth to a child, or have an abortion, and explicitly stated that it was "the intent of the legislature to prevent the enforcement of laws or regulations that are not in furtherance of a legitimate state interest in protecting a woman's health

that burden abortion access.” As such, it is necessary to repeal section 12.20 of Title 10 and the corresponding provisions of subdivision 505.2(e) of Title 18.

What is now compartmentalized as section 12.13 of Title 10 contains two provisions applicable to abortion care that are inconsistent with both current standards of clinical care and recent changes to the abortion provisions in regulations authorized by Article 28 of the PHL. Moreover, it is both legally inaccurate and medically inappropriate that regulations governing abortion care be organized under a heading entitled “Protection of Infants and Children Against Hazards,” when in fact these provisions are meant to protect the health and lives of people of childbearing age. For that reason, the proposal will create a new subject heading under Part 12 entitled “Reproductive Healthcare Standards,” to clarify the regulation’s relevance and better facilitate public access to its contents.

Additionally, the rulemaking will amend subdivision of 505.2(e) of Title 18 to modernize the definition of abortion to expressly include medication and procedural services as deemed appropriate by patient and physician; to clarify that abortion services may be provided by any healthcare practitioner licensed in New York State and acting within their lawful scope of practice; and to clarify that said practitioners should determine a patient’s estimated duration of pregnancy in accordance with the requirements of PHL section 2599-bb and evidence-based clinical guidelines.

**COSTS:**

**Costs to Private Regulated Parties:**

There are no anticipated costs to regulated parties, including physicians, licensed midwives and nurse practitioners attending a pregnant person, because the current regulations already require these individuals to take or cause to be taken a sample of blood to determine blood group and Rh type. In addition, the changes to Title 18 modernize and clarify the

definition of abortion but make no actual changes to current provision of services or scope of practice. Therefore, there are no anticipated costs to regulated parties.

**Cost to Local Government:**

There are no anticipated costs to local governments associated with this regulation.

**Cost to the Department of Health:**

There are no anticipated costs to the Department of Health associated with this regulation.

**Cost to Other State Agencies:**

There are no anticipated costs to other state agencies associated with this regulation.

**Local Government Mandates:**

This regulation imposes no new government mandates.

**Paperwork:**

This regulation does not impose any new paperwork requirements.

**Duplication:**

This regulation does not duplicate, overlap, or conflict with relevant rules or other legal requirements of the State or federal government.

**Alternatives:**

An alternative to these regulatory amendments would be not to make any changes and to keep the regulations as written. However, these amendments are needed to bring the regulations into compliance with Article 25-A of the PHL, and therefore this was not considered a viable alternative.

**Federal Standards:**

The proposed regulations do not duplicate or conflict with any federal statutes or regulations.

**Compliance Schedule:**

This regulation will be effective immediately upon publication of a Notice of Adoption in the New York State Register. These proposed rules conform current regulation to existing State statutes.

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**STATEMENT IN LIEU OF  
REGULATORY FLEXIBILITY ANALYSIS  
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments. There was no small business or local government participation in the development of these regulations. Local government should not be impacted by these proposed regulations.

**STATEMENT IN LIEU OF  
RURAL AREA FLEXIBILITY ANALYSIS**

No Rural Area Flexibility Analysis is required pursuant to section 202-bb of the State Administration Procedure Act (SAPA). It is apparent from the nature of the proposed amendment that it will not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. These provisions apply uniformly throughout New York State, including all rural areas.



**STATEMENT IN LIEU OF  
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, Section 2.6 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

2.6 Investigations and Response Activities.

(a) Except where other procedures are specifically provided in law and consistent with any direction that the State Commissioner of Health may issue, every local health authority, either personally or through a qualified representative, shall, with all due speed [immediately] upon receiving a report of a case, suspected case, outbreak, or unusual disease[,], and as the circumstances may require, investigate the circumstances of such report at any and all public and private places in which the local health authority has reason to believe, based on epidemiological or other relevant information available, that such places are associated with such disease. Except as consistent with any direction that the State Commissioner of Health may issue, s[S]uch investigations and response activities shall[,], consistent with any direction that the State Commissioner of Health may issue]:

\* \* \*

(6) With the training or assistance of the State Department of Health as necessary, examine the processes, structures, conditions, machines, apparatus, devices, equipment, records, and material within such places that may be relevant to the investigation of disease or condition;

\* \* \*

(c) Investigation Updates and Reports.

- (1) Upon request of the State Department of Health, the local health authority shall submit updates and reports on outbreak investigations to the State Department of Health. The content, timeframe, and manner of submission of such updates shall be determined by the State Department of Health in consultation with the local health authority.

\* \* \*

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The statutory authority for the regulatory amendments to Part 2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 225 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC), subject to the approval of the Commissioner of Health (Commissioner), to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York. Additionally, section 2103 of the PHL requires all local health officers to report cases of communicable disease to the New York State Department of Health (the “Department”).

### **Legislative Objectives:**

The legislative objective of section 225 of the PHL is, in part, to protect the public health by authorizing the PHHPC, with the approval of the Commissioner, to amend the SSC to address public health issues related to communicable disease.

### **Needs and Benefits:**

These regulations update and clarify the Department’s authority as well as that of local health departments (LHDs) to take specific actions to monitor the spread of disease, including actions related to investigation and response for a disease outbreak.

Specifically, the proposed regulatory amendments would add language to clarify and make explicit that the Commissioner may issue guidance that impacts investigation and response activities. For example, guidance may be issued instructing LHDs to prioritize full

investigations of varicella cases to those known to involve congregate residential settings and conduct investigations of other varicella cases only to the extent that resources allow, or guidance may provide details about the extent of investigation for a case of chlamydia in a pregnant individual. Regarding the timing for when investigation must commence, the regulation would change “immediately” to “with all due speed” to account for the fact that there is a range of appropriate response times depending on the condition and situation. In addition, the regulation would add “as necessary” to the provision requiring the local health authority to examine various factors associated with places related to an investigation “with the training or assistance of the State Department of Health”, to acknowledge that local health authorities will not always need training or assistance. Finally, the regulation would add “in consultation with the local health authority” to the provision stating that the Department shall determine the content and other characteristics of investigation updates, to acknowledge that the local health authority can provide valuable input.

## **COSTS:**

### **Costs to Regulated Parties:**

Although there are costs associated with disease investigation and response for any outbreak, these amendments merely clarify the existing authorities and responsibilities of local governments. As such, these amendments do not impose any substantial additional costs beyond what LHDs would incur in the absence of these amendments.

Further, making explicit the Department’s authority to issue guidance that impacts investigation activities will result in a more appropriate allocation of resources, possibly resulting in a cost-savings for State and local governments by reducing unnecessary investigatory

activities and allowing resources to be focused on investigations likely to have the greatest public health impact.

**Costs to Local and State Governments:**

Although there are costs associated with disease investigation and response for any outbreak, these regulations merely clarify the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations.

Further, making explicit the Department’s authority to issue guidance that impacts investigation activities will result in a more appropriate allocation of resources, possibly resulting in a cost-savings for State and local governments.

**Paperwork:**

These amendments do not require any additional paperwork.

**Local Government Mandates:**

Under existing regulation, LHDs already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties.

**Duplication:**

There is no duplication in existing State or federal law.

**Alternatives:**

The alternative would be to leave in place the current regulations on disease investigation. However, these regulatory provisions clarify the regulation and provide additional flexibility to LHDs, while ensuring appropriate responses are taken for communicable disease outbreaks.

**Federal Standards:**

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within New York State.

**Compliance Schedule:**

The regulations will become effective upon publication of a Notice of Adoption in the New York State Register.

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## **REGULATORY FLEXIBILITY ANALYSIS**

### **Effect on Small Business and Local Government:**

Under existing regulation, local health departments (LHDs) already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments merely clarify these existing authorities and duties.

### **Compliance Requirements:**

Under existing regulation, LHDs already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments merely clarify these existing authorities and duties.

### **Professional Services:**

It is not expected that any professional services will be needed to comply with this rule.

### **Compliance Costs:**

Although there are costs associated with disease investigation and response for any outbreak, these regulations merely clarify the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what LHDs would incur in the absence of these regulations being amended.

Further, making explicit the New York State Department of Health's ("the Department") authority to issue guidance that impacts investigation activities will result in a more appropriate allocation of resources, possibly resulting in a cost-savings for State and local governments.



**Economic and Technological Feasibility:**

There are no economic or technological impediments to the rule changes.

**Minimizing Adverse Impact:**

As the proposed amendments clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with regulated entities to ensure they are aware of the new regulations and have the information necessary to comply.

**Small Business and Local Government Participation:**

These proposed amendments to the regulation were previously discussed with the New York State Association of Counties Health Officials (NYSACHO) on three occasions and participants included both NYSACHO and LHD representatives. Discussions involved a detailed review of each of the submitted comments to the prior amendments adopted effective December 20, 2023 and a proposed approach to prioritize the initial scope of the regulatory amendments to incorporate the requested flexibility to prioritize investigation and response efforts at the local level, which is reflective of current practice and supported by both the Department and NYSACHO. These proposed amendments to the regulation are being proposed for permanent adoption, so all parties will have an opportunity to provide comments during the notice and comment period.

## RURAL AREA FLEXIBILITY ANALYSIS

### Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population, ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 44 counties have a population of less than 200,000 based upon 2020

United States Census data:

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

The following 10 counties have populations of 200,000 or greater, and towns with population densities of 150 persons or fewer per square mile, based upon the United States Census estimated county populations for 2020:

Albany County  
Dutchess County  
Erie County

Monroe County  
Niagara County  
Oneida County  
Onondaga County

Orange County  
Saratoga County  
Suffolk County

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

As the proposed regulations clarify existing responsibilities and duties among regulated entities and individuals, no additional recordkeeping, compliance requirements, or professional services are expected.

**Compliance Costs:**

As the proposed regulations clarify existing responsibility and duties among regulated entities and individuals, no initial or annual capital costs of compliance are expected above and beyond the cost of compliance for the requirements currently in 10 NYCRR Part 2.

**Minimizing Adverse Impact:**

As the proposed amendments to the regulations clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with local health departments (LHDs) to ensure they are aware of the new regulations and have the information necessary to comply.

**Rural Area Participation:**

These proposed amendments to the regulations are being proposed for permanent adoption, so all parties will have an opportunity to provide comments during the notice and comment period.

## **JOB IMPACT STATEMENT**

The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

## SUMMARY OF EXPRESS TERMS

This regulation amends Title 10 of the Codes, Rules, and Regulations of the State of New York by adding a new Subpart 98-5 and will be effective upon publication of a Notice for Adoption in the New York State Register.

The proposed regulations implement a new licensure requirement for the Program of All-Inclusive Care for the Elderly (PACE) program under Article 29-EE of the Public Health Law requiring the Commissioner of Health to develop regulations for a unified licensure process for PACE organizations that includes the applicable program requirements of this article and Articles 28, 36 and 44 of the Public Health Law.

The regulations specifically provide the criteria for the establishment application process for the newly developed Article 29-EE PACE program including: the criteria needed to submit or make amendments or modifications to PACE applications, the criteria for an applicant withdrawing and abandoning a PACE application, the criteria for revocation, limitation or annulment of approvals of establishment and decision-making process, the criteria for determining if a PACE program is operating a Diagnostic and Treatment Center, and the responsibilities of the governing authority of a PACE program.

The following is a summary of the amendments to the Department's regulations which creates a new Subpart: 98.5 – Programs of All Inclusive Care for the Elderly (PACE):

- **Section 98-5.1** establishes the new PACE program. A PACE organization lawfully operating at the time this Subpart takes effect may continue to operate while the PACE organization transitions into full compliance with Articles 29-EE and this Subpart. All pending applications for PACE-related programs currently under review by the

Department under Article 29-EE, Article 28, Article 36 and Article 44 shall automatically be reviewed for compliance with this section at the time this Subpart is adopted.

Further, this section lists the criteria that PACE programs must comply with and provides the Commissioner of Health the authority to establish a uniform licensure process for the newly formed PACE organizations and that any license granted requires the approval of the Public Health and Health Planning Council (PHHPC).

- **Section 98-5.2** defines certain terms in the Subpart.
- **Section 98-5.3** outlines the criteria for the application process for Article 29-EE PACE licenses.
- **Section 98-5.4** outlines the requirements for approval of a PACE license.
- **Section 98-5.5** outlines the requirements to revise, amend, or modify a PACE licensure application.
- **Section 98-5.6** outlines the requirements to withdraw or abandon a PACE licensure application and what processes will be taken if an applicant fails to satisfy contingencies.
- **Section 98-5.7** outlines the procedures for the revocation, limitation, or annulment of approvals for establishment of PACE licenses.
- **Section 98-5.8** outlines the procedures for necessary hearings conducted by PHHPC, a committee of the Council, a person designated by the Council, or the Department related to PACE licenses.
- **Section 95-5.9** outlines how decisions of PHHPC on PACE licensure applications will be disseminated.
- **Section 98-5.10** outlines the criteria for determining the operation of a diagnostic and treatment center for PACE programs.

- **Section 98-5.11** outlines the criteria for the governing authority or operator of a PACE program licensed under Article 29 EE.
- **Section 98-5.12** outlines the procedures for agents, nominees, and fiduciaries for the new PACE program.
- **Section 98-5.13** outlines the procedures for name-of-purpose changes of operators and medical facilities related to PACE programs.



Pursuant to the authority vested in the Commissioner of Health by Section 2999-u of the Public Health Law, and the authority vested in PHHPC, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new Subpart 98-5 within Subchapter R, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new Subpart 98-5 is added to read as follows:

**SUBPART 98-5. Program of All-Inclusive Care for the Elderly (PACE)**

**Section 98-5.1 PACE Program Established.**

(a) The program of all-inclusive care for the elderly (PACE) is established in the department to provide community-based, risk-based, and capitated long-term care services as optional services under Medicaid and, where applicable, under Medicare, as well as under contracts among Centers for Medicare and Medicaid Services (CMS), the department, and PACE organizations.

(b) A PACE organization lawfully operating at the time this Subpart takes effect may continue to operate while the organization transitions into full compliance with this section under a process and requirements established by the department. Such requirements will take effect 180 days after the effective date of this Subpart.

(c) For purposes of existing contractual obligations of PACE organizations currently established under articles 28, article 36 and article 44 of the Public Health Law, a PACE program may continue to be established if the organization notifies the department of its intention to do so in writing within 30 days following the effective date of this section. Such approval is at the discretion of the department based on criteria set forth by the commissioner. Any material change (such as, but not limited to, change in current PACE-related services, current location, or change in any of the established operators) to the makeup and composition of the PACE program

under this section will automatically trigger requirements for licensure of the PACE organization under article 29-ee of the Public Health Law.

(d) All pending applications for PACE-related programs currently under review under article 28, article 36 and article 44 of the Public Health Law shall automatically be reviewed for compliance with this section at the time this Subpart is adopted for licensure under article 29-ee of the Public Health Law.

(e) Any new PACE program pursuant to article 29-ee of the Public Health Law or a PACE program currently established (prior to enactment of article 29-ee of the Public Health Law) shall comply with this section except for those PACE programs that qualify under section 98-5.1(c) of this Subpart.

(f) A PACE organization under this section must:

(1) Comply with applicable federal law and regulations, 42 USC §1396u-4 and 42 CFR part 460, respectively. The statute at 42 USC §1396u-4 is contained Title 42 of Supplement 4 of the United States Code, the 2006 Edition. The regulations at 42 CFR part 460 are contained in volume 42 of the Code of Federal Regulations, Public Health, at part 460 (42 CFR part 460), 1984 edition. Both are published by the Office of the Federal Register National Archives and Records Service, General Services Administration. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office Washington, DC 20402. Both 42 USC §1396u-4 and 42 CFR part 460 are available for public inspection and copying at the Records Access Office, New York State Department of Health, Corning Tower Building, Empire State Plaza, Albany, NY 12237.

(2) Provide a PACE program or facilities at which primary care and other services are furnished to enrollees.

(3) Provide an interdisciplinary team approach to care management, care delivery, and care planning.

(4) Unless specifically enumerated in this section, comply with this section and the applicable provisions of articles 29-ee, and if relevant, articles 28, 36 (if not already contracted with an article 36 licensed entity for home care services), and 44 of the Public Health Law.

(5) Enter into a PACE organization contract and agreement with the department and CMS.

(g) (1) A PACE organization shall serve an approved geographic service area as determined by the department.

(2) (i) A PACE organization and its incorporators, directors, sponsors, stockholders, members, and operators shall have the experience, competence, and standing in the community as to give reasonable assurance of their ability to operate the organization to provide a consistently high level of care for enrollees and comply with this section.

(ii) A PACE organization shall demonstrate that where any incorporator, director, sponsor, stockholder, member, or operator of the organization holds, or within the past 10 years has held, a controlling interest or been a controlling person in a PACE program licensed under this Chapter or outside the State of New York, a consistently high level of care has been rendered in each such organization.

(iii) A PACE organization shall demonstrate that where any incorporator, director, sponsor, stockholder, member, or operator of the organization facility holds, or within the

past 10 years has held, a controlling interest in any other entity providing health-related or senior services inside or outside the State of New York, a consistently high level of care has been rendered in each such organization or facility.

(3) A PACE organization shall meet requirements for financial solvency under paragraph (c) of subdivision 1 of section 4403 of the Public Health Law, including a contingent reserve requirement as developed by the commissioner.

(4) A PACE organization shall be deemed to be a health maintenance organization under article 44 of the Public Health Law for purposes of subdivision 1 of section 6527 of the Education Law.

(h) (1) A unified licensure process for PACE organizations is hereby established that includes the applicable program requirements of article 29-ee of the Public Health Law, and, if not noted in this section, the provisions found in articles 28, 36 and 44 of the Public Health Law shall apply.

(2) A license under this Subpart shall require approval of the Public Health and Health Planning Council (PHHPC) and CMS.

(3) Any part of the PACE application that is approved by PHHPC is considered contingently approved until such time as all components of the PACE application are finally approved in writing by CMS which confers the final approval to become a PACE organization.

(4) A PACE application can be submitted at any time to the department during a calendar year. The separately required CMS application may only be submitted based on the quarterly submission schedule, or any other scheduled timeframes, issued by CMS and only after the department has officially issued the *State Attestation and Assurances*. An

applicant that has received an executed *State Attestation and Assurances* document must notify the department within 10 business days upon filing their CMS application.

**Section 98-5.2 Definitions.**

- (a) *Application* shall mean all or a part of the application for PACE licensure as defined in section 29-ee of the Public Health Law.
- (b) *Council* shall mean the New York State Public Health and Health Planning Council or PHHPC, the body set forth in section 225 of the Public Health Law.
- (c) *CMS* shall mean the federal Centers for Medicare and Medicaid Services
- (d) *Department* shall mean the New York State Department of Health.
- (e) *Health maintenance organization* or *HMO* shall have the same meaning as defined in article 44 of the Public Health Law unless otherwise noted in this section.
- (f) *Hospital* shall have the same meaning as defined in article 28 of the Public Health Law unless otherwise noted in this section.
- (g) *Interdisciplinary team* shall have the same meaning as found in section 42 CFR 460.102 unless otherwise noted.
- (h) *Medicaid* shall mean the program established pursuant to title 11 of article 5 of the Social Services Law and the program thereunder.
- (i) *Medicare* shall mean the program established by the federal government pursuant to title XVIII of the Federal Social Security Act and the programs thereunder.
- (j) *PACE services* shall mean those services defined by CMS as all Medicare Part A, Part B, and Part D services along with all Medicaid state plan covered services as determined appropriate by the Interdisciplinary Team.

**Section 98-5.3 Applications for uniform licensure to the PACE program.**

(a) The department will develop a unified PACE license application which will consist of three parts:

- (1) health maintenance organization, newly licensed under this Subpart;
- (2) hospital, newly licensed under this section; and
- (3) proof that a home care agency licensed or certified pursuant with defined criteria under article 36 of the Public Health Law is either newly licensed under this Subpart for the proposed PACE program, or the proposed PACE program plans to contract with an already existing home care provider currently licensed under article 36 of the Public Health Law.

(b) An application to CMS must be accompanied by a fully executed *State Attestation and Assurances* document indicating that the council considers the entity qualified to be a PACE organization and is willing to enter into a three-way agreement with the PACE program upon final approval of the application by both the council and CMS. This document will also clearly define the applicant's proposed geographic service area, consistent with both the applicant's State and CMS applications.

(c) (1) An application shall be in writing on forms provided by the department and subscribed by the chief executive officer (or other officer duly authorized by the applicant) of the proposed PACE program or, where an application is to be submitted by a local governmental applicant, the president or chairperson of the board of the proposed PACE program or the chief executive officer if there is no board; and accompanied by a certified copy of a resolution of the board of a corporate applicant authorizing the undertaking which is the subject of the application, and the subscribing and submission thereof by an appropriate designated individual. In the event that an

application is to be submitted by an entity which necessarily remains to be legally incorporated it shall be subscribed and submitted by one of the proposed stockholders or directors. If a local governmental applicant submitting an application has not designated a president, chairperson or chief executive officer for the proposed facility, the application shall be subscribed by the chairperson or president of the local legislature or board of supervisors having jurisdiction, or other appropriate executive officer. An original application and two copies thereof shall be prepared. The original shall be filed with the council through submission to the PACE project management unit in the department's Office of Aging and Long Term Care in Albany, New York, or by such means as determined by the commissioner.

(2) Applications shall contain information and data with reference to:

(i) the justification for the existence of the proposed PACE program at the time and place and under the circumstances proposed for use in a specific PACE program;

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

(iii) the financial resources and sources of future revenue of the proposed PACE program to be operated by the applicant as defined in article 29-ee of the Public Health Law;

(iv) the fitness and adequacy of the premises and equipment to be used by the applicant for the proposed facility;

(v) the following documents shall be filed:

(a) a certified copy of the applicant's certificate of doing business;

(b) where the applicant is a partnership, full and true copies of all partnership agreements, which shall include the following language:

"By signing this agreement, each member of the partnership created by the terms of this agreement acknowledges that the partnership and each member thereof has a duty to report to the New York State Department of Health any proposed change in the membership of the partnership. The partners also acknowledge that the prior written approval of the Public Health and Health Planning Council and the New York State Department of Health is necessary for such change before such change is made, except that a change resulting from an emergency caused by the severe illness, incompetency or death of a member of the partnership shall require immediate notification to the New York State Department of Health of such fact and application shall be made for the approval by both the Public Health and Health Planning Council and the New York State Department of Health of such change within 30 days of the commencement of such emergency. The partners also acknowledge that they shall be individually and severally liable for failure to make the aforementioned reports and/or applications."; and

(c) any additional information or documents which may be requested by the council.

(3) Each application shall include an application fee of \$2,000 in addition to the fee described in section 2802 of the Public Health Law due upon submission of application. All fees pursuant to this paragraph shall be payable to the Department of Health for deposit into the Special Revenue Funds - Other, Miscellaneous Special Revenue Fund - 339, Certificate of Need Account.



(4) Any person filing a proposed certificate of incorporation or an application for licensure shall file with the commissioner information regarding the property interests in such facility, including the following:

(i) the name, address, and a description of the interest held, or proposed to be held, by each of the following persons:

(a) any person who, directly or indirectly, beneficially owns an interest in the land on which the proposed PACE program premises is located;

(b) any person who, directly or indirectly, beneficially owns any interest in the building in which the proposed PACE program is located;

(c) any person who, directly or indirectly, beneficially owns any interest in any mortgage, note, deed of trust or other obligation secured in whole or in part by the equipment used in the facility, or by the land on which or the building in which the proposed PACE program is located;

(d) any person who, directly or indirectly, has any interest as lessor or lessee in any lease or sublease of the land on which or the building in which the proposed PACE program is located; and

(e) any person who, directly or indirectly has any interest as a lessor or lessee in any lease or sublease of the equipment used in the building in which the proposed PACE program is located;

(ii) if any person named in response to subparagraph (i) of this paragraph is a partnership, then the name and address of each partner;

(iii) if any person named in response to subparagraph (i) of this paragraph is a corporation, other than a corporation whose shares are traded on a national securities

exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of each officer, director, stockholder and, if known, each principal stockholder and controlling person of such corporation;

(iv) any additional information and documents which may be requested by the council.

**Section 98-5.4 Requirements for Approval.**

(a) The application must be complete and in proper form. It shall provide all the scope and organization of services defined by CMS for a PACE plan and all information essential for the council's and the department's consideration.

(b) The applicant must satisfactorily demonstrate to the council:

(1) that there is a justification for the proposed PACE program. All applicants must demonstrate in their application that the PACE services provided by the proposed PACE program will be an organized and comprehensive program. The department may exclude from designation an application's proposed geographic service area that is already covered under another PACE program agreement to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing PACE program;

(2) (i) if a nonprofit corporation, that the members of the board of directors and the officers of the corporation are of such character, experience, competence, and standing as to give reasonable assurance of their ability to conduct the affairs of the corporation in its best interests and in the public interest and so as to provide proper care for the patients or residents to be served by the proposed PACE program;

(ii) if a proprietary business, that the owner, or all the partners, if a partnership, are persons of good moral character with the experience, competence and standing as to give reasonable assurance of their ability to operate the business so as to provide proper care for the patients or residents to be served by the proposed PACE program;

(iii) if a business corporation, that the members of the board of directors, the officers and the stockholders of the corporation are of such character, experience, competence, and standing as to give reasonable assurance of their ability to conduct the affairs of the corporation so as to provide proper care for the patients or residents to be served by the proposed PACE program;

(iv) if a limited liability company, that the members, managers, and officers of the company, are of such character, experience, competence, and standing as to give reasonable assurance of their ability to conduct the affairs of the company so as to provide proper care for the patient or residents to be served by the proposed PACE program;

(3) that there are adequate finances to properly establish and conduct the proposed PACE program for purposes of this section, including:

(i) all sources of capital;

(ii) all audited financial statements of all holding companies, related parties, and principals;

(iii) financial projections that identify the medical loss ratio and administrative overhead in line with industry standards;

(iv) the ability of the applicant to project financial viability;

(v) the ability of the applicant to meet reserved requirements defined in Part 98 of this Title; and

(vi) templates or contracts to meet all administrative and management services requirements;

(4) that with respect to an applicant who is already, or within the past 10 years has been, an incorporator, director, sponsor, stockholder, member, controlling person, principal stockholder, principal member, or operator of any PACE program or other entity providing health-related or senior services in New York as specified in paragraph (b) of subdivision (3) of section 2801-a of the Public Health Law or any other jurisdiction outside the State of New York, a substantially consistent high level of care has been rendered in each such PACE program or other entity providing health-related or senior services, with which the applicant is or has been affiliated.

(i) In reaching this determination, the council shall consider findings of PACE program or any other health facility related inspections, including but not limited to title XVIII and XIX of the Social Security Act and any relevant article 28, article 36, or article 29-ee survey findings that pertain to violations of this Chapter, routine and patient abuse complaint investigation results, and other available information. The council's determination that a substantially consistent high level of care has been rendered shall be made after evaluating such information, with the following criteria: the gravity of any violation, the manner in which the applicant/operator exercised supervisory responsibility over the proposed PACE program operation, or other entity providing health-related or senior services, and the remedial action, if any, taken after the violation was discovered.

(a) In evaluating the gravity of the violation, the council shall consider whether the violation threatened, or resulted in direct, significant harm to the health, safety or welfare of patients/residents.

(b) In evaluating the manner in which the applicant/operator exercised supervisory responsibility over the proposed PACE program operation, or other entity providing health-related or senior services, the council shall consider whether a reasonably prudent individual of the applicant/operator should have been aware of the conditions which resulted in the violation and/or was notified about the conditions which resulted in the violation.

(c) In evaluating any remedial action taken, the council shall consider whether the applicant/operator investigated the circumstances surrounding the violation and took steps which a reasonably prudent applicant/operator would take to prevent the reoccurrence of the violation.

(ii) When violations were found which either threatened to directly affect patient/resident health, safety, or welfare, or resulted in direct, significant harm to the health, safety or welfare of patients/residents, there shall not be a determination of a substantially consistent high level of care if the violations were recurrent or were not promptly corrected.

(a) A violation is recurrent if it has the same root cause as a violation previously cited within the last 10 years.

(b) A violation is not promptly corrected if a plan of correction has not been submitted to the department within 10 calendar days of the issuance of the *Statement of Deficiencies (Form CMS-2567)*, and the PACE program, or other entity providing

health-related or senior services has failed to provide an acceptable date of compliance based on the violation(s) requiring correction.

(c)(1) The applicant must supply any additional documentation or information requested by the council or the department within 30 days of such request, or must obtain from the council or the department, an extension of the time to provide such documentation or information which is requested during the review of the application. Any request for an extension of time shall set forth reasons why such documentation or information could not be obtained within the prescribed time. The granting of a request for an extension shall be at the discretion of the council or the department. Failure to provide such documentation or information within the time prescribed or as extended by the council or the department, shall constitute an abandonment or withdrawal of the application without any further action by the council or department.

(2) The applicant must supply any authorization the council or the department requests in order to verify any documentation or information contained in the application or to obtain any additional documentation or information which the council or department finds is pertinent to the application. Failure to provide such authorization shall constitute an abandonment or withdrawal of the application without any further action by the council or department.

(d) Whenever any applicant proposes to lease premises in which the operation of a hospital as defined in section 2801 of the Public Health Law is to be conducted, the lease agreement shall include the following language:

"The landlord acknowledges that their rights of reentry into the premises set forth in this lease do not confer on them the authority to select or install an operator or to operate a hospital as defined in article twenty-eight or article twenty-nine-ee of the Public Health Law on the premises and agrees that they will give the New York State Department of Health, Center for Long Term Care

Licensure, Planning and Finance, Office of Aging and Long Term Care, New York State Department of Health, Empire State Plaza, Albany, N.Y. 12237, notification by certified mail of their intent to reenter the premises or to initiate dispossess proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of the lease.

Upon receipt of notice from the landlord of their intent to exercise his right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified mail to the Center for Long Term Care Licensure, Planning and Finance, New York State Department of Health, Office of Aging and Long Term Care, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that the lease is due to expire."

(e) No lease covering the premises in which the operation of a hospital as defined in article 29-ee or, if relevant, 28 of the Public Health Law may contain any provision whereby rent, or any increase therein, is based upon the Consumer Price Index, or any other cost-of-living index, except:

(1) Leases for outpatient facilities and premises leased solely for administrative purposes may contain cost-of-living index rent determination or adjustment provisions, provided the following conditions are met:

(i) the lease is reviewed and approved by the department;

(ii) the space rented is in a multi-purpose, multi-use building not constructed specifically for the purpose of housing an outpatient proposed PACE program;

(iii) the rental, if the lease is a sublease, is the same or less than the rental in the overlease;

(iv) the applicant has no interest, direct or indirect, beneficial or of record, in the ownership of the building or any overlease; and

(v) the rental per square foot, in the judgement of the department, is the same as or is comparable to other rentals in the building in which the outpatient service or administrative space is to be located, and the rental per square foot is comparable to the rental of similar space in other comparable buildings in the area when such comparisons can be made.

(2) In addition to the exception set forth in paragraph (1) of this subdivision, in the event the lease covering hospital premises contains provisions whereby it is the lessor's responsibility to pay necessary expenses associated with such premises, such as real estate taxes, utilities, heat, insurance, maintenance and operating supplies, such lease may contain provisions which allow adjustments to the rent only to the extent necessary to compensate for changes in such expenses.

**Section 98-5.5 Revisions, Amendments, and Modifications to Applications.**

(a) For purposes of this section, the following terms shall have the following meanings:

(1) *Amendment* shall mean a change to an application which has been approved or contingently approved by the council but for which an operating certificate has not been issued, and meets the criteria contained in subdivision (c) of this section.

(2) *Modification* shall mean a change to an application which has been approved or contingently approved by the council for which an operating certificate has not been issued and does not meet the criteria contained in subdivision (c) and is approvable pursuant to subdivision (e) or meets the criteria in subdivision (d) of this section.

(3) *Revision* shall mean a change to an application which has not been approved or contingently approved before the council.



(4) *Total basic cost of construction* means total project costs less the capitalized amount of construction loan interest and financing fees.

(5) *Total project cost* means total costs for construction, including but not limited to costs for demolition work, site preparation, design and construction contingencies, total costs for real property, for fixed and movable equipment, architectural and/or engineering fees, legal fees, construction manager and/or cost consultant fees, construction loan interest costs, and other financing, professional and ancillary fees and charges. If any asset is to be acquired through a leasing arrangement, the relevant cost shall be the cost of the asset as if purchased for cash, not the lease amount.

(b) Revisions: changes prior to council approval. An application made to the council pursuant to this Subpart, may be changed before the council has approved or contingently approved the application, which shall constitute a revision as defined in this section. Such revisions shall be made on appropriate forms supplied by the department and submitted to the council through the PACE project management unit in the department's Office of Aging and Long Term Care in Albany and shall be governed by the following:

(1) any change in the information contained in the original application must be accompanied by a satisfactory written explanation as to the reason such information was not contained in the original application;

(2) when reviewing a competitive batch of applications, the department, acting on behalf of the council, may establish deadlines pursuant to written notification for the submission of any change to an application; and

(3) if a change is submitted after any such deadline(s), the application shall be removed from consideration within the competitive batch being reviewed.

(c) Amendments. An application made to the council pursuant to this Subpart may be changed after the council has approved or contingently approved an application but prior to the issuance of an operating certificate. For any amendment which changes the information set forth in paragraphs (1) through (3) of this subdivision, the applicant shall submit the proposed amendment, to the council, with appropriate documentation explaining the reason(s) for the amendment and such additional documentation as may be required in support of such amendment to the council for their reevaluation and recommendations. The approval of the council must be obtained for any such amendment including the following:

- (1) a change in the number and/or type of services, other than a reduction in service which would be subject to an administrative review;
- (2) a change in the location of the site of the construction if outside the facility's service area or adjacent service areas; and
- (3) any change in the applicant.

(d)(1) If the commissioner, acting on behalf of the council determines that increases in total project costs or total basic costs of construction are due to factors of an emergency nature such as labor strikes, fires, floods, or other natural disasters or factors beyond the control of the applicant, or modifications to the architectural aspects of the application which are made on the recommendation of the department, the applicant may proceed without the need for the application to be referred back to the council and the department.

- (2) If the applicant can document by evidence acceptable to the commissioner, acting on behalf of the council, that increases in total project cost or total basic cost of construction were caused by delays in obtaining zoning or planning approvals which were beyond its control, the commissioner may permit review of the application to proceed without the need

for the application to be referred back to the council and the department pursuant to this Subpart. The evidence shall demonstrate clearly that the applicant had timely pursued the zoning or planning permits, has now obtained all such required permits and approvals, and is prepared to proceed with the project.

(3) If the applicant can document by evidence acceptable to the commissioner, acting on behalf of the council, that increases in the total basic cost of construction were caused by inflation in excess of that estimated and approved in the application and that such inflation has affected the total basic cost of construction as a result of delays which were beyond the applicant's control, the commissioner may permit review of the application to proceed without the need for the application to be referred back to the council and the department, pursuant to this Subpart. The evidence shall demonstrate clearly that the increase in inflation exceeds that estimated and approved in the application, and that any delays resulting in such inflationary cost increases were beyond the applicant's control.

(e) Any modification submitted subsequent to the issuance of any approval by the council, which does not constitute an amendment pursuant to subdivision (c) of this section shall require only the prior approval of the commissioner.

(f) Failure to disclose an amendment as described in subdivision (c) of this section prior to the issuance of an operating certificate shall constitute sufficient grounds for the revocation, limitation, or annulment of the approval of licensure.

**Section 98-5.6 Withdrawals or abandonment of applications and failure to satisfy contingencies.**

(a) An application made to the council and the department in accordance with this Subpart may, on written request of the applicant, be withdrawn prior to decision by the council at any time without prejudice to resubmission. Such resubmission shall be considered a new application.

(b) The failure, neglect, or refusal of an applicant to submit documentation or information, within the stated time frame, to satisfy a contingency imposed by the council and the department in conjunction with the council's or the department's proposal to approve an application shall constitute and be deemed an abandonment or withdrawal of the application by the applicant without the need for further action by the council and the department.

(c) When an applicant submits documentation or information, within the stated time frame, in an attempt to satisfy a contingency imposed by the council but the department, on behalf of the council, does not consider the documentation or information sufficient to satisfy the contingency, the application may be returned to the council for whatever action the council deems appropriate.

**Section 98-5.7 Revocation, limitation, or annulment of approvals of licensure.**

(a) An approval of licensure may be revoked, limited, or annulled by the council or the department if the council or the department finds:

(1) that the licensed operator employed fraud or deceit, as determined by the department (such as, but not limited to, information from a conviction, civil suit, or an investigation by a government agency), in procuring such approval of licensure or has made statements or furnished information in support of the application which were not true, accurate, or complete in any material respect;

(2) that the operating certificate of a hospital or PACE program has been revoked, limited, or annulled pursuant to the applicable provisions of law;

- (3) that a PACE program or hospital caused or allowed a patient to be subjected to violence or abuse by an employee, consultant, volunteer, or other person serving in any capacity in the hospital or that a hospital has failed to comply with the relevant provisions of article 29-ee, article 28, article 36, or article 44 of the Public Health Law or the rules and regulations promulgated thereunder;
- (4) that the licensed operator has had such a change in his financial condition or in the fiscal aspects of the proposed institution since the approval of licensure as to render the project economically unfeasible or render unsatisfactory the financial resources of the proposed institution and its sources of future revenue;
- (5) that the licensed operator has been convicted in a court of competent jurisdiction, of a relevant crime, as determined by the commissioner. Such crimes may entail fraud, theft, falsifying an instrument, or any crime that affects patient safety;
- (6) that the licensed operator has transferred his ownership interest in the operation of the PACE program without council approval and department approval, and that such person has terminated his participation in the operation of the PACE program;
- (7) that there has been a violation of section 610.4(a) of this Title;
- (8) that the licensed operator has granted any person convicted of a crime relating to PACE program, hospital, Medicaid, Medicare, or HMO activities the authority to direct or cause the direction of the operations, management, or policies of the PACE program;
- (9) that the licensed operator has failed to comply fully with any condition, limitation, or other requirement imposed as part of, or in conjunction with, the approval of licensure; or
- (10) that the applicant has failed to commence and complete construction within the time period determined under Part 710 of this Title.

(b) For purposes of this section, licensed operator shall include any person, partnership, or partner thereof, company and its members, and any corporation or stockholder, officer or director thereof, actual or proposed, whose application for licensure has been approved, regardless of whether an operating certificate has been issued.

**Section 98-5.8 Decisions.**

Copies of the resolution of the council approving or disapproving an application shall be transmitted to the commissioner.

**Section 98-5.9 Governing authority or operator.**

(a) The governing authority or operator is the party responsible for the operation of a medical facility.

(b) The governing authority or operator shall mean:

- (1) the policy making body of a government agency;
- (2) the board of directors or trustees of a not-for-profit corporation;
- (3) the officers, directors and stockholders of a business corporation;
- (4) the proprietor or proprietors of a proprietary medical facility; and
- (5) the members of a limited liability company.

(c) An individual, partnership or corporation which has not received establishment approval pursuant to articles 28, 36, and 44 of the Public Health Law or licensure pursuant to article 29-ee of the Public Health Law, may not participate in the total gross income or net revenue of a medical facility.

(d)(1) Except as provided in section 405.3 of this Title, the governing authority or operator may not contract for management services with a party which has not received establishment or licensure approval.

(2) The criteria set forth in this paragraph shall be used in determining whether there has been an improper delegation to a contracting entity or individual by the governing authority or operator of its responsibilities. The governing authority shall not delegate the following elements of management authority:

- (i) authority to hire or fire the administrator or other key management employees;
- (ii) maintenance and control of the books and records;
- (iii) authority over the disposition of assets and the incurring of liabilities on behalf of the PACE program;
- (iv) the adoption and enforcement of policies regarding the operation of the facility; or
- (v) regular review and oversight of the contracting entity or individual activities.

(3) The criteria set forth in paragraph (2) of this subdivision shall not be the sole determining factors of an improper delegation, but indicators to be considered with such other factors that may be pertinent in particular instances.

(4) Professional expertise shall be exercised in the utilization and analysis of the criteria. All of the listed criteria need not be present in a given instance for there to be an improper delegation of authority.

**Section 98-5.10 Agents, nominees, and fiduciaries.**

(a) Agents, nominees, and fiduciaries, whether testamentary or inter vivos, shall not be considered proper applicants for licensure, transfer of interest, or transfer of stock of a PACE program except that the following persons may apply for licensure approval in accordance with and subject to the requirements and conditions set forth in relevant portions outlined in article 29-ee, and if relevant, article 28, article 36, and article 44 of the Public Health Law:

(1) a natural person appointed as trustee of an express testamentary trust created by a deceased sole proprietor, partner, or shareholder in the operation of a hospital for the benefit of a person less than 25 years of age; or

(2) a natural person appointed conservator pursuant to article 77 of the Mental Hygiene Law or a natural person appointed committee of the property of an incompetent pursuant to article 78 of the Mental Hygiene Law or a sole proprietor, partner, or shareholder of a hospital, with respect to a hospital owned by a conservatee or incompetent person.

**Section 98-5.11 Name changes or purpose changes of operators and medical facilities.**

(a) Any change in the following shall require the prior approval of the council and the department, in accordance with the requirements of this section, section 98-5.5 of this Subpart, and any other applicable requirements of law:

(1) the name of a not-for-profit corporation operating a PACE program under article 29-ee, or, if relevant, article 28 of the Public Health Law or the not-for-profits purposes thereof;

(2) the name of a not-for-profit corporation authorized to solicit contributions for the establishment, licensure, or maintenance of any hospital pursuant to article 29-ee or article 28 of the Public Health Law;

(3) the assumed name of a sole proprietor or a not-for-profit corporation operating a PACE program under article 29-ee or, if relevant, article 28 or article 36 of the Public Health Law or of a not-for-profit corporation authorized to solicit contributions for the establishment, licensure, or maintenance of any hospital pursuant to article 28 of the Public Health Law, whenever the prior assumed name was approved by the council or its predecessor; and the department and;



(4) the name or assumed name of a business corporation, partnership, or governmental subdivision operating a PACE program under article 29-ee and, if relevant article 28, article 36, and article 44 of the Public Health Law whenever the prior name or prior assumed name was approved by the council and the department.

(b) Applicants requesting council and the department approval of a change of name or assumed name shall submit a written request to the executive secretary of the council, and the Office of Aging and Long Term Care at the department's central office in Albany, which shall include the following information and documentation as appropriate:

(1) a letter specifying the current and proposed names and explaining the nature of and the reasons for the requested name or purpose of change;

(2) a photocopy of the executed proposed certificate of amendment for the certificate of incorporation or articles of organization, as appropriate, certificate of authority to conduct business in the State of New York, or certificate of conducting business under an assumed name; and,

(3) such other pertinent information and documents necessary for the council's and department's consideration, as requested.

(c) Whenever the name of a business corporation, partnership, limited liability company, or governmental subdivision, or the assumed name of a business corporation, not-for-profit corporation, partnership, limited liability company, governmental subdivision, or sole proprietor operating a PACE program or fundraiser under article 29-ee or, if relevant, article 28, and article 36, of the Public Health Law was not specifically approved by the council and the department, any proposed change in said name or assumed name or initial use of an assumed name shall not

require the approval of the council but shall require the approval of the department in accordance with section 401.3 of this Title.

(d) The approval of the council and the department of a proposed name or assumed name or purposes may be withheld if the proposed name or assumed name or purposes indicates or implies that the corporation, partnership, limited liability company, governmental subdivision, or individual is authorized to engage in activities for which it is not authorized, provide a level of care it is not authorized to provide, is misleading, causes confusion with the identity of another facility, or violates any provision of the law.

(e) An approved name change under this Subpart is deemed a material change under 98-5.1(c) of this Subpart.

(f) Nothing contained within this section shall limit the authority of the council and the department to approve or disapprove the initial use of a name or assumed name for a not-for-profit corporation, business corporation, partnership, limited liability company, governmental subdivision, or sole proprietor when such name or assumed name is before the council and the department as part of an application for the establishment or licensure of a PACE program or fundraiser.

## REGULATORY IMPACT STATEMENT

### **Statutory Authority:**

The statutory authority for the new Subpart 98-5 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is Article 29-EE of the Public Health Law which authorizes the Department of Health (Department), subject to approval of the Commissioner to develop regulations for the new Program of All-Inclusive Care of the Elderly (PACE) licensure process.

### **Legislative Objectives:**

The legislative objective of Article 29-EE is to create a streamlined single application process for the Program of All-Inclusive Care of the Elderly (PACE) programs.

PACE is a federally recognized model of provider-sponsored, comprehensive care for persons 55 years of age or older who are otherwise eligible for nursing home admission. The PACE program fully integrates, coordinates, and pays for the continuum of Medicare and Medicaid-covered services to enable individuals with long-term care needs to live safely in the community.

This legislative objective is to streamline the regulation of PACE programs by developing a consolidated and uniform authorization process, encompassing all program requirements into singular licensure, and improve oversight of PACE organizations.

These changes maintain the same level of oversight of all PACE programs that exist today across all program areas.

**Needs and Benefits:**

The regulations are needed to comply with a new statutory provision, Article 29-EE of the Public Health Law, which creates a new licensure category for the Program of All-Inclusive Care of the Elderly (PACE) program. PACE programs are established to provide community-based, risk-based, and capitated long-term care services as optional services under Medicaid and, when applicable, under Medicare as well as under contracts among CMS, the Department, and PACE organizations.

Specifically, these regulations are required under Section 2999-u of the Public Health Law which states that the Commissioner of Health “shall establish in regulation” a unified licensure process for PACE organizations that includes the applicable program requirements of Article 29-EE, Articles 28, 36, and 44 of the Public Health Law.

PACE programs directly provide medical care, home health care, and social support services (typically at a PACE Center), unlike partially capitated managed long-term care (MLTC) plans that only provide certain Medicaid-covered long-term services and supports. PACE programs provide over 5,900 New Yorkers with the opportunity to remain safely in their communities and improve their quality of life, while also effectively controlling healthcare expenditures. Nationwide, PACE participants have shown reduced hospitalizations, readmissions, and reliance on emergency medical services, along with improved quality of life and higher satisfaction with their care. Yet, New York pays PACE programs less than the cost of caring for a comparable population through other Medicaid services, including nursing homes and MLTC programs.

However, PACE organizations operate in a confusing and complicated regulatory structure which hinders their ability to expand and further development of PACE programs in

New York. Statutory reforms were made to eliminate barriers to the development, expansion, and efficient operation of PACE programs in New York while preserving vitally important protections to those receiving services.

Currently, PACE organizations in New York must be licensed as MLTC plans, clinics, and licensed home care agencies (under Articles 44, 28, and 36 of New York's Public Health Law, respectively). This has created an administratively burdensome authorization process, which has limited the expansion of this critical product and does not reflect its unique role in the healthcare system.

There are several benefits to creating a uniform PACE licensure structure within the Department. The regulation will streamline the licensure and establishment of PACE programs by developing a uniform authorization process, encompassing all program requirements into a singular licensure which will assist in improving oversight of PACE organizations.

These changes maintain the same level of oversight of all PACE programs that exist today across all program areas.

Both nationally and here in New York, PACE programs have demonstrated the ability to allow individuals to reside safely in their communities for longer, improve their quality of life and deliver a high satisfaction with their care. Contrary to costing the State money, PACE programs deliver this desired level of care for elderly individuals for less than the cost of caring for a comparable population through other Medicaid services.

#### **COSTS:**

##### **Costs to regulated parties:**

This regulation will reduce the costs for regulated parties. Instead of three separate application fees, there will only be a single application to prepare and submit in addition to the

capital construction fee in Section 2802 of the Public Health Law. Outside of the unified and reduced standard application processing fee of \$2000 dollars, it is not expected that any new compliance costs will be associated with this rule. Under the current three license tier structure there is an Article 28 Diagnostic and Treatment Center Certificate of Need filing fee of \$2,000 and an additional \$2,000 filing fee for any Article 36 Licensed Home Care Agency Certificate of Need. There is no filing fee associated for an Article 44 Managed Long Term Care application.

**Costs to Local and State Governments:**

This regulation will not impact local or State governments unless they operate a PACE program, in which case the costs will be the same as costs for private entities. Currently, there are no PACE programs run by local governments in New York State.

**Costs to the Department of Health:**

Costs associated are the implementation of ten new staff within the Office of Aging and Long-Term Care to administer the licensure process and surveillance and operations of the new PACE licensure developed under the new statute and regulations. The Department is prepared to absorb the cost of the new hires in existing staff allocation but is seeking an additional staff package that is pending.

**Paperwork:**

This regulation imposes no additional paperwork.

**Local Government Mandates:**

This regulation imposes no local government mandates.

**Duplication:**

There is no duplication in State or federal law.

**Alternatives:**

An alternative would be to leave in place the current structure which consists of three different licenses. Any alternative short of full unification would fail to accomplish the directives of the statute and the goals of the program. The current structure is burdensome, confusing, and unnecessarily bureaucratic, and the statute requires a new regulation.

**Federal Standards:**

PACE programs must adhere to all federal PACE requirements. Currently, all PACE programs must be reviewed and approved by the federal Centers for Medicare and Medicaid Services (CMS) and nothing in this regulation will affect federal laws, rules and regulations regarding federal compliance with PACE programs.

**Compliance Schedule:**

These regulations will become effective upon publication of a Notice of Adoption in the New York State Register.

**Contact Person:** Katherine Ceroalo  
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**REGULATORY FLEXIBILITY ANALYSIS FOR  
SMALL BUSINESSES AND LOCAL GOVERNMENTS**

**Effect of Rule:**

This regulation will not impact local governments or small businesses unless they operate a PACE program. Currently, there are only nine New York State PACE Plans and they currently enroll 5,800 members.

**Compliance Requirements:**

These regulations are required for all new PACE programs to be established under a new licensure category as defined in Article 29-EE of the New York State Public Health Law. As such the regulations mostly apply to only new PACE program applications after these regulations take effect. The regulations set up the framework and the requirements needed to apply under an Article 29-EE PACE program.

**Professional Services:**

It is not expected that any professional services will be needed to comply with this rule.

**Compliance Costs:**

Outside of the standard application processing fee of \$5,000 dollars, it is not expected that any new compliance costs will be associated with this rule.

**Economic and Technological Feasibility:**

There are no economic or technological impediments to the rule changes.

**Minimizing Adverse Impact:**

The Department anticipates that any adverse impacts will be minimal as the purpose of this regulation is to streamline the current three individual licenses approval process (currently an Article 28 Diagnostic and Treatment Center license, an Article 36 Home Care license, and an



Article 44 Health Maintenance Organization license) into one, streamlined PACE application and licensure process under Article 29-EE of the Public Health Law.

**Small Business and Local Government Participation:**

Those interested in expanding the PACE program in New York State have offered input at the statutory bill drafting and at various public forums including the legislative process that resulted in the requirement of these regulations. Further, all stakeholders will have the opportunity to present their ideas for improvement and enhancements during the public comment period. Further, the Department anticipates holding a public committee meeting of the Public Health and Health Planning Council (PHHPC) to discuss these new regulations. The public, consumers of PACE programs, and industry stakeholders will be invited to present testimony at the PHHPC meeting.

**For Rules That Either Establish or Modify a Violation or Penalties Associated with a Violation:**

Not applicable to the proposed regulation.

**STATEMENT IN LIEU OF  
RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

**STATEMENT IN LIEU OF  
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.



Project # 241112-C BronxCare Hospital Center

Program: Hospital Purpose: Construction

County: Bronx Acknowledged: March 18, 2024

Executive Summary

Description

BronxCare Hospital Center (BCH), a 415-bed, voluntary not-for-profit, Article 28, safety-net hospital at 1650 Grand Concourse, Bronx (Bronx County), requests approval to add 33 medical-surgical beds in an effort to address inadequate capacity. Current and projected medical-surgical bed occupancy is greater than 100%. The additional beds will be placed in available space on the 14th floor. This floor is currently occupied by a Women’s Health Outpatient Service. The Women’s Health Outpatient Service will be relocated on the Concourse Campus into vacant Article 28 outpatient clinic space. A Limited Review Application to relocate the Women’s Health Outpatient Service was submitted on 1/30/2024 (CON # 241039).

BronxCare Health System is the largest safety net hospital serving the South and Central Bronx. Its Concourse and Fulton Campuses are located approximately 1.5 miles apart. Inpatient and outpatient medical services are provided at the BronxCare Concourse Hospital Division (415 total beds; 250 medical surgical and 165 specialties). Behavioral health services are provided at the Fulton Division

Currently, the average wait time for an inpatient bed is 13 hours, more than three times the recommended standard of four hours. Approximately 600 hours of ED staff time is dedicated to caring for boarded patients daily.

The proposed beds will be focused on treating people presenting to the ED with chronic conditions such as asthma, heart disease,

diabetes, cancer, and other illnesses. Bronxcare is trying to reduce hospitalizations and time to diagnosis by providing preventative care through screening and early detection.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 17,624 medical/surgical discharges in Year One and 17,816 in Year Three with 50% Medicaid.

Program Summary

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

Financial Summary

The total project cost of \$9,607,924 will be funded with equity.

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

Health Equity Impact Assessment

Based on the information and analysis presented in the Health Equity Impact Assessment and the applicant’s mitigation plan, which demonstrates the proposed project will not result in any significant adverse health equity impacts.

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

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

#### Approval conditional upon:

1. This project must be completed by **11/30/25** including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **12/30/24**, and construction must be completed by **8/30/25**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

### Council Action Date

June 20, 2024

# Need Analysis

## Project Description

BronxCare, a safety net hospital at 1650 Grand Concourse, Bronx, NY 10457, is seeking approval to certify 33 medical-surgical beds. These beds will be added to available space at BronxCare's Concourse Hospital Division.

## Background and Analysis

BronxCare is within a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care and is in a Medically Underserved Area.

BronxCare's 12 zip-code service area is among the poorest in the nation with high disease incidence rates, large minority and immigrant populations, and low socioeconomic status.

The population of Bronx County is projected to increase to 1,597,728 by 2029 per Cornell Program on Applied Demographics. Demographics for the primary service area are noted below.

Demographics	Bronx County	New York State
Total Population – 2022 Estimate	1,443,229	19,994,379
Hispanic or Latino (of any race)	56.4%	19.50%
White (non-Hispanic)	8.6%	53.8%
Black or African American (non-Hispanic)	28.3%	13.8%
Asian (non-Hispanic)	3.8%	8.8%
Other (non-Hispanic)	2.9%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021 92.2% of the population in Bronx County had health coverage as follows:

Employer Plans	30.7%
Medicaid	42.3%
Medicare	6.78%
Non-Group Plans	12%
Military or VA	0.4 %

Source: Data USA

Applicant Inpatient Payor Mix			
Payor	Current	Year One	Year Three
Commercial	6.58%	6.64%	6.65%
Medicare	42.47%	41.60%	41.50%
Medicaid	49.67%	50.48%	50.57%
Other	1.28%	1.28%	1.27%
Total Visits	16,085	17,624	17,816

Source: Applicant

The table below shows high utilization at BronxCare for medical/surgical beds exceeding 100% for 2023 with projections still above 100% for Year 1 and Year 3:

Utilization for BronxCare Historical and Projected								
Major Service Category	Current Beds	Projected Beds	Utilization	2021	2022	2023	Projected Year 1	Projected Year 3
Medical/Surgical	309	342	ADC	294.5	305.1	326.2	353.7	358.2
			ALOS	6.2	6.6	7.1	7.0	7.0
			Occ.	95.3%	98.7%	105.6%	103.4%	104.7%
Pediatric (Includes Pediatric ICU)	30	30	ADC	11.2	13.7	11.1	11.1	11.1
			ALOS	3.1	3.2	3.3	3.3	3.3
			Occ.	37.5%	45.7%	37.2%	37.0%	37.2%
Obstetric/Maternity	36	36	ADC	16.2	15.4	14.8	14.7	14.8
			ALOS	2.6	2.6	2.6	2.6	2.6
			Occ.	45.0%	42.9%	41.0%	40.9%	41.0%
High-risk Neonates	40	40	ADC	16.0	8.5	9.8	9.8	9.8
			ALOS	17.5	11.4	17.5	17.5	17.5
			Occ.	40.0%	21.1%	24.6%	24.5%	24.6%
Total	415	448	ADC	337.9	342.7	362.0	389.3	393.9
			ALOS	5.8	6.0	6.6	6.5	6.5
			Occ.	81.4%	82.6%	87.2%	86.9%	87.9%

ADC: Average Daily Census; ALOS: Average Length of Stay; Occ: Occupancy  
Source: Applicant

The applicant projects 16,085 medical/surgical discharges in the current year, 17,624 in Year One and 17,816 in Year Three.

Also, BronxCare reports significant Emergency Department (ED) volume that is both contributing to and being exacerbated by their medical/surgical bed undercapacity.

Historical/Current ED Volume for BronxCare					
	2019	2020	2021	2022	2023
Total Bays	69	69	69	69	69
Total Visits	129,623	112,311	116,717	119,592	118,826
Total Visits per ED Bay	1,879	1,628	1,692	1,733	1,722
Standard Bays	58	58	58	58	58
Standard Visits - Adult	97,629	94,518	95,463	95,564	93,921
Standard Visits per ED Bay	1,683	1,630	1,646	1,648	1,619
Specialty Bays	11	11	11	11	11
Visits - Pediatrics	31,994	17,793	21,254	24,028	24,905
Visits per Specialty Bay	2,909	1,618	1,932	2,184	2,264

Source: Applicant

According to the applicant, patients waiting for inpatient beds are being housed in BronxCare's ED, leading to overcrowding, long wait times, and delayed procedures. Currently, the average wait time for an inpatient bed is 13 hours, more than three times the recommended standard of four hours. Approximately 600 hours of ED staff time is dedicated to caring for boarded patients daily.

The proposed beds will be focused on treating people presenting to the ED with chronic conditions such as asthma, heart disease, diabetes, cancer, and other illnesses. BronxCare is trying to reduce hospitalizations and time to diagnosis by providing preventative care through screening and early detection.

**Conclusion**

The addition of these 33 medical-surgical beds would allow the facility to achieve the following:

- Reduce the long wait time for inpatient units.
- Strengthen BronxCare's capability to quickly respond to surges in demand.
- Reduce ED overcrowding.
- Reduce ED wait times.
- Free up ED staff to focus on patients.



## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	<b>BronxCare Health System</b>
<b>To Be Known As</b>	<b>BronxCare Hospital Center</b>
<b>Site Address</b>	<b>1650 Grand Concourse Bronx, NY 10457</b>
<b>Service</b>	<b>Certify 33 Medical / Surgical Beds</b>
<b>Hours of Operation</b>	<b>24/7</b>
<b>Medical Director(s)</b>	<b>Dr. Sai Lakshmi Akella</b>

BronxCare is the largest safety-net hospital system serving the South and Central Bronx, among the poorest communities in the nation. This Certificate of Need application requests approval to add 33 critically needed medical-surgical beds into available space at BronxCare's Concourse Hospital Division.

Increasing medical surgical capacity will:

- Represent an essential starting point in resolving BronxCare's medical surgical overcapacity occupancy, which exceeded 100 percent throughout 2023 and is continuing into 2024.
- Address the increasing severity of acute conditions and a multitude of health challenges facing BronxCare's service area population.
- Reduce patient overcrowding and long ER wait times for patients requiring inpatient admission. The average waiting time for an inpatient bed is now 13 hours, more than three times the recommended standard of four hours.
- Result in more efficient use of ER staff. Currently, approximately 600 hours of ER staff time is now dedicated to caring for boarded patients daily.
- Maximize the benefit of patients receiving timely care in the inpatient units.
- Strengthen BronxCare's capability to quickly respond to surges in demand, which are frequently occurring.

Occupancy for BronxCare's medical-surgical bed complement is at over-capacity levels. These high occupancy levels are continuing and demonstrate the major need and demand for additional medical-surgical beds. The additional 33 beds will result in Bronx Care becoming better positioned to accommodate and care for the large number of patients requiring hospital admission. It will also address the continuing health disparities associated with BronxCare's vulnerable service area, which is among the poorest in the nation with high disease incidence rates, large minority and immigrant populations, and low socioeconomic status. The average waiting time for an inpatient bed from BronxCare's ER is 13 hours, more than three times the Joint Commission recommended standard of four hours, with patients requiring inpatient admission often being transferred to hallway areas or the maternity and pediatric units. These types of actions temporarily reduce the pressures on the ER staff regarding inpatient admissions.

The table below shows the projected FTEs in Year One And Year Three:

<b>Position</b>	<b>FTEs Year One</b>	<b>FTEs Year Three</b>
Management & Supervision	1.0	1.0
Technician & Specialist	14.4	15.8
Registered Nurses	13.3	15.2
Aides, Orderlies & Attendants	3.0	3.0
<b>Totals</b>	<b>31.7</b>	<b>35.0</b>

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

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

### **Prevention Agenda**

BronxCare Hospital Center, in Bronx New York is seeking approval for the addition of 33 critically needed medical-surgical beds into available space at BronxCare's Concourse Hospital Division. An increase in medical-surgical capacity represents an essential starting point in resolving BronxCare's medical-surgical overcapacity occupancy, which exceeded 100 percent throughout the previous calendar year and continues to do so. It will also enable the facility to better cater to the increasing severity of acute conditions and a multitude of health challenges presented within the service area population and reduce patient overcrowding and wait times for patients requiring inpatient admission.

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

- Prevent Chronic Diseases
- Promote Wellbeing and Prevent Mental and Substance Use Disorders

The proposed project, however, does not explicitly advance the selected local Prevention Agenda priorities that were identified in the most recently completed Community Service Plan (CSP), but it does improve access to care for patients who require medical-surgical intervention.

In 2022, BronxCare Hospital spent \$1,397,426 on community health improvement services.

### **Conclusion**

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

## Financial Analysis

### Total Project Cost

Total project costs for renovations and movable equipment are estimated at \$9,607,924, broken down as follows:

Renovation & Demolition	\$6,661,150
Design Contingency	666,115
Construction Contingency	666,115
Architect/Engineering Fees	440,000
Other Fees	20,000
Movable Equipment	700,000
Telecommunications	400,000
Application Fee	2,000
Processing Fee	<u>52,544</u>
Total Project Cost	\$9,607,924

The applicant's financing plan appears as follows:

Equity	\$9,607,924
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BFA Attachment A presents BronxCare Health System's 2022 Certified Consolidated Financial Statements, which show sufficient resources to meet the equity requirement.

### Operating Budget

The applicant has submitted their current year (2022) and projected operating budgets for the first and third years in 2024 dollars, summarized below:

	<u>Current Yr.</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>2022</u>		<u>2026</u>		<u>2028</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Revenues						
Medicaid FFS	\$13,710	\$23,005,137	\$14,152	\$26,081,475	\$14,199	\$26,466,018
Medicaid MC	\$30,824	194,529,686	\$28,901	203,867,215	\$28,692	205,030,407
Medicare FFS	\$40,291	55,601,581	\$39,326	58,045,196	\$39,188	58,350,648
Medicare MC	\$17,097	93,195,246	\$17,576	102,904,713	\$17,629	104,116,883
Commercial FFS	\$8,163	5,820,161	\$8,577	6,784,657	\$8,632	6,905,219
Commercial MC	\$10,343	3,578,673	\$10,208	3,879,013	\$10,199	3,916,556
All Other	\$18,014	<u>3,710,966</u>	\$17,217	<u>3,873,839</u>	\$17,155	<u>3,894,197</u>
Total Revenues		\$379,441,450		\$405,436,108		\$408,679,928
Expenses						
Operating	\$20,535	\$330,304,169	\$19,149	\$337,485,259	\$19,003	\$338,551,641
Capital	<u>\$49</u>	<u>792,075</u>	<u>\$66</u>	<u>1,164,574</u>	<u>\$86</u>	<u>1,537,074</u>
Total Expenses	\$20,584	\$331,096,244	\$19,215	\$338,649,833	\$19,089	\$340,088,715
Net Income (Loss)		\$48,345,206		\$66,786,275		\$68,591,213
Discharges		16,085		17,624		17,816

The following is noted concerning the submitted budget:

- The current year reflects the facility's 2022 revenue and expenses for the 250-bed Medical/Surgical unit.
- The addition of 33 Medical / Surgical beds is expected to generate 1,539 incremental discharges in Year One and 1,731 incremental discharges by Year Three.
- Medicaid and Medicaid MCO rates were based on DOH calculations effective January 1, 2024. Medicare and Medicare MCO are based on the current rate, effective October 1, 2023. Commercial

and Commercial MCOs are based on average payment rates in 2023. All other rates are based on average payment rates in 2023. No changes to reimbursement rates were assumed after 2024.

- Payor mix assumptions are based on the 2023 experience.
- Expense assumptions consider staffing for the added 33 Medical/Surgical beds, contractually obligated salary increases, supply costs, and added depreciation.

Utilization by payor source is as follows:

Utilization by Payor <u>Payor:</u>	<u>Current Year</u> <u>2022</u>		<u>Year One</u> <u>2026</u>		<u>Year Three</u> <u>2028</u>	
	<u>Disch</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Medicaid FFS	1,678	10.43%	1,843	10.46%	1,864	10.46%
Medicaid MC	6,311	39.24%	7,054	40.02%	7,146	40.11%
Medicare FFS	1,380	8.58%	1,476	8.37%	1,489	8.36%
Medicare MC	5,451	33.89%	5,855	33.22%	5,906	33.15%
Commercial FFS	713	4.43%	791	4.49%	800	4.49%
Commercial MC	346	2.15%	380	2.16%	384	2.16%
All Other	<u>206</u>	<u>1.28%</u>	<u>225</u>	<u>1.28%</u>	<u>227</u>	<u>1.27%</u>
Total by Payor	16,085	100%	17,624	100%	17,816	100%

### **Capability and Feasibility**

The total project cost of \$9,607,924 will be funded from equity. Working capital of \$1,498,745 based on two months of third-year incremental expenses will come from hospital operations. BronxCare Hospital Center projects a net income of \$66,786,275 in Year One and \$68,591,213 in Year Three. The budget appears reasonable.

BFA Attachment A, BronxCare Health System's 2022 Certified Financial Statements, indicates positive working capital, a positive net asset position, and a net income of \$97,311,906. BFA Attachment B, BronxCare Health System's November 30, 2023, Internal Financial Statements shows positive working capital, positive net assets, and a net gain of \$20,814,000.

### **Conclusion**

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

## **Health Equity Impact Assessment**

### **Health Equity Impact Assessment Summary**

BronxCare Health System aims to add 33 medical/surgical beds to its Concourse hospital facility at 1650 Grand Concourse, Bronx, NY 10457. The primary objective of the project is to augment the facility's inpatient bed capacity, thereby alleviating the issue of overcrowding in the emergency department and meeting the existing healthcare needs of the community. Given that Bronx County faces the highest socioeconomic challenges in New York State, addressing the lack of adequate healthcare access in this region is imperative. Socioeconomic status has been identified as a significant risk factor for delayed access to healthcare services and individuals from low-income backgrounds face substantial barriers to accessing care and exhibit higher rates of departing before being seen.

The Independent Entity states that prolonged wait times at the hospital escalate the risk of patients delaying care and/or prematurely leaving without receiving medical care, further compounding the challenges in obtaining timely medical attention. The expansion of additional beds intends to improve issues surrounding high emergency room utilization rates, accessibility, reduce inpatient admission care and subsequently elevate the quality of life for patients and the community.

### **Conclusion**

Based on the information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan, which demonstrates the proposed project will not result in any significant adverse health equity impacts.

## **Attachments**

BFA Attachment A	BronxCare Health System's 2022 Certified Financial Statements
BFA Attachment B	BronxCare Health System's November 30, 2023, Internal Financial Statements
OHEHR Attachment	Health Equity Impact Assessment Report



Project # 241115-C
Montefiore Medical Center - Henry & Lucy Moses Div

Program: Hospital
Purpose: Construction

County: Bronx
Acknowledged: April 1, 2024

Executive Summary

Description

Montefiore Medical Center, a 1,558-bed not-for-profit hospital, requests approval to certify a new 21-bed Child and Adolescent Psychiatric Division on the New York City Children's Center Bronx Campus at 1500 Waters Place, Bronx (Bronx County). The proposed facility will comprise 18,300 square feet of leased space with a separate entrance and will be self-contained and distinct from NYCCC. The proposed unit, an extension of the Montefiore Einstein Center for Children's Mental Health, will be designed to provide treatment for youth with serious behavioral health conditions, including severe depression, anxiety, trauma, suicidal thoughts, psychosis, co-morbid mental health issues, and other acute psychiatric conditions. The site will be dually licensed by NYSDOH and NYSOMH.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 348 psychiatric inpatient discharges in Year One and 364 in Year Three with 100% Medicaid utilization.

Program Summary

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

Financial Summary

The total project cost of \$8,860,545 will be met with \$3,160,546 from Montefiore Medical Center capital and philanthropy and \$5,700,000 from the New York State Capital Assistance Program.

Table with 3 columns: Budget, Year One (2025), Year (2027). Rows include Revenues, Expenses, Excess, and Revenues.

Health Equity Impact Assessment

The information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan demonstrate the proposed project will not result in any significant adverse health equity impacts.

## 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 documentation of approval from the New York State Office of Mental Health. [PMU]
3. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
4. Submission of the receipt of grant funding that is acceptable to the Department of Health. [BFA]
5. Acceptance by the Bureau of the Applicant's RFAI responses and revisions to the Engineering (MEP) drawings, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

#### Approval conditional upon:

1. This project must be completed by **November 30, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 31, 2024**, and construction must be completed by **August 31, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

### Council Action Date

June 20, 2024

# Need Analysis

## Project Description

Montefiore Medical Center - Henry & Lucy Moses Division is seeking to certify a 21-bed child and adolescent psychiatry unit in the New York City Children's Center (NYCCC) - Bronx Campus at 1500 Waters Place Bronx, NY 10461 (Bronx County). The Montefiore Einstein Center for Children's Mental Health of the Children's Hospital at Montefiore Einstein (CHAM) proposes to establish an Inpatient Acute Psychiatric Unit for Children and Adolescents by expanding and enhancing the complement of services provided by Montefiore Medical Center and its Children's Hospital at Montefiore Einstein. The site will be dually licensed by the New York State Department of Health and the New York State Office of Mental Health. This new unit will focus on children and adolescents, ages 5-17, and is designed to treat patients with serious behavioral health conditions, including severe depression, anxiety, trauma, suicidal thoughts, psychosis, co-morbid mental health issues, and other acute psychiatric conditions. The beds will be flexible allowing the facility to accommodate children or adolescents in all.

## Background and Analysis

This project will treat patients located in Bronx County. This location is within a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care. The population of Bronx County is projected to increase to 1,597,728 by 2029, per Cornell Program on Applied Demographics. Demographics for the primary service area are noted below.

Demographics	Bronx County	New York State
Total Population – 2022 Estimate	1,443,229	19,994,379
Hispanic or Latino (of any race)	56.4%	19.50%
White (non-Hispanic)	8.6%	53.8%
Black or African American (non-Hispanic)	28.3%	13.8%
Asian (non-Hispanic)	3.8%	8.8%
Other (non-Hispanic)	2.9%	4.1%

Source: American Community Survey (5-Year Estimates Data Profiles)

In 2021, 92.2% of the population in Bronx County had health coverage as follows.

Employer Plans	30.7%
Medicaid	42.3%
Medicare	6.78%
Non-Group Plans	12%
Military or VA	0.4 %

Source: Data USA

The applicant projects Medicaid as the payor for all discharges.

The table below provides the proposed bed change by category:

Bed Change at Montefiore Medical Center - Henry & Lucy Moses			
Bed Category	Current Beds	Bed Change	Beds Upon Approval
AIDS	13		13
Bone Marrow Transplant	4		4
Coronary Care	12		12
Intensive Care	48		48
Medical / Surgical	581		581
Pediatric	116		116
Pediatric ICU	20		20
Psychiatric	22	21	43
Total	816	21	837



The applicant is projecting 348 children and adolescents in the new unit in Year 1 and 364 in Year 3 and anticipates an 18/19-day average length of stay. These visits are expected to come mostly from within the Montefiore Health System.

According to the applicant, Montefiore has witnessed an increase in the number of children presenting to the emergency department (ED) experiencing psychiatric conditions and staying extended times due to the lack of inpatient beds. Symptoms often include suicidality or psychosis, which puts further strain and added time on ED staff. Montefiore Medical Center currently does not have a Child and Adolescent Inpatient unit for psychiatric patients.

Montefiore Medical Center Children's Hospital on the Moses Campus transfers children to out-of-network facilities such as Four Winds and St. Vincent's Hospital, both in Westchester County. The table below shows the child and adolescent psychiatric-related ED visits and how many were transferred to inpatient units.

Year	Psychiatric-Related ED Visits	Transferred to Inpatient Psychiatric Units
2021	1,008	159
2022	1,120	163
2023	1,117	160

Source: Applicant

The table below indicates transfers for children and adolescents needing inpatient psychiatric care. With the addition of the proposed inpatient unit to Montefiore, these patients would be able to utilize the unit as well.

Montefiore System Transfers for Child Inpatient Psychiatric Care 2023		
Facility	Per Month	Per Year
Moses Campus ED	13	160
Wakefield Campus ED	1	16
Montefiore St. Luke's Cornwall Hospital	2	22
White Plains Hospital	7	80
Montefiore Mount Vernon	2	21
Children not admitted due to bed availability	4	51
Total	29	350

Source: Applicant

The Montefiore Health System is transferring a total of 299 children to other facilities, with 51 being discharged due to a lack of bed availability. Many hospitals divert these inpatients, knowing the lack of availability at Montefiore.

The facility has listed its project goals as follows:

- To provide a safe environment for children and adolescents who are at risk of harming themselves or others or cannot function safely in the community due to their psychiatric condition.
- To treat acute psychiatric symptoms with medications and psychotherapy and to monitor the effects and side effects of these interventions.
- To coordinate outpatient support for children and adolescents, such as referrals to community services for continued treatment and support.
- To help children, adolescents, and their families develop coping skills, self-care strategies, and recovery plans for their psychiatric condition.
- To educate patients and their families about mental illness, its causes, treatments, and prognosis.
- To allow the Children's Hospital at Montefiore Einstein to expand its focus on the mental health care of pediatric patients at Montefiore.

## Conclusion

The addition of these beds will allow for the timely treatment of child and adolescent mental health patients, preclude the transfer of these patients out of county, and reduce the current strain on the emergency department.

## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	Montefiore Medical Center
<b>Doing Business As</b>	Montefiore Einstein Center for Children's Mental Health of the Children's Hospital at Montefiore Einstein
<b>Site Address</b>	1500 Waters Place, Bronx, NY 10461
<b>Shift/Hours/Schedule</b>	24 hours 7 days a week
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	72.5 FTEs for 1 <sup>st</sup> and 3 <sup>rd</sup> years
<b>Medical Director</b>	Dr. Jonathan E. Alpert
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Montefiore Medical Center - Moses - Children's Hospital. 4.6 miles / 23 minutes.

Montefiore Medical Center does not currently have a Child and Adolescent Inpatient unit for psychiatric patients. Montefiore Medical Center's Division of Child and Adolescent Psychiatry services and treatments are currently delivered through a range of Montefiore units and programs on an outpatient/ambulatory basis.

The proposed Montefiore Medical Center operated 21-bed Child and Adolescent Inpatient unit for psychiatric patients within New York City Children's Center will add to the service continuum and have a great benefit to the patients of the Bronx.

The Applicant reports that Bronx children are suffering from behavioral health disorders at elevated levels:

- 281,629 children ages 5-17 live in the Bronx.
- 56,326 of those children have a behavioral health disorder.
- 28,163 are considered to have serious emotional disturbances.
- 74% of Bronx high school students report high levels of stress and anxiety.
- Suicide among Bronx children ages 5-17 has doubled in the past decade.
- 35% of children in the Bronx report suffering from depression.
- 12% of Bronx students report one or more suicide attempts in the past year.

There is a scarcity of specialists practicing child and adolescent psychiatry and inpatient beds, specifically for this population, with fewer than 120 inpatient psychiatric beds for children and adolescents in service in the Bronx. There are 25 beds at BronxCare, 92 beds at the NYS-operated New York City Children's Center, and none within the Montefiore network.

From January to September 2023, 1,117 children and adolescents made psychiatric-related Emergency Department (ED) visits, and of those, 145 were transferred to inpatient psychiatric units. In 2022, 1,120 children were seen, and 163 were transferred to inpatient psych units. In 2021, 1,008 children and adolescents made psychiatric-related ED visits, and of those, 159 (16%) were transferred to inpatient psychiatric units. Typically, only one or two of these transfers can go to a Bronx facility due to a lack of available inpatient psychiatric beds.

A unit under Montefiore's auspices will help address the behavioral health of the children in the Bronx, alleviate back-ups in the ED, address prolonged length of stay of patients awaiting psychiatric transfer on CHAM inpatient units, and would integrate well with the existing and anticipated outpatient and intensive outpatient services for children and adolescents at Montefiore.

The hours of operation are 24 hours a day, 7 days a week. In the first year of operations, it is projected that the unit will provide care for 348 discharges, and in the third year, the projection is for 364 discharges.

The table below shows the projected FTEs in Year One and Year Three following completion of the project:

<b>Positions</b>	<b>FTEs Year One</b>	<b>FTEs Year Three</b>
Physicians	3.00	3
Nurse Practitioners	2.00	2
Social Worker & Psychologist	4.00	4
Other Therapists and Assistants	20.2	20.2
Clerical & other administrative	5.44	5.4
Pharmacist and pharmacy tech.	4.00	4
Dietitian	5.00	5
Security	10.00	10
<b>Totals</b>	<b>72.5</b>	<b>72.5</b>

*\*Numbers and mix of staff based on volume projections as well as experience.*

Staffing will increase by 72.5 FTEs in Year 1 & Year 3.

### **Character and Competency**

#### **Jonathan E. Alpert, MD, PhD**

Dr. Alpert received a PhD in January 1987; an MD in May 1986; and a BA in May 1977. An Internship in Pediatrics was completed in June 1987; a Residency in Pediatrics was completed in 1989; and Dr. Alpert was the Chief Resident in the Psychiatry / Psychopharmacology program in 1992.

Dr. Alpert currently has an office at the Department of Psychiatry and Behavioral Sciences, Belfer Education Center, Albert Einstein College of Medicine in Bronx, New York; and has over thirty (30) years of extensive Faculty Academic appointments addressing pediatrics, psychiatry, and neuroscience; as well as over 30 years of appointments at various hospitals in the field of Psychiatry.

Dr. Alpert is currently the Chair at Silverman University; and since 1992 has held many leadership positions at Massachusetts General Hospital, and at Harvard Medical School; and is the University Chair for the Department of Psychiatry and Behavioral Sciences at the Albert Einstein College of Medicine.

### **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.

### **Prevention Agenda**

Montefiore Medical Center – Henry & Lucy Moses Div, in Bronx, New York, is seeking to establish a 21-bed Child and Adolescent psychiatry unit in leased space at the New York City Children's Center (NYCCC) – Bronx Campus. Through the establishment of this unit, Montefiore Medical Center aims to increase access to acute inpatient psychiatry care for children and adolescents in a community where there is currently an unmet need for these services.

Montefiore Medical Center is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Healthy Women, Infants and Children

The proposed project does not explicitly advance the selected local Prevention Agenda priorities that were identified in the most recently completed Community Service Plan (CSP), but it does improve access to care for patients who require child and adolescent psychiatry care in an underserved community.

In 2021, Montefiore Medical Center spent \$38,838,022 on community health improvement services, representing 0.84% 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

### Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$8,860,545, broken down as follows:

Renovation and Demolition	\$3,037,687
Site Development	1,499,718
Asbestos Abatement or Removal	16,380
Design Contingency	453,740
Construction Contingency	453,740
Fixed Equipment	420,420
Architect/Engineering Fees	683,737
Construction Manager Fees	272,244
Other Fees (Consultant)	130,320
Moveable Equipment	861,588
Telecommunications	980,516
CON Fee	2,000
Additional Processing Fee	<u>48,455</u>
Total Project Cost	<u>\$8,860,545</u>

The applicant's financing plan appears as follows:

Medical Center Capital and Philanthropy	\$3,160,546
Grants (NYS Capital Assistance Program)	<u>\$5,700,000</u>
Total	<u>\$8,860,545</u>

The applicant has submitted documentation of receipt of gift proceeds. As a contingency of approval, the applicant must provide final documentation of receipt of grant proceeds.

### Operating Budget

The applicant has submitted an incremental operating budget, in 2024 dollars, for the first and third years, summarized below:

	Year One (2025)		Year Three (2027)	
	<u>Per Patient Day</u>	<u>Total</u>	<u>Per Patient Day</u>	<u>Total</u>
<b>Revenues</b>				
Medicaid Fee for Service	\$2,267	\$1,441,645	\$2,267	\$1,511,914
Medicaid Managed Care	\$2,234	\$12,792,440	\$2,234	13,408,201
Professional Fees		<u>270,000</u>		<u>270,000</u>
Total Revenues		\$14,504,085		\$15,190,115
<b>Expenses:</b>				
Operating	\$2,046	\$13,016,855	\$2,084	\$13,897,658
Capital	<u>\$227</u>	<u>\$1,446,263</u>	<u>\$217</u>	<u>\$1,446,263</u>
Total Expenses	\$2,273	\$14,463,118	\$2,301	\$15,343,921
Net Income (Loss)		\$40,967		(\$153,806)
Utilization: (Patient Days)		6,362		6,669

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

- Revenues are based on current per-day reimbursement methodologies for psychiatric services.
- Expense assumptions are based on the hospital's current historical experience for psychiatric services.

- Utilization assumptions are based on the hospital's current historical experience for psychiatric services.
- The hospital will hire 72.5 FTEs in Year One and Year Three, comprised of nurses, physicians, therapists, and assistants.

Utilization broken down by payor source for the first and third years are as follows:

	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Medicaid FFS	10.00%	10.00%
Medicaid Managed Care	90.00%	90.00%
Total	100.00%	100.00%

### **Lease Rental Agreement**

The applicant has submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

Premises	18,300 square feet located at 1500 Waters Place, Bronx, New York.
Lessor	The Dormitory Authority Of The State of New York.
Lessee	Montefiore Medical Center
Term	10 years
Rental	Years 1-3: \$462,334 (\$25.26 per sq.ft.) Years 4-10: \$659,000 (\$36.01 per sq.ft.)
Provisions	The lessee shall be responsible for utilities, maintenance, and real estate taxes.

The lease agreement will be an arm's length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

### **Capability and Feasibility**

The total project cost of \$8,860,545 will be met with \$3,160,546 from Montefiore Medical Center capital and philanthropy and \$5,700,000 from the New York State Capital Assistance Program. As a contingency of approval, the applicant must provide documentation of receipt of grant proceeds. Montefiore received a gift totaling \$13M, authorized by the NYS Attorney General, as a result of the dissolution of the August Aichorn Center, a nonprofit that offered inpatient mental health treatment to teens.

Working capital requirements are estimated at \$2,557,320 at two months of incremental third-year expenses. The hospital will provide equity from operations to meet the working capital requirement. As shown in BFA Attachment A, the hospital has the availability of sufficient funds to meet the working capital requirement.

The submitted budget indicates incremental net revenues of \$40,969 and an incremental loss of (\$153,806) during the first and third years, respectively. The incremental losses in the third year are the result of increased salaries, employee benefits, and supplies expenses. The third-year incremental loss will be offset by the \$13M gift they received via Aichorn. Revenues are based on current reimbursement methodologies for psychiatric services. The submitted budget appears reasonable.

BFA Attachment A, 2022-2023 Certified Financial Statements of Montefiore Medical Center, show the hospital had an average positive working capital position and an average negative net asset position during the period. Also, the hospital incurred operating losses of \$65,611,000 in 2022 and an operating gain of \$60,231,000 in 2023. The average negative net asset positions are the result of rolling historical losses and the impacts of the COVID-19 pandemic. To improve operations, the hospital continues to have ongoing discussions with the NYSDOH, and other governmental agencies related to the availability of additional rate enhancements. The hospital has applied for reimbursement for qualifying expenses related to COVID-19 under the FEMA Disaster Relief Fund. Also, driven by top-down executive leadership, the organization has targeted multiyear initiatives on revenue growth and expense management.

### **Conclusion**

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

# Health Equity Impact Assessment

## Health Equity Impact Assessment Summary

Montefiore Medical Center proposes to certify a 21-bed inpatient psychiatric unit space leased at the New York City Children's Center (NYCCC) – Bronx Campus for children and adolescents ages 5-17 years old. The facility aims to address the need for mental health inpatient services in the area. Currently, residents in Bronx County face a lack of local options for mental health inpatient services, leading to prolonged wait times for referrals and other barriers to receiving adequate care. Many residents are forced to travel longer distances to access pediatric facilities in Westchester and Manhattan. Discharge data from Montefiore reveals that over 1,000 children visit the emergency department annually for mental health-related disorders, but only approximately 10% follow up with transfers to Westchester and Manhattan hospitals. The lack of local mental health inpatient services creates accessibility challenges for patients who must rely on public transportation, endure long referral times, and miss days of work to seek services in other areas.

According to the Health Resources and Services Administration, the Bronx is experiencing a significant shortage of pediatric psychiatrists, with less than 100 inpatient beds available in the area, none of which are available in the Montefiore network. In addition, the zip codes surrounding the proposed project are among the highest levels of social and economic stress in the state. This project aims to address these challenges and reduce wait times for child and adolescent patients and their families.

## Conclusion

The information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan demonstrate the proposed project will not result in any significant adverse health equity impacts.

## Attachments

BFA Attachment A	Financial Summary- 2022-2023 Certified Financial Statements Montefiore Medical Center.
OHEHR Attachment	Health Equity Impact Assessment Report



Project # 231324-C Northern Westchester Hospital

Program: Hospital Purpose: Construction

County: Westchester Acknowledged: July 17, 2023

Executive Summary

Description

Northern Westchester Hospital (NWH), a 245-bed, voluntary not-for-profit, Article 28 acute care hospital at 400 East Main Street, Mount Kisco (Westchester County), requests approval to decertify three maternity beds and renovate the maternity unit. The 29,382 square-foot modernization project on the hospital's 3rd floor and a portion of the 5th floor's East wing will result in 24 single-bedded mother and baby rooms. Also, the labor, delivery, and C-section rooms will be enlarged. The unit changes will align with the service area's needs for an improved obstetric patient-centered experience, allowing for better recovery, patient/baby bonding, and private family time.

NWH is co-operated by Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc. Northwell Health, Inc., is an integrated healthcare delivery network serving the residents of the greater New York Metropolitan Area.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 2,311 patient discharges in Year One and 2,528 in Year Three, with Medicaid at 27.6% and no Charity Care in both years.

Program Summary

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

Financial Summary

The total project cost of \$51,373,715 will be funded with \$5,137,371 in equity from NWH and a bond issuance of \$46,236,344 at 5% interest for a 30-year term.

Table with 3 columns: Budget, Year One 2027, Year Three 2029. Rows: Revenues, Expenses, Net Income.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 16, 2023.



## 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 source and uses statement and debt amortization schedule for both new and refinanced debt. [BFA]

#### Approval conditional upon:

1. This project must be completed by **February 15, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **November 15, 2024**, and construction must be completed by **November 15, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

### Council Action Date

June 20, 2024

# Need Analysis

## Project Description

Northern Westchester Hospital (NWH), an existing 245-bed not-for-profit acute care hospital, requests approval to restructure and renovate its maternity unit and remove three maternity beds. The number of maternity beds will decrease from 27 to 24, with minimal adverse effects on utilization expected.

## Background and Analysis

The primary service area for this project is Westchester County. The proposed site is within a Medically Underserved Area/Population. The population of Westchester County is estimated to increase to 1,033,428 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 4.3%. Demographics for the primary service area are noted below including a comparison with the county and New York State.

Demographics	Westchester County	New York State
Total Population	990,427	19,994,379
Hispanic or Latino (of any race)	26.3%	19.5%
White (non-Hispanic)	50.0%	53.8%
Black or African American (non-Hispanic)	13.0%	13.8%
Asian(non-Hispanic)	6.2%	8.8%
Other (non-Hispanic)	4.5%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 94.9% of the population of Westchester County had health coverage as follows:

Employee plans	56.2%
Medicaid	14.2%
Medicare	12.7%
Non-group plans	11.5%
Military or VA plans	0.291%

Source: Data USA

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	72%	72%
Medicare	0.3%	0.3%
Medicaid	27.6%	27.6%
Private Pay	0%	0%
Charity Care	0%	0%
Other	0.2%	0.2%

<b>Current and Projected Beds at Northern Westchester Hospital, Source HFIS/Applicant</b>			
<b>Bed Type</b>	<b>Current Beds</b>	<b>Bed Change</b>	<b>Beds Upon Completion</b>
Coronary Care	6		6
Intensive Care	10		10
Maternity	27	-3	24
Medical / Surgical	153		153
Neonatal Intensive Care	5		5
Neonatal Intermediate Care	5		5
Pediatric	12		12
Psychiatric	15		15
Transitional Care	12		12
<b>Total</b>	<b>245</b>	<b>-3</b>	<b>242</b>

The removal of 3 of the 27 existing Maternity beds will have minimal consequences as the utilization of the beds shows occupancy rates around 50% for the last few years, as the following chart illustrates:

<b>Facility Utilization of Maternity Beds, Source: SPARCS</b>						
<b>Services</b>	<b>2021</b>		<b>2022</b>		<b>2023</b>	
	<b>Discharges</b>	<b>Occupancy</b>	<b>Discharges</b>	<b>Occupancy</b>	<b>Discharges</b>	<b>Occupancy</b>
Obstetric	1,760	46.5%	1,951	51.7%	1,948	53.4%

**Conclusion**

Approval of this project will allow for improvement and consolidation of the maternity services for those residing in Westchester County.

## **Program Analysis**

### **Program Description**

Northern Westchester Hospital (NWH), a 245-bed not-for-profit acute care hospital at 400 East Main Street in Mount Kisco (Westchester County), seeks approval to decertify three (3) maternity beds and expand the maternity unit on the 3rd floor to include a portion of the 5th floor. Approval of the application will result in a net decrease of three maternity beds from 27 to 24, with all maternity rooms in the existing unit being single-bedded rooms.

The applicant reports that women of childbearing age are expected to decline slightly in the next five (5) years. However, the specific age groups of 18-24 and 25-34 are expected to increase by over 1%. Therefore, NWH is seeking to modernize its hospital to improve patient satisfaction and the experience of patients seeking inpatient obstetrical care. Additionally, having more space can enable healthcare professionals to move about freely, making it easier to attend to the patient's needs and monitor their condition. In 2019, NWH had 999 births. This number had increased to 1,069 by 2021.

Staffing is expected to increase by 10.9 FTEs by Year Three of the completed project.

### **Prevention Agenda**

The Northern Westchester Hospital is seeking approval to modernize the maternity unit with single-bedded patient rooms to provide the privacy needed for the new mothers, their babies, and their families. The project will reduce the number of maternity beds from 27 to 24, a reduction of three (3) beds.

The Northern Westchester Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders
- Promote Healthy Women, Infants and Children

Modernization of the maternity unit advances the Prevention Agenda priority 'Promote Healthy Women, Infants, and Children.' This project will improve access to quality obstetric care for all patients, regardless of their background or socioeconomic status, and contribute to interventions focused on reducing maternal and infant mortality and morbidity.

In 2021, Northern Westchester Hospital spent \$5,754,848 on community health improvement services, representing 1.57% of total operating expenses.

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

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

The Department issued a Stipulation and Order dated November 21, 2016, and fined Northern Westchester Hospital \$10,000 based on findings from a survey that was completed on April 26, 2016. Deficient practice was cited in the area of Nursing Services-Patient Death due to the death of a newborn.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules, and regulations. This determination was made based on a

review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys, as well as investigations of reported incidents and complaints.

**Conclusion**

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

## Financial Analysis

### Total Project Cost and Financing

Total project costs for renovations and movable equipment are estimated at \$51,373,715, broken down as follows:

Renovation & Demolition	\$32,731,078
Asbestos Abatement or removal	896,460
Design Contingency	2,060,485
Construction Contingency	3,129,531
Architect/Engineering Fees	1,155,000
Construction Manager Fees	84,000
Movable Equipment	8,610,948
Financing Costs	2,423,214
Application Fee	2,000
Processing Fee	<u>280,999</u>
Total Project Cost	\$51,373,715

The applicant's financing plan appears as follows:

Equity	\$5,137,371
Bond Issuance (5% interest, 30-year term)	<u>46,236,344</u>
Total	\$51,373,715

BFA Attachment B, Northern Westchester Hospital's 2022 Certified Consolidated Financial Statements, shows sufficient resources to meet the equity requirement. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bond financing, noting that if the financing is completed on a tax-exempt basis, the bonds will be issued through DASNY.

### Operating Budget

The applicant has submitted their current year (2022) and projected operating budgets for the first and third years in 2024 dollars, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2022</u>		<u>2027</u>		<u>2029</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Revenues						
Medicaid FFS	\$10,034	\$561,900	\$10,014	\$590,800	\$9,982	\$648,800
Medicaid MC	\$5,105	5,916,800	\$5,109	6,222,800	\$5,105	6,809,800
Medicare FFS	\$5,767	69,200	\$5,767	69,200	\$5,900	76,700
Commercial MC	\$16,343	51,905,500	\$16,345	54,527,800	\$16,345	59,772,200
All Other	\$16,114	<u>112,800</u>	\$16,114	<u>112,800</u>	\$16,288	<u>130,300</u>
Total Revenues		\$58,566,200		\$61,523,400		\$67,437,800
Expenses						
Operating	\$6,930	\$30,559,100	\$6,666	\$30,877,200	\$6,553.26	\$33,270,900
Capital	<u>\$0.</u>	<u>0</u>	<u>\$1,157</u>	<u>5,360,300</u>	<u>\$1,040.00</u>	<u>5,280,100</u>
Total Expenses	\$6,930	\$30,559,100	\$7,823	\$36,237,500	\$7,593.26	\$38,551,000
Net Income (Loss)		\$28,007,100		\$25,285,900		\$28,886,800
Discharges		4,410		4,632		5,077

The following is noted concerning the submitted budget:

- Northwell Health's internal cost accounting system generated the revenue, expense, utilization, and payer rate assumptions based on the inpatient maternity services applicable to the program.
- Revenue and payer rate assumptions are based on the current maternity volume and payer mix at Northern Westchester Hospital.
- Staffing assumptions were developed with clinical and operational leadership using staffing models in existing programs. Expense assumptions are based on the current maternity experience at Northern Westchester Hospital plus estimated added capital costs.

Utilization by payor source is as follows:

Payor:	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2022</u>		<u>2027</u>		<u>2029</u>	
	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Medicaid FFS	56	1.27%	59	1.27%	65	1.28%
Medicaid MC	1,159	26.28%	1,218	26.30%	1,334	26.28%
Medicare FFS	12	0.27%	12	0.26%	13	0.26%
Commercial MC	3,176	72.02%	3,336	72.02%	3,657	72.03%
<u>All Other</u>	<u>7</u>	<u>0.16%</u>	<u>7</u>	<u>0.15%</u>	<u>8</u>	<u>0.15%</u>
Total by Payor	4,410	100%	4,632	100%	5,077	100%

### Capability and Feasibility

The total project cost of \$51,373,715 will be funded with \$5,137,371 equity from NWH and a bond issuance of \$46,236,344 at 5% interest for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bond financing, noting that if the financing is completed on a tax-exempt basis, the bonds will be issued through the Dormitory Authority of the State of New York (DASNY).

Working capital of \$6,425,167 based on two months of third-year expenses will come from hospital operations. Northern Westchester Hospital projects a net income of \$25,285,900 in Year One and \$28,886,800 in Year Three. The budget appears reasonable.

BFA Attachment B, Northern Westchester Hospital's 2022 Certified Financial Statements, shows positive working capital and net asset positions. NWH had positive operating income of \$34.3M. BFA Attachment C, Northwell Health, Inc.'s Third-Quarter Financial Statements shows positive working capital and net assets positions, and positive revenue over expenses of \$449.2M.

### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	Northern Westchester Hospital's 2022 Certified Financial Statements
BFA Attachment B	Northwell Health, Inc's Third Quarter 2023 Financial Statements



Project # 231339-C
Long Island Jewish Medical Center

Program: Hospital
Purpose: Construction

County: Queens
Acknowledged: July 18, 2023

Executive Summary

Description

Long Island Jewish Medical Center (LIJMC), a 1,004-bed hospital at 270-05 76th Avenue, New Hyde Park, New York (Queens County), requests approval to certify a pediatric heart transplant program within its Cohen Children's Medical Center (CCMC), a 206-bed pediatric specialty division of LIJMC. Through this application, North Shore University Hospital (NSUH) will extend its adult heart transplant program to LIJMC-Cohen Children's Medical Center of New York (CCMC) to establish a pediatric heart transplant program. CCMC consists of multi-disciplinary teams and surgical specialists along with Dr. Jeffrey Gossett, who will serve as the Program Director and Medical Director, and a Board-Certified Surgeon.

Financial Summary

The project costs of \$403,758 are for equipment only. There is no construction or renovation associated with this project. Equipment costs will be met with accumulated funds.

Table with 3 columns: Budget, Year One (2025), Year Three (2027). Rows include Revenue, Expenses, and Gain/(Loss).

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 19, 2023

OPCHSM Recommendation

Contingent Approval

Need and 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.



## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

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

#### Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The applicant obtaining membership, 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. Develop and implement an active outreach plan to educate and support Northwell affiliated and non-affiliated hospitals and providers in underserved areas, facilitating access to pediatric heart transplant evaluation and care.
  - a. Implementation of patient evaluation services in underserved areas of the state.
  - b. Report on these efforts annually to the Department. [HSP]
5. The applicant committing and devoting resources to improving organ donation and NYS Donate Life Registry enrollments as 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 LIJ-CCMC pediatric heart transplant services.
  - c. Improving communication and coordination with the OPO(s), for example, establishing onsite transplant coordinators, conducting regular multi-disciplinary clinical case reviews to identify missed opportunities and/or opportunities for improvement, and reporting and reviewing aggregate donor data jointly with the OPO(s);
  - d. 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;
  - e. 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;

- f. Conducting specific activities to improve enrollment in the NYS Donate Life Registry;
- g. 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**

June 20, 2024

## **Need and Program Analysis**

### **Background and Project Proposal**

Long Island Jewish Medical Center – Cohen Children's Medical Center of New York seeks approval to certify a pediatric heart transplant program at Cohen Children's Medical Center located at 270-05 76th Avenue, New Hyde Park, NY 11040.

Cohen Children's Medical Center (CCMC) is located at the border of Queens and Nassau Counties. As a result, the applicant identifies the primary service area for the requested pediatric heart transplant program as serving children residing in Nassau and Suffolk Counties on Long Island and children residing in Queens, Brooklyn, Staten Island, and Westchester Counties as their secondary service area.

Cohen Children's Hospital is a 195-bed acute care quaternary hospital exclusively for the care of children. The applicant reports 68,000 inpatient and outpatient visits annually. The facility offers Cardiology, Cardiothoracic Surgery, Neurosurgery, Orthopedic Surgery, Minimally Invasive Surgery, Nephrology, Urology, Kidney Transplantation, and Stem Cell (Bone Marrow) Transplantation. In addition, the Center provides a comprehensive array of pediatric services, including infectious disease, radiology, hematology, pulmonology, neonatal intensive care, rehabilitation, anesthesia, recovery rooms, trauma, nephrology, pathology, laboratory/blood bank, nursing, pharmacy, nutrition, social work, child life & creative art therapies program, and child psychiatry.

The Cohen Children's Heart Center currently includes cardiothoracic surgery, cardiac critical care, pediatric intensive care, neonatal intensive care, cardiac anesthesia, echocardiography, cardiac MRI, cardiac CT, heart failure, cardiomyopathy, electrophysiology, cardiac catheterization, and outpatient services to assure that these multiple specialists all contribute in their own separate but critical ways to optimize the care of children with all types of cardiac disease and adults with congenital heart disease.

The applicant describes the mission of Cohen Children's Medical Center as providing care to children while keeping the family unit intact and delivering services in a family-centered approach. In keeping with this mission, their primary motivation for seeking approval for a Pediatric Transplant Program is to serve their patients on Long Island in a location close to their home residence.

The heart transplant team would work closely with patients, their families and their local cardiologist to provide optimal care and communication for each individual patient. Due to patient acuity while waiting for a donor heart, pediatric heart transplant candidates would predominately be cared for in the hospital. Those who can wait at home while on the waitlist would be managed by the facility's heart failure team in close collaboration with their local cardiologist. The applicant notes that the proposed program's shared management model with a CCMC advanced heart failure team working with the patient's local cardiologist provides the ability to deliver exceptional care in their own communities for waitlisted patients.

The elements of the proposed program include:

- An inpatient multi-disciplinary pediatric intensive care unit with 37 beds that cares for more than 2,700 patients per year and houses a cardiac intensive care unit. The cardiac intensive care unit currently provides critical care to children with a broad range of pediatric cardiology diagnoses, from congenital heart defects to heart failure and conduction abnormalities requiring electrophysiology interventions in a dedicated CICU service.
- A Left Ventricular Assist Device (LVAD) program providing care for children with severe heart failure as a bridge to transplant while they await a suitable heart for transplantation.
- An Extracorporeal Membrane Oxygenation (ECMO), renal replacement therapy, and advanced respiratory support, including high-frequency oscillatory support and high-frequency percussive ventilation.
- Pre and Post-transplant outpatient care delivered within the dedicated space of their pediatric cardiology ambulatory center in an office across the street from the CCMC medical campus, where there is space for evaluation and post-transplant care of our patients and families. The ambulatory space provides for 9 exam rooms, 8 dedicated echocardiogram rooms, 3 consult rooms, an

exercise stress lab with bike and treadmill, as well as a private consultation room for family meetings and a transplant conference room.

The applicant presents the following information as a rationale for the need of an additional pediatric heart transplant program in NYS:

- A review of the home addresses of CCMC patients who were referred to another facility for transplant evaluation and care identified that most of these patients resided in the immediate local area of CCMC, in Queens County, and extended to the south shore of Nassau and as far as Suffolk County.
- In 2022 CCMC referred eight (8) children to New York Presbyterian Columbia Medical Center in Manhattan for heart transplant evaluation and care. Two of the referred children were under 12 months old. The proposed pediatric heart transplant service would serve the residents of Queens, Nassau, Suffolk, making these transfers in care unnecessary and allowing patients to be cared for in close proximity to their homes. Facility data shows waitlist time often exceeds 6 months, with the majority of that time spent as an inpatient, with approximately 35% of patients going to transplantation on a Ventricular Assist Device.
- According to 2023 data from the Organ Procurement Transplantation Network (OPTN), through October 31, 2023, a total of 25 pediatric heart transplants were performed in New York State. Approximately 1 out of 3 of these children (32%) who needed a heart transplant were from our primary service area of Queens, Nassau, and Suffolk County. This means patients who needed a pediatric heart transplant had to travel miles past CCMC in order to get this life-saving treatment.

Cohen Children's Medical Center (CCMC) of New York is a division of Long Island Jewish Medical Center (LIJ). Northwell Healthcare, Inc. co-operates Long Island Jewish Medical Center. In 2017, Long Island Jewish Medical Center – Cohen Children's Medical Center received CON approval to establish a kidney transplant program. This program received CMS certification after undergoing a successful survey the following year. To date, the LIJ-CCMC kidney transplant program has performed over 50 transplants for children ages 1 to 17 years of age.

North Shore University Hospital (NSUH) and LIJ/Cohen's hospitals are members of the Northwell Health system, which, in 2023, established a Transplant Institute. The Northwell Transplant Institute formally integrates components of and shares resources and expertise among the NSUH liver, kidney, heart, and lung transplant programs. These programs have been collaborating since 2017 and maximizing their ability to successfully impact and deliver optimal transplant care. NSUH received CON approval to perform adult heart transplants in 2018 and has performed more than 100 transplants since that time, according to the Organ Procurement Transplant Network.

If approved, the applicant notes that the CCMC pediatric heart transplant program will be affiliated with the NSUH Transplant Institute, gaining access to a broader pool of resources, including specialized adult medical expertise for the patient in transition, state-of-the-art technology, and research capabilities. Additionally, collaboration with a larger institute facilitates knowledge exchange and continuous learning and collaboration, allowing pediatric cardiologists and transplant surgeons to stay abreast of the latest advancements in transplant medicine, ultimately improving patient care and long-term prognosis.

The Northwell Home Care Network currently provides home infusion therapies to the NSUH adult heart transplant and Left Ventricular Assist Device patients. It is trained and prepared to extend these services to the pediatric population as well as coordinate care with other local home agencies. Children receiving heart failure care from affiliated practitioners in the surrounding communities have access to advanced heart services such as home infusion therapy; however, initial and ongoing LVAD therapy for these patients requires travel to CCMC.

In addition, Northwell established the Business Employee Resource Group (BERG) to enhance engagement, innovation, and talent development and to promote an inclusive culture, ensuring the delivery of culturally sensitive quality patient care. Under this, Northwell Health set up an organ donation-focused BERG entitled the Donate Life Employee Network (DLEN). The goal of this BERG is to sustain life while eliminating unnecessary deaths on the waiting list by addressing the social, emotional, and wellness aspects of those who have been touched by organ donation.

Northwell's Donor Champion program, which provides in-depth training about all aspects of organ donation, was formally known as "Donor Nurse Champion." This program is intended to be revived in 2024 and expanded beyond the staff nurses to the medical doctors and advanced care professionals.

The applicant reports being recognized by the Health Resource and Service Administration (HRSA) with a platinum-level award for their National Hospital Organ Donation Campaign.

**Transplant Program Review**

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), CCMC's UNOS/Organ Procurement and Transplantation Network (UNOS/OPTN), the Scientific Registry of Transplant Recipients (SRTR) data, and that of other NYS and out-of-state hospitals that perform pediatric heart transplants, as well as reports and information provided by the NYS Cardiac Advisory Committee (CAC) on Pediatric Congenital Cardiac Surgery.

CCMC Kidney Transplant Program

As noted previously, LIJ-CCMC received CON approval to establish a pediatric kidney transplant program in 2017 and received CMS certification of this program shortly thereafter. To date, the LIJ-CCMC kidney transplant program has performed over 50 transplants on children ages 1 to 17 years of age, averaging seven (7.5) kidney transplants a year over a 7-year period.

In the January 2024 SRTR report of CCMC's performance, it was reported that CCMC's:

- Transplant rate is lower than expected;
- Pre-transplant and waitlist mortality rates are lower than expected;
- One year post-transplant mortality rate is lower than the national average and
- One year graft failure rate is higher than the national average.

LIJ Pediatric Cardiac Surgery Program

LIJ has an active pediatric surgery program. See below for information gained from the NYS Department of Health Cardiac Advisory Committee of 2018-2023 physician volumes.

	2018	2019	2020	2021	2022	2023
Dr. Abdullah	0	0	4	2	0	0
Dr. Dodge-Khatami	0	0	33	7	0	0
Dr. Martens	0	0	0	8	49	48
Dr. Meyer D	59	63	41	134	98	78
Dr. Parnell	39	33	13	0	0	0
<b>Hospital Total</b>	<b>98</b>	<b>96</b>	<b>91</b>	<b>151</b>	<b>147</b>	<b>126</b>

*Table 1: LIJ Pediatric Surgery Volume by Surgeon, 2018 - 2023*

No published outcome data is available for the period of time reported in the table above. However, the Cardiac Advisory Committee's Pediatric Congenital Cardiac Surgery in NYS 2014-2017 report includes the table below, which indicates that LIJ's cardiac surgery program has a risk-adjusted mortality rate (RAMR) that was higher than the statewide RAMR of 2.81 for the period of the report but not significantly higher.

## Hospital Observed, Expected, and Risk-Adjusted Mortality Rates for Pediatric Congenital Cardiac Surgery in New York State, 2014-2017 Discharges

(Listed Alphabetically by Hospital)

Hospital	Cases	Deaths	OMR	EMR	RAMR	95% CI for RAMR
Albany Medical Center	275	5	1.82	2.35	2.17	(0.70, 5.08)
LIJ Medical Center	428	10	2.34	2.18	3.01	(1.44, 5.54)
Montefiore - Moses	223	13	5.83	1.98	8.26 *	(4.39,14.12)
Mount Sinai	478	14	2.93	1.67	4.92	(2.69, 8.26)
NYP-Columbia Presbyterian	1611	43	2.67	3.27	2.29	(1.66, 3.08)
NYP-Weill Cornell	264	1	0.38	1.37	0.78	(0.01, 4.32)
NYU Hospitals Center	616	9	1.46	2.87	1.43 **	(0.65, 2.71)
Strong Memorial	755	38	5.03	4.05	3.49	(2.47, 4.79)
Univ. Hosp. - Upstate	52	0	0.00	0.33	0.00	(0.00,60.60)
Westchester Medical Center	179	4	2.23	2.26	2.77	(0.75, 7.10)
<b>Total</b>	<b>4881</b>	<b>137</b>	<b>2.81</b>			

\* Risk-adjusted mortality rate significantly higher than the statewide rate based on 95 percent confidence interval.

\*\* Risk-adjusted mortality rate significantly lower than the statewide rate based on 95 percent confidence interval.

### Status of Donation and Heart Transplantation in NYS

#### *Donation*

There is a significant need for pediatric hearts available for transplantation. Strategies that work to increase the number of hearts available for transplantation in the adult population, e.g., increasing Registry enrollments, accepting harder-to-place hearts, etc., will not necessarily have the same effect in making more hearts available for transplantation in children. OPTN data indicates that of the 390 hearts that were donated and transplanted in children in NYS between 2018 and 2024 year to date, 19 of them came from NYS donors.

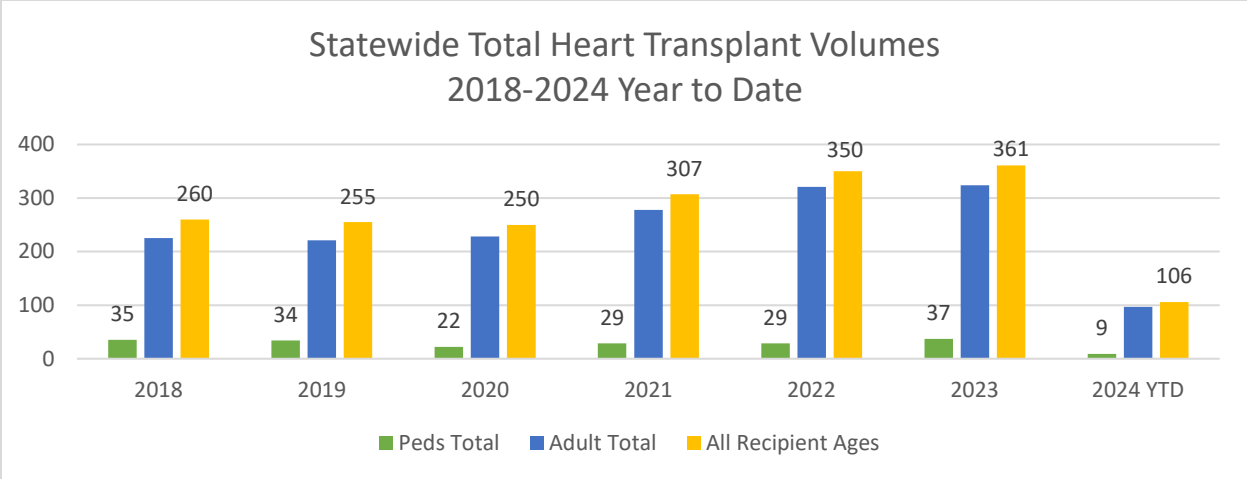
#### *Transplantation*

There are eight (8) adult heart transplant programs in New York State, four (4) of which also perform pediatric heart transplants. Five (5) of the existing centers are located in the boroughs of New York City, including all four 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. See Table 2.

		Adult	Pediatrics
Montefiore Medical Center	NYC, Bronx County/Borough	X	X
NYU Langone Medical Center	NYC, New York County/Borough	X	X
NY Presbyterian-Columbia	NYC, New York County/Borough	X	X
Mount Sinai Medical Center	NYC, Queens County/Borough	X	X
<b>Long Island Jewish - Cohen Children's Hospital</b>	New Hyde Park, NY, Nassau County		<b>Applicant</b>
Westchester Medical Center	White Plains, NY, Westchester County	X	
North Shore University Hospital	Manhasset, NY Nassau County	X	
NY Presbyterian-Cornell	NYC, New York County/Borough	X	
Strong Memorial Hospital	Rochester NY, Monroe County	X	

Table 2: NYS Heart Transplant Programs

Graph 1 and Table 3 below show that while the volume trend for adult transplants was stagnant from 2018-2020, it has been increasing since 2021. During this same period of time the number of pediatric heart transplants performed declined somewhat in 2020 but otherwise remained relatively stable. (Source OPTN)



Graph 1

Heart Transplant Centers		2018	2019	2020	2021	2022	2023	2024 YTD	Center Totals
All Centers	Peds	35	34	22	29	29	37	9	195
	Adult	225	221	228	278	321	324	97	1694
Montefiore MC	Peds	6	4	1	2	0	0	0	13
	Adult	37	47	29	44	41	27	9	234
Mount Sinai MC	Peds	1	0	2	2	3	9	1	18
	Adult	30	23	29	29	41	46	12	210
NYP - Columbia MC	Peds	28	30	19	24	22	24	7	154
	Adult	56	61	63	76	85	66	20	427
NYU Langone MC	Peds	0	0	0	1	4	4	1	10
	Adult	35	38	39	49	69	71	27	328
NYP -Weill Cornell	Adult	0	0	0	0	0	13	5	18
North Shore MC	Adult	14	14	16	25	24	30	8	131
Westchester MC	Adult	38	23	36	37	39	31	10	214
Strong Memorial MC	Adult	15	15	16	18	22	40	6	132
<b>Statewide Peds Total</b>		<b>35</b>	<b>34</b>	<b>22</b>	<b>29</b>	<b>29</b>	<b>37</b>	<b>9</b>	<b>195</b>
<b>Statewide Adult Total</b>		<b>225</b>	<b>221</b>	<b>228</b>	<b>278</b>	<b>321</b>	<b>324</b>	<b>97</b>	<b>1694</b>

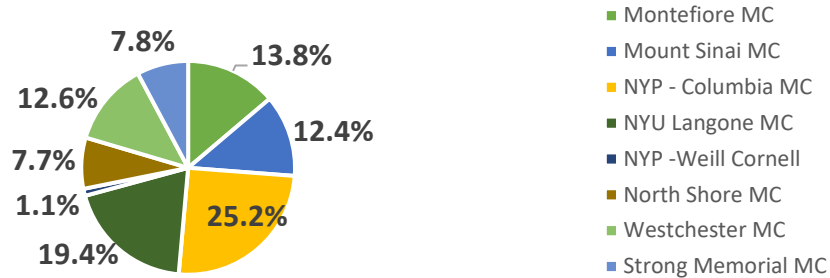
Table 3: NYS Heart Transplant Volumes 2018-2024 Year to Date

Heart transplant volume data 2018-2024 year to date, as noted in Table 3, Graphs 2 and 3 below show that NY Presbyterian Columbia Medical Center consistently performed the most adult (25.2%) and pediatric heart transplants (79%) during this period of time.

NYU Langone Medical Center performed the second-highest number of adult heart transplants at 19.4% during this period, followed by Montefiore, Mount Sinai, and Westchester Medical Centers at 12-13%. University of Rochester Strong Memorial Hospital and North Shore University Hospital performed 7-8% of adult heart transplants during this time. NYP Weill Cornell's program performed the fewest heart transplants in that they only began performing them in 2023.

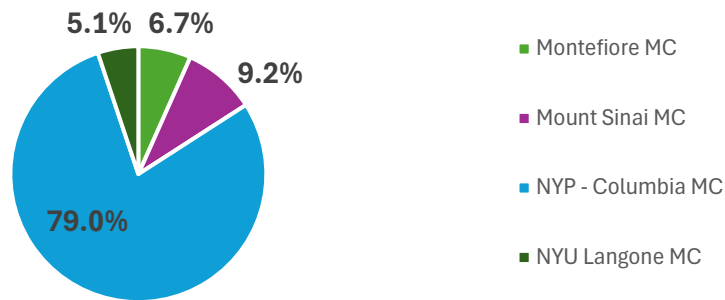
Following NYP Columbia in the order of the number of pediatric heart transplants performed during the period are Mount Sinai, Montefiore, and NYU Medical Center, performing 9.2, 6.7, and 5.1 percent, respectively.

Percent of Adult Heart Transplants by Center  
2018-2024 Year to Date



Graph 2: Percent of Adult Heart Transplants per Center 2018-2024 Year to Date

Percent of Pediatric Heart Transplants by Center  
2018-2024 Year to Date



Graph 3: Percent of Pediatric Heart Transplants per Center 2018-2024 Year to Date

**Waitlist**

As noted in Table 4, while there are a total of 318 adults waiting to receive a heart transplant at a New York State heart transplant center, there are 15 children on the list waiting for a pediatric heart. Nine of these children were listed by Columbia, 4 by Mount Sinai, and 2 by NYU. Table 4 below also shows how long the children currently listed have been on the waitlist.

	NY State		NYMA		NYUC		NYCP		NYMS	
	Statewide WL Volume		Montefiore Medical Ctr		NYU Langone Medical Ctr		NYP - Columbia		Mount Sinai Medical Ctr	
	Adults	Peds	Adults	Peds	Adults	Peds	Adults	Peds	Adults	Peds
All Times	318	15	33	0	46	2	105	9	32	4
<30 Days (D)	35	2	7	0	9	0	12	2	2	0
30 to < 90 D	34	3	4	0	7	0	8	1	1	2
90 D - <6 mo.	40	4	3	0	6	1	9	3	1	0
6 mo. - 1 Year	59	1	5	0	10	0	17	0	4	1
1 Yr. - < 2 Yrs.	58	3	5	0	8	1	17	1	9	1
2 Yrs. - < 3 Yrs	36	0	3	0	3	0	16	0	7	0
3 Yrs. - 5 Yrs.	35	1	5	0	3	0	13	1	6	0
5 or more Yrs.	21	1	1	0	0	0	13	1	2	0

Table 4: Statewide and Pediatric Heart TP Center Waitlist Volumes (Organ Procurement and Transplant Network (OPTN) data through 05/23/2024)

Table 5 below indicates that the average national wait time for a heart during the period of July 2017 through the end of December 2022, combined adult and pediatric hearts, is reported as 3.4 months. Of



the centers with pediatric heart programs, Montefiore and NYU Langone have wait times of less than the national average. NYP Columbia's wait time is slightly longer, and Mount Sinai's wait time is significantly longer than the national average.

Of the adult-only heart transplant centers, Westchester and North Shore have wait times below the national average, and both NYP Columbia and Strong wait times are longer.

Heart Transplant Centers	Median Time to Transplant 07/01/2017 - 12/31/2022 Months to Transplant		Waitlist Mortality Rate 07/01/2021 - 06/30/2022			
		Center	National		Center	National
Montefiore Medical Ctr.	Combined Adult & Pediatrics	3	3.4	Adult	7	6.1
				<b>Peds</b>	<b>5.2</b>	<b>4.3</b>
NYU Langone Med. Ctr.	Combined Adult & Pediatrics	1.1	3.4	Adult	44.7	6.1
				<b>Peds</b>	<b>5.2</b>	<b>4.3</b>
NYP -Columbia Med. Ctr.	Combined Adult & Pediatrics	4.3	3.4	Adult	3	6.1
				<b>Peds</b>	<b>5.3</b>	<b>4.3</b>
Mount Sinai Med. Ctr.	Combined Adult & Pediatrics	18	3.4	Adult	4.5	6.1
				<b>Peds</b>	<b>0</b>	<b>4.3</b>
Westchester Med. Ctr.	Adult	0.7	3.4	Adult	7	6.1
North Shore Univ. Hosp	Adult	1.7	3.4	Adult	5.6	6.1
NYP - Cornell	Adult	7.5	3.4	Adult	0	6.1
Strong Memorial Hosp.	Adult	11.7	3.4	Adult	5.8	6.1

Table 5: Heart Transplant Center Median Time to Transplant and Waitlist Mortality

### Program Outcomes

One (1) year post-transplant mortality number and one-year patient mortality hazard ratio are two different but related metrics published by SRTR to reflect program performance. Programs with patient mortality numbers greater than the expected numbers in Table 6 below reported more deaths than expected. The average one year patient mortality hazard ratio is one. Programs with a mortality ratio of less than one reported fewer deaths than the average among heart transplant programs of a similar type. The same is true for programs with mortality ratios of greater than one; these programs reported more deaths than similar programs during the reporting period. Through time, the mortality hazard ratio is thought to be a better reflector of program outcomes.

Adult heart transplant programs with one-year mortality hazard ratios lower than the national average include Montefiore, NYU, and Columbia. Strong's and North Shore's one-year mortality hazard ratios are basically equal to the national average, while Mount Sinai's and Westchester's ratios are greater than the national average.

One-year mortality hazard ratios for three of the four pediatric heart transplant programs are greater than the national average, while Mount Sinai's ratio is less than the average national ratio of one.

Heart Transplant Centers		1 Year Post-Transplant: 7/1/2020-12/31/2022		Patient Mortality Hazard Ratio
		Mortality		
		Observed	Expected	
Montefiore Medical Center	Adult	3	6.64	0.96
	<b>Peds</b>	<b>1</b>	<b>0.04</b>	<b>1.49</b>
NYU Langone Medical Center	Adult	3	8.29	0.49
	<b>Peds</b>	<b>2</b>	<b>0.34</b>	<b>1.71</b>

NY Presbyterian-Columbia	Adult	8	13.07	0.56
	Peds	6	4.4	1.28
Mount Sinai Medical Center	Adult	10	5.77	1.54
	Peds	0	0.65	0.76
Westchester Medical Center	Adult	9	7.69	1.14
North Shore University Hospital	Adult	4	3.78	1.04
NY Presbyterian-Cornell	Adult	NA	NA	NA
Strong Memorial Hospital	Adult	3	3.03	0.99

Table 6

### *OPTN Program Review*

The Organ Procurement and Transplant Network approved the application of Long Island Jewish Medical Center/Cohen Children's Medical Center to establish a pediatric heart transplant program in June 2023.

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

Cohen Children's Medical Center underwent a successful Medicare recertification survey of their kidney transplant program in May 2023 and was found to be in substantial compliance with federal regulations.

North Shore University Hospital has undergone a number of Medicare initial and recertification surveys since 2019. The facility was found to be in substantial compliance with federal regulations in the:

- February 2019 initial certification survey of their adult heart transplant program,
- September 2020 recertification survey of their adult kidney transplant program,
- August 2021 initial certification survey of their adult liver transplant program and
- January 2023 initial certification survey of their adult lung transplant program.

The Joint Commission carried out an accreditation survey of LIJ in April 2023. No deficiencies were found, and the facility was deemed in substantial compliance with CMS hospital conditions of participation.

The NYS Hospital Profiles website notes that Long Island Jewish Medical Center has received a total of 10 citations resulting from three onsite surveys between July 2021 and June 2023. There were 8 surveys in which no citations were issued. This hospital is part of a group that is authorized under the same operating certificate. Citations from some of the inspections apply to the group as a whole. The other members of the group include LIJ Forest Hills and LIJ Valley Stream. Posted citations issued include:

- 7/8/2022 - Complaint investigation survey: Emergency Services policies citation issued.
- 1/12/2022 - Complaint investigation survey: Patient Rights and Patient Rights-grievances citations issued.
- 3/25/2021 - Complaint investigation survey: Citations issued included Adverse Event Reporting, Governing Body-Care of Patients, Nursing Services-Delivery of Services, and Quality Assurance Program.

### Summary of Review of Application

The Department identified a number of experts in the field of pediatric heart transplantation, provided them with the information contained within this Exhibit, and requested feedback on the merits of the proposed project, any strengths or weaknesses in the project discernable from the information provided, and the need for an additional pediatric heart transplant program in NYS.

Reviewers noted that LIJ-CCMC has:

- A goal to provide the complete range of pediatric cardiac services to the patients they serve, ensuring continuity of care and making those services available in and as close to the communities they serve as possible.
- Active pediatric, pediatric cardiology, and pediatric cardiac surgical programs that have demonstrated good outcomes.
- An existing pediatric cardiology and surgery infrastructure within the LIJ-CCMC and the Northwell System that is likely to enable the leveraging of existing services and patients served by the system

to generate a waitlist and support the number of pediatric heart transplants projected for their new program.

- An existing physical plant capable of supporting the provision of pediatric heart transplant services;
- A familiarity with the demands and requirements of implementing a successful transplant program.
- An alliance with and support of the LIJ Pediatric Cardiac Surgery Program as well as that of the Northwell Health Transplant Institute;
- Gained OPTN/UNOS approval of the program after having demonstrated it meets their strict rules for infrastructure, qualified and credentialed personnel, quality assurance and performance improvement, etc.

Reviewers also noted that:

- There is a shortage of pediatric hearts available for transplantation, and traditional methods of increasing the number of organs available for transplantation, such as increasing enrollments in the Registry, will not work to increase the number of pediatric hearts available for transplantation.
- There are four established pediatric heart transplant (PHTP) programs in New York State, all located in the boroughs of New York City.
- The applicant's objective of establishing a pediatric heart transplant program at LIJ-CCMC as a way to facilitate continuity of care for the applicant's patients and make available to their patients the full complement of pediatric cardiac and cardiac surgery services is laudable.

However, it was noted 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 and very resource-intensive.

In this case, pediatric heart transplant services are already available in the primary service area of the applicant (Queens County/Borough) and are costly to establish and maintain when the needs of these children could be met by collaboration with existing providers and programs rather than opening a new program.

- The size of a facility's pediatric congenital heart program is generally a predictor of disease burden and volume of an associated pediatric heart transplant program. Information from the DOH Cardiac Advisory Committee indicated that LIJ-CCMC performed 100-150 pediatric cardiac surgeries per year from 2018 to 2023 and that the volume of pediatric heart transplants projected by the applicant, 2, 3, and 3-5 in years one, two, and three, respectively, were thought to be reasonable, especially in a new program.
- The volume of pediatric heart transplants performed per year at the existing programs varies significantly. The NYP-Columbia program performs 25-30 pediatric heart transplants a year. Two of the other programs generally perform less than 5 transplants a year, and Montefiore has not performed a pediatric heart transplant since 2021. The 2021 addition of NYU's pediatric heart transplant program has not increased the overall number of pediatric heart transplants performed in the state.

The factors contributing to the low pediatric transplant volumes at the Montefiore, Mount Sinai, and, to a certain extent, the NYU programs are unknown. It may be that they are not receiving or generating enough referrals to increase their transplant volume. It may be that the low-volume centers choose to list and transplant the more "straightforward" cases while referring the more complex cases to Columbia in order not to incur the negative impact a potential post-transplant death would have on their program metrics and bring attention to their program(s). Any number of other factors, e.g., staffing, may also be contributing to low program volumes.

- There is capacity at the existing programs sufficient to meet the number of pediatric heart transplants the applicant projected they would be performing, at least in the early days of the program.
- A new program is not likely to destabilize NYP-Columbia, which was the recipient of 8 referrals for pediatric heart transplant evaluation in 2022, but the impact of a new program on the other existing low-volume programs is unclear.
- There are currently 15 children waiting for a pediatric heart transplant in NYS; nine were placed on the list by Columbia.

- The median time to transplant in three of the four existing pediatric programs is less than or approximately equal to the national norm of three months, with Mount Sinai having a significantly longer wait time for children on their list.
- Additions to the pediatric waitlist by Montefiore have been zero, 7-8 for NYU and Mount Sinai, and 28-30 for NYP – Columbia for the last few years.
- Waitlist Mortality is higher, though not significantly, than the national average for Montefiore, NYU, and NYP–Columbia pediatric transplant programs and less than the national norm for Mount Sinai.

### Reviewers Recommendation

Reviewers concluded that although the merits of the application would support approval and that it is likely that LIJ-CCMC and Northwell Health system providers would be able to generate a sufficient number of referrals to result in the projected number of transplants in years 1-3 of program functioning, their conclusion is that there is no need for another pediatric heart transplant program in the region to increase access to these vital services.

### **Prevention Agenda**

Long Island Jewish Medical Center in Queens County is seeking approval to establish a pediatric heart transplant program at the Cohen Children’s Medical Center (CCMC) of New York. This project will improve the continuity of pediatric cardiac care by bring a crucial service to a community where children with advanced / end-stage heart failure must travel to receive care in Manhattan.

Long Island Jewish Medical Center is implementing multiple interventions to support the priority areas of the 2019-2024 prevention agenda. These priorities include:

- Prevent Chronic Disease
- Promote Well-Being and Prevent Mental and Substance Use Disorders
- Promote Healthy Women, Infants and Children

The pediatric heart transplant program advances the following Prevention Agenda priority areas: ‘Prevent Chronic Diseases’ and ‘Promote Healthy Women, Infants and Children’. The program will also increase access to an essential service that is not currently present within the county.

In 2021, Long Island Jewish Medical Center spent \$ 105,594,711 on Community Health Improvement Services and Community Benefit Operations, which accounts for 3.08% of their total operating expenses.

### **Conclusion**

This application reflects that LIJ-CCMC and the Northwell Health System are dedicated to increasing the availability of pediatric cardiac surgery and organ transplantation to the residents of Long Island, Queens, and Westchester Counties.

The application and responses to Department requests for additional information assured the Department that LIJ-CCMC, with the support of the Northwell Health System, has the structure, processes, staff, and other resources to implement a pediatric heart transplant program.

The Organ Procurement and Transplant Network contractor, United Network for Organ Sharing (UNOS), has approved the establishment of a pediatric heart transplant program at LIJ-Cohen Children's Medical Center.

Based on the information and data evaluated, the Department's recommendation differs from that of the Reviewers and recommends approval of the application.

## Financial Analysis

### Total Project Cost and Financing

The total cost of the project is anticipated to be \$403,758, broken down as follows in 2024 dollars:

Movable Equipment	\$399,560
CON Application Fee	2,000
Additional CON Fees	<u>2,198</u>
Total Project Cost	\$403,758

Total project cost will be met with the accumulated funds.

### Operating Budget

The applicant has submitted an operating budget for the first and third years of operation of the service.

	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
	<u>Per Visit</u>	<u>Dollars</u>	<u>Per Visit</u>	<u>Dollars</u>
Inpatient Revenue				
Commercial MC	\$700,000	\$700,000	\$700,000	\$1,400,000
Medicaid MC	\$400,000	400,000	\$400,000	800,000
Medicaid FFS	-	<u>0</u>	\$200,000	<u>200,000</u>
Total Inpatient Revenue		\$1,100,000		\$2,400,000
Outpatient Expense				
Operating	\$1,402,051.00	\$2,804,102	\$1,379,397.40	\$6,896,987
Capital	<u>28,840.00</u>	<u>57,680</u>	<u>11,536</u>	<u>57,680</u>
Total Expense	\$1,430,891.00	\$2,861,782	\$1,390,900.40	\$6,954,667
Net Income (Loss)		(\$1,176,178)		(\$4,554,667)
Transplants		2		5
Cost per Transplant		\$1,430,891.00		\$1,390,900.40

The budget is based on the following assumptions:

- Staffing assumptions apply to the actual transplant procedure and full inpatient stay, which is 4.2 FTEs and 12 FTEs in Year One and Year Three, respectively.
- The expense and utilization assumptions are based on inpatient detail variables. Once the variable direct costs were calculated, overhead costs, depreciation, and interest were developed using the experience of the clinical and management staff.
- Staffing assumptions were developed with Clinical and Operational leadership using staffing models based on existing programs. Revenue, expense, and utilization assumptions are based on the current cardiology and cardiac surgery experience at Northwell Health.
- Revenues were based on the internal cost accounting system that Northwell Health's internal system uses for similar cardiac transplant programs.
- The CFO provided a letter stating that Northwell Health, Inc., is committed to providing financial support to absorb the financial operations losses in years one and three.

Utilization by payor source is anticipated as follows:

	<u>Year One</u> <u>Discharges</u>	<u>Year Three</u> <u>Discharges</u>
Commercial MC	50%	40%
Medicaid MC	50%	40%
Medicaid FFS	-	20%
Total	100%	100%

**Capability and Feasibility**

The total project cost of \$403,758 will be covered by accumulated funds. The working capital requirements are estimated at \$1,159,111, based on two months of third-year expenses, and will be funded through equity from Northwell, Inc. operations. BFA Attachment B, 2022-2023 Certified Financial Statements – Northwell Health, Inc., shows sufficient resources to fund the total project cost and working capital requirement.

The submitted budget indicates a net loss of (\$1,761,782) and (\$4,554,667) in Years One and Year Three, respectively. The CFO of Northwell Health, Inc. has submitted a letter stating that they will absorb the operational losses of the Pediatric Heart Transplant program. The budget is based on existing reimbursement methodologies, including donor and recipient reimbursement. The budget appears reasonable.

BFA Attachment B, 2022-2023 Certified Financial Statements – Northwell Health, Inc., shows the entity maintained positive working capital, a positive net equity position for both years, and an excess of operating revenue over operating expenses of \$117,648,000 and \$197,702,000, in 2022 and 2023, respectively.

**Conclusion**

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

**Attachments**

BFA Attachment A	Organizational Chart of the North Well Health, Inc., and the Obligated Group
BFA Attachment B	2022-2023 Certified Financial Statement - Northwell Health, Inc.



Project # 231286-B
Carthage Area Hospital Inc.

Program: Hospital County: St. Lawrence
Purpose: Establishment and Construction Acknowledged: August 7, 2023

Executive Summary

Description

Carthage Area Hospital, Inc. (Carthage) requests approval to establish a 25-bed Critical Access Hospital (CAH) at 214 Kings Street, Ogdensburg, New York. Carthage Area Hospital, Inc. currently operates another CAH at 1001 West Street, Carthage, NY, in southern St. Lawrence County. Claxton-Hepburn Medical Center (Claxton) currently operates a 127-bed hospital at the 214 Kings Street site in Ogdensburg, NY, as well as numerous clinics at this site and other locations in St. Lawrence County. Carthage and Claxton operate as part of the same healthcare system, with North Star Health Alliance, Inc. serving as both providers' corporate passive parent and sole member.

Due to the financial distress experienced by Claxton, a strategic sustainability plan is being implemented to preserve critical acute care and behavioral health services in St. Lawrence County. The plan will result in the simultaneous closure of Claxton's operation of an Article 28 hospital at the 214 Kings Street, Ogdensburg site, and a total of seven (7) Article 28 associated clinics at this site and other locations, and the concurrent opening of a new 25-bed CAH by Carthage at the existing 214 King Street, Ogdensburg site. Claxton will separately operate a 40-bed, Article 31 behavioral health facility at the same site, ensuring adequate separation from the CAH. The operation of five (5) rural health clinics was transferred in an initial phase through Certificate of Need application 232015. The remaining (2) two clinics, CHMC-Ravinder Agarwal Renal Center at 124 Ford Avenue, Ogdensburg, NY, and Heuvelton Health Center at 103 Rensselaer

Street, Heuvelton, NY, will be transferred as part of this application.

No services are planned to be eliminated as a result of this project.

OPCHSM Recommendation

Contingent Approval

Need Summary

At the completion of the project, there will be 62 fewer (out of the current 127) beds at the 214 Kings Street hospital site. Carthage projects 2,193 discharges for Year One and 2,209 by Year Three, with Medicaid utilization of 21.3% by Year Three.

Program Summary

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

Financial Summary

The total project cost of \$6,292,520 will be met with accumulated funds from Carthage Area Hospital.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenues, Expenses, and Excess of Revenues.

**Health Equity Impact Assessment**

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 7, 2023.



## 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 lease rental agreement for the site located at 214 King Street, Ogdensburg, New York. [BFA]
3. Submission of an executed lease rental agreement for the site located at 124 Ford Avenue, Ogdensburg, New York. [BFA]
4. Submission of an executed lease rental agreement for the site located at 103 Rensselaer Street, Heuvelton, New York. [BFA]
5. Submission of closure plans, acceptable to and approved by the Department, for two facilities: CHMC Ravinder Agarwal Renal Center and Heuvelton Health Center. [HSP]

#### Approval conditional upon:

1. This project must be completed by **December 31, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 20, 2024**, and construction must be completed by **January 20, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. Submission of documentation showing final approval by CMS for the 40-bed behavioral health hospital co-located within the CAH. [PMU]
4. Submission of documentation showing final approval by OMH for the 40-bed behavioral health hospital co-located within the CAH. [PMU]
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]
6. Submission and approval of Form-855 to the Fiscal Intermediary prior to onsite inspection. [HSP]
7. A determination by CMS that the facility meets the Critical Access Hospital (CAH) requirements. [HSP]

### Council Action Date

June 20, 2024

# Need Analysis

## Project Description

Carthage Area Hospital Inc. (Carthage) is seeking approval to establish a 25-bed Critical Access Hospital (CAH) at 214 King Street, Ogdensburg, New York. Carthage Area Hospital Inc. is currently the operator of a CAH located at 1001 West Street, Carthage, New York, in southern St. Lawrence County. Claxton-Hepburn Medical Center (Claxton) currently operates a 127-bed hospital at the 214 Kings Street site in Ogdensburg, NY as well as numerous clinics both at this site as well as other locations in St. Lawrence County.

Claxton will separately operate a 40-bed Article 31 behavioral health facility at the same 214 Kings Street site in Ogdensburg address, ensuring adequate separation from the CAH. Between the two proposed licensed facilities, there is no planned elimination of services as a result of this project at the site; however, there will be 62 fewer beds. Carthage and Claxton are in discussions with other providers in St. Lawrence County to ensure there is no interruption of service delivery.

## Background and Analysis

The CAH will be in a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care. The primary service area is Ogdensburg within St. Lawrence County. The population of St. Lawrence County is projected to decrease to 105,990 by 2028 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	St. Lawrence County	New York State
Total Population	108,670	19,994,379
Hispanic or Latino (of any race)	2.4%	19.5%
White (non-Hispanic)	91.6%	53.8%
Black or African American (non-Hispanic)	2.1%	13.8%
Asian (non-Hispanic)	1.0%	8.8%
Other (non-Hispanic)	2.9%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)

In 2021, 94.4% of St. Lawrence County residents had health coverage as follows:

Employer Plans	45.8%
Medicaid	20.3%
Medicare	12.6%
Non-Group Plans	14.4%
Military or VA	1.24%

Source: Data USA

The table below shows the projected payor mix showing only inpatient services of the new CAH.

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	34.23%	33.07%
Medicare	47.68%	48.54%
Medicaid	18.09%	18.39%
<b>Total Discharges</b>	2,193	2,209

Currently, Claxton operates the 127-bed hospital. The table below shows the SPARCS data for occupancy and Average Daily Census (ADC) details for 2020-2022. SPARCS data for 2023 is incomplete. Total occupancy has been below 43% for this time frame; however, the psychiatric occupancy was between 82-86% prior to the hospital adding additional psychiatric beds in 2022. Occupancy of the 25 beds is expected to be close to 100%.

<b>Claxton-Hepburn Medical Center Facility Utilization, Beds, and Average Daily Census</b>							
<b>Category</b>	<b>Beds</b>	<b>2020</b>		<b>2021</b>		<b>2022</b>	
		<b>ADC</b>	<b>Occupancy</b>	<b>ADC</b>	<b>Occupancy</b>	<b>ADC</b>	<b>Occupancy</b>
<b>Med/Surg</b>	<b>77</b>	17	22%	25	32.4%	22	28.5%
<b>Obstetrics</b>	<b>10</b>	1	10%	1	10%	1	10%
<b>Psychiatric</b>	<b>40*</b>	24	85.7%	23	82.1%	25	62.5%
<b>Total</b>	<b>127</b>	43	37.3%	49	42.6%	48	37.8%

*\*In 2022, 12 psychiatric beds were added  
Source: SPARCS*

The table below shows the current beds at Claxton, proposed changes, and totals of beds moving to the CAH. There will be no change to the number of available psychiatric beds in the area, as the current psychiatric beds within Claxton will move to the Article 31 Mental Health Hospital in the same location.

<b>Current and Projected Beds at Claxton-Hepburn/Carthage CAH</b>			
<b>Bed Type</b>	<b>Current Beds</b>	<b>Bed Change</b>	<b>CAH Beds</b>
Coronary Care	6	-6	0
Intensive Care	4	+2	6
Maternity	10	-8	2
Medical / Surgical	67	-50	17
Psychiatric	40	-40*	0*
<b>Total</b>	<b>127</b>	<b>-102</b>	<b>25</b>

*\*40 beds will be transitioned to the Article 31 Mental Health Center  
Source: HFIS/Applicant*

At the completion of this project, there will be a loss of 62 total beds at the site. However, given the historical occupancy at Claxton and the beds remaining between the new CAH operated by Carthage and the new Article 31 behavioral health facility operated by Claxton, there should be adequate resources to meet the preponderance of the need for services within Claxton's current service area.

<b>Claxton's Historical Total Inpatient Discharges</b>		
<b>2020</b>	<b>2021</b>	<b>2022</b>
2,711	2,841	2,631

Source: SPARCS

Carthage projects 2,193 discharges for Year One and 2,209 by Year Three at the new CAH. Historically, Carthage has had an average length of stay (ALOS) of approximately 4 days for medical in their currently operating CAH. Claxton's ALOS has been approximately 5.5 days. It is expected that the ALOS of the new CAH will be in line with Carthage's operational experience.

The table below lists hospitals closest to the proposed site, their distances from the applicant's location, and SPARCS occupancy data for medical/surgical and obstetric services, which will be decreased in the area with the proposed application.

Neighboring Hospital	Distance/Time from Applicant	2021 Occupancy		2022 Occupancy	
		Med/Surg	Obstetrics	Med/Surg	Obstetrics
Gouverneur Hospital	29 miles/40 min	20.2%	N/A	21.4%	N/A
Canton-Potsdam Hospital	31 miles/42 min	63.1%	52.9%	69.5%	14.5%
Massena Memorial Hospital	36 miles/43 min	45.3%	N/A	57.8%	N/A
Samaritan Medical Center	59 miles/1 hr 10 min	44.0%	34.8%	38.8%	32.6%
Carthage Area Hospital	62 miles/1 hr 18 min	43.2%	24.2%	35.7%	26.9%
University Hospital SUNY Health Science Center	127 miles/2 hr 6 min	99.0%	N/A	94.8%	N/A
St. Joseph's Hospital Health Center	127 miles/2 hr 7 min	65.7%	54.3%	50.5%	41.8%
Crouse Hospital	128 miles/2 hr 7 min	69.8%	65.8%	70.2%	67.8%

Source: Google Maps and SPARCS

The table below shows the geographic distribution of discharges for Claxton-Hepburn Medical Center. Of note, 44.7% of the discharges came from Claxton's own zip code and those immediately contiguous. 16.9% came from zip codes that also contain a hospital (Potsdam, Massena, and Gouverneur).

<b>Market Share Analysis for 000798: Claxton-Hepburn Medical Center Service area: 85% of hospital discharges based on patient Zip Codes of origin including the facility with the biggest share in each zip code</b>						
Patient Zip Code	Post Office Name	Annual Average Discharges	Percent of facility's total discharges	Cumulative Percent	Facility's Share of Zip Code	Facility with biggest share of this zip code (%)
13669	Ogdensburg	893	36.1	36.1	59.9	000798: Claxton-Hepburn Medical Center (60%)
13662	Massena	192	7.8	43.9	8.5	000804: Massena Memorial Hospital (37%)
13617	Canton	131	5.3	49.2	14.4	000815: Canton-Potsdam Hospital (59%)
13642	Gouverneur	121	4.9	54.1	12.1	000815: Canton-Potsdam Hospital (28%)
13676	Potsdam	103	4.2	58.3	9.8	000815: Canton-Potsdam Hospital (65%)
13646	Hammond	81	3.3	61.5	40.7	000798: Claxton-Hepburn Medical Center (41%)
13654	Heuvelton	70	2.8	64.4	36.8	000798: Claxton-Hepburn Medical Center (37%)
13658	Lisbon	61	2.5	66.8	29.8	000815: Canton-Potsdam Hospital (36%)
13619	Carthage	42	1.7	68.5	3.9	000379: Carthage Area Hospital Inc (29%)
13664	Morristown	41	1.7	70.2	63.1	000798: Claxton-Hepburn Medical Center (63%)
13680	Rensselaer Falls	39	1.6	71.8	36.8	000798: Claxton-Hepburn Medical Center (37%)
13660	Madrid	38	1.5	73.3	17.3	000815: Canton-Potsdam Hospital (56%)

<b>Market Share Analysis for 000798: Claxton-Hepburn Medical Center Service area: 85% of hospital discharges based on patient Zip Codes of origin including the facility with the biggest share in each zip code</b>						
<b>Patient Zip Code</b>	<b>Post Office Name</b>	<b>Annual Average Discharges</b>	<b>Percent of facility's total discharges</b>	<b>Cumulative Percent</b>	<b>Facility's Share of Zip Code</b>	<b>Facility with biggest share of this zip code (%)</b>
13667	Norfolk	38	1.5	74.8	8.2	000815: Canton-Potsdam Hospital (54%)
13655	Hogansburg	36	1.5	76.3	8.9	000815: Canton-Potsdam Hospital (25%)
13694	Waddington	30	1.2	77.5	24.0	000815: Canton-Potsdam Hospital (45%)
13630	De Kalb Junction	29	1.2	78.7	22.3	000815: Canton-Potsdam Hospital (35%)
13601	Watertown	28	1.1	79.8	0.6	000367: Samaritan Medical Center (72%)
13668	Norwood	27	1.1	80.9	7.7	000815: Canton-Potsdam Hospital (68%)
13652	Hermon	22	0.9	81.8	12.5	000815: Canton-Potsdam Hospital (54%)
13684	Russell	21	0.8	82.6	14.3	000815: Canton-Potsdam Hospital (50%)
13681	Richville	20	0.8	83.5	16.9	000815: Canton-Potsdam Hospital (32%)
13679	Redwood	18	0.7	84.2	11.7	000367: Samaritan Medical Center (34%)
13613	Brasher Falls	17	0.7	84.9	5.6	000815: Canton-Potsdam Hospital (51%)

Data source: SPARCS inpatient data (Apr. 1, 2022 - Mar. 31, 2023) - Date Extracted: 08/18/2023 (Note: 2022-2023 SPARCS data are incomplete for some facilities)

### **Conclusion**

Approval of this project will preserve adequate medical/surgical, obstetric, and psychiatric services in the target service area.

## Program Analysis

### Project Proposal

Carthage Area Hospital, Inc. (Carthage) seeks to establish a 25-bed Critical Access Hospital in Ogdensburg to be co-located with a 40-bed Article 31 Behavioral Health facility operated by Claxton Hepburn Medical Center (Claxton). Carthage will also be established as the operator of a total of seven (7) Article 28 clinics currently operated by Claxton. Five (5) were transferred in an initial phase through Certificate of Need (CON) application 232015. The remaining (2) two clinics, CHMC-Ravinder Agarwal Renal Center at 124 Ford Avenue, Ogdensburg, NY, and Heuvelton Health Center at 103 Rensselaer Street, Heuvelton, NY, will be transferred as part of this application.

Carthage, in Jefferson County, and Claxton, in St. Lawrence County, have been working collaboratively since October of 2019 through a shared services arrangement to promote financial sustainability and preservation of services in the North Country. Both Carthage and Claxton are part of the same healthcare system, with North Star Health Alliance, Inc. as the sole member and passive parent of both entities. To that end, this project is being undertaken as part of Claxton's strategic sustainability plan to preserve, right-size, and enhance patient access to primary, acute, and behavioral health services.

Over the last decade, Claxton has faced multiple operational and financial issues which has compromised the future sustainability of the organization. The two organizations have developed a strategic plan to ensure the preservation of healthcare services in St. Lawrence County. This multistep plan includes 1) the closure of acute care services currently provided by Claxton, and the conversion of 40 in-patient mental health beds to a standalone Article 31 Mental Health Hospital that will be operated by Claxton, and 2) the establishment of a 25-bed Critical Access Hospital (CAH) by Carthage in Ogdensburg.

Carthage Area Hospital, Inc. will operate 25 beds that will swing from acute to short-term skilled care services in accordance with Critical Access Hospital regulations.

The proposed modification would create an exterior entrance into the Article 31 portion of the building at the basement level and create a distinct receptionist and greeting area. This area will direct the patient to the dedicated elevator that will access the Article 31 spaces of behavioral health on the third and fourth floors. The entire building will house the Article 28 spaces as well as Article 31 spaces, which will conform to all Article 28 and 31 specifications. On the third floor, a new firewall and door will be installed to separate access to the adjacent Article 28 spaces. The building will require no construction, and there will be no changes in bed capacity or number of occupants.

Any patient deemed not to be able to be cared for related to patient acuity and or bed availability will be transferred to the appropriate facility providing those services. Transfer agreements are in place with:

- Carthage Area Hospital Inc. (CAH) at 1001 West Street, Carthage, NY in Jefferson County (63 miles and 85 minutes)
- Clifton-Fine Hospital at 1014 Oswegatchie Trail, Star Lake, NY in St. Lawrence County (51 miles and 70 minutes)
- River Hospital, Inc. at 4 Fuller Street, Alexandria Bay, NY in Jefferson County (36.5 miles and 43 minutes)
- Samaritan Medical Center at 830 Washington St., Watertown, NY in Jefferson County (59 miles and 76 minutes)
- SUNY Upstate Medical at:
  - 750 East Adams St., Syracuse, NY in Onondaga County (128 miles and 128 minutes)
  - 4900 Broad Rd. Syracuse, NY in Onondaga County (131 miles and 136 minutes)

The approval for the Closure/Change in Operator of Claxton-Hepburn Medical Center (CAH) plan was granted on 05/07/2024.

### **Prevention Agenda**

Carthage Area Hospital, in St. Lawrence County, is seeking approval to 1) establish a second site 25-bed Critical Access Hospital (CAH) with 17 medical/surgical beds, 2 maternity beds, and 6 ICU beds, and 2) close the acute care services currently provided by Claxton, and the conversion of 40 in-patient mental health beds to a standalone Article 31 Mental Health Hospital that will be operated by Claxton.

Carthage Area Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders

Establishing the CAH advances the Prevention Agenda's priority "Promote Well-being and Prevent Mental and Substance Abuse Disorders." The new CAH will ensure the community can access acute services and mental and behavioral health care for children and adults.

In 2021, Carthage Area Hospital spent \$16,289,729 on community benefits.

### **Conclusion**

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

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovations and the acquisition of moveable equipment is estimated at \$6,292,520 and will be met with accumulated funds of Carthage Area Hospital. A further breakdown is as follows:

Renovation and Demolition	\$200,000
Design Contingency	20,000
Construction Contingency	20,000
Moveable Equipment	4,712,873
Telecommunications	1,303,238
CON Fees	2,000
Additional Processing Fee	<u>34,409</u>
Total Project Cost	\$6,292,520

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years after project completion, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2022)</u>		<u>(2024)</u>		<u>(2026)</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch</u>	<u>Total</u>
Rev: (Inpatient)						
Medicaid FFS	\$2,454.76	\$81,007	\$4,232	\$757,599	\$4,774	\$768,585
Medicaid MC	\$2,045.65	1,397,182	\$1,346	3,183,676	\$1,347	3,284,833
Medicare FFS	\$2,645.23	5,446,531	\$2,453	12,527,149	\$2,467	12,922,521
Medicare MC	\$2,611.78	2,946,083	\$2,346	3,756,339	\$2,431	3,943,210
Comm FFS	\$991.39	<u>1,380,010</u>	\$1,016	<u>4,890,199</u>	\$1,071	<u>5,005,715</u>
Inpatient Revenues		\$11,250,813		\$25,114,962		\$25,924,864
Exp: (Inpatient)						
Operating	\$2,043.45	\$10,820,049	\$1,409	\$19,817,383	\$1,396.03	\$19,728,751
Capital	<u>39.77</u>	<u>210,603</u>	<u>\$36</u>	<u>506,245</u>	<u>\$20.03</u>	<u>283,002</u>
Inpatient Expenses	\$2,083.22	\$11,030,652	\$1,445	\$20,323,628	\$1,416	\$20,011,753
Inpatient Excess Rev		<u>\$220,161</u>		<u>\$4,791,334</u>		<u>\$5,913,111</u>
Discharges		<u>5,295</u>		<u>14,068</u>		<u>14,132</u>
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Rev (Outpatient)						
Medicaid FFS	\$80.14	\$2,831,608	\$80.14	\$3,612,624	\$81.34	\$3,740,150
Medicaid MC	\$68.92	\$5,510,226	\$68.92	\$13,560,004	\$69.96	\$14,038,673
Medicare FFS	\$198.77	\$6,852,141	\$231.43	\$31,923,099	\$238.91	\$33,614,439
Medicare MC	\$184.86	\$7,422,497	\$221.46	\$45,300,400	\$228.10	\$47,592,600
Comm FFS	\$211.42	<u>\$38,121,358</u>	\$211.42	<u>\$74,175,065</u>	\$215.33	<u>\$77,055,843</u>
Outpatient Revenues		\$60,737,830		\$168,571,192		\$176,041,705
Exp (Outpatient)						
Operating	\$192.69	\$71,335,504	\$189.43	\$177,147,559	\$188.91	\$180,190,475
Capital	<u>3.75</u>	<u>1,388,485</u>	<u>4.84</u>	<u>4,525,328</u>	<u>2.72</u>	<u>2,594,494</u>
Outpatient Expenses	\$196.44	\$72,723,989	\$194.27	\$181,672,887	\$191.63	\$182,784,969
Other Op Revenues		\$10,247,343		\$9,741,564		\$9,644,408
Non-Op Revenues		(\$243,843)		\$217,821		\$225,904
Total Revenues		\$81,992,143		\$203,645,539		\$211,836,881
Total Expenses		<u>\$83,754,641</u>		<u>\$201,996,515</u>		<u>\$202,796,722</u>
Excess Revenues		(\$1,762,498)		\$1,649,024		\$9,040,159
Utilization: (Visits)		370,213		935,152		953,855



The following is noted concerning the submitted RHCF operating budget:

- The above budget was based on the current experience of the applicant and is inclusive of the 25-bed CAH and five (5) rural health clinics.
- Other Operational Revenues include 340B, Indigent Care Pools, VAP, Access, HRSA, School-Based Health, Rural Health Clinic ADP Grants, and Rental/Management income.
- The applicant used an overall blended rate for payors on outpatient services using Claxton-Hepburn Medical Center's Medicare rate as a basis. This allowed the applicant to project a cost savings for the hospital with no proposed changes to existing service line offerings or in the payor mix.
- The model uses a rebuilt version of Claxton's Medicare cost report using historical revenues and expenses, accounting for known changes such as the removal of inpatient psych units and associated support services and the transition of Rural Health Clinics (RHCs) to Carthage.
- For outpatient services, ratios of cost to charge (RCC) were established for each service by determining the proportion of costs/charges. The RCC for each outpatient service was multiplied by the service charges for each financial class to determine the appropriate allocation of outpatient costs for each service by financial class. Cost-based payors were projected to reimburse the allowable costs. Non-cost-based payors were projected to be reimbursed the same as Carthage.
- For inpatient services, their model used cost-finding principles to establish cost-based per diems for each financial class that reimburses on a cost basis. Non-cost-based financial classes were projected to be reimbursed at the same per diem as Carthage.

Utilization is broken down by payor source and by inpatient and outpatient for the current year, the first year after project completion, and the third year after project completion are as follows:

<u>Inpatient</u>	<u>Current Year</u> <u>(2022)</u>	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Commercial FFS	26.29%	34.23%	33.07%
Medicare FFS	38.89%	36.30%	37.06%
Medicare MC	21.30%	11.38%	11.48%
Medicaid FFS	0.62%	1.27%	1.13%
Medicaid MC	<u>12.90%</u>	<u>16.82%</u>	<u>17.26%</u>
Total	100.00%	100.00%	100.00%
<u>Outpatient</u>			
Commercial FFS	60.55%	37.52%	37.52%
Medicare FFS	9.49%	14.75%	14.75%
Medicare MC	11.06%	21.87%	21.87%
Medicaid FFS	5.79%	4.82%	4.82%
Medicaid MC	<u>13.11%</u>	<u>21.04%</u>	<u>21.04%</u>
Total	100.00%	100.00%	100.00%

### **Lease Rental Agreement**

The applicant has submitted three (3) draft lease rental agreements, of which one (1) is for the Critical Access Hospital site, and the other two (2) are for extension sites, which are summarized below:

#### **Critical Access Hospital (Draft)**

Premises	139,188 square feet located at 214 King Street, Ogdensburg, New York
Lessor	Claxton Hepburn Medical Center
Lessee	Carthage Area Hospital
Term	10 years
Rental	\$2,908,127 annually (\$20.89 per sq.ft.)
Provisions	The lessee shall be responsible for maintenance, repairs, utilities, and real estate taxes.

#### **Extension Site (Draft)**

Premises	The premises are located at 124 Ford Avenue, Ogdensburg, New York.
Lessor	Claxton Hepburn Medical Center
Lessee	Carthage Area Hospital
Term	10 years
Rental	\$305,200 annually
Provisions	The lessee shall be responsible for maintenance, utilities, and real estate taxes.

#### **Extension Site (Draft)**

Premises	The premises are located at 103 Rensselaer Street, Heuvelton, New York.
Lessor	Claxton-Hepburn Medical Center
Lessee	Carthage Area Hospital
Term	10 years
Rental	\$23,969 annually
Provisions	The lessee shall be responsible for maintenance, repairs, utilities, and real estate taxes.

The applicant has submitted a fair market value study showing that the rents in the proposed leases are reasonable.

### **Capability and Feasibility**

Total Project Cost of \$6,292,520 will be met with accumulated funds from Carthage Area Hospital operations. BFA Attachment A, 2021-2022 Certified Financial Statements of Carthage Area Hospital, indicate the availability of sufficient resources to fund the project.

Working capital requirements are estimated at \$1,496,850, which is equivalent to two months of incremental inpatient expenses. The hospital will provide equity to meet the working capital requirement. As shown, the hospital has sufficient funds to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$1,649,024 and \$9,040,159 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

Attachment A shows that Carthage had an average negative working capital position, a positive net asset position, and an average net income of \$1,618,048 during 2021 and 2022. This was attributed to the effects of the COVID-19 pandemic and the inflationary environment that allowed volumes to begin to recover a return to a regular post-COVID-19 operational environment. Further cost savings initiatives implemented between Carthage and Claxton include sharing administrative personnel and reductions in workforce, some of which resulted in outsourcing revenue cycle functions.

BFA Attachment B November 30, 2023, Internal Financial Statements of Carthage Area Hospital shows Carthage had a positive working capital position, positive net asset position, and incurred a net loss of \$1,850,730 through November 30, 2023.

**Conclusion**

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

<b>Attachments</b>
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BHFP Attachment	Map
BFA Attachment A	2021-2022 Certified Financial Statements of Carthage Area Hospital
BFA Attachment B	November 30, 2023, Internal Financial Statements of Carthage Area Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to certify a new critical access hospital division at 214 Kings Street, Ogdensburg, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

231286 B

FACILITY/APPLICANT:

Carthage Area Hospital Inc.

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 lease rental agreement for the site located at 214 King Street, Ogdensburg, New York. [BFA]
3. Submission of an executed lease rental agreement for the site located at 124 Ford Avenue, Ogdensburg, New York. [BFA]
4. Submission of an executed lease rental agreement for the site located at 103 Rensselaer Street, Heuvelton, New York. [BFA]
5. Submission of closure plans, acceptable to and approved by the Department, for two facilities: CHMC Ravinder Agarwal Renal Center and Heuvelton Health Center. [HSP]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by December 31, 2025, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before December 20, 2024, and construction must be completed by January 20, 2025, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. Submission of documentation showing final approval by CMS for the 40-bed behavioral health hospital co-located within the CAH. [PMU]
4. Submission of documentation showing final approval by OMH for the 40-bed behavioral health hospital co-located within the CAH. [PMU]
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]
6. Submission and approval of Form-855 to the Fiscal Intermediary prior to onsite inspection. [HSP]
7. A determination by CMS that the facility meets the Critical Access Hospital (CAH) requirements. [HSP]

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



**Project # 232204-E**

**St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's  
Surgery And Endoscopy Center**

**Program:** Diagnostic and Treatment Center

**County:** Albany

**Purpose:** Establishment

**Acknowledged:** December 5, 2023

**Executive Summary**

**Description**

St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's Surgery & Endoscopy Center (St. Peter's or the Center), an existing multi-specialty freestanding ambulatory surgery center (FASC) at 1375 Washington Avenue, Albany (Albany County), requests approval to transfer 84.57% ownership interest in a member LLC from five (5) withdrawing members and three (3) existing members to sixteen (16) new members of that LLC. The FASC is a joint venture between AGC Associates, LLC (AGC), which is comprised of local physicians and St. Peter's Hospital. The direct membership interest in the Center, which is held by St. Peter's Health (50%) and AGC (50%), has not changed since the Center was established.

Since the Center began operations more than 20 years ago, several members have joined and withdrawn from AGC. The Center did not notify the Department and seek prior approval for those indirect ownership changes. The Center assures the Department that it had no intent to ignore the Public Health Law, and when they discovered the issue last year, this application was prepared and submitted. The applicant confirmed that the members of the Center simply believed that because the percentages of the direct members were not changing (i.e., the physician member entity and the St. Peter's entity always remained at 50% each), they did not have to give notice when the membership composition within the physician member entity changed.

Therefore, St. Peter's is seeking approval of 1) certain historical ownership changes that have occurred within AGC over the last 20 years and 2) to add two (2) new physician members (Shai Posner, M.D. and Xinjun Cindy Zhu, M.D.) to AGC.

The Center will continue to provide surgical services in Gastroenterology, Plastics, Otolaryngology, Podiatry, Gynecology, Oral, General, and Colon/Rectal surgery. There will be no change to the services or operating certificate as a result of this application.

Samuel Feldman, M.D., FASC serves as the Medical Director of the Center.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

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

**Program Summary**

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

**Financial Summary**

The purchase price for the two (2) new members' membership interest will be met with a promissory note of \$1,777,542.

Budget:	Year One (2025)	Year Three (2027)
Revenues	\$29,089,629	\$29,089,629
Expenses	<u>11,172,173</u>	<u>11,245,998</u>
Net Income	\$17,917,456	\$17,843,631

**Health Equity Impact Assessment**

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## 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 promissory note that is acceptable to the Department of Health. [BFA]

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

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

### **Council Action Date**

June 20, 2024



## Program Analysis

### Project Description

St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's Surgery & Endoscopy Center (St. Peter's or the Center) is an existing multi-specialty freestanding ambulatory surgery center (FASC) at 1375 Washington Avenue, Albany, New York (Albany County). Through this application, they are seeking to transfer 84.57% ownership interest in a member LLC from five (5) withdrawing members and three (3) existing members to sixteen (16) new members of that LLC. St. Peter's Surgery and Endoscopy Center is also seeking approval of indirect ownership membership changes that have occurred within AGC Associates, LLC (AGC) over the last twenty (20) years and to add two (2) new physician members - Shai Posner, M.D. and Xinjun Cindy Zhu, M.D. to AGC.

St. Peter's consists of a joint venture between AGC Associates, LLC (which is comprised of local physicians) and St. Peter's Hospital (SPH). The direct membership interest in the Center, which is held by SPH (50%) and AGC (50%), has not changed since the Center was established.

Upon approval, AGC will have nineteen (19) members (16 new members along with 3 prior approved members): Jonathan Barsa, M.D.; Mandeep Bhamra, M.D.; John Buhac, M.D.; Joseph Choma, M.D.; Richard Clift, M.D.; Carla Fernando-Gilday, M.D.; Jeffrey Gerson, M.D.; Robert Gianotti, M.D.; Bora Gumustop, M.D.; Sajd Hussain, M.D.; Reena Patel, M.D.; Joseph Polito, M.D.; Shai Posner, M.D.; James V. Puleo, M.D.; Sean Sheehan, M.D.; Domenico Viterbo, M.D.; Neil Volk, M.D.; Matthew Warndorf, M.D. and Xinjun Cindy Zhu, M.D.

Dr. Buhac and Dr. Fernando-Gilday will each have a 4.79% interest in AGC and a 2.39% indirect interest in the Center. The other seventeen (17) members will have a 5.32% interest in AGC and a 2.66% indirect interest in the Center.

Decisions concerning business affairs and operations of the Center are made by its members acting through representatives appointed to the management committee.

No changes in services are proposed for the Center which is currently certified as a multi-specialty freestanding ambulatory surgical center (FASC) specializing in Gastroenterology; Plastics; Otolaryngology; Podiatry; Gynecological; Oral; General and Colon/Rectal surgery.

The Center's hours of operation are Monday - Friday from 7:00 a.m. to 7:00 p.m.

There are no programmatic changes as a result of this request, and staffing will remain the same at 58FTEs with no change expected.

Samuel Feldman, M.D, serves as the current Medical Director of the Center.

The Center has a transfer and affiliation agreement with St. Peter's Hospital, which is located 3.2 miles and nine (9) minutes travel time from the Center.

The table details the proposed direct and indirect membership interests:

<b>St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's Surgery And Endoscopy Center</b>			
AGC Associates, LLC	50%		
St. Peter's Hospital	50%		
<b>TOTAL</b>	100%		
<b>Proposed Membership in AGC Associates, LLC</b>	<b>Membership Shares</b>	<b>Direct Membership % in AGC</b>	<b>Indirect Membership % SPESC</b>
Richard G. Clift, M.D.	10	5.32%	2.66%
Carla F. Fernando-Gilday, M.D.	9	4.79%	2.39%
Joseph Polito, M.D.	10	5.32%	2.66%
Jonathan Barsa, M.D.	10	5.32%	2.66%
Mandeep Bhamra, M.D.	10	5.32%	2.66%
John Buhac, M.D.	9	4.79%	2.39%
Joseph Choma, M.D.	10	5.32%	2.66%
Jeffery Gerson, M.D.	10	5.32%	2.66%
Robert Gianotti, M.D.	10	5.32%	2.66%
Bora Gumustop, M.D.	10	5.32%	2.66%
Sajd, Hussain, M.D.	10	5.32%	2.66%
Reena Patel, M.D.	10	5.32%	2.66%
Sai Posner, M.D.	10	5.32%	2.66%
James V. Puleo II, M.D.	10	5.32%	2.66%
Sean Sheehan, M.D.	10	5.32%	2.66%
Domenico Viterbo, M.D.	10	5.32%	2.66%
Neil Volk, M.d.	10	5.32%	2.66%
Matthew Warndorf, M.D.	10	5.32%	2.66%
Xinjun, M.D.	10	5.32%	2.66%
<b>TOTAL</b>	<b>188</b>	<b>100.00%</b>	<b>50.00%</b>

### **Character and Competence**

Drs. Fiorenz, Notis, Orris, Samuels, and Sax were five (5) of the original eight (8) members of AGC who have withdrawn from membership since approval of project #992612-B. The three (3) remaining doctors, (Clift, Fernando-Gilday, and Polito) were approved in project #992612-B and remain members of AGC today.

### **Proposed Members:**

**Dr. Jonathan Barsa** is currently employed by Albany Gastroenterology Consultants. In 2011, Dr. Barsa received a degree from Columbia University.

**Dr. Mandeep Barma** is an attending physician at Albany Gastroenterology Consultants; and received a formal education at Teerth Rural Medical College in India. In 2015, Dr. Barma completed a residency at Albany Medical Center.

**Dr. Jonathan Buhac** has been an attending physician at Albany Gastroenterology Consultants, PLLC since 2004. In 1991, Dr. Buhac completed accreditations at the Tufts University School of Medicine and finished a residency in 1994 at the New England Deaconess Hospital in Massachusetts.

**Dr. Joseph Choma** is currently employed by Albany Gastroenterology Consultants, PLLC as an attending physician. In 2002, Dr. Choma completed an education at the University of Vermont College of Medicine and completed a residency in 2005 at the Tufts New England Medical Center.

**Dr. Jeffrey Gerson** is a physician at Albany Gastroenterology Consultants, PLLC. In 1990, Dr. Gerson graduated from SUNY Health Science Center and completed a residence at Allegheny General Hospital in 1993.

**Dr. Robert Gianotti** is employed at Albany Gastroenterology Consultants, PLLC. In 2008, Dr. Gianotti graduated from Weill Cornell Medical College and completed a residency at Beth Israel Deaconess Medical Center in 2016.

**Dr. Bora Gumustop** is currently employed at Albany Gastroenterology Consultants since 2001. Current registration in NY through 2/28/2025. Dr. Gumustop graduated with a medical degree from Hacettepe University in Turkey in 1992. Residency was completed at Mary Imogene Bassett Hospital in Cooperstown in 1997 followed by a fellowship in gastroenterology and ERCP completed both in 2000.

Legal disclosure: Schenectady Supreme Court Edward Wildzunas and Karen Zalewski-Wildzunas v. Bora Gumustop, M.D., Albany Gastroenterology Consultants, PLLC, Albany Med Health System, Albany Medical Center Hospital, John Does 1-10 for medical malpractice allegation against multiple parties. Ongoing.

**Dr. Sajid Hussain** has been administering healthcare to his patients at Albany Gastroenterology Consultants, PLLC since 2017. In 2002, Dr. Hussain completed an education in Romania at the University of Oradea and a residency was completed at St. Luke's and Roosevelt Hospital in New York in 2008.

**Dr. Reena Patel** received an education in the nation of Grenada in the Caribbean at St. Georges University School of Medicine in 2010. Currently, Dr. Patel has been practicing at Albany Gastroenterology Consultants, PLLC, since 2020.

**Dr. Shai Posner** completed their education in 2015 at the Icahn School of Medicine at Mount Sinai in New York City and has been an attending physician at Albany Gastroenterology Consultants, PLLC, since 2021.

**Dr. James Puleo** has been a doctor at Albany Gastroenterology Consultants, PLLC, since 2020. In 1994, Dr. Puleo completed a residency at Albany Medical Center after receiving an education at Albany Medical College in 1991.

**Dr. Sean Sheehan** is presently a practicing physician at Albany Gastroenterology Consultants, PLLC, since 2004 as well as Albany Memorial Hospital, St. Peter's Hospital, and St. Peter's Surgery and Endoscopy Center. Dr. Sheehan received medical credentials at SUNY Syracuse College of Medicine in 1998 and completed a residency at Yale New Haven Hospital in 2001.

**Dr. Domenico Viterbo** is a physician employed at Albany Gastroenterology Consultants, PLLC, since 2018. In 2012, Dr. Viterbo completed a residency at Yale New Haven Hospital after receiving an education at SUNY Downstate College of Medicine in 2009.

**Dr. Neil Volk** has been employed at Albany Gastroenterology Consultants, PLLC, since 2019. In 2012, Dr. Volk completed an education at SUNY Stony Brook University School of Medicine. Dr. Volk completed a residency with significant recognition as the Chief Resident at Hitchcock Medical Center in 2016.

**Dr. Matthew Warndorf** is a medical doctor licensed in New York and Vermont and is currently an attending physician at Albany Gastroenterology Consultants, PLLC, since 2016. Dr. Warndorf has privileges at St. Peter's Hospital, Albany Medical Center, Southwest Vermont Medical Center, and Ellis Hospital.

**Dr. Xinjun Zhu** has been a doctor at Albany Gastroenterology Consultants, PLLC, since 2022 and is licensed in both New York and Florida with both licenses up for renewal in 2026. Dr. Zhu disclosed that one (1) case was disposed in the State of Florida filed in 2020. Charges consisted of a recordkeeping violation and a violation of the standard of care in 2023 which resulted in the death of a patient due to metastasis of the colon. Dr. Zhu had to concede to a restitution of \$5,000 fine, payment of costs, and completion of continuing medical reeducation on medical recordkeeping, small bowel obstruction, and risk management. New York State Department of Health has been made aware of this violation and has issued Dr. Zhu a New York State BMPC Order (No. 24-015) that has been in effect since January 24, 2024, and can practice without any hindrances despite this infraction.

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 applicants' 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.

### **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

### Operating Budget

The applicant has submitted an operating budget, in 2024 dollars, for the current year (2022), year one after ownership change, and year three after ownership change, summarized below:

	<u>Current</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2022)</u>		<u>(2025)</u>		<u>(2027)</u>	
	<u>Per</u>		<u>Per</u>		<u>Per</u>	
	<u>Procedure</u>	<u>Total</u>	<u>Procedure</u>	<u>Total</u>	<u>Procedure</u>	<u>Total</u>
<b>Revenues:</b>						
<b>Commercial</b>						
FFS	\$1,880	\$197,445	\$1,662	\$199,388	\$1,662	\$199,388
Commercial MC	\$2,029	\$23,058,171	\$2,043	\$23,285,089	\$2,043	\$23,285,089
Medicare FFS	\$518	\$1,507,316	\$516	\$1,522,149	\$516	\$1,522,149
Medicare MC	\$528	\$1,593,684	\$531	\$1,609,368	\$531	\$1,609,368
Medicaid FFS	\$556	\$13,895	\$468	\$14,032	\$468	\$14,032
Medicaid MC	\$649	\$1,144,920	\$651	\$1,156,187	\$651	\$1,156,187
Private Pay	\$2,077	\$1,260,595	\$2,122	\$1,273,001	\$2,122	\$1,273,001
Other	\$615	<u>\$30,119</u>	\$507	<u>\$30,415</u>	\$507	<u>\$30,415</u>
<b>Total Revenues</b>		<b>\$28,806,145</b>		<b>\$29,089,629</b>		<b>\$29,089,629</b>
<b>Expenses:</b>						
Operating	\$467	\$9,287,967	\$497	\$9,943,845	\$498	\$9,956,774
Capital	<u>\$54</u>	<u>\$1,081,676</u>	<u>\$61</u>	<u>\$1,228,328</u>	<u>\$64</u>	<u>\$1,289,224</u>
<b>Total Expenses</b>	<b>\$522</b>	<b>\$10,369,643</b>	<b>\$559</b>	<b>\$11,172,173</b>	<b>\$562</b>	<b>\$11,245,998</b>
<b>Net Income</b>		<b>\$18,436,502</b>		<b>\$17,917,456</b>		<b>\$17,843,631</b>
<b>Utilization:(Proc)</b>		<b>19,868</b>		<b>20,000</b>		<b>20,000</b>

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

- Expense, revenue, and utilization assumptions are based on the Center's historical experience.

Utilization broken by payor source for the current year, first year and the third year after the change in ownership interests:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
	<u>(2022)</u>	<u>(2025)</u>	<u>(2027)</u>
Commercial FFS	0.53%	0.60%	0.60%
Commercial MC	57.19%	56.98%	56.98%
Medicare FFS	14.66%	14.75%	14.75%
Medicare MC	15.21%	15.15%	15.15%
Medicaid FFS	0.13%	0.15%	0.15%
Medicaid MC	8.87%	8.88%	8.88%
Private Pay	3.06%	3.00%	3.00%
Charity Care	0.12%	0.20%	0.20%
Other	<u>0.25%</u>	<u>0.30%</u>	<u>0.30%</u>
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

### **Capability and Feasibility**

The purchase price for the two (2) new members' membership interest, which amounts to \$1,777,542, will be funded with a promissory note. This note will be issued at an interest rate of 1-month Federal Home Loan Bank rate plus 225 basis points (7.77% as of 5/9/2024) for a six-year term. Notably, a portion of Dr. Posner's and Dr. Zhu's annual membership interest distribution will be used to fund the promissory note they had with AGC.

Working capital requirements are estimated at \$1,874,333, equivalent to two months of third-year expenses. The applicant will provide equity from operations to meet the working capital requirement. Presented as BFA Attachment E are the March 31, 2024, Internal Financial Statements of St. Peter's Ambulatory Surgery Center, LLC, indicating sufficient resources to meet the working capital requirement. The submitted budget indicates a net income of \$17,917,456 and \$17,843,631 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

Presented as BFA Attachment D are the 2022 Certified Financial Statements and the 2023 Internal Financial Statements of St. Peter's Ambulatory Surgery Center, LLC. As shown, the Center had an average positive working capital position and an average positive net asset position during the period. Also, the Center generated an average net income of \$18,885,096 during the period shown.

Presented as BFA Attachment E are the March 31, 2024, Internal Financial Statements of St. Peter's Ambulatory Surgery Center, LLC. The Center had positive working capital and net asset positions through March 31, 2024. The Center achieved a net income of \$6,204,367 through March 31, 2024.

### **Conclusion**

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

## **Attachments**

BFA Attachment A	Original Ownership of St. Peters Ambulatory Surgery Center
BFA Attachment B	Current Ownership of St. Peter's Ambulatory Surgery Center
BFA Attachment C	Proposed Ownership of St. Peter's Ambulatory Surgery Center
BFA Attachment D	Financial Summary - 2022 Certified Financial Statements and the 2023 Internal Financial Statements of St. Peter's Ambulatory Surgery Center.
BFA Attachment E	Financial Summary- March 31, 2024, Internal Financial Statements of St. Peter's Ambulatory Surgery Center.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 84.57% ownership interest in a member LLC from five withdrawing members and three existing members to sixteen new members of that LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

232204 E

St. Peter's Ambulatory Surgery Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a promissory note that is acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

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

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





Project # 232243-E
Advanced Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Rockland
Acknowledged: January 16, 2024

Executive Summary

Description

Advanced Surgery Center, LLC (The Center), an existing Article 28 multi-specialty, freestanding ambulatory surgical center (FASC) at 150 South Pearl Street, Pearl River, NY (Rockland County), is seeking approval to transfer 100.00% ownership interest (100 shares) from the sole withdrawing member to two new members. The Center has been in operation since 2010 and obtained an indefinite life in 2018. The facility currently provides and will continue to provide plastic surgery and pain management services.

On June 5, 2023, the current sole shareholder Dr. Michael Fiorillo entered into a Membership Interest Purchase agreement to sell all outstanding shares in the Center to Dr. David Gamburg. Dr. Gamburg then assigned his interest in Advanced Surgical Center, LLC to J. Fire Ambulatory Holdings, LLC. On June 26, 2023, J. Fire Ambulatory Holdings, LLC, through a Membership Interest Purchase Agreement, agreed to sell 5% interest to Dr. Dmitry Rozin. Dr. Fiorillo will continue to operate with a reduced workload and eventually phasing out.

Ownership before and after the requested change is as follows:

Table with 2 columns: Current Operator, Member. Row 1: Advanced Surgery Center, LLC, Michael Fiorillo, M.D. 100%

Proposed Operator

Table with 2 columns: Members, Ownership %. Row 1: J. Fire Ambulatory Holdings, LLC\* 95%. Row 2: Dr. Dmitry Rozin 5%. Row 3: Total 100%

\*J Fire Ambulatory Holdings, LLC is comprised of 5 members listed below:

Table with 2 columns: Name, Ownership %. Row 1: Dr. David Gamburg 8.55%. Row 2: Alina Gamburg 15.2%. Row 3: Jordan Gamburg 9.5%. Row 4: Jacob Gamburg 9.5%. Row 5: Ludmila Superfin 52.25%. Row 6: Total 95.00%

Dr. Dmitry Rozin will serve as the medical director. The Center has an existing transfer and affiliation agreement for backup and emergency services with Good Samaritan Hospital of Suffern (11 miles and 18 minutes travel time from the Center) that will remain in effect.

OPCHSM Recommendation

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

Need Summary

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

**Program Summary**

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

**Health Equity Impact Assessment**

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

**Financial Summary**

There are no project costs for this application. The total purchase price for the 100 outstanding shares of stock is \$2,000,000 plus the value of all pharmaceutical and medical inventory on hand as of the closing date. 20% of the total purchase price will be funded with equity from the proposed new members and 80% of the total purchase price will be funded with a 10-year loan at 11% interest.

<u>Budget:</u>	<u>Current Year (2022)</u>	<u>Years One and Three (2024 and 2026)</u>
Revenues:	\$929,986	\$1,762,629
Expenses:	<u>1,225,522</u>	<u>1,576,121</u>
Gain/(Loss):	(\$295,536)	\$186,508

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### **Approval with an expiration of the operating certificate three years from the date of its issuance, contingent upon:**

1. Submission of an executed loan document, acceptable to the Department of Health. [BFA]
2. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

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

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

### Council Action Date

June 20, 2024

## Program Analysis

### Project Proposal

There are no programmatic changes because of this request.

Staffing will increase from 4.6 FTE in Year 1 to 6.4 FTE in Year 3.

The Center will be managed by its members: J Fire Ambulatory Holdings LLC (representative - David Gamburg, M.D. and Dmitry Rozin, M.D).

The table below details the proposed change in ownership:

MEMBER NAME	Membership Interest	Percentage Ownership
*J Fire Ambulatory Holdings LLC	95%	95%
*Dmitry, Rozin, M.D.	5%	5%
<b>TOTAL</b>	100%	100%
	<b>Direct Membership in J Fire Ambulatory Holding LLC</b>	<b>Indirect Membership in Advance Surgery Center, LLC</b>
Alina Gamburg	16.0%	15.2%
David Gamburg	9.0%	8.6%
Jacob Gamburg	10.0%	9.5%
Jordan Gamburg	10.0%	9.5%
Ludmila Superfin	55.0%	52.3%
<b>TOTAL</b>	100.0%	95%

*\*New members are subject to character and competence review.*

Dr. Dmitry Rozin will serve as Medical Director of the Center.

### Character and Competence

**Dr. David Gamburg / Manager** - is a pain management specialist in New York (NY) and New Jersey (NJ) and currently performs cases at the Center on a limited basis and has admitting privileges at Hudson Regional Medical Center. Dr. Gamburg completed a Pain Management Fellowship at Mount Sinai Medical Center in New York City (NYC); completed an Anesthesiology Residency at Mount Sinai Medical Center in NYC; received a Medical Doctor degree in NY and from the Sackler School of Medicine in Tel Aviv, Israel. As a Pain Management Specialist, Dr. Gamburg is registered to practice in NY until April 30, 2024; and in Pediatric Anesthesiology until December 31, 2025.

Dr. Gamburg is the founder and Medical Director (MD) of Cross River Pain Management PC which is a Pain Management practice providing outpatient services in the Hudson Valley region covering Albany, Greene, Columbia, Ulster, Dutchess, and Orange Counties; Founder/Medical Director of Hudson Pain Associate PC in Flushing, NY; and the Founder/Medical Director of Pain Treatment Center Outpatient Ambulatory Center facility affiliated with Kingston Hospital.

Past employment for Dr. Gamburg consisted of acting as the facility President at DG Pain Management PC, in Rockland County, NY; worked at Advanced Surgical Center in Pearl River, NY; Director of Pain Management Services at Benedictine Hospital in Kingston NY; Director of Pain Management Services at Kingston Hospital in Kingston NY; Director of Pain Management Services at Northern Dutchess Hospital in Rhinebeck, NY; Attending Physician Pain Management Services at Vassar Hospital in Poughkeepsie, NY; CEO at Montvale Surgical Center LLC; and was the Managing Partner at Saddle River Surgical Center in Ridgewood, NJ.

**Alina (Superfin) Gamburg / Member** - received a bachelor's degree from Syracuse, NY, and is currently employed with Cross River Pain Management PC as the Administrator overseeing staff, office, and facility operations since 1988.

**Jordan Gamburg / Member** - completed high school at Northern Highlands Regional High School in Allendale, NJ in June 2023 and was employed at Cross River Pain Management PC completing office work such as ordering supplies and staff scheduling for three (3) years.

**Jacob (Jake) Gamburg / Member** - earned a Bachelor of Science degree in Real Estate from Tulane College in New Orleans, LA in May 2022; and indicates enrollment in the LSU Master's Program for Healthcare Administration for 2024. Jacob is currently employed with Wells Fargo assisting individuals with vehicle funding.

**Ludmila (Lozansky) Superfin / Member** - received an Engineering Degree at the University of Kiev and currently operates a healthcare staff management company called AGM Services LLC in Ramsey, NJ since 2018.

**Dr. Dmitry Rozin /Manager and Medical Director** - is an anesthesiologist and will provide anesthesia services for the Center, as well as participate in the management of the Center. Dr. Rozin is registered in New York (NY) as an Anesthesiologist until July 31, 2025, and is licensed in New Jersey (NJ) until June 30, 2025. Dr. Rozin received an MD from St. Georges, University of Medicine in St. George, Grenada, WI, and has a BS from Michigan State University, East Lansing, MI.

Dr. Rozin completed a Pediatric Anesthesia Fellowship at Albert Einstein College of Medicine, Montefiore Medical Center in Bronx, NY; and is currently the Chief Medical Officer at Olena Medical, NJ; is an Anesthesiologist at Overlook Medical Center, St Joseph Hospital and Barnabas Hospital in NY; an Anesthesiologist (Pediatric, Adult, Cardiothoracic) at Mednax/NAPA in NJ and Illinois; and specializes in Pediatric Anesthesiology in NJ, NY and in IL.

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.

### **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

### Operating Budget

The applicant has provided the current year (2022) results and the first- and third-year operating budget, in 2024 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Years One and Three</u>	
	<u>(2022)</u>		<u>(2024 and 2026)</u>	
	Per Proc.	Total	Per Proc.	Total
<b>Revenues:</b>				
Commercial MC	\$2,649.06	\$341,729	\$989.56	\$376,032
Medicare FFS	\$388.08	\$10,090	\$498.20	\$30,390
Medicaid FFS	\$161.00	\$322	\$186.73	\$2,801
Medicaid MC			\$112.92	\$1,468
Private Pay	\$1,632.33	\$577,845	\$4,097.69	\$1,241,599
Total Oper. Rev.				
Other Oper. Rev.				<u>\$110,339</u>
Total Revenue		<u>\$929,986</u>		<u>\$1,762,629</u>
<b>Expenses:</b>				
Operating	\$1,919.38	\$1,015,351	\$1,445.26	\$1,396,121
Capital	<u>\$397.30</u>	<u>\$210,171</u>	<u>\$186.34</u>	<u>\$180,000</u>
Total Expenses	<u>\$2,316.68</u>	<u>\$1,225,522</u>	<u>\$1,631.60</u>	<u>\$1,576,121</u>
Gain/(Loss)		(\$295,536)		\$186,508
Procedures		529		966
Cost/Procedure		\$2,316		\$1,631

The following is noted with respect to the submitted budget:

- Revenues and expenses are based on 2022 Cost Report data, the experience of the applicant in providing the services outlined in this application and the impact of the additional cases that Dr. Gamburg will perform.
- Utilization in Year One and Year Three is based on the experience of the current operator and the additional cases performed by Dr. Gamburg.
- The applicant expects to sustain existing volume of procedures, revenues, and expenses with increases in Year One and Year Three based on the proposed physician shareholder's volume letters.
- Per the applicant, "All Other" includes Worker's Compensation and is showing a significant increase between Current Year and Year One and Year Three. Currently, most of the cases are Plastic, which is not covered under Worker's Compensation, but after approval, Pain Management surgeons will be using the Center and based on their current payer mix, they do cases covered by Workers Compensation at the projected level .  
As of February 1, 2024, the facility had no outstanding Medicaid overpayment liabilities.
- The facility has deemed to keep the revenue and expense projections for Year One and Year Three the same to be conservative in their overall assumptions of the project going forward with the addition of Dr. Gamburg's procedures.
- The reason for the significant swing in the Commercial MC s Private Pay rates is the addition of Dr. Gamburg's services, which changed the overall case mix for the facility. Prior to the addition of Dr. Gamburg, the Center performed plastic surgery that was paid through Commercial MC or Private Pay. The new service make up is now pain management and plastic surgery with the majority of the services coming under Commercial, Medicare, Medicaid, charity care and all other. Due to this change, the rate for Private Pay has increased while the rate for Commercial MC has decreased.

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

	<u>Current Year (2022)</u>	<u>Years One and Three (2024 &amp; 2026)</u>
Commercial MC	24.39%	39.34%
Medicare FFS	4.91%	6.31%
Medicaid FFS	0.38%	1.55%
Medicaid MC	0%	1.35%
Private Pay	66.92%	31.37%
Charity Care	3.02%	4.55%
All Other	<u>0.38%</u>	<u>15.53%</u>
Total	100.0%	100.0%

### **Membership Interest Purchase Agreement**

The applicant has submitted an executed Membership Interest Purchase Agreement, effectuated on June 5<sup>th</sup>, 2023, and summarized as follows:

Date:	June 5 <sup>th</sup> , 2023
Seller:	Dr. Michael Fiorillo
Buyer:	Dr. David Gamburg
Purchase and Sale of Shares	100% transfer of ownership through purchase of 100 shares in the LLC
Purchase Price:	\$2,000,000 plus the value of all pharmaceuticals and inventory on hand as of closing date. 20% equity of the total purchase price will come from the proposed new members and 80% of the total purchase price will come from a loan with a 10-year term at prime plus 2.5% interest. 2.5% plus prime of 8.5% as of 2/14/202, for an estimated interest rate of 11%. The total available amount of the loan is \$2.5 million, which can be used to cover the value of all pharmaceutical and inventory on hand as of closing date.
Seller's Deliverables	At the closing, seller shall assign and convey the shares to buyer (equally among them) by the execution and delivery of stock powers in a form agreed to by the parties along with any certificates evidencing the shares, which may be necessary to effectively convey all of seller's rights, title and interest in the shares to buyer (equally among them) and deliver to the buyer; resign as an officer and director of Advanced; deliver to buyer all other documents reasonably required by buyer to consummate the transactions contemplated hereunder and deliver a closing certificate to buyer certifying that seller has met all of its obligations.
Buyer's Deliverables	At the closing, the buyer shall deliver an amount equal to the purchase price via wire transfer of immediately available funds to an account designated in written wiring instructions delivered by seller, deliver to seller all other documents reasonably required by seller to consummate the transactions contemplated hereunder and deliver a closing certificate to seller certifying that buyer has met all its obligations.

### **Membership Interest Assignment**

The applicant has submitted an executed membership interest assignment, effectuated on June 5<sup>th</sup>, 2023, and summarized as follows:

Date	June 5 <sup>th</sup> , 2023
Assignor:	Dr. David Gamburg
Assignee:	J. Fire Ambulatory Holdings, LLC
Assignment:	100% ownership interest in Advanced
Fee:	N/A

### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement, effectuated on June 5, 2023, and summarized as follows:

Date:	June 26 <sup>th</sup> , 2023
Seller:	J. Fire Ambulatory Holdings, LLC
Buyer:	Dr. Dmitry Rozin
Purchase and Sale of Shares	5% transfer of ownership through purchase of five shares in the LLC
Purchase Price:	\$100,000

### Lease Agreement

The applicant provided an executed Lease Agreement for the existing site, the terms of which are summarized below:

Premises:	150 South Pearl Street, Pearl River, NY
Landlord:	150 Route 304, LLC
Lessee:	Advanced Surgery Center, LLC
Term:	10 years with 3 (yr.) renewal periods
Rent:	180,000 annually
Provisions:	Triple Net

The applicant has submitted an affidavit stating that the lease arrangement is an arm's length agreement.

### Capability and Feasibility

There are no project costs associated with this application. The total purchase price is \$2,000,000 plus the value of all pharmaceuticals and inventory on hand as of the closing date. 20% of the purchase price will be funded with proposed members' equity and 80% of the purchase price from a loan with a 10-year term at 2.5% plus prime of 8.5% as of 2/14/2024, for an estimated interest rate of 11%. NBLease, LLC has provided J. Fire with a letter of interest for a maximum loan amount of \$2.5 million.

The working capital requirement is \$262,687 based on two months of the first year's expenses and will be funded through proposed member equity. BFA Attachment A, Proposed Member's Net Worth Statement, shows sufficient resources to cover the purchase price and working capital requirements. Dr. Gamburg has submitted an affidavit stating he will contribute a disproportionate share of the equity and working capital requirement.

BFA Attachment B, 2022 Certified Financial Summary of Advanced Surgery Center, LLC, shows a negative working capital position, a positive net asset position, and an operating loss of (\$295,536). BFA Attachment C, 1/1/23-11/30/23 Internal Financial Statements of Advanced Surgery Center, LLC, shows a positive working capital position, a positive net asset position, and a net income of \$107,592.

### Conclusion

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

## Attachments

BFA Attachment A	Proposed Members' Net Worth Statements for Advanced Surgery Center, LLC
BFA Attachment B	2022 Certified Financial Summary of Advanced Surgery Center, LLC
BFA Attachment C	1/1/23-11/30/23 Internal Financial Statements of Advanced Surgery Center, LLC
BFA Attachment D	Organizational Chart and proposed owners' ownership percentage



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% ownership interest from one withdrawing member to two new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

232243 E

Advanced Surgery Center

APPROVAL CONTINGENT UPON:

**Approval with an expiration of the operating certificate three years from the date of its issuance, contingent upon:**

1. Submission of an executed loan document, acceptable to the Department of Health. [BFA]
2. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans.[RNR]

APPROVAL CONDITIONAL UPON:

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

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



# Department of Health | Public Health and Health Planning Council

## Project # 241100-B Holistic Birth Center New York

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** March 13, 2024

### Executive Summary

#### Description

Holistic Birth Center New York, LLC (The Center), a to-be-formed limited liability company, requests approval to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC) in Kings County. The Center will be in renovated space at 840 Lefferts Avenue, Brooklyn, New York, and certified as a Freestanding Birthing Center, a primary care provider, and provide other medical specialties. The intent is to provide a birthing center as a better alternative to in-hospital services, improve the health of residents, and reduce hospital admissions.

Judy Ribner, DNP, will be the sole member of Holistic Birth Center New York, LLC. Melinda Mann, MD, will be the medical director of the facility. The Center will enter into a Transfer and Affiliation Agreement with Maimonides Hospital.

#### OPCHSM Recommendation

Contingent Approval

#### Need Summary

The applicant projects 138 births and 35 primary care/other medical specialties visits in Year One and 331 births and 83 primary care/other medical specialties visits in Year Three. Medicaid is projected at 73.4% with 2.3% Charity Care in Year One and 73.9% Medicaid and 2.2% Charity Care in Year Three.

#### 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 \$1,684,799 will be met with landlord equity of \$1,072,000, \$61,280 in equity from the sole member, and a bank loan of \$551,519 at an interest rate of 6% for a ten-year term.

Budget:	<u>Year One</u>	<u>Year Three</u>
	<u>(2025)</u>	<u>(2027)</u>
Revenues	\$1,916,813	\$4,597,575
Expenses	<u>1,638,628</u>	<u>3,062,775</u>
Net Income	\$278,185	\$1,534,800

#### Health Equity Impact Assessment

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an executed Transfer and Affiliation Agreement acceptable to the Department with a local acute care hospital(s). Transfer agreements for mother and/or infant should include a list of indicators necessitating transfer and a written procedure for automatic acceptance of such transfers by the transfer hospital. [HSP]
8. Submission of a formal executed and approved collaborative agreement with a pediatric provider with a hospital. [HSP]

#### Approval conditional upon:

1. This project must be completed by **July 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2025**, and construction must be completed by **April 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Apply for accreditation by the Commission for Accreditation of Birth Centers (CABC) and request a site visit of its facility at the time of its opening for a one-year certification and another site visit for the permanent certification of a three-year period. [HSP]
5. Provide formal arrangements for the provision of obstetrical care at the transfer hospital with a qualified physician for these services and for consultation and referral. [HSP]
6. Provide formal arrangements for the provision of pediatric care at the transfer hospital and for consultation and referral. [HSP]
7. 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]

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

**Council Action Date**

June 20, 2024

# Need Analysis

## Project Description

Holistic Birth Center NY, LLC seeks approval for the establishment and construction of a new Article 28 Diagnostic and Treatment Center to be certified as a freestanding birthing center and a provider of primary care and other medical specialties. The center will be in a renovated space at 840 Lefferts Avenue, Brooklyn, New York 11203 (Kings County).

The facility will be a freestanding birth center, defined as "a facility where birth is planned to take place away from the hospital and away from the person's residence, where care is provided in the midwifery and wellness model, with birth center care integrated into the healthcare system." To minimize complications, Holistic Birth Center New York LLC will accept only those persons who present as low-risk childbearing individuals in accordance with accepted standards of practice for birth centers.

The facility will provide primary care services, birth center services, and other medical specialties. The establishment of this diagnostic and treatment center is part of an overall plan to provide care to individuals expecting a baby in an environment that promotes better deliveries and outcomes for the mother and babies, with particular emphasis on providing culturally and linguistically appropriate services to the underserved minority population in the county. Holistic Birth Center New York LLC seeks to reduce hospital admissions, free up hospital space by providing an alternate venue in which people can give birth safely, and reduce healthcare costs. The Center will also provide education and information to ensure greater access to prenatal visits and, ultimately, better outcomes. Holistic Birth Center will initiate programs that follow patients who have given birth for the first year postpartum.

## Background and Analysis

The service area is Kings County, with the primary service area in zip code 11203 and those neighboring in 11210, 11226, 11225, 11213, 11212, 11236, and 11234. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Mental Health, and Dental Health. The population of Kings County is estimated to increase to 2,854,617 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 6.5%. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Primary Service Area	Kings County	New York State
Total Population	644,656	2,679,620	19,994,379
Hispanic or Latino (of any race)	11.5%	18.9%	19.5%
White (non-Hispanic)	17.7%	36.1%	53.8%
Black or African American (non-Hispanic)	62.2%	28.3%	13.8%
Asian(non-Hispanic)	3.4%	11.7%	8.8%
Other (non-Hispanic)	5.2%	5.0%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employee plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-group plans	11.7%
Military or VA plans	0.308%

Source: Data USA

<b>Applicant Projected Payor Mix</b>		
<b>Payor</b>	<b>Year One</b>	<b>Year Three</b>
Commercial	22.0%	21.7%
Medicare	0%	0%
Medicaid	73.4%	73.9%
Private Pay	2.3%	2.2%
Charity Care	2.3%	2.2%
Other	0%	0%

The applicant projects 138 births and 35 primary care/other medical specialties visits in Year One and 331 births and 83 primary care/other medical specialties visits in Year Three. Each projected birth recorded includes all the necessary prenatal and post-natal visits. The estimated 35 primary care/other medical specialty visits in the first year and 83 in the third will include services such as transfers out at pre-admission, family planning, well-women care, preventive care, OB/GYN care, lactation, education, ultrasounds, primary care, other medical specialties including endocrinology, and behavioral health.

The proposed location will serve Brooklyn Community District 17, including the neighborhoods of East Flatbush, Crown Heights, Flatlands, Brownsville, and Canarsie. Holistic Birth Center New York will adhere to standards established by the American Association of Birth Centers (AABC) and the Commission on the Accreditation of Birth Centers.

There are 12 providers of Maternity or Birthing Service O/P in Kings County, including two hospitals in the same zip code. CON 232217 The Birth Center at Fort Greene is another midwifery birthing center under review within 3 miles of the applicant.

The applicant is negotiating an Affiliation and Transfer Agreement with Maimonides Medical Center for backup hospital services located 4 miles and 14 minutes away.

**Conclusion**

Approval of this project will allow for expanded access to birthing and primary care services for the residents of Kings County.

## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	Holistic Birth Center New York, LLC
<b>Doing Business As</b>	Holistic Birth Center New York, LLC
<b>Site Address</b>	840 Lefferts Avenue, Brooklyn, NY 11203
<b>Shift/Hours/Schedule</b>	Sunday through Thursday from 9 am to 8 pm and Friday from 9 am to 2 pm. Birth center services: 24 hours a day, 7 days a week.
<b>Approved Services</b>	Birthing Service O/P Medical Services - Primary Care Medical Services - Other Medical Specialties Endocrinology Diabetes Care Neurology Orthopedic Cardiology Pulmonology
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	9.54 FTEs for the 1 <sup>st</sup> and 20.29 for the 3 <sup>rd</sup> year
<b>Medical Director(s)</b>	Dr. Melinda Mann
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Maimonides Medical Center 4 miles and 14 minutes  The nearest hospital is Kings County Hospital Center 1 mile and 5 minutes

Recognizing the needs of the community, the Center proposes to provide a variety of integrated primary health care services, including assessment and diagnosis, outpatient primary care screening and monitoring of key health indicators, screenings for HIV and Hepatitis, pregnancy screenings, and prenatal care in addition to other medical specialty services. Cases that fall under Primary Care / Other Medical Specialties include clinic antepartum visits to patients who were risked out or transferred out pre-admission to the birth center. It also includes visits for family planning, well-women care, preventive care, OB/GYN care, lactation, education, ultrasounds, primary care, and other medical specialties, including endocrinology, behavioral health, etc.

The program will provide a variety of integrated primary health care services and other medical specialty services. Neurology, Orthopedics, Cardiology, Pulmonology/Asthma, and Behavioral Health will also be included.

Holistic Birth Center New York, LLC proposes to renovate approximately 5,360 square feet of a one-story building, which will include the mechanical, electrical, plumbing, fire alarm, and sprinkler systems. The birth center will provide a homelike environment, which will include three birthing rooms with birth pools, seven exam rooms, a classroom, and a midwife room.

The applicant anticipates entering into a Transfer and Affiliation Agreement with Maimonides Medical Center at 4802 Tenth Avenue, Brooklyn, NY 11219. Maimonides has maternity, neonatal, and pediatric capabilities. The nearest hospital is Kings County Hospital Center, which also has maternity, neonatal, and pediatric capabilities.

The applicant projects 138 births and 35 primary care/other medical specialties visits in Year One and 331 births and 83 primary care/other medical specialties visits in Year Three. Each projected birth recorded includes all the necessary prenatal and post-natal visits. The estimated 35 primary care/other medical specialty visits in the first year and 83 in the third will include services such as transfers out at pre-admission, family planning, well-women care, preventive care, OB/GYN care, lactation, education, ultrasounds, primary care, other medical specialties including endocrinology, and behavioral health.



The applicant has two midwives who will be employed full-time. The full-time midwives will be employed as part of the midwifery staff and rotate their on-call schedules to be available 24/7 for consultation, triage, admission, labor and delivery, and prompt response to clients for all inquiries.

The two senior midwives will rotate initially to accommodate several births per week. The regular professional staff of two full-time senior midwives will cover 24-hour shifts and work office hours at the clinic while on call or on other scheduled days. A 3rd midwife (the Applicant) will be available for backup and coverage of the two senior staff midwives in the event a midwife is unavailable due to scheduled vacation, sudden illness, or family leave time.

Staffing will increase by 10.75 FTEs from Year 1 & Year 3:

<b>Positions</b>	<b>First Year FTE</b>	<b>Third Year FTE</b>
Management & Supervision	1.82	3.09
Technicians and Specialists	1.25	2.50
Aides, Orderlies & Attendants	1.0	2.0
Nurse Midwife	2.0	4.0
Social Worker & Psychologist	0.20	0.50
Clinical and Patient Coordinators	0.77	3.00
Birth Assistant Manager / Nurse Manager	0.00	1.00
Birth Assistant / Fellows / CPM / RN	2.50	4.20
<b>Totals</b>	<b>9.54</b>	<b>20.29</b>

*\*Numbers and mix of staff based on volume projections as well as experience.*

In the event there is a transfer during labor and delivery, the senior midwife attending the birth, will notify the hospital of an incoming transfer as per mutually agreed upon protocols with the hospital as to whom to call and the process of transporting the patient. The midwives will go with the patient to the hospital but will not continue the client's care in the hospital as they are not presently applying for privileges. It is their intention to apply in the future and provide continuity of care in the hospital. Therefore, the hospital will accept the transfer and will either call the medical director as the covering physician or the hospital staff will attend to the patient as required.

There will be two senior midwives rotating initially to accommodate several births per week. The regular professional staff consists of midwives to take calls no less than every third day/night based on 24-hour shifts, work office hours at the clinic while on call or other scheduled days, and a 3<sup>rd</sup> midwife available for backup and coverage of midwives who are unavailable due to scheduled vacation, sudden illness, or family leave time.

**Character and Competence:**

The proposed membership of Holistic Birth Center New York LLC is as follows:

<b>Member Name/Title</b>	<b>Membership Interest</b>
Judy Ribner, Operator/Manager	100%
<b>Total</b>	<b>100%</b>

**Melinda Sue Mann (Medical Director):**

Dr. Mann is the proposed Medical Director (MD) and is currently registered as a Physician in Medicine and Surgery in New York State (license #171092) until January 31, 2026. Dr. Mann has been licensed since July 1987 and is a board-certified OB/GYN physician and will see OB/GYN patients face-to-face at Holistic Birth Center New York, LLC.

Dr. Mann graduated from the New York Medical College in Valhalla, New York, with an MD in June 1985 and from City College of NY in New York, New York, with a BS in June 1983.

Dr. Mann's employment history consists of working as the OB/GYN physician for ODA (FQHC), which has a facility in Brooklyn, New York, since October 2023 to present; creating a women's health facility for Parcare (OB/GYN) in Brooklyn, New York from January 2022 to September 2023; and in partnership with Dr. Rais (OB/GYN MD Midwifery) in Brooklyn, New York from January 2014 to November 2021.

Dr. Mann is an attending physician privileged at Maimonides Medical Center and Maimonides Medical Center for Dr. Mann's private patients, and the Holistic Birth Center patients admitted at the Hospital. The Medical Director will be available via phone and text for antepartum consultation, collaboration, or transfer of care.

There is a formal arrangement with the Medical Director to consult and collaboratively manage patients and accept patients in need of transfer of care during antepartum, intrapartum, and postpartum.

**Judy Ribner, DNP, CNM, RNM (100% Member):**

Dr. Ribner is currently a licensed Midwife in New York State (license #001983) until October 31, 2025. Dr. Ribner graduated from New York University in New York, New York, with a Doctor of Nursing degree in August 2021; from SUNY Downstate Medical Center in Brooklyn, New York, with a Masters in Midwifery in August 2014; from CUNY College of Staten Island in Staten Island, New York with an associate in nursing in May 2016; and from Excelsior College/Touro from Albany, New York with a BS in February 2011.

Dr. Ribner's employment history consists of working as the sole owner/midwifery director, as the administrator of Holistic Midwifery New York, Inc. since March 2020 to present, and as the chairperson with the New York City Homebirth Collective Committee for Safety, Quality Improvement, and Research from January 2022 to present.

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.

**Conclusion**

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

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget in 2024 dollars during the first and third years, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>(2025)</u>		<u>(2027)</u>	
	<u>Per Births</u>	<u>Total</u>	<u>Per Births</u>	<u>Total</u>
Commercial FFS	\$8,989	\$134,839	\$8,984	\$323,418
Commercial MC	\$12,177	\$182,656	\$12,170	\$438,110
Medicaid MC	\$11,423	\$1,165,105	\$11,406	\$2,794,565
Private Pay	\$16,950	\$50,850	\$17,424	\$121,967
Transfer Clinic Revenue		\$230,018		\$551,709
Other Clinic Visits Rev		<u>\$153,345</u>		<u>\$367,806</u>
Total Revenues		\$1,916,813		\$4,597,575
Expenses:				
Operating		\$1,319,015		\$2,737,611
Capital		<u>\$319,613</u>		<u>\$325,164</u>
Total Expenses		\$1,638,628		\$3,062,775
Net Income		\$278,185		\$1,534,800
Utilization: (Births)		138		331
Transfer Visits		21		50
Other Clinic Visits		14		33
Total Visits		173		414

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

- Revenues are based on current reimbursement methodologies.
- Expense assumptions are based on the historical experience of the provider. The applicant is projecting to hire 2 FTEs of nurse midwives during the first year and 4 FTEs in the third year. Additionally, the applicant plans to hire 2.5 FTEs of birth assistants/fellows/CPMs/RNs during the first year and 4.2 FTEs in the third year.
- Utilization assumptions are based on the historical experience of other providers in Kings County.

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

	<u>Year One</u>	<u>Year Three</u>
	<u>(2025)</u>	<u>(2027)</u>
Commercial FFS	11.0%	10.8%
Commercial MC	11.0%	10.9%
Medicaid MC	73.4%	73.9%
Private Pay	2.3%	2.2%
Charity Care	<u>2.3%</u>	<u>2.2%</u>
Total	100.00%	100.00%

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

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,684,799, further broken down as follows:

Renovation and Demolition	\$1,072,000
Design Contingency	107,200
Construction Contingency	107,200
Planning Consultant Fees	15,000
Architect/Engineering Fees	85,760
Construction Manager Fees	60,000
Other Fees (Consultant)	35,000
Moveable Equipment	106,175
Telecommunications	44,500
Financing Costs	22,232
Interim Interest Expense	18,527
CON Fees	2,000
Additional Processing Fees	<u>9,205</u>
Total Project Cost	\$1,684,799

The applicant's financing plan appears as follows:

Landlord (Equity)	\$1,072,000
Equity (Member)	61,280
Bank Loan (6% for a ten-year term)	<u>551,519</u>
Total	\$1,684,799

### **Lease Rental Agreement**

The applicant has submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

Premises	5,360 square feet located at 840 Lefferts Avenue, Brooklyn, New York.
Lessor	The Leser Group
Lessee	Holistic Birth Center New York, LLC
Term	10-year term with a five-year renewal option.
Rental	\$268,000 year one with a 3% increase each thereafter.
Provisions	The lessee shall be responsible for real estate taxes, maintenance, and utilities.

The lease is arms-length as the applicant submitted an affidavit stating that there is no relationship between the landlord and tenant. The applicant has submitted two real estate letters attesting to the reasonableness of the rent.

### **Capability and Feasibility**

The total project cost of \$1,684,799 will be met with \$1,072,000 in landlord equity, \$61,280 in member equity, and a bank loan of \$551,519 at an interest rate of 6% for a ten-year term. The applicant has submitted documentation indicating the landlord has sufficient funds to cover their portion of the equity contribution and a letter of interest regarding the financing. BFA Attachment A, Personal Net Worth Statement of the Proposed Member of Holistic Birth Center, New York, LLC, indicating the availability of sufficient funds for the equity contribution. The funds will come from member's business interest in 74 Roanoke St, LLC.

Working capital requirements are estimated at \$510,462, which is equivalent to two months of third-year expenses. The applicant will finance \$255,231 at an interest rate of 6% for a three-year term. The remainder, \$255,231, will be provided as equity from the proposed member's personal resources. BFA Attachment A, Personal Net Worth Statement of the Proposed Member of Holistic Birth Center, New York, LLC, which indicates the availability of sufficient funds for the equity contribution. The funds will come from the member's business interest in 74 Roanoke St, LLC. BFA Attachment B, Pro Forma Balance

Sheet of Holistic Birth Center, New York, LLC, which indicates a positive net asset position of \$285,231 as of the first day of operation.

The submitted budget projects a net income of \$278,185 and \$1,534,800 during the first and third years of operations. Revenues are based on current reimbursement methodologies for birthing services and the other clinic visits they will provide. The submitted budget appears reasonable.

**Conclusion**

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

<b>Attachments</b>
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BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement of the proposed member of Holistic Birth Center New York, LLC
BFA Attachment B	Pro Forma Balance Sheet

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new Diagnostic and Treatment Center at 840 Lefferts Avenue, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

241100 B

Holistic Birth Center New York

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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an executed Transfer and Affiliation Agreement acceptable to the Department with a local acute care hospital(s). Transfer agreements for mother and/or infant should include a list of indicators necessitating transfer and a written procedure for automatic acceptance of such transfers by the transfer hospital. [HSP]
8. Submission of a formal executed and approved collaborative agreement with a pediatric provider with a hospital.

APPROVAL CONDITIONAL UPON:

1. This project must be completed by July 1, 2025, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before January 1, 2025, and construction must be completed by April 1, 2025, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Apply for accreditation by the Commission for Accreditation of Birth Centers (CABC) and request a site visit of its facility at the time of its opening for a one-year certification and another site visit for the permanent certification of a three-year period. [HSP]
5. Provide formal arrangements for the provision of obstetrical care at the transfer hospital with a qualified physician for these services and for consultation and referral. [HSP]

6. Provide formal arrangements for the provision of pediatric care at the transfer hospital and for consultation and referral. [HSP]
7. 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]
8. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf).  
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

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





Project # 241153-E
Digestive Disease Center of Central New York, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Onondaga
Acknowledged: April 9, 2024

Executive Summary

Description

Digestive Disease Center of Central New York, LLC (the Center), an existing single-specialty Ambulatory Surgery Center (ASC) specializing in gastroenterology in Onondaga County, requests approval to transfer 37.50% membership interest from one withdrawing member to one new member. Thomas Romano, M.D. will sell his 37.5% membership interest to his son John Romano, M.D.

The current and proposed ownership of Digestive Disease Center of Central New York, LLC is as follows:

Table with 2 columns: Members, %
Current Operator: Digestive Disease Center of Central New York LLC
Members: Thomas Romano, MD (37.50%), Borys Burnick, MD (37.50%), Sara Gosselin, MD (25.00%)

Table with 2 columns: Members, %
Proposed Operator: Digestive Disease Center of Central New York LLC
Members: John Romano, MD (37.50%), Borys Burnick, MD (37.50%), Sara Gosselin, MD (25.00%)

Need Summary

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

Program Summary

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

Financial Summary

There are no project costs associated with this application. The purchase price for the 37.5% membership interest is \$3,000,000 and will be funded with a \$3,000,000 personal loan at an interest rate of 4.31% for a fifteen-year term. Since there are no changes to the facility or the services provided, operating budgets were not reviewed as a part of this review.

Health Equity Impact Assessment

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

OPCHSM Recommendation

Contingent Approval

## 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 personal loan commitment that is acceptable to the Department of Health. [BFA].

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

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

### **Council Action Date**

June 20, 2024

# Program Analysis

## Program Description

Digestive Disease Center of Central New York, LLC is submitting this application to transfer 37.5% membership interest from Thomas Romano, MD to his son, Dr. John Romano, MD. Thomas Romano will continue to serve as the Medical Director. Digestive Disease Center of Central New York, LLC is current with all reporting and regulatory requirements and maintains its national accreditation.

The proposed members and ownership percentages of Digestive Disease Center of Central New York, LLC are as follows:

Members	Proposed Membership
John Romano, MD **	37.50%
Borys Buniak, MD	37.50%
Sara M. Gosselin, MD	25.00%
<b>Total</b>	<b>100.00%</b>

*\*\*All New Members are subject to character and competence background investigation.*

**John Romano, M.D.** received a master's in science education from Pace University in 2010 and received his medical credentials from The University of Queensland/Ochsner Clinic School in Australia in 2015. Dr. Romano is currently licensed to practice in the State of New York. Dr. Romano has been an attending Gastroenterologist at Gastroenterology & Hepatology of Central New York, PC, since 2022. Dr. Romano completed a residency and internship at the Tinsley Harrison Internal Medicine Residency Program University of Alabama in 2019 and a fellowship in gastroenterology at the Medical University of South Carolina, in 2022.

**Thomas J. Romano, M.D.** is the current medical director for this facility. Dr. Romano received a medical doctorate from Columbia University College of Physicians and Surgeons in 1984 and completed a clinical fellowship at Yale University Medical School, Division of Digestive Diseases in 1989. Dr. Romano has been affiliated with both St. Joseph's Hospital Health Center and Crouse Irving Memorial Hospital since 1989. Dr. Romano is currently licensed to practice in the State of New York.

Additionally, 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.

## Conclusion

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

## Financial Analysis

### Membership Interest Transfer Agreement

The applicant has submitted an executed membership interest transfer agreement for the 37.5% transfer, which is summarized below:

Date:	March 14, 2024
Purpose	Transfer of 37.5% ownership interest in Digestive Disease Center of Central New York, LLC
Transferor	Thomas Romano, M.D.
Transferee	John Romano, M.D.
Purchase Price	\$3,000,000
Payment of Purchase Price	Transferee shall pay the respective purchase price to the Transferor at the Closing to be held within sixty days of DOH's approval of the transaction.

### Capability and Feasibility

The purchase price for the 37.50% ownership interest is \$3,000,000 and will be paid with a \$3,000,000 personal loan at an interest rate of 4.31% for a fifteen-year term. The purchaser, John Romano, M.D., will make monthly payments of \$22,660 using his salary income of \$825,000 and from distributions that may be made in 2024 and beyond by the Center subsequent to John Romano, M.D.'s ownership in the facility.

Presented as BFA Attachment A is the 2023 Internal Financial Statements of Digestive Disease Center of Central New York, LLC. As shown, the Center achieved a positive working capital position and a positive net asset position in 2023. Also, the Center generated a net income of \$3,484,414 in 2023.

### Conclusion

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

## Attachments

BFA Attachment A	Financial Summary- 2023 Internal Financial Statements of Digestive Disease Center of Central New York, LLC
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 37.5% ownership interest from one withdrawing member to one new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

241153 E

FACILITY/APPLICANT:

Digestive Disease Center of Central New York,  
LLC

APPROVAL CONTINGENT UPON:

1. Submission of a personal loan commitment that is acceptable to the Department of Health. [BFA].

APPROVAL CONDITIONAL UPON:

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

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



Project # 241024-B WellMed

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: February 7, 2024

Executive Summary

Description

WellMed NY LLC d/b/a (WellMed), an existing limited liability company, requests approval to establish and construct a new Article 28 Diagnostic & Treatment Center (D&TC) for Primary Care and Other Medical Specialties to include Podiatry, Gastroenterology, Pediatrics, Pain Management, Orthopedics, Oncology, Endocrinology, Cardiology, and Ophthalmology. WellMed will be in leased space at 532 Neptune Avenue, Brooklyn (Kings County). The facility will have six (6) exam rooms and operate (5) five days per week, subject to change based on the community needs.

The members of WellMed NY LLC are Kristina Field (34%), Jacqueline Volman (33%), and Pavel Gozenput, M.D. (33%). Dr. Gozenput will serve as the Medical Director.

WellMed is negotiating a Transfer and Affiliation Agreement for emergency backup services with NYC Health & Hospitals/South Brooklyn Health, approximately one (1) mile away.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 6,435 visits in Year One and 11,349 in Year Three, with 60% Medicaid and 2% Charity Care in both years.

Program Summary

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

Financial Summary

The total project costs of \$465,891 will be met with \$46,589 from the proposed members' equity and a \$419,302 loan at 6% interest and a ten-year term.

Table with 3 columns: Budget, Year One (2026), Year Three (2028). Rows: Revenues (\$1,091,227 vs \$1,924,547), Expenses (836,056 vs 1,256,749), Net Income (\$255,171 vs \$667,798).

Health Equity Impact Assessment

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## 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 loan commitment acceptable to the Department. [BFA]
3. Submission of an executed working capital loan agreement acceptable to the Department. [BFA]
4. The 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 Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

#### Approval conditional upon:

1. This project must be completed by **June 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 1, 2024**, and construction must be completed by **March 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

### Council Action Date

June 20, 2024



# Need Analysis

## Project Description

WellMed NY LLC d/ b/a WellMed is seeking approval to establish and construct a new Diagnostic and Treatment Center (D&TC) at 532 Neptune Avenue, Brooklyn, New York (Kings County). The proposed services include Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P, specifically Gastroenterology, Pediatrics, Pain Management, Orthopedics, Oncology, Endocrinology, Cardiology and Ophthalmology. WellMed will provide a range of health care services, including assessment and diagnosis, outpatient primary care screening and monitoring of key health indicators, screenings for HIV and Hepatitis, vaccinations, pregnancy screenings, and prenatal care. The applicant states these services are in need for the community based on the high Prevention Quality Indicators (PQIs) for the area, low amount of prenatal care, number of communicable diseases, and potentially preventable hospitalizations.

## Background and Analysis

The service area is Kings County specifically zip code 11224 in Coney Island. The population of Kings County is estimated to increase to 2,854,617 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 6.5%. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Zip Code 11224	Kings County	New York State
Total Population	47,893	2,679,620	19,994,379
Hispanic or Latino (of any race)	19.5%	18.9%	19.5%
White (non-Hispanic)	47.7%	36.1%	53.8%
Black or African American (non-Hispanic)	20.1%	28.3%	13.8%
Asian(non-Hispanic)	9.5%	11.7%	8.8%
Other (non-Hispanic)	3.2%	5.0%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employee plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-group plans	11.7%
Military or VA plans	0.308%

Source: Data USA

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	14%	14%
Medicare	21%	21%
Medicaid	60%	60%
Private Pay	3%	3%
Charity Care	2%	2%
Other	0%	0%

The proposed site is in a Health Professional Shortage Area (HPSA) for Dental Health, Mental Health, and Primary Care. Wellmed NY LLC is committed to serving all patients needing care, regardless of their ability to pay or the source of payment.

The hours of operation of the new main site will be Monday through Friday, from 9 am to 6 pm, and on Saturdays from 9 am to 2 pm, subject to change depending on the changing needs of the community and patient base.

The applicant is negotiating an Affiliation and Transfer Agreement with NYC Health & Hospitals/South Brooklyn Health, located 1 mile and 3 minutes away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020 related to this application, which indicates that the service area has higher PQI rates than the county and New York State.

<b>Hospital Admissions per 100,000 Adults</b>			
<b>PQI Name</b>	<b>Zip Code 11224</b>	<b>Kings County</b>	<b>New York State</b>
Diabetes Short-Term Complications	122	80	71
Diabetes Long-Term Complications	230	122	106
Chronic Obstructive Pulmonary Disease or Asthma	396	251	244
Hypertension	124	67	63
Heart Failure	527	359	336
Bacterial Pneumonia	106	82	105
Uncontrolled Diabetes	99	59	45
Prevention Quality Overall Composite	1,669	1015	994

**Conclusion**

Approval of this project will allow for increased access to Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P services for the residents of Kings County.

## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	WellMed NY, LLC.
<b>To Be Known As</b>	WellMed
<b>Site Address</b>	532 Neptune Avenue Brooklyn, NY 11224
<b>Specialties</b>	Medical Services - Primary Care Medical Services-Other Medical Specialties Podiatry O/P Other Medical Specialties Include: Gastroenterology Pediatrics Pain Management Orthopedics Oncology Endocrinology Cardiology Ophthalmology
<b>Hours of Operation</b>	Mon – Fri 9 AM to 6 PM and Sat 9 AM – 2 PM
<b>Medical Director(s)</b>	Dr. Pavel Gozenput
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	South Brooklyn Health, Ruth Bader Ginsburg Hospital for primary care, NYC Health + Hospital Network, 0.9 miles or 7 minutes driving.

With the establishment of an Article 28 facility, WellMed seeks to reduce preventable admissions for patients in the community, as well as improve overall health, prevent illness, and educate the community. Upon approval of this application, the site will be known as WellMed.

Wellmed NY LLC will enter into a Transfer and Affiliation Agreement with South Brooklyn Health, Ruth Bader Ginsburg Hospital, part of the NYC Health + Hospital network for primary care at the completion of this project. The address of the hospital is 2601 Ocean Pkwy, Brooklyn, NY 11235, and it is a 0.9-mile or 7-minute drive from Wellmed's proposed location.

Projected FTE totals for Year One and Year Three are as follows:

<b>Positions</b>	<b>FTEs Year One</b>	<b>FTEs Year Three</b>
Administrator	0.50	0.50
Medical Director	0.20	0.20
Registered Nurse	0.50	1.00
Medical Assistants	2.00	3.00
Physicians	1.75	3.08
Nurse Practitioner	0.50	1.00
Social Worker/Psychologist	0.25	0.50
Infection Control/Environment	1.00	2.00
Clerical and Other Administrative	1.00	2.00
<b>Totals</b>	<b>7.70</b>	<b>13.28</b>

## Character and Competence

The members of WellMed NY LLC are:

Members	Percent Interest	Eligible Votes
*Dr. Pavel Gozenput	33%	1
*Jacqueline Volman	33%	1
*Kristina Field	34%	1
<b>Total</b>	<b>100%</b>	<b>3</b>

*\*New members are subject to character and competence review.*

**Dr. Pavel Gozenput**, the proposed Medical Director of WellMed, received a medical degree at St. George's School of Medicine in 2008. Dr. Gozenput is licensed to practice in the state of New York and has board certifications in Critical Care Medicine and the American Board of Internal Medicine. In 2012, Dr. Gozenput completed their residency at Maimonides Medical Center. Currently, Dr. Gozenput is the Director of critical care at Mount Sinai South Nassau and an Intensivist at St. John's Episcopal Hospital since 2020. Prior, Dr. Gozenput was a physician at Maimonides Medical Center as an Infectious Diseases Fellow and a Critical Care fellow until 2019. There are no legal disclosures or infractions.

**Kristina Field** is currently employed as a pharmacy manager at Volfi, Inc. since 2006. Kristina manages the day-to-day operations of the pharmacy, including sales, insurance plans, inventory, budgeting, and staff management. Kristina completed a Master of Science in Physical Therapy in 2006 as well. There are no legal disclosures or infractions.

**Jacqueline Volman, Esq.** completed a juris doctorate at Hofstra University School of Law in 2003. Jacqueline has been functioning as legal counsel and pharmacy manager at S and K Pharmacy since 2016. Before that, Jacqueline was an attorney at Berkowitz-Ortiz & Volman PLLC from 2012 to 2016. There are no legal disclosures or infractions.

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.

## 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

The total project cost for the renovations and acquisition of movable equipment is \$465,891, presented in 2024 dollars and distributed as follows:

Renovation and Demolition	\$187,604
Design Contingency	18,760
Construction Contingency	18,760
Planning Consulting Fees	12,500
Architect/Engineer Fees	14,714
Other Fees	50,000
Moveable Equipment	146,166
Financing Costs	9,070
Interim Interest Expense	3,779
Application Fee	2,000
Processing Fee	<u>2,537</u>
Total Project Costs	\$465,891

The total project cost will be met with \$46,589 from the proposed members' equity and financing of \$419,302. The applicant has submitted a bank letter of interest in the amount of \$419,302 with a ten-year term at approximately 6% interest rate.

### Operating Budget

The applicant has submitted their first and third-year operating budgets. Summarized below:

Outpatient Rev.	Per Visit	Dollars	Per Visit	Dollars
Commercial FFS	\$180.00	\$115,920	\$180.00	\$204,300
Commercial MC	\$153.00	39,321	\$153.00	69,462
Medicare FFS	\$180.00	196,920	\$180.00	347,220
Medicare MC	\$153.00	39,321	\$153.00	69,462
Medicaid FFS	\$199.69	25,760	\$199.69	45,330
Medicaid MC	\$169.74	633,455	\$169.74	1,117,373
Private Pay	\$210.00	<u>40,530</u>	\$210.00	<u>71,400</u>
Total Revenue		\$1,091,227		\$1,924,547
Expenses:				
Operating	\$94.65	\$609,071	\$91.13	\$1,034,231
Capital	<u>35.27</u>	<u>226,985</u>	<u>19.61</u>	<u>222,518</u>
Total Expenses	\$129.92	\$836,056	\$110.74	\$1,256,749
Net Income		<u>\$255,171</u>		<u>\$667,798</u>
Visits		6,435		11,349
Cost/Visit		\$129.92		\$110.74

The following is noted with respect to the submitted budget:

- Revenues are based on APG rates and capital.
- Expenses are based on (PQI) Patient Quality Indicators for the zip codes in the area for delivery of services, interest, rent, and depreciation.
- Medicaid utilization is based on average volume for the area and Medicare and Commercial rates are based on similar D&TCs and their AHCF-1s in this location.
- Medicaid Utilization is approximately 60.00% in Years One and Year Three.
- The applicant plans to reach an underserved population with a growing minority population and ensure that services are sensitive to the needs of the population in a centralized location.

- Expenses are based on 7.70 FTEs and 13.28 FTEs in Year One and Year Three, respectively as well as rent, depreciation, and interest.

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

Payor Source	<u>Visits</u>	<u>Year One</u>	<u>Visits</u>	<u>Year Three</u>
	<u>2024</u>	<u>2024</u>	<u>2026</u>	<u>2026</u>
Commercial FFS	644	10.01%	1,135	10.00%
Commercial MC	257	3.99%	454	4.00%
Medicare FFS	1,094	17.00%	1,929	17.00%
Medicare MC	257	3.99%	454	4.00%
Medicaid FFS	129	2.00%	227	2.00%
Medicaid MC	3,732	58.00%	6,583	58.01%
Other/Private Pay	193	3.00%	340	3.00%
Charity Care	129	<u>2.00%</u>	227	<u>2.00%</u>
Total Visits	6,435	100.00%	11,349	100.00%

### Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the proposed site, the terms of which are summarized below:

Date:	January 18, 2024
Premises:	532 Neptune Avenue, Brooklyn (Kings County) – Approximately (2,600 sq. ft.)
Landlord:	532 Neptune Commercial, LLC – 45 Broadway, 25 <sup>th</sup> floor (New York, New York)
Tenant:	WellMed – 532 Neptune Ave. Brooklyn (Kings County)
Term:	10 years with a ten (10) year renewal option.
Rental:	Year (1) \$10,800 Year (2) \$11,124 Year (3) \$11,457 Year (4) \$11,801 Year (5) \$12,155 Year (6) \$12,520 Year (7) \$12,895 Year (8) \$13, 282 Year (9) \$13,681 Year (10) \$14,091
Provisions:	The lessee will pay all the expenses of the property, including utilities, taxes, and maintenance, per the agreement.

The above lease is an arm's length agreement. The landlord and tenant provided an affidavit indicating there is no existing relationship between the parties. The tenant has submitted two (2) real estate letters indicating rent reasonableness from NYS Licensed realtors.

### Capability and Feasibility

Total project costs of \$465,891 will be met with \$46,589 in members' equity and a \$419,302 bank loan. The applicant has submitted a bank letter of interest for the loan at approximately 6% interest and a ten-year term. Working capital requirements are estimated at \$209,458 based on two (2) months of third-year expenses. Working capital will be funded with \$104,729 in members' equity and a working capital loan of \$104,729 for three years at approximately 6% interest. BFA attachment A, Net Worth Statements of the Proposed Members, shows sufficient resources to meet the equity requirements of this application.

The submitted budget indicates a net income of \$255,171 and \$667,798 during the first and third years of operation, respectively. Revenues and expenses are based on current reimbursement methodologies of other similar D&TCs. BFA Attachment B presents the Pro Forma Balance Sheet, LLC. The pro forma balance sheet indicates a positive members' equity position of \$153,444 on the first day of operations. The budget appears reasonable.

**Conclusion**

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

**Attachments**

BHFP Attachment	Map
BFA Attachment A	Net worth Statements (Proposed Members of WellMed)
BFA Attachment B	Pro Forma Balance Sheet (WellMed)
BFA Attachment C	Organizational Chart of WellMed NY LC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new Diagnostic and Treatment Center at 532 Neptune Avenue, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

241024 B

WellMed NY LLC d/b/a WellMed



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 loan commitment acceptable to the Department. [BFA]
3. Submission of an executed working capital loan agreement acceptable to the Department. [BFA]
4. The 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 Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by June 1, 2025, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before December 1, 2024, and construction must be completed by March 1, 2025, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

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

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



Project # 241028-B
1771 Utica, LLC dba Care Plus Health Center

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: January 31, 2024

Executive Summary

Description

1771 Utica, LLC d/b/a Care Plus Health Center, an existing limited liability company, requests approval to establish and construct a diagnostic and treatment center (D&TC) at 1771 Utica Avenue, Brooklyn (Kings County). The proposed D&TC will be certified for Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P. More specifically, services will include internal medicine, family practice, gynecology, pediatrics, nutrition, behavioral health, pain management, cardiology, radiology, urology, and diagnostics.

Danil Shabatay and Zaur Yusufov will each have a 50% membership interest in 1771 Utica, LLC d/b/a Care Plus Health Center. Dr. Jude Ozuzu will serve as the Medical Director.

The Center will have a transfer and affiliation agreement with Maimonides Hospital 4.6 miles and 20 minutes travel time from the proposed D&TC.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 7,200 visits in Year One and 11,250 in Year Three with 75% Medicaid and 5% Charity Care.

Program Summary

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

Financial Summary

Total project costs of \$299,286 will be met with proposed members' equity.

Table with 3 columns: Budget, Year One (2025), Year Three (2027). Rows: Revenues (\$1,161,501 vs \$1,814,682), Expenses (1,141,482 vs 1,742,842), Net Income (\$20,019 vs \$71,840).

Health Equity Impact Assessment

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## 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 photocopy of the Assignment and Assumption of the Lease Agreement, acceptable to the Department. [CSL]

#### Approval conditional upon:

1. This project must be completed by **May 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 1, 2024**, and construction must be completed by **February 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

### Council Action Date

June 20, 2024

# Need Analysis

## Project Description

1771 Utica, LLC dba Care Plus Health Center, a recently formed limited liability company, is seeking approval to establish and construct a diagnostic and treatment center at 1771 Utica Avenue, Brooklyn. The proposed services include Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P, specifically internal medicine, family practice, gynecology, pediatrics, nutrition, behavioral health, pain management, cardiology, radiology, urology, diagnostics (x-ray, sonogram, ABI, EKG, PFT).

## Background and Analysis

The service area is Kings County. The population of Kings County is estimated to increase to 2,854,617 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 6.5%. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Kings County	New York State
Total Population	2,679,620	19,994,379
Hispanic or Latino (of any race)	18.9%	19.5%
White (non-Hispanic)	36.1%	53.8%
Black or African American (non-Hispanic)	28.3%	13.8%
Asian(non-Hispanic)	11.7%	8.8%
Other (non-Hispanic)	5.0%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employee plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-group plans	11.7%
Military or VA plans	0.308%

Source: Data USA

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	5%	5%
Medicare	15%	15%
Medicaid	75%	75%
Private Pay	0%	0%
Charity Care	5%	5%
Other	0%	0%

The proposed center is at the site of a former extension clinic of Brookdale Hospital that closed in 2009. The applicant plans to restore this health care resource serving residents of south/central and eastern Brooklyn. The Center will serve all patients without regard to race, sex, religion, creed, sexual orientation, ability to pay, source of payment, or other personal characteristics.

The hours of operation of the new main site will be Monday through Friday: 9 AM-10 PM and Saturday and Sunday: 10 AM-6 PM. The Center will extend its hours as necessary to accommodate patient needs.

The applicant is negotiating an Affiliation and Transfer Agreement with Maimonides Medical Center for backup hospital services. The closest Maimonides hospital to the proposed new main site is Maimonides Midwood Community Hospital located 1.7 miles and 6 minutes away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020 related to this application which indicates that the county has higher PQI rates than New York State.

<b>Hospital Admissions per 100,000 Adults</b>		
<b>PQI Name</b>	<b>Kings County</b>	<b>New York State</b>
Diabetes Short-Term Complications	80	71
Diabetes Long-Term Complications	122	106
Chronic Obstructive Pulmonary Disease or Asthma	251	244
Hypertension	67	63
Heart Failure	359	336
Bacterial Pneumonia	82	105
Uncontrolled Diabetes	59	45
Prevention Quality Overall Composite	1015	994

### **Conclusion**

Approval of this project will allow for increased access to Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P services for the residents of Kings County.

## Program Analysis

### Project Proposal

Proposed Operator	1771 Utica, LLC dba Care Plus Health Center
To Be Known As	1771 Utica, LLC dba Care Plus Health Center
Site Address	1771 Utica Avenue Brooklyn, NY 11234
Specialties	Medical Services – Primary Care Medical Services-Other Medical Specialties
Hours of Operation	Monday through Friday 9am - 10pm, Saturday and Sunday 10am – 6pm.
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	10.00 FTEs / 18.00 FTEs
Medical Director(s)	Jude Ozuzu, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 4.6 miles and 20 minutes travel time

### Character and Competence

The members and percent ownership of 1771 Utica Avenue LLC are as follows:

Member	Membership Interest
Danil Shabatay	50%
Zaur Yusufov	50%
<b>Total</b>	<b>100%</b>

*\*All Members are subject to character and competence background investigation.*

**Dr. Jude Ozuzu** will serve as the Medical Director of the Center. Dr. Ozuzu is a physician with over 40 years of clinical experience in both, hospital and international community-based family and emergency medicine. He trained for his medical degree in Nigeria and Philadelphia and received his Diplomate in General Surgery at the Royal College of Surgeons (Glasgow, UK). Dr. Ozuzu is the Chief Medical Officer at Kings Medical Family Practice, a partner at Stat Health Medical Center, and a staff physician at NYU Langone-Woodhull Emergency Department. He is board-certified in Emergency Medicine and Family Medicine. In his role as medical director, Dr. Ozuzu will oversee the clinical operations of the facility and serve as Chairman of the Quality Improvement Committee. An independent reviewer will visit the facility on a regular basis to conduct chart reviews and participate in the quality improvement program activities.

Dr. Ozuzu has one legal disclosure: Index Number: 511230/2018, Kings Supreme Court. Ballkisson Christina and Mandai Christina v. Jude Ozuzu, MD, Sean Keenan, MD, Dovid Herskowitz, PA, Kanwar Ruhila, MD, and Wycoff Heights Medical Center. 11/16/2019 - Ongoing case; 68-year-old male patient in emergency room for chest and abdominal pain and vomiting for 2 hours. All tests were ordered, and review of systems was completed. All labs came back negative, patient was discharged. Three days later patient was at the hospital again for cholecystitis diagnosis. The patient is suing for failure to diagnose and pain and suffering.

**Danil Shabatay** earned a Bachelor of Business Administration degree from CUNY Baruch College in 2006. Danil is currently the founder and CEO of both Wehealth Technologies and DME for DME LLC since 2019, patient care technology application companies, specializing in apps focused on providing healthcare information and telehealth to chronically ill patients. He is also the founder and CEO of Shabat Group, LLC, Amerihealth Group, LLC, Knapp Nutritional & Pharmacy, and the CEO of Alba International Trading Corp.

**Yusufov Zaur** received an associate degree from Globe Institute of Technology in 1998. Yusufov is the President & Certified Pedorthist (CPed) of Alba International Trading Corp, an orthotic and prosthetic medical supply since 2009. Yusufov is also the Founder and CTO of AmeriHealth Group LLC, WeHealth Technologies, and Agile Apps, healthcare technology firms.

The Center’s goal is to improve access to primary and specialty care services for the residents of its service areas. The Center will serve all patients without regard to race, sex, religion, creed, sexual orientation, ability to pay, source of payment, or other personal characteristics. The proposed operating budget provides for charity care, self-pay, and a sliding fee scale.

The Center will have a transfer and affiliation agreement with Maimonides Hospital which is 4.6 miles and 20 minutes travel time from the proposed extension site. There are ample transportation options available for patients needing to access the center. The center is conveniently located close to the Belt Parkway and is between 2 major thoroughfares in the area (Kings Hwy and Flatlands Avenue). NYC-MTA Surface Bus Routes B7-8-46 and NYC Subway Lines 2 and 5 are also conveniently located near the proposed center. The proposed extension site’s hours of operation will be Monday through Friday: 9 am – 10 pm Saturday and Sunday: 10 am – 6 pm. The Center will extend its hours as necessary to accommodate patient needs and NYSDOH community and public health priorities. An answering service is provided to address patient concerns during hours when the Center will not be in operation.

Expected volume of the proposed extension site is 7,200 visits in Year 1, and 11,250 visits by Year 3.

The following table shows the projected number of FTEs for Year 1 and Year 3 after completion of this project:

Position	FTEs	FTEs
	Yr 1	Yr 3
Management	2.00	4.00
Aides, Orderlies & Attendants	2.00	4.00
Physicians	2.00	4.50
Clerical & Other Administrative	2.00	2.50
Other X-RAY TECH	1.00	1.50
Other SONOGRAPHY TECH	1.00	1.50
<b>Totals</b>	10.00	18.00

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

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

**Conclusion**

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



## Financial Analysis

### Total Project Cost and Financing

The total project cost for leasehold improvements, renovations, and moveable equipment is distributed as follows:

Renovation & Demolition	\$200,000
Architect /Engineering Fees	32,000
Moveable Equipment	63,660
CON Fee	2,000
Additional Processing Fee	<u>1,626</u>
Total Project Cost	\$299,286

Total project costs will be met with equity from the proposed members. BFA Attachment A Personal Net Worth Statements of the proposed members show sufficient resources to fund the costs.

### Operating Budget

The applicant has submitted their first and third-year operating budget, in 2024 dollars, as shown below:

	<u>Year One</u> <u>2025</u>		<u>Year Three</u> <u>2027</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$79.24	\$17,116	\$79.24	\$26,783
Commercial MC	\$63.86	9,197	\$63.86	14,370
Medicare FFS	\$136.73	49,223	\$136.73	76,979
Medicare MC	\$112.61	81,079	\$112.61	126,686
Medicaid FFS	\$223.66	161,035	\$223.66	251,617
Medicaid MC	\$180.31	<u>843,851</u>	\$180.31	<u>1,318,247</u>
Total Revenue		\$1,161,501		\$1,814,682
Expenses:				
Operating	\$132.30	\$952,550	\$138.13	\$1,553,910
Capital	<u>\$26.24</u>	<u>188,932</u>	<u>\$16.79</u>	<u>188,932</u>
Total Expenses	\$158.54	\$1,141,482	\$154.92	\$1,742,842
Net Income		<u>\$20,019</u>		<u>\$71,840</u>
Visits		7,200		11,250
Cost/Visit		\$158.54		\$154.92

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

	<u>Year One</u> <u>2025</u>		<u>Year Three</u> <u>2027</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	216	3%	338	3%
Commercial MC	144	2%	225	2%
Medicare FFS	360	5%	563	5%
Medicare MC	720	10%	1,125	10%
Medicaid FFS	720	10%	1,125	10%
Medicaid MC	4,680	65%	7,311	65%
Charity Care	<u>360</u>	<u>5%</u>	<u>563</u>	<u>5%</u>
Total	7,200	100%	11,250	100%

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

- Charity Care is projected at approximately 5% in Year 1 & Year 3.
- Medicaid Utilization is approximately 75% in Year 1 and Year 3.
- Commercial Rates are negotiated and Medicare FFS rates are based on the Part B fee schedule.
- Medicaid revenue rates are based on actual rates expected for services performed using the APG rates published by the Department for Freestanding Clinics.
- Expenses are based on ten (10) and eighteen (18) FTEs and administrative costs in Year One and Year Three.

### **Lease Agreement**

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

Data:	3/31/2023
Premises:	273 Brooklyn, New York 11234 (Approximately 4,500 sq. ft.)
Landlord:	Lancaster Realty Mtg, Corp.
Assignor:	AmeriHealth Utica, LLC
Assignee:	1771 Utica, LLC
Term:	(10) Ten years- and a (10-year renewal option.)
Rent:	First five (5) years is \$153,000 annually Years six (6) through ten (10) is \$171,360 annually.
Provisions:	Security Deposit of \$25,000 guaranteed by Zaur Yusufov; If, in any year taxes increase on the Real Estate from the base year, then a pro-rata share will be applied via additional rent. Improvements and fixtures can only be made with the consent of the landlord.

The lease agreement is a non-arm's length agreement as stated in the landlord-tenant affidavit submitted. The affidavit states there is common ownership between AmeriHealth, LLC and 1771 Utica, LLC. The applicant has submitted two letters of rent reasonableness as they are related by family.

### **Capability and Feasibility**

Total project costs of \$299,286 will be met with equity from the proposed members. Working capital requirements are estimated at \$290,274 based on two months of third-year expenses and will be met through ongoing operations. BFA Attachment A, shows sufficient resources to fund the working capital requirement as well as total project costs. Attachment B, Pro Forma Balance Sheet, indicates members' equity of \$859,320 as of the first day of operations

The submitted budget indicates the facility will generate a net operating income of \$20,019 and \$71,840, in Year 1 and Year 3, respectively. Revenues are based on prevailing reimbursement methodologies for D&TCs.

### **Conclusion**

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

## **Attachments**

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement (Proposed Members)
BFA Attachment B	Pro Forma – 1771 Utica, LLC
BFA Attachment C	Organizational Chart - 1771 Utica, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new Diagnostic and Treatment Center at 1771 Utica Avenue, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

241028 B

1771 Utica, LLC d/b/a/ Care Plus Health Center

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 photocopy of the Assignment and Assumption of the Lease Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by May 1, 2025, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before December 1, 2024, and construction must be completed by February 1, 2025, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

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



**Project # 222202-E**

**Priority Cares Home Services, LLC**

**Program:** LHCSA

**County:** Queens

**Purpose:** Establishment

**Acknowledged:** December 9, 2022

**Executive Summary**

**Description**

Priority Care Home Services, LLC, a New York limited liability company is seeking to establish a licensed home care services agency (LHCSA) under Article 36 of New York State Public Health Law. Priority Care Home Services, LLC is a single-member LLC with no parent entity.

**OALTC Recommendation**

Contingent Approval

**Need Summary**

In accordance with Title 10 NYCRR §765-1.16(c)1, this application is not exempt from a Public Need review as the agency is applying for one county with no presumed need (Monroe County). Pursuant to 10 NYCRR §765-1.16(c) 4 a rebuttal to the presumption of no need was submitted for Monroe County, which was

determined to be sufficient based on the criteria set forth in 10 NYCRR §765-1.16(d).

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Aging and Long-Term Care**

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

1. A copy of the amended operating agreement by the applicant, acceptable to the Department. [CSL]

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

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

### **Council Action Date**

June 20, 2024

## Program Analysis

### Project Description

Priority Care Home Services, LLC is seeking to establish a licensed home care services agency (LHCSA).

The applicant proposes to serve the residents of the following counties from an office located at 510 Clinton Square, Rochester, NY. 14060:

- Monroe
- Livingston
- Ontario
- Genesee
- Chemung

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide
- Physical Therapy
- Occupational Therapy
- Respiratory Therapy
- Medical Social Work
- Nutrition
- Homemaker
- Housekeeper

### Character and Competence Review

Priority Cares Home Services, LLC is comprised of the following individual:

**Ezekiel Segun Olaniyi – Priority Cares Home Services, LLC; Owner and Chief Executive Officer  
ESO Consultants, LLC; Owner and Chief Executive Officer**

#### Affiliations

- Priority Cares Home Services, LLC (Consumer Directed Personal Assistance Program) (April 2017 - Present)
- Priority Groups Services, LLC (New Jersey) (Consumer Directed Personal Assistance Program) (April 2022 - Present)

Ezekiel Segun Olaniyi has a strong interest in the position of operating a licensed home care services agency (LHCSA) in New York. He has over six years of extensive experience and an educational background in the social services field.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

### Facility Compliance/Enforcement

Not applicable due to the applicant not having any NYS-licensed facilities at this time.

**Need Review**

In accordance with Title 10 NYCRR §765-1.16(c)1, this application is not exempt from a Public Need review as the agency is applying for one county with no presumed need (Monroe County). If there are more than five LHCSAs actively serving patients in the county where the applicant is seeking licensure, then there is a determination that there is no public need for additional LHCSAs in that county. Pursuant to 10 NYCRR §765-1.16(c)(4), an application may still be submitted; however, it must contain a rebuttal and present data-driven evidence. A rebuttal to the presumption of no need was submitted for Monroe County, which was determined by the Department to be sufficient based on the criteria set forth in 10 NYCRR §765-1.16(d). Specifically, the applicant is committed to playing a crucial role in addressing the diverse needs of the demographic population of Monroe County for which they provided statistical data, including being responsive to sub-populations and the cultural needs of the patients. The applicant also spoke to the current waiting lists of individuals requiring licensed home care services, as well as, to the quality care that they will offer. Additionally, the applicant provided a strong case for dedicating the personnel and resources needed to recruit and train the workforce.

A rebuttal to the presumption of no need was not required for the other counties applied for Livingston, Ontario, Genesee, and Chemung counties, as they have been identified by the Department as counties with an existing need for LHCSA services.

**Financial Review**

In accordance with 10 NYCRR §765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

**Workforce Summary**

The applicant’s response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment A for the Workforce Summary.

**Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**Attachments**

OALTC Attachment A	Workforce Summary
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish a new licensed home care services agency at 29-10 Thomson Avenue, C-760 Studio 15, Long Island City, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

222202 E

Priority Cares Home Services, LLC

APPROVAL CONTINGENT UPON:

1. A copy of the amended operating agreement by the applicant, acceptable to the Department.  
[CSL]

APPROVAL CONDITIONAL UPON:

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

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



Department of Health **Public Health and Health Planning Council**

**Project # 231058-E  
Excel Homecare Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** February 17, 2023

**Executive Summary**

**Description**

Excel Homecare, Inc., a business corporation, requests approval to become the new operator of Companions Plus Inc., a Licensed Home Care Services Agency (LHCSA).

There will be no changes to the counties served or services provided as a result of this CON.

Upon approval of this application, the agency will be known as Excel Homecare, Inc. d/b/a Companions Plus.

**OALTC Recommendation**

Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Aging and Long-Term Care**

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

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

### **Council Action Date**

June 20, 2024

# Program Analysis

## Program Description

Excel Homecare, Inc. requests approval to become the new operator of Companions Plus Inc., an existing LHCSA.

Companions Plus, Inc., the current operator of Companions Plus, Inc., entered into a management contract with Excel Homecare, Inc., which was approved by the Department on June 14, 2023.

Upon approval of this application, the agency will be known as Excel Homecare, Inc. d/b/a Companions Plus.

The applicant will continue to serve the residents of the following counties from an office located at 2100 Deer Park Avenue, Suite 1B, Deer Park, NY 11729:

- Nassau
- Queens
- Suffolk

The applicant will continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care
- Homemaker
- Housekeeper

## Character and Competence Review

The proposed membership interest and shareholders for Excel Homecare, Inc. is as follows:

### Lekeisha Hall (50%)

#### Employment

Administrator, Universacare (January 2022 – January 2023)

Administrator, Companions Plus, Inc. (June 2008 – December 2021)

#### Affiliations

No offices held or ownership interests in other health facilities.

### Joy Gardener (50%)

#### Employment

Registered Nurse, Long Island Community Hospital (April 2016 – Present)

Director of Patient's Care, Companions Plus, Inc. (January 2023 – Present)

#### Affiliations

No office held or ownership interests in other health facilities.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Care Services Agency.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

**Facility Compliance/Enforcement**

Not applicable due to the applicant not having any NYS-licensed facilities at this time.

**Need Review**

In accordance with Title 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Financial Review**

In accordance with 10 NYCRR §765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

**Workforce Summary**

The applicant’s response regarding the recruitment and retention of the workforce was adequately addressed. Please refer to Attachment A.

**Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**Attachments**

OALTC Attachment A	Workforce Summary
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Excel Homecare Inc. as the new operator of a Licensed Home Care Services Agency currently operated by Companions Plus Inc. at 55 Post Avenue, Suite 205, Westbury, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

231058 E

Excel Homecare Inc.

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

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





**Project # 222208-E**

**Caregiver Pro Homecare, Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** December 15, 2022

**Executive Summary**

**Description**

Caregiver Pro Homecare, Inc., an existing Licensed Home Care Services Agency (LHCSA) at 122-01 Liberty Avenue, 2<sup>nd</sup> Floor, Richmond Hill, NY 11419, is requesting a change in 90.1% ownership interest pursuant to a stock purchase agreement dated August 29, 2019.

**OALTC Recommendation**

Contingent Approval

**Need Summary**

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

## Recommendations

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Aging and Long-Term Care**

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

1. Submission of dated/executed copies of Stock Assignments that are acceptable to the Department. [CSL]
2. Submission of dated/executed copy of a Resignation that is acceptable to the Department. [CSL]

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

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

### **Council Action Date**

June 20, 2024

## **Program Analysis**

### **Program Description**

Caregiver Pro Homecare, Inc. is requesting approval of a 90.1% change in ownership interest pursuant to a stock purchase agreement dated August 29, 2019.

The current principal stockholders of Caregiver Pro Homecare, Inc. are as follows:

- Marina Rabinovich (90.1%)
- Rushik Patel (3.3%)
- Mihir Patel (3.3%)
- Chintan Patel (3.3%)

Following the approval of this CON, the principal stockholders of Caregiver Pro Homecare, Inc. will be as follows:

- Rushik Patel (33.3%)
- Mihir Patel (33.3%)
- Chintan Patel (33.3%)

The applicant will continue to serve the residents of Kings, Bronx, New York, Queens, Richmond, and Nassau counties.

The applicant will continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care
- Physical Therapy
- Occupational Therapy
- Respiratory Therapy
- Speech- Language Pathology
- Audiology
- Medical Social Services
- Nutritional
- Homemaker
- Housekeeper
- Medical Supplies, Equipment, and Appliances

### **Character and Competence Review**

Caregiver Pro Homecare, Inc. will be comprised of the following individuals:

#### **Rushik Patel (33.3%)**

##### Employment

- Minority Owner, Caregiver Pro Homecare, Inc. (August 2019 – Present)
- Manager, Unicare Adult Day Care Inc. (December 2019 – February 2022)
- Manager, Caregiver Pro Homecare, Inc. (February 2020 – December 2021)

##### Affiliations

- Caregiver Pro Homecare, Inc. (August 2019 – Present)
- Tradition Choice LLC (FI/CDPAP Agency) (January 2021 – Present)
- Unicare Adult Day Care, Inc (Social Adult Day Care Center) (January 2019 – Present)
- Great Direct Care, Inc. (FI/CDPAP Agency) (January 2016 – Present)
- Social Adult Day Care Centers of New York, LLC (Social Adult Day Care Center) (January 2016 – December 2020)

**Mihir Patel (33.3%)**

Employment

Manager, Freehold Montclair LLC (November 2017 – Present)

Affiliations

- Sunny Day Care (NJ) (Medical Adult Day Care Program) (2009 – Present)
- Caregiver Pro Homecare, Inc. (LHCSA) (January 2020 – Present)
- Unicare Adult Day Care, Inc (Social Adult Day Care Center) (January 2019 – Present)
- Great Direct Care, Inc (FI/CDPAP Agency) (2016 – Present)
- Social Adult Day Care Centers of New York, LLC (Social Adult Day Care Center) (2016 – December 2020)

**Chintan Patel (33.3%)**

Affiliation

- Tradition Choice, LLC (FI/CDPAP Agency) (January 2021 – Present)

A review of the Personal Qualifying Information indicates that the applicants have the required character and competence to operate a licensed home care services agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

**Facility Compliance/Enforcement**

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

The New Jersey Department of Health has submitted a Schedule 2D, Compliance Report Form for Sunny Day Program, located in Edison, New Jersey, and has confirmed that the agency is operational and is currently in compliance with all applicable codes, rules, and regulations; and is free of any enforcement or administrative actions.

**Need Review**

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Financial Review**

In accordance with 10 NYCRR §765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

**Workforce Review**

Please refer to Attachment A for the agency’s Workforce Summary.

**Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**Attachments**

OALTC Attachment A	Workforce Summary
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 90.1% ownership interest from one withdrawing shareholder to the remaining shareholders, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

222208 E

Caregiver Pro Homecare, Inc

APPROVAL CONTINGENT UPON:

1. Submission of dated/executed copies of Stock Assignments that are acceptable to the Department. [CSL]
2. Submission of dated/executed copy of a Resignation that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Department of Health **Public Health and Health Planning Council**

**Project # 222209-E**  
**Galaxy Home Care Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** December 15, 2022

**Executive Summary**

**Description**

Galaxy Home Care, Inc., an existing Licensed Home Care Agency (LHCSA), requests approval for a 30.2 % change in ownership from one shareholder to two existing shareholders.

**OALTC Recommendation**

Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Aging and Long-Term Care**

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

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

### **Council Action Date**

June 20, 2024



## Program Analysis

### **Program Description**

Galaxy Home Care, Inc. requests approval for a 30.2 % change in ownership from one shareholder to two existing shareholders.

The current ownership is as follows:

- Yelena Sokolsky (80.2%)
- Mila Verkhoglaz (9.9%)
- Luba Greenman (9.9%)

Following the approval of this CON, the proposed ownership will be as follows:

- Yelena Sokolsky (50%)
- Mila Verkhoglaz (25%)
- Luba Greenman (25%)

The applicant will continue to serve the residents of Kings, Bronx, New York, Queens, Richmond, and Nassau Counties from the address located at 224 Kings Highway, Brooklyn, NY 11223.

The applicant will continue to provide the following home care services:

- Audiology
- Home Health Aide
- Homemaker
- Housekeeper
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Personal Care
- Therapy- Occupational
- Therapy- Physical
- Therapy- Respiratory
- Therapy- Speech Language Pathology

### **Character and Competence Review**

Galaxy Home Care Inc. is comprised of the following individuals:

#### **Yelena Sokolsky (50%)**

##### Employment

CEO, Galaxy Home Care Inc. (January 2020 – Present)

##### Affiliations

- Galaxy Home Care Inc. (June 2017 – Present)

#### **Mila Verkhoglaz (25%)**

##### Employment

CEO, Executive Home Care (April 2003 – Present)

##### Affiliations

- Galaxy Home Care Inc. (June 2022 – Present)
- Executive Home Care, LLC d/b/a Executive Care (NJ) (April 2003 – June 2022)

**Luba Greenman (25%)**

Employment

Receptionist, KnK OBGYN (January 2023 – Present)

Affiliations

- Galaxy Home Care Inc. (June 2022 – Present)

A review of the Personal Qualifying Information indicates that the applicants have the required character and competence to operate a licensed home health agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

**Facility Compliance/Enforcement**

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

An attestation was provided by the applicant stating that Executive Home Care, LLC d/b/a Executive Home Care in the State of New Jersey is no longer operational and was free of any enforcements between 2017 and June 2022 when it closed. A Schedule 2D was provided by the State of New Jersey, which did not list any compliance issues, violations, enforcement, or administrative actions.

**Need Review**

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Financial Review**

In accordance with 10 NYCRR §765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

**Workforce Review**

Please refer to Attachment A for the Workforce Summary.

**Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**Attachments**

OALTC Attachment A	Workforce Summary
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 30.2% from one shareholder to two existing shareholders, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

222209 E

Galaxy Home Care Inc.

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

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



**Project # 222110-E  
Pentec Infusions Of New York, LLC**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Nassau  
**Acknowledged:** November 23, 2022

**Executive Summary**

**Description**

Pentec Infusions of New York, LLC, an existing Licensed Home Care Services Agency (LHCSA), is requesting a change of ownership by transferring 100% ownership interest above the grandparent level.

Pentec Infusions of New York, LLC provides a specialized home nursing service to complex patients who suffer from chronic, severe pain, secondary to other conditions and from spasticity of various origins and rely on implanted drug delivery systems for their treatment.

The applicant reports this transaction will not result in any change to the name, location, or services provided.

**OALTC Recommendation**

Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c), this application is not exempt from Public Need review as the agency is not actively serving 25 patients as attested to by the current operator. Pursuant to 10 NYCRR §765-1.16(c)4 a rebuttal to the presumption of no need was submitted, which was determined to be sufficient based on the criteria set forth in 10 NYCRR §765-1.16(d).

**Program Summary**

The individual background review indicates the proposed members have met the standards for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Aging and Long-Term Care**

Approval is recommended

### **Council Action Date**

June 20, 2024

## **Program Analysis**

### **Program Description**

Pentec Infusions of New York, LLC requests approval of a transfer of 100% ownership interest above the grandparent level.

Pentec Infusions of New York, LLC provides a specialized home nursing service to complex patients who suffer from chronic, severe pain, secondary to other conditions and from spasticity of various origins and rely on implanted drug delivery systems for their treatment. This change of ownership will not result in any change to the name, location, or services provided.

An affidavit of no control has been implemented above the parent entity, Pentec Holdings, Inc. whereby Pentec Healthcare Infusions, Inc. and all organizations above this entity will refrain from exercising control over the licensed home care services agency by directing or causing the direction of the actions, management or policies of the agency, whether through voting securities or voting rights thereunder, electing or appointing directors, the direct and indirect determination of policies, or otherwise. Please refer to Attachment A for the post-closing organizational chart.

The applicant will continue to serve the residents of Nassau, Queens, and Suffolk counties from the address located at 100 Duffy Avenue, Suite 510, Hicksville, NY 11801.

The applicant will continue to provide the following healthcare services:

- Nursing
- Specialty – Infusion Company

### **Character and Competence Review**

Pentec Infusions of New York, LLC and Pentec Holdings, Inc. are comprised of the following individuals:

#### **Matthew L. Deans – Director/Manager**

##### Employment

CEO/President, Pentec Health, Inc. (April 2023 - Present)  
Executive Vice President Sales and Chief Strategy Officer, Pentec Health, Inc.  
(January 2022 -April 2023)

##### Affiliations:

Please refer to Attachment B.

#### **Jeffery T. Baker, Esq. – Director/Manager**

##### Employment

Secretary, Pentec Health, Inc. (January 2017 - Present)

##### Affiliations:

Please refer to Attachment B.

#### **Eric C. Mollman – Director/Manager**

##### Employment

Chief Financial Officer, Pentec Health, Inc. (March 2022 - Present)

##### Affiliations:

Please refer to Attachment B.

## **Facility Compliance/Enforcement**

The information provided by the Division of Home and Community Based Services indicates that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

Please refer to Attachment C for the summary of federal legal action and for regulatory actions by states.

## **Need Review**

In accordance with 10 NYCRR §765-1.16(c), this application is not exempt from the Public Need review as the agency is not actively serving over 25 patients, as attested to by the current operator. Pursuant to 10 NYCRR §765-1.16(c)(4), an application may still be submitted; however, it must contain a rebuttal and present data-driven evidence. A rebuttal to the presumption of no need was submitted to the Department, and due to the limited number of home care agencies providing in-home infusion services, the Department determined that the criteria in the rebuttal were sufficient. There is only one other infusion agency that is licensed to provide infusion services to Queens, Nassau, and Suffolk counties, and that agency's main site is located in Sullivan County. The following is information that the applicant provided in their rebuttal:

*Pentec provides a specialized home nursing service to complex patients who suffer from chronic, severe pain secondary to other conditions and from spasticity of various origins and rely on implanted drug delivery systems for their treatment. These patients have failed traditional therapy and now rely on a small, surgically implanted medical device called an intrathecal pump that delivers highly concentrated medication through a catheter directly into the intrathecal space surrounding the patient's spinal cord. They represent a very narrow, complex, and traditionally underserved patient population for which there is limited support by traditional home health care and home infusion providers. Pentec serves these patients in their places of residence with specially trained registered nurses. Because Pentec is focused on the provision of specialized services required by implanted pump patients, it is not comparable to traditional home health agencies.*

*Pentec received its Home Care Services Agency license on August 1, 2019, and thereafter initiated contacts with sources of patient referrals, primarily specialists in interventional pain and spasticity management. These activities were effectively suspended as a result of the COVID-19 pandemic, during which Pentec focused its attention on the provision of services to its existing patient census in other states. Pentec has resumed contact with its referral sources in the expectation of providing the services described above, including pain management physicians. Since the submission of the Change of Ownership application, Pentec has brought four (4) patients onto service and anticipates this census growing. Despite the delay in commencing services, the underlying facts and circumstances supporting Pentec's initial LHCSA application have not changed:*

- *Implanted pump patients represent a narrow, complex, and traditionally underserved patient population. There is limited support for this patient population by traditional home health care and home infusion providers. In the State of New York, there are over 3,870 patients with implanted pumps and over 185 of them reside within the Nassau, Suffolk, and Queens counties.*
- *Treatment of implanted pump patients requires specialized training. Pentec nurses are required to successfully complete an ANCC-accredited 90-day training program and examination prior to performing independent patient care. This training program requires completion of 460 hours of classroom and hands-on field training. In addition, all nurses are required to have at least 3 years of clinically relevant practice with ICU or ER experience preferred prior to hire. Pentec currently employs five (5) registered nurses who are available to treat patients in Nassau, Suffolk, and Queens counties.*
- *Effective management of a patient's care via the implanted pump requires both skilled nursing and pharmacy services. In addition to its team of registered nurses, Pentec operates a specialty closed-door pharmacy that is licensed in New York to fulfill its patients' prescriptive needs. Pentec is accredited by The Joint Commission in pharmacy as well as home health care.*



**Financial Review**

In accordance with 10 NYCRR §765-1.2(b)3, this application has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

**Workforce Review**

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. Please refer to Attachment D.

**Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<b>Attachments</b>
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OALTC Attachment A	Organizational Chart
OALTC Attachment B	Ownership Interest in Health Care Facilities
OALTC Attachment C	Enforcement Actions
OALTC Attachment D	Workforce Summary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% ownership interest at the great-grandparent level, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

222110 E

Pentec Infusions Of New York, LLC

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

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



**Project # 231012-E  
Long Life Home Care Inc**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** February 16, 2023

**Executive Summary**

**Description**

Long Life Home Care, Inc., an existing Licensed Home Care Services Agency (LHCSA) at 86-47 164<sup>th</sup> Street, Suite BD, Jamaica, is requesting a transfer of 80.2% ownership, pursuant to a Stock Purchase Agreement dated June 3, 2021.

**OALTC Recommendation**

Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Aging and Long-Term Care**

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

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

### **Council Action Date**

June 20, 2024

# Program Analysis

## Program Description

Long Life Home Care, Inc. is requesting approval for a transfer of 80.2% ownership pursuant to a Stock Purchase Agreement dated June 3, 2021.

The current ownership is as follows:

- Elena Sapon (80.2%)
- Bracha Radziminiski (9.9%)
- Carol Shafir (9.9%)

Following the approval of this CON, the proposed ownership will be as follows:

- Bracha Radziminiski (90%)
- Carol Shafir (10%)

The applicant will continue to serve the residents of Bronx, Kings, Nassau, New York, Queens, and Richmond Counties.

The applicant will continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Medical Social Services
- Personal Care
- Physical Therapy
- Occupational Therapy
- Speech-Language Pathology
- Nutritional
- Homemaker
- Housekeeper

## Character and Competence Review

Long Life Home Care, Inc. is comprised of the following individuals:

### Bracha Radziminiski (90%)

#### Employment

Administrator, Long Life Home Care, Inc. (June 2021 – Present)

#### Affiliations

- Long Life Home Care Inc. (June 2021 - Present)

### Carol Shafir (10%)

#### Employment

Director of Patient Services, Long Life Home Care, Inc. (June 2021 – Present)

#### Affiliations

- Long Life Home Care Inc.; (June 2021 - Present)

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Health Agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

**Facility Compliance/Enforcement**

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

**Need Review**

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review, as the agency is actively serving over 25 patients, as attested to by the current operator.

**Financial Review**

In accordance with 10 NYCRR §765-1(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

**Workforce Review**

Please refer to Attachment A for the Workforce Summary.

**Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<b>Attachments</b>
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OALTC Attachment A	Workforce Summary
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 80.2 % ownership interest from one current shareholder to the two remaining shareholders, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

231012 E

Long Life Home Care Inc



APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

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



**Project # 231034-E  
Golden Age Home Care Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** February 16, 2023

**Executive Summary**

**Description**

Golden Age Home Care, Inc., d/b/a Golden Age Home Care, an existing Licensed Home Care Services Agency (LHCSA) requests approval for a change of ownership.

This change of ownership will not result in any change to the name, counties served, or services provided.

**OALTC Recommendation**

Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Aging and Long-Term Care**

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

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

### **Council Action Date**

June 20, 2024

# Program Analysis

## Program Description

Golden Age Home Care, Inc., d/b/a Golden Age Home Care requests approval for a change ownership.

The applicant will continue to serve the residents of Bronx, Kings, New York, Queens, Richmond, and Westchester counties from an address at 71-24 35<sup>th</sup> Avenue, Jackson Heights, NY 11372.

The applicant will continue to provide the following healthcare services:

- Home Health Aide
- Nursing
- Personal Care

## Character and Competence Review

Golden Age Home Care, Inc. will be comprised of the following individual:

### Shah M. Nawaz (f/k/a Mohammad Shah Nawaz) – President 100%

#### Employment

Bengal Home Care, Inc. - President & CEO/Provider; (March 2020 – Present)  
Golden Age Home Care, Inc. - Consultant (January 2017 – Present)

#### Affiliations:

- No offices held or ownership interests in other health facilities.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Health Agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

## Facility Compliance/Enforcement

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

## Need Review

In accordance with 10 NYCRR Section §765- 1.16(c)2, this application is exempt from Public need as the agency is actively serving 25 patients, as attested to by the current operator.

## Financial Review

In accordance with 10 NYCRR §765-1.2(b)3, the application has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. Please refer to Attachment A.

## Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<b>Attachments</b>	
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OALTC Attachment A	Workforce Review
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Golden Age Home Care Inc. as the new operator of a licensed home care services agency currently operated by Marian Howell d/b/a Golden Age Home Care at 71-24 35th Avenue, Jackson Heights, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

231034 E

Golden Age Home Care Inc.

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

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



**Project # 231097-E**

**Key To Life Homecare, Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** March 30, 2023

**Executive Summary**

**Description**

Key to Life Homecare, Inc., an existing Licensed Home Care Services Agency (LHCSA) at 2657 East 14<sup>th</sup> Street, Brooklyn, is requesting approval for a change in 90.1% membership pursuant to a stock purchase agreement dated December 26, 2019.

**OALTC Recommendation**

Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.



## Recommendations

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Aging and Long-Term Care**

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

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

### **Council Action Date**

June 20, 2024

## **Program Analysis**

### **Project Description**

Key to Life Homecare, Inc. is requesting approval of a change in 90.1% membership pursuant to a stock purchase agreement dated December 26, 2019.

The current ownership is as follows:

- Gvantsa Ramishvili (4.9%)
- Anthony Trochtchenkov (36.04%)
- Henrich Chigirinsky (54.06%)
- Tsisnami Gogilashvili (5.0%)

Following the approval of this CON, the proposed ownership will be as follows:

- Gvantsa Ramishvili (95.0%)
- Tsisnami Gogilashvili (5.0%)

The applicant will continue to serve the residents of Bronx, Kings, New York, Queens, Richmond, and Westchester Counties.

The applicant will continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care
- Speech-Language Pathology
- Medical Social Services
- Homemaker
- Respiratory Therapy
- Occupational Therapy
- Physical Therapy
- Audiology
- Nutritional
- Housekeeper

### **Character and Competence Review**

Key to Life Homecare, Inc. will be comprised of the following individuals:

#### **Gvantsa Ramishvili (95.0%)**

##### Employment

Administrator, Key to Life Homecare, Inc. (January 2021 – Present)

##### Affiliations

- Key to Life Homecare, Inc. (December 2019 – Present)

#### **Tsisnami Gogilashvili (5.0%)**

##### Employment

Case Management/Marketing Services, Home Family Care (July 2022 – Present)

##### Affiliations

- No offices held or ownership interests in other Health Facilities.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Health Agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

### **Facility Compliance/Enforcement**

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

### **Need Review**

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

### **Financial Review**

In accordance with 10 NYCRR §765-1(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

### **Workforce Review**

The following information was provided by the applicant to respond to the workforce questions.

#### Current availability of professional/paraprofessional staff:

Key to Life Homecare, Inc. (KTL) is an existing Licensed Home Care Services Agency (LHCSA). The operating entity will remain upon the completion of this transaction, which will reflect a change in stock interest, pursuant to a stock purchase agreement. KTL has 873 total employees and currently has approximately 511 existing and ongoing cases.

#### Training, recruitment, and workforce initiatives:

KTL provides ongoing training programs for staff including in-house in-service programs, refresher training as part of its quality assurance program, as well as specialized training to include Alzheimer's, dementia, TBI, and mental health services.

#### Measures to promote retention:

In order to promote the retention of specific categories of the workforce, KTL will:

- increase pay and/or benefits (holiday pay, competitive benefits packages, health insurance);
- increase communication with caregivers (mobile application, online training);
- provide caregiver recognition;
- improve schedule accommodations (availability search on HHA Exchange Mobile Application);
- improve recruitment (digital applications, include diverse and multilingual staff).

### **Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 90.10% ownership from two withdrawing shareholders to one existing shareholder, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

231097 E

FACILITY/APPLICANT:

Key To Life Homecare, Inc.

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

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

## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** William Sacks, Associate Attorney  
Bureau of Program Counsel, Division of Legal Affairs

**Date:** March 21, 2024

**Subject:** Proposed Dissolution of Bridge Regional Health System, Inc.

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Please include this matter on the next Establishment and Project Review Committee and Public Health and Health Planning Council agendas.

The attachments relating to the matter include:

- 1) A Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letter from applicant's legal counsel requesting approval of the proposed Certificate of Dissolution of Bridge Regional Health System, Inc.;
- 3) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Bridge Regional Health System, Inc.;
- 4) Certificate of Incorporation of Bridge Regional Health System, Inc. dated July 5, 2006; Certificate of Amendment to Certificate of Incorporation dated August 30, 2006; and associated documents;
- 5) The Bylaws of Bridge Regional Health Systems, Inc.;
- 6) A proposed Plan of Dissolution for Bridge Regional Health System, Inc.;
- 7) A proposed Resolution of the Board of Directors approving dissolution;
- 8) A proposed Certificate of Dissolution for Bridge Regional Health System, Inc.; and
- 9) The executed Resolution of the Board of Directors approving dissolution.

Attachments

## MEMORANDUM

**To:** Public Health and Health Planning Council

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

**Date:** March 18, 2024

**Subject:** Proposed Dissolution of Bridge Regional Health System, Inc, Inc.

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Bridge Regional Health System, Inc, Inc. requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

Bridge Regional Health System, Inc, Inc. (“Bridge Regional”) is a New York not-for-profit corporation formed in 2006. The original Certificate of Incorporation for “Bridge Regional System, Inc.” was executed on July 5, 2006, with a Certificate of Amendment for “Bridge Regional Health System, Inc.” executed on August 30, 2006. Between those dates, the company’s purposes changed as the Article 28 facilities they sought to acquire and operate changed, with the approval of a bankruptcy court, from St. Vincent’s Hospital Staten Island to Richmond University Medical Center (“RUMC”) and Bayonne Medical Center, the latter operating in Hudson County, NJ.

The Bridge Regional received approval from the NYS Department of Health and the Public Health Council (“PHC”) to file its Certificate of Amendment to the Certificate of Incorporation on December 22, 2006. No discrete PHC permission to file the original Certificate of Incorporation is extant.

The proposed Plan of Dissolution indicates that there are no longer any members of the Bridge Regional corporation whose authorization to dissolve is required by the Board of Trustees. The Plan also stipulates that Bridge Regional has no assets and no known liabilities. Additionally, the Resolutions of the Board of Directors issued pursuant to their approval of dissolution indicate that RUMC was “the only [New York-based] hospital that survived” the St. Vincent’s Health System bankruptcy proceeding, and that the Corporation’s only current activity involves ratification of decisions by the RUMC Board of Directors. The Resolutions further indicate that Bridge Regional is no longer the sole member of Bayonne Medical Center, which is now part of the CarePoint Health System.

Because PHC previously approved the filing of the Certificate of Amendment to the Certificate of Incorporation, its successor PHHPC must approve of this dissolution. The Department of Health expects that the submitted Petition and Certificate of Dissolution will then be executed/verified and addressed with the Attorney General’s Office Charities Bureau.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution. The required documents are attached.

Attachments.



Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792

**Anita Pelletier**  
Counsel

T / 585.263.1164  
F / 866.947.0499  
apelletier@nixonpeabody.com

August 29, 2023

**VIA FEDERAL EXPRESS**

Colleen M. Leonard  
Executive Secretary  
Public Health and Health Planning Council  
New York State Department of Health  
Center for Health Care Facility Planning, Licensure and Finance  
Corning Tower, Room 1805  
Albany, New York 12237

**RE: Bridge Regional Health System, Inc.  
Dissolution**

Dear Ms. Leonard:

We are writing to respectfully request the approval of the enclosed Certificate of Dissolution for **Bridge Regional Health System, Inc.**, (the "Corporation") by the Public Health and Health Planning Council ("PHHPC"). PHHPC consent is required in addition to consent of the New York State Attorney General.

The Corporation is no longer conducting activities and has no remaining assets or liabilities.

At this time, the Corporation requests consent from PHHPC to dissolve. Copies the following **proposed draft** materials in support of the Corporation's application for approval of its dissolution are enclosed:

1. Verified Petition, with all exhibits;
2. Plan of Dissolution and Distribution of Assets (Exhibit C of the Verified Petition); and
3. Certificate of Dissolution of the Corporation.

Thank you for your time and attention to this matter. Please contact me should you require any additional information.

Very truly yours,



Anita Pelletier  
Counsel

Enclosures

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
28 LIBERTY STREET NEW YORK, NY 10005

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In the Matter of the Application of  
BRIDGE REGIONAL HEALTH SYSTEM, INC.

**VERIFIED PETITION**

AG # \_\_\_\_\_

For Approval of Dissolution and Distribution of  
Assets pursuant to Section 1002 of the Not-for-Profit  
Corporation Law

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TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

Petitioner, Bridge Regional Health System, Inc., by its attorneys, Nixon Peabody LLP, Anita L. Pelletier, Esq., for its Petition herein respectfully alleges:

1. Petitioner, whose principal office is located in the County of Richmond, was incorporated pursuant to New York's Not-for-Profit Corporation Law on July 2, 2006. Copies of Petitioner's Certificate of Incorporation, as amended as well as complete and current Bylaws are attached as **Exhibits A** and **B**, respectively.

2. The names and residence addresses of all remaining directors and officers of Petitioner are listed below.

NAME/TITLE	ADDRESS
Timothy Colton Harrison/Chair and Director	80 Benedict Road Staten Island, NY 10304
John C. Santora/Vice Chair and Director	220 Chelsea Street Staten Island, NY 10307
Daniel Messina, Ph.D./ President, CEO and <i>Ex Officio</i> Director	17 Coverly Place Staten Island, NY 10301
Francesco Rotatori, M.D./President of the Medical Staff and <i>Ex Officio</i> Director	227 92nd Street Brooklyn NY 11209
Jill O'Donnell-Tormey, Ph.D./ Secretary and Director	263 Howard Ave. Staten Island, NY 10301
Pankaj R. Patel, M.D./Assistant Secretary and Director	34 Amy Court Staten Island, NY 10314
David McGoy/Director	9 Davis Court Staten Island, NY 10310
Alan Bernikow, CPA/Director	207 Benedict Ave. Staten Island, NY 10314

Marcello Sciarrino/Director	9 Benedict Road Staten Island, NY 10304
Robert Urs/Director	14 Silver Ct Staten Island, NY 10301
Thomas Delmastro/Treasurer and Director	85 Dutchess Avenue Staten Island, NY 10304
Sara Warren Gardner, MPH/Director	47 Parkview Place Staten Island, NY 10310
Kenneth Corey/Director	66 Florence Place Staten Island, NY 10309
Steven M. Klein/ Director	11 Woodview Drive Howell, NJ 07731
Anita Laremont/Director	10 Overlook Drive Staten Island, NY 10304
Courtney Moore/Director	5 Scheffelin Ave, Staten Island, NY 10306
Wing Law/Director	120 McVeigh Ave Staten Island, NY
Hon. Rosemarie Maldonado/Director	26 Harbor View Court Staten Island, NY 10301
John Vincent Scalia, Sr./Director	28 Eltingville Blvd. Staten Island, NY 10312
Samala Swamy, M.D./Director	96 Benedict Road Staten Island, NY 10304
John Tapinis/Director	6 Twin Lakes Drive Colts Neck NJ 07722
Joe Torres/Director	199 Benedict Ave Staten Island, NY 10314

3. The purposes for which Petitioner was organized are:

"(a) To support the purposes, missions, objectives, operations and activities of Richmond University Medical Center and Bayonne Medical Center (each, a "Hospital Corporation" and jointly, the "Hospital Corporations"), which Hospital Corporations operate, or will operate upon receiving requisite regulatory approvals, the hospital in Richmond County in the State of New York and Hudson County in the State of New Jersey, respectively known as Richmond University Medical Center and Bayonne Medical Center, and may operate such other hospital and health care facilities as may be established or otherwise become part of the Hospital Corporations in the future;

(b) To provide strategic planning and coordination assistance to, act as the sole member of, and operate Richmond University Medical Center, a New York not-for-profit corporation;

(c) To provide strategic planning and coordination assistance to, as the sole member of, and operate Bayonne Medical Center, a New Jersey not-for-profit corporation;

(d) To solicit contributions for the purpose of supporting the Hospital Corporations;..."

4. Petitioner is a charitable corporation.

5. Petitioner plans to dissolve in accordance with the Plan of Dissolution attached hereto as **Exhibit C**.

6. In or around 2006, Richmond University Medical Center ("**RUMC**") was part of the St. Vincent's Health System and was the only hospital that survived a bankruptcy proceeding. Petitioner was formed at that time to facilitate the acquisition of RUMC assets from the bankruptcy proceeds. Petitioner has not conducted any activities since that time.

7. The Board of Directors approved the Plan and authorized the filing of a Certificate of Dissolution at a meeting duly noticed and held on July 26, 2023. At that time, Petitioner had twenty (20) directors, eighteen (18) of whom were present at the meeting and eighteen (18) of whom voted in favor of the Plan and proposed dissolution. A copy of the resolutions approved at the meeting is attached hereto as **Exhibit D**.

8. The Petitioner has no assets or liabilities as of the date hereof.

9. The New York State Attorney General and the New York State Department of Public Health and Health Planning Council must consent to the dissolution of the Corporation.

10. No previous application for approval of the dissolution and distribution of assets has been made.

*[SIGNATURE PAGE FOLLOWS]*

WHEREFORE, Petitioner requests that the Attorney General approve its Plan of Dissolution and consent to filing the Certificate of Dissolution with New York State, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: \_\_\_\_\_, 2023

NIXON PEABODY LLP

By: \_\_\_\_\_

Anita L. Pelletier, Esq.

Anita L. Pelletier, Esq.  
Nixon Peabody LLP  
Counsel for Petitioner  
1300 Clinton Square  
Rochester, New York 14604

**VERIFICATION**

STATE OF NEW YORK     )  
  :SS  
COUNTY OF RICHMOND   )

\_\_\_\_\_, individually, being duly sworn affirms and verifies that they have read the annexed Verified Petition, knows the contents thereof and the same is true to their knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters they believe them to be true. Their belief, as to those matters herein not stated upon knowledge, is based upon the files maintained by Petitioner.

\_\_\_\_\_  
Name:  
Title:

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Notary Public

# **Exhibit**

**A**

*State of New York }  
Department of State } ss:*

*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 on*

**July 06, 2006**



A handwritten signature in black ink, appearing to be "D. J. ...", written over a horizontal line.

*Special Deputy Secretary of State*



F060706000 283

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CERTIFICATE OF INCORPORATION

OF

BRIDGE REGIONAL SYSTEM, INC.

Under Section 402 of the  
New York Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York (the "Not-for-Profit Corporation Law"), hereby certifies:

FIRST: The name of the Corporation is Bridge Regional System, Inc. (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The Corporation shall be a Type C corporation under Section 201 of the Not-for-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed and operated are exclusively charitable, scientific and educational as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The purposes of the Corporation are limited to the following:

(a) Planning for, preparing, submitting and assisting Castleton Acquisition Corporation in the processing of, a certificate of need application with the Public Health Council of the New York State Department of Health to become the operator of a hospital in Richmond County currently known as St. Vincent's Hospital Staten Island, with the public objective of furthering the purposes, missions, objectives, operations and activities of such hospital, which will provide for the medical and surgical care and treatment of inpatients and outpatients and the provide a range of medical and associated services for the diagnosis and treatment of patients, including, outpatient care, home care and extended care, and the promotion and carrying on of scientific and medical research related to the care of the sick, injured or disabled, and related to the causes, origins, treatment and prevention of diseases, sickness, injuries and disabilities; and

(b) To engage in all other activities that relate to or are incidental to the achievement of such purposes.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes herein set forth, or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the following purposes: educational, literary, or charitable purposes, as specified in Section

501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal taxation under Section 501(c)(3) of the Code; this shall include, without limitation, the powers to:

(a) receive and hold real and personal property in order to carry on the aims and purposes of the Corporation as expressed in this Certificate of Incorporation; to expend, contribute, disburse, develop and otherwise handle and dispose of the same for such aims and purposes, either directly or by contributions to other agencies, organizations or institutions organized for the same or similar aims and purposes, and otherwise to cooperate with and assist such other agencies, organizations and institutions in order to further the aims and purposes of the Corporation;

(b) receive and maintain a fund or funds of personal or real property and apply the whole or any part of the income and/or principal thereof exclusively for the charitable purposes of the Corporation, as shall from time to time be found appropriate in connection with the foregoing purposes, and as are lawful for a not-for-profit corporation; and

(c) by resolution of the Board of Trustees of the Corporation, to accept subventions from any member of the Corporation, or non-members, on terms and conditions not inconsistent with the by-laws of the Corporation and the Not-for-Profit Corporation Law, and to issue certificates therefor, and such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of Section 505 of the Not-for-Profit Corporation Law.

FIFTH: (a) The Corporation is not formed for pecuniary profit or for financial gain, and no part of the net earnings of the organization shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual, firm or corporation (except that reasonable compensation may be paid for services rendered to or for the Corporation).

(b) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code, or the corresponding provision of any future United States Internal Revenue law, during any fiscal year or years in which the Corporation chooses to utilize the benefits authorized by that statutory provision), and the Corporation shall not participate or intervene (including by publishing or distributing statements) in any political campaign on behalf of any candidate for public office.

(c) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404 of the Not-for-Profit Corporation Law or Section 460a of the Social Services Law of the State of New York. Specifically, nothing herein shall be construed as authorizing the Corporation to operate a nursery school, an elementary school, a secondary school, an institution of higher learning, a library, a museum, an historical society, a cable television facility or an educational television station.

(d) Nothing herein shall authorize the Corporation to establish, operate or



maintain a hospital or to provide hospital service or health-related services, or to operate a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law of the State of New York, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment, including the filing of a certificate of need application, or operation, of any hospital.

SIXTH: If at any time the Corporation is determined to be other than an organization described in Section 509(a)(1), (2) or (3) of the Code, it shall, to the extent applicable, comply with Section 508 of the Code, insofar as such provision:

(a) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) prohibits the Corporation, its directors, trustees or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(c) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(d) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(e) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

SEVENTH: In the event of the dissolution of the Corporation, all the assets and property of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed to further the not-for-profit purposes of the Corporation to such one or more corporations, trusts, community trusts, funds or foundations organized and operating exclusively for scientific, charitable or educational purposes, no part of the net earnings, contributions or any other corporate funds of which shall inure to the benefit of any private member or individual, no substantial part of the activities of which shall consist in carrying on propaganda or otherwise attempting to influence legislation, and which shall not participate in or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office, as selected by a two-thirds vote of the entire board of trustees of the Corporation and subject to the approval of a Justice of the Supreme Court of the State of New York.

EIGHTH: The office of the Corporation is to be located in Richmond County, State of New York.

NINTH: The names and addresses of the initial Trustees of the Corporation are as follows:

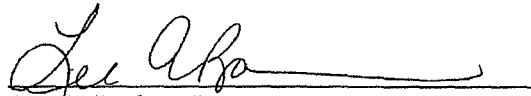
Robert Evans  
29 East 29<sup>th</sup> Street  
Bayonne, NJ 07002

Theodore Garelick  
31 Park View Terrace  
Bayonne, NJ 07002

Herman Brockman  
78 Avenue C  
Bayonne, NJ 07002

TENTH: 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 or her is: c/o Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attention: Richard J. Zall, Esq.

IN WITNESS WHEREOF, this Certificate of Incorporation has been signed and the statements made herein are affirmed as true under the penalties of perjury this 5<sup>th</sup> day of July, 2006.



Lee A. Barkan, Incorporator  
c/o Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036

F 060706000 283

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CERTIFICATE OF INCORPORATION  
OF  
BRIDGE REGIONAL SYSTEM, INC.

Under Section 402 of the  
New York Not-for-Profit Corporation Law

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DEPARTMENT OF STATE

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Lee A. Barkan  
Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036  
(212) 969-3115

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State of New York }  
Department of State } ss:

*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 on* **December 28, 2006**



A handwritten signature in black ink, appearing to be "R. A. ...", is written over the seal area.

*Special Deputy Secretary of State*

F 061228001143

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BRIDGE REGIONAL SYSTEM, INC.

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

The undersigned, being the President of Bridge Regional System, Inc., a Not-for-Profit corporation duly organized under the Not-for-Profit Corporation Law of the State of New York (hereinafter referred to as the "Corporation"), does hereby certify, pursuant to Section 803 of the Not-for-Profit Corporation Law:

FIRST: The name of the Corporation is Bridge Regional System, Inc.

SECOND: The Corporation was formed under the Not-for-Profit Corporation Law of the State of New York and the Certificate of Incorporation was filed by the Department of State on July 6, 2006.

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The Corporation is a Type C corporation under Section 201 of the Not-for-Profit Corporation Law.

FOURTH: The amendment to the Certificate of Incorporation effected by this Certificate of Amendment (A) changes the name of the Corporation, (B) changes the purposes of the Corporation, and (C) changes the powers of the Corporation.

FIFTH: To accomplish the foregoing amendment to the Certificate of Incorporation,

(A) Article FIRST of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to read in its entirety as follows:

"FIRST: The name of the corporation is Bridge Regional Health System (the "Corporation")."

(B) Article THIRD of the Certificate of Incorporation, which describes the purposes for which the Corporation is formed, is hereby amended to read in its entirety as follows:

"THIRD: As a Type C corporation, the purposes for which the Corporation is formed and operated are exclusively charitable, scientific and educational as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The purposes of the Corporation shall be the following:

(a) To support the purposes, missions, objectives, operations and activities of Richmond University Medical Center and Bayonne Medical Center (each, a "Hospital Corporation" and jointly, the "Hospital Corporations"), which Hospital Corporations operate, or will operate upon receiving requisite regulatory approvals, the hospitals in Richmond County in the State of New York and Hudson County in the State of New Jersey, respectively known as Richmond University Medical Center and Bayonne Medical Center, and may operate such other hospitals and health care facilities as may be established or otherwise become part of the Hospital Corporations in the future;

(b) To provide strategic planning and coordination assistance to, act as the sole member of, and operate Richmond University Medical Center, a New York not-for-profit corporation;

(c) To provide strategic planning and coordination assistance to, act as the sole member of, and operate Bayonne Medical Center, a New Jersey not-for-profit corporation;

(d) To solicit contributions for the purpose of supporting the Hospital Corporations;

(e) To engage in all other activities that relate to or are incidental to the achievement of such purposes; and

(f) The public objective of the Corporation is to help the Hospital Corporations run more efficiently so that they may provide better and more affordable care to the public."

(C) Article FOURTH of the Certificate of Incorporation, which describes the powers of the Corporation, is hereby amended to read in its entirety as follows:

"FOURTH: (a) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes herein set forth, or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that,



notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the following purposes: educational, literary, or charitable purposes, as specified in Section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal taxation under Section 501(c)(3) of the Code; this shall include, without limitation, the powers to:

(i) receive and hold real and personal property in order to carry on the aims and purposes of the Corporation as expressed in this Certificate of Incorporation; to expend, contribute, disburse, develop and otherwise handle and dispose of the same for such aims and purposes, either directly or by contributions to other agencies, organizations or institutions organized for the same or similar aims and purposes, and otherwise to cooperate with and assist such other agencies, organizations and institutions in order to further the aims and purposes of the Corporation;

(ii) receive and maintain a fund or funds of personal or real property and apply the whole or any part of the income and/or principal thereof exclusively for the charitable purposes of the Corporation, as shall from time to time be found appropriate in connection with the foregoing purposes, and as are lawful for a not-for-profit corporation; and

(iii) by resolution of the Board of Trustees of the Corporation, to accept subventions from any member of the Corporation, or non-members, on terms and conditions not inconsistent with the bylaws of the Corporation and the Not-for-Profit Corporation Law, and to issue certificates therefor, and such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of Section 505 of the Not-for-Profit Corporation Law.

(b) As the sole member of the Hospital Corporations, the Corporation shall have the following reserved powers over each Hospital Corporation:

(i) The power to elect the Trustees of the Hospital Corporation and to remove the Trustees of the Hospital Corporation;

(ii) The power to authorize (A) the amendment and restatement of the Certificate of Incorporation and By-Laws of the Hospital Corporation; (B) the merger or consolidation of the Hospital Corporation with any other entity; (C) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the Hospital Corporation; and (D) the voluntary dissolution of the Hospital Corporation, and the plan of distribution of assets upon dissolution and the revocation of voluntary dissolution proceedings;

(iii) The power to approve affiliation agreements for education and research between academic institutions and the Hospital Corporation;

(iv) The power to approve (i) the Hospital Corporation's strategic and business plans and (ii) any proposed changes to the Hospital Corporation's mission statements;

(v) The power to approve the Hospital Corporation's (A) capital budgets, (B) operating budgets, and (C) non-budgeted material expenditures (classification of expenditures as "material" shall be established by the Corporation's Board of Trustees from time to time);

(vi) The power to approve the Hospital Corporation's investment policies;

(vii) The power to authorize the Hospital Corporation's participation in a joint venture, consolidation, affiliation, network, association, system or alliance of health care providers;

(viii) The power to authorize the Hospital Corporation's organization or formation of a new subsidiary or joint venture entity, arrangement or relationship in which the Hospital Corporation's ownership interest will be equal to or in excess of fifty percent (50%) of the net income or voting interests therein;

(ix) The power to authorize the Hospital Corporation's incurrence or guarantee of material indebtedness to any other person or entity (classification of an indebtedness as "material" shall be established by the Corporation's Board of Trustees from time to time) and a mortgage or pledge of, or grant

of a security interest in, property or assets of a hospital or related entity in connection with any such indebtedness;

(x) The power to approve the Hospital Corporation's human resource plans;

(xi) The power to approve accounting policies for the Hospital Corporation and approve the appointment of the Hospital Corporation's outside auditors;

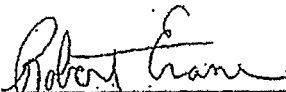
(xii) The power to authorize any vote by the Hospital Corporation of the capital stock, membership or partnership voting rights owned by the Hospital Corporation in any and all of its subsidiaries or affiliates with respect to any of the foregoing; and

(xiii) The power to hire and fire the President of the Hospital Corporation.

SIXTH: This amendment of the Certificate of Incorporation was authorized by the unanimous written consent of the board of Trustees of the Corporation. There are no members entitled to vote thereon.

SEVENTH: 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 or her is: c/o Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attention: Richard J. Zall, Esq..

IN WITNESS WHEREOF, this Certificate of Amendment of the Certificate of Incorporation has been signed and the statements made herein are affirmed as true under the penalties of perjury this 30th day of August, 2006.



Robert Evans

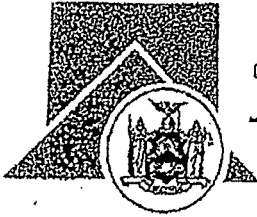
President, Bridge Regional System, Inc.

12/27/2006

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NO. 159 0005



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

## PUBLIC HEALTH COUNCIL

December 22, 2006

Ms. Erin Petrosino  
Vice President, Mergers and Acquisitions  
Bayonne Medical Center  
29 East 29<sup>th</sup> Street  
Bayonne, New Jersey 07002

Re: Certificate of Amendment of the Certificate of Incorporation of Bridge Regional System, Inc.

Dear Ms. Petrosino:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 10th day of November, 2006, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Bridge Regional System, Inc., dated August 30, 2006.

Sincerely,

Donna W. Peterson  
Executive Secretary

/cf

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The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

THE ATTORNEY GENERAL'S NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

ELIOT SPITZER  
ATTORNEY GENERAL  
STATE OF NEW YORK

*Paula Spitzer* 12-27-06  
ASSISTANT ATTORNEY GENERAL DATE

by:

Date: \_\_\_\_\_

I, RACHEL A. ADAMS, a Justice of the Supreme Court of the State of

New York for the 2<sup>ND</sup> Judicial District do hereby approve of the foregoing

Certificate of Amendment of the Certificate of Incorporation of Bridge Regional Systems, Inc.

and consent that the same be filed.

Date: 12-28-06

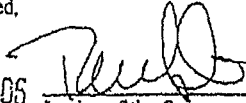


J.S.C.

Rachel A. Adams,  
Acting Justice Supreme Court

I, RACHEL A. ADAMS, a Justice of the Supreme Court of the State of New York, 2<sup>ND</sup> Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Bridge Regional System, Inc. and consent that the same be filed.

DEC 28 2005



Rachel A. Adams,  
Acting Justice Supreme Court

Justice of the Supreme Court  
of the State of New York,  
2<sup>ND</sup> Judicial District

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BRIDGE REGIONAL SYSTEM, INC.

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

FILED  
2006 DEC 28 PM 4:09

*DES/NTS*

DRAWDOWN

Lee A. Barkan, Esq.  
Proskauer Rose LLP  
1585 Broadway  
New York, New York 10036  
212.969.3115

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 28 2006

TAX \$             
%           

*Ice*  
*Richmond*

# **Exhibit**

# **B**



**BYLAWS**

**OF**

**BRIDGE REGIONAL HEALTH SYSTEM**

**Dated: January 1, 2007**

**Amended: by unanimous written consent of The Board of Trustees**

**Revised December 12, 2008**

**Revised June 30, 2009**

**Revised June 26, 2018**

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**BYLAWS**  
**OF**  
**BRIDGE REGIONAL HEALTH SYSTEM**

**ARTICLE I**  
**THE CORPORATION**

1. Principal Office. Bridge Regional Health System (the “Corporation”) shall have its principal office in Richmond County, New York, or at such other place as may from time to time be determined by its Board of Trustees (herein the “Board”).

2. Powers. The Corporation shall have all of the powers enumerated in the New York Not-for-Profit Corporation Law, as such may be amended from time to time; *provided, however*, that the Corporation shall exercise its powers only in furtherance of its charitable purpose, as such term is defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder.

3. Purposes.

- (a) The Corporation shall at all times be operated exclusively for charitable purposes, as defined in Section 501(c)(3) of the Code, as more specifically set forth in the Corporation’s Certificate of Incorporation, for the purpose of engaging in various activities that further, support, benefit or carry out the purposes, missions, objectives, operations and activities of Richmond Medical Center (the “Hospital Corporation”), which will operate a hospital in Richmond County in the State of New York, known as Richmond University Medical Center. In no event shall the Corporation engage in carrying on propaganda, attempt to influence legislation, or participate or intervene in any political campaign.
- (b) The Corporation shall serve as the sole member of the Hospital Corporation, and in that capacity shall have the following reserved powers over the Hospital Corporation:
  - (i) The power to elect the Trustees of the Hospital Corporation and to remove the Trustees of the Hospital Corporation;
  - (ii) The power to authorize (A) the amendment and restatement of the Certificate of Incorporation and By-Laws of the Hospital Corporation; (B) the merger or consolidation of the Hospital Corporation with any other entity; (C) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the Hospital Corporation; and (D) the voluntary dissolution of the Hospital Corporation, and the plan of

distribution of assets upon dissolution and the revocation of voluntary dissolution proceedings;

- (iii) The power to approve affiliation agreements for education and research between academic institutions and the Hospital Corporation;
- (iv) The power to approve (i) the Hospital Corporation's strategic and business plans and (ii) any proposed changes to the Hospital Corporation's mission statements;
- (v) The power to approve the Hospital Corporation's (A) capital budgets, (B) operating budgets, and (C) non-budgeted material expenditures (classification of expenditures as "material" shall be established by the Board from time to time);
- (vi) The power to approve the Hospital Corporation's investment policies;
- (vii) The power to authorize the Hospital Corporation's participation in a joint venture, consolidation, affiliation, network, association, system or alliance of health care providers;
- (viii) The power to authorize the Hospital Corporation's organization or formation of a new subsidiary or joint venture entity, arrangement or relationship in which the Hospital Corporation's ownership interest will be equal to or in excess of fifty percent (50%) of the net income or voting interests therein;
- (ix) The power to authorize the Hospital Corporation's incurrence or guarantee of material indebtedness to any other person or entity (classification of an indebtedness as "material" shall be established by the Board from time to time) and a mortgage or pledge of, or grant of a security interest in, property or assets of a hospital or related entity in connection with any such indebtedness;
- (x) The power to approve the Hospital Corporation's human resource plans;
- (xi) The power to approve accounting policies for the Hospital Corporation and approve the appointment of the Hospital Corporation's outside auditors;
- (xii) The power to authorize any vote by the Hospital Corporation of the capital stock, membership or partnership voting rights owned by the Hospital Corporation in any and all of its subsidiaries or affiliates with respect to any of the foregoing; and
- (xiii) The power to hire and fire the President of the Hospital Corporation.

**ARTICLE II**  
**BOARD OF TRUSTEES**

1. Powers and Number. The Board shall have general power to control and manage the affairs and property of the Corporation in accordance with the purposes and limitations set forth in the Certificate of Incorporation. The number of Trustees shall be at least three (3) but no more than twenty-four (24) and will include all members of the Executive Committee. The number may be increased or decreased, but no decrease shall shorten the term of any incumbent Trustee. The President of the Corporation and the President of the Medical Staff shall be *ex-officio* members of the Board with vote and shall be counted as a regular member of the Board for purposes of determining whether a quorum is present and for all other purposes.

2. Qualifications of Trustees. Any person over the age of twenty-one (21) years shall be eligible for membership on the Board. Trustees shall be selected for their ability to contribute to and effectively fulfill their responsibilities as Trustees of the Corporation.

3. Election and Term of Office.

(a) On the date these Bylaws are revised, the members of the Board shall be those individuals set forth in *Exhibit A* annexed hereto.

(b) Effective prior to June 26, 2018. At the first annual meeting of the Board following the adoption of these Bylaws, or as soon as practicable thereafter, the elected members of the Board shall be divided into three (3) classes, designated Class A, Class B and Class C, each class shall be as nearly equal in number as possible, having not less than three (3) nor more than nine (9) Trustees. The term of office of the initial Class A Trustees shall expire at the next annual meeting of the Board. The term of office of the initial Class B Trustees shall expire at the second succeeding annual meeting of the Board. The term of office of the initial Class C Trustees shall expire at the third succeeding annual meeting of the Board. At each annual meeting of the Board, Trustees to replace those whose terms expire shall be elected, after giving consideration to the recommendations of the Corporation's Governance Committee, to hold office until the third succeeding annual meeting. Each Trustee shall be elected to serve (subject to the provisions of this *Article II*) until such Trustee's respective successor has been elected and qualified. Trustees may be elected for a maximum of four (4) three (3) year terms each, after which they will be ineligible for further service on the Board, provided that after a one year absence from the Board, a former Trustee will again be eligible for election to the Board.

(c) Effective as of June 26, 2018. The practice of dividing the Board of Trustees into classes A, B and C shall be eliminated, and all incumbent Trustees (i.e., all Trustees who are members as of June 26, 2018) shall be viewed as a single group, identified individually by their service commencement date. At each annual meeting of the Board, Trustees to replace those whose terms expire shall be elected, after giving consideration to the recommendations of

the Corporation's Governance Committee, to hold office until their term expires (subject to the provisions of this Article II) and until such Trustee's respective successor has been elected and qualified. Trustees may be elected for a maximum term of fifteen (15) years. All incumbent Trustees shall be allowed to serve a maximum term of fifteen (15) years. The maximum number of years of continued service as a trustee will be fifteen (15) years, after which a Trustee will be ineligible for further service on the Board of Trustees, provided that after a one year absence from the Board of Trustees, a former Trustee will again be eligible for election to the Board of Trustees.

- (d) Prior to the annual meeting of the Board, the chair of the Governance Committee of the Corporation shall announce that recommendations of individuals to serve as members of the Board and officers of the Corporation must be submitted by any member of the Board, in writing, to the chair of the Governance Committee no later than June 1st of that year. Recommendations shall include a resume or curriculum vitae of the person being recommended. Annually, the Governance Committee shall report back to the full Board with its recommendations of officers and members of the Board. There shall be no floor nominations. The formal election of officers and members of the Board shall occur at the annual meeting of the Board in June.

4. Trustee Emeritus. The Board, in its discretion, may confer the title of Trustee Emeritus upon any Trustee who shall have served as a Trustee for a period of four (4) terms of three (3) years each.

5. Removal. Any Trustee may be removed from such position for cause by a two-thirds (2/3) vote of the entire Board.

6. Resignation. Any Trustee may resign from office at any time by delivering a resignation in writing to the Board or to the President and the acceptance of the resignation, unless required by its terms, shall not be necessary to make the resignation effective.

7. Vacancies. Vacancies on the Board may be filled by election by the Board upon recommendation of the Corporation's Governance Committee. A Trustee so elected shall hold office for the balance of the term of the vacancy and until the election and qualification of the Trustee's successor.

8. Regular Meetings. Unless otherwise provided by resolution of the Board, the Board shall hold a minimum of one regular meeting to be held in June on a date and at a time specified by the Board.

9. Special Meetings. Special meetings of the Board may be called at any time and place by the Chair, the Vice Chair, the President or by any six (6) members of the Board.

10. Annual Meetings. The regular meeting in the month of June shall also be the Annual meeting of the Board and will be held on a date and time specified by the Board.

11. Notice of Meetings. Notice of the time and place of each regular, special or annual meeting of the Board, and, to the extent possible, a written agenda stating all matters upon which action is proposed to be taken, shall be mailed to each Trustee, postage prepaid, addressed to such Trustee at the Trustee's residence or usual place of business (or at such other address as the Trustee may have designated in a written request filed with the Secretary), or shall be emailed to each Trustee at an email address designated by the Trustee, at least five (5) days before the day on which the meeting is to be held; *provided, however*, that notice of special meetings to discuss matters requiring prompt action may be sent to the Trustee at such address by hand delivery, facsimile, email or other electronic means, or by overnight or other courier service, no less than forty-eight (48) hours before the time at which such meeting is to be held. Notice of a meeting need not be given to any Trustee who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

12. Quorum and Voting. At all meetings of the Board, a majority of the entire Board shall constitute a quorum for the transaction of business or of any specified item of business. Except as otherwise provided by law or these Bylaws, at any meeting of the Board at which a quorum is present, the vote of a majority of the Trustees present at the time of the vote shall be the act of the Board.

13. Organization of Meetings. Meetings of the Board shall be presided over by the Chair, or in the absence of the Chair, the Vice Chair, unless otherwise directed by the Chair.

14. Order of Business. The order of business at each regular meeting of the Board shall be as follows:

- Approval of Minutes
- Report of Officers:
  - Chair
  - Treasurer
  - President
- Committee Reports:
  - Standing Committees
  - Special Committees
- Unfinished Business
- New Business
- Adjournment

15. Attendance at Board Meetings. A Trustee who is absent from three (3) consecutive Board meetings shall automatically be deemed to have tendered his or her resignation from the Board. However, the Board may reinstate such Trustee in that position if it determines such retention is warranted.

16. Action by the Board. Any action required or permitted to be taken by the Board or by any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action which consent may be obtained by email or other electronic means. The resolution and the written consents shall



be inserted in the minute book of the Corporation with the minutes of the proceedings of the Board or committee. Participation of one or more Trustees by conference telephone allowing all persons participating in the meeting to hear each other at the same time shall constitute presence at a meeting.

17. Committees of the Board. The Board, by resolution adopted by a majority of the entire Board, shall establish and appoint an Executive Committee and a Governance Committee, and may establish and appoint any other Standing Committees. The Executive Committee shall consist of the Chair, the Vice-Chair, the President of the Hospital Corporation, the Secretary, the Treasurer and the Chair(s) of the Finance, Board Quality and Strategic Planning Committees. The immediate past Chair of the Board shall also be a member of the Executive Committee, *ex-officio*, with vote. Each committee so appointed shall consist of three (3) or more Trustees and, to the extent provided in the resolution establishing it, shall have all the authority of the Board, except as to the following matters:

- (b) the filling of vacancies on the Board or on any committee;
- (c) the amendment or repeal of these Bylaws or the adoption of new Bylaws; and
- (d) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.

18. Committees of the Corporation. The Board may elect or appoint committees of the Corporation consisting of such persons who may, but need not be, Trustees, as the Board shall designate. These committees shall have such duties as permitted by law and as deemed appropriate by the Board.

19. Annual Report. At each annual meeting of the Board, the Treasurer shall present a verified report showing in appropriate detail the following or as otherwise may be required by law: (a) the assets and liabilities of the Corporation as of the end of a twelve (12) month fiscal period terminating not more than six (6) months prior to the meeting; (b) the principal changes in assets and liabilities during that fiscal period; (c) the revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes, for that fiscal period; and (d) the expenses or disbursements of the Corporation, for both general and restricted purposes during said fiscal period. The foregoing report shall be filed with the records of the Corporation and a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting.

### **ARTICLE III**

#### **OFFICERS, EMPLOYEES AND AGENTS**

1. Officers. The officers of the Corporation shall consist of a Chair, a Vice Chair, a President, a Secretary, a Treasurer, and such other officers, as the Board may from time to time elect. The Chair, Vice Chair, Secretary and Treasurer shall be elected by the Board from among the members of the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

2. Election, Term of Office and Removal.

- (a) President. The President shall be appointed to such office by the Board and shall serve at the will of the Board, in accordance with the terms of a written employment agreement.
- (b) All Other Officers. Each other officer shall be elected by the Board after each annual meeting of the Board and shall hold office for one year or until his or her respective successor shall have been elected and duly qualified, or until his or her death, resignation or removal. The Governance Committee shall nominate a slate of candidates to stand for election and shall submit its written report to the Board at the March meeting.
- (c) Removal. Election of an officer shall not itself create any contract or employment rights in such person. Any officer of the Corporation may be removed, with or without cause, by a vote of a two-thirds (2/3) of the entire Board.

3. Other Agents and Employees. The Board may from time to time appoint such agents and employees as it shall deem necessary, each of whom shall hold such position at the pleasure of the Board and shall have such authority, perform such duties and receive such reasonable compensation, if any, as the Board may from time to time determine.

4. Vacancies. Any vacancy in any office may be filled by the Board upon recommendation of the Governance Committee. Any officer so elected shall hold office until the next annual meeting of the Board, or until the election and qualification of his or her successor.

5. Chair; Powers and Duties. The Chair shall:

- (a) preside at all meetings of the Board and shall appoint, with the advice and consent of the Board, where appropriate, all standing and special committees and their chairs;
- (b) be an *ex-officio* member with vote of all committees of the Board;
- (c) have the power to sign, on behalf of the Corporation, checks, contracts and other instruments pertinent to the Corporation;
- (d) have all powers and perform all duties normally incident to and vested in the office of the chairman of the board of a corporation; and
- (e) be chair of the Executive Committee of the Board, and shall perform such other duties as the Board shall designate from time to time.

6. Vice Chair; Powers and Duties. The Vice Chair shall:

- (a) perform the duties of and have the rights and powers of the Chair during the absence or disability of the Chair; and
- (b) perform such other duties and have such other powers as the Board or the Chair shall designate from time to time.

7. President; Powers and Duties. The President shall:

- (a) be the Chief Executive Officer of the Corporation and shall have complete charge of all administrative and fiscal activities of the Corporation, subject only to the restrictions of law, these Bylaws and the policies determined by the Board;
- (b) employ such Vice Presidents as shall be required to conduct the business and affairs of the Corporation;
- (c) attend all meetings of the Board, have the responsibility to participate in all discussions and be a regular member of the Board with vote;
- (d) be an *ex-officio* member with vote of all committees of the Board, except the Governance Committee, where he or she shall be an *ex-officio* member without vote;
- (e) have the power, on behalf of the Board, to perform all acts, execute and deliver all documents including checks, contracts and other instruments and take all steps that he or she may deem necessary or prudent in order to effectuate the actions and policies of the Board and the Executive Committee of the Board; however, the President shall not enter into any contracts, leases or other document relating to real estate, without the approval of the Board;
- (f) perform all other duties normally incident to the office of president of a corporation, including the following specific duties, the enumeration of which shall not be considered as any limitation upon the foregoing general powers and responsibilities:
  - (i) supervise all business affairs of the Corporation and assure that sound business and fiscal policies are established and followed;
  - (ii) select, employ, control and discharge all employees of the Corporation; and
  - (iii) establish effective lines of communication between the Board and the administration of the Corporation.

8. Secretary; Powers and Duties. The Secretary shall:

- (a) attend all meetings of the Board and keep and preserve minutes of the proceedings and actions taken at such meetings in books provided therefore by the Corporation;
  - (b) attest all documents executed on behalf of the Corporation;
  - (c) give all notices of meetings as required under these Bylaws, the Certificate of Incorporation or law;
  - (d) maintain a record of these Bylaws and all amendments thereto in a book provided therefore by the Corporation;
  - (e) have custody of the seal of the Corporation and authority to affix same to all instruments where its use is required;
  - (f) have custody of all documents of the Corporation;
  - (g) perform all duties normally incident to and vested in the office of the secretary of a corporation; and
  - (h) perform such other duties as the Board shall assign from time to time.
9. Treasurer; Powers and Duties. The Treasurer shall:
- (a) open accounts in the name of the Corporation in such banks, brokerages or depositories as the Board shall direct;
  - (b) keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all moneys and other valuable effects of the Corporation in the name and to the credit of the Corporation in such banks, brokerages or depositories;
  - (c) see to it that an accurate accounting system is maintained which shall reflect a true and accurate financial position of the Corporation;
  - (d) whenever required by the Board, at all reasonable times exhibit the books and accounts to any officer or Trustee of the Corporation;
  - (e) perform all duties incident to the office of the Treasurer and such other duties as shall from time to time be assigned by the Board; and
  - (f) if required by the Board, file such security for the faithful performance of his or her duties as the Board may require.

**ARTICLE IV**  
**CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS**

1. Checks, Notes and Contracts.

- (a) The Board is authorized to select the banks, brokerages or depositories it deems proper for the funds of the Corporation.
- (b) All checks, drafts and orders for payment of monies shall be signed in the name of the Corporation and in its behalf by the Chair, Vice Chair, President, Treasurer or by such other officers or agents as the Board shall designate from time to time.
- (c) The Board shall determine who shall be authorized from time to time on the Corporation's behalf to enter into contracts or to execute and deliver other documents and instruments. Contracts, conveyances or other instruments, when authorized by the Board without specification as to the executing officer, may be executed by the Chair, Vice President or the President of the Corporation in the name and on behalf of the Corporation, and the Secretary or any Assistant Secretary may affix the seal of the Corporation thereto.

2. Investments. The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the Board may deem desirable.

#### **ARTICLE V** **BOOKS**

There shall be kept at an office of the Corporation correct books of account of the activities and transactions of the Corporation. The Corporation's minute book, which shall contain a copy of the certificate of incorporation, a copy of these Bylaws, and all minutes of meetings of the Board and the Executive Committee, shall be kept at an office of the Corporation or at the office of the Corporation's counsel, as determined by the Board.

#### **ARTICLE VI** **FISCAL YEAR**

The fiscal year of the Corporation shall be determined by the Board.

#### **ARTICLE VII** **INDEMNIFICATION**

1. Indemnification. The Corporation shall indemnify each Trustee and each officer, employee and agent (in cases of employees and agents, those employees and agents, and only those employees and agents, to whom the Board shall determine, before or after their engagement, shall be afforded the protection of these indemnification provisions) of the Corporation who is a natural person, such person's heirs, executors and administrators (whether or not natural persons) and all other natural persons whom the Corporation is authorized to indemnify under the provisions of the Not-for-Profit Corporation Law of the State of New York (including, without limitation, a person who is or was serving at the written request of the Corporation as a director, officer, partner, trustee, employee or agent (or in a like capacity) of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise), to the fullest extent that such indemnification may be lawful under the Not-for-Profit Corporation Law, (a) against all expenses (including, without

limitation, attorneys' and other experts' fees and disbursements), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any actual or threatened action, suit or other proceeding, whether civil, criminal, administrative, investigative or an arbitration, or in connection with any appeal therein, or otherwise, and (b) against all expenses (including, without limitation, attorneys' and other experts' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of any action, suit or other proceeding by or in the right of the Corporation or in connection with any appeal therein, or otherwise; and no provision of these Bylaws is intended to be construed as limiting, prohibiting, denying or abrogating any of the general or specific powers or rights conferred under the Not-for-Profit Corporation Law upon the Corporation to furnish, or upon any court to award, such indemnification, or such other indemnification as may otherwise be authorized pursuant to the Not-for-Profit Corporation Law or any other law now or hereafter in effect, including, without limitation, indemnification of any employees or agents of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification provided for herein shall continue as to a person who has ceased to be a member of the Board or an officer, employee or agent of the Corporation and shall inure to the benefit of such person's heirs, executors and administrators.

2. Determinations. If and to the extent such indemnification shall require a determination whether the relevant person met the applicable standard of conduct set forth in the Not-for-Profit Corporation Law, such determination shall be made expeditiously at the cost of the Corporation after a request for the same from the person seeking indemnification. If indemnification is to be given or an advance of expenses is to be made upon a determination by independent legal counsel, such counsel may be the regular counsel to the Corporation. In rendering such opinion, such counsel shall be entitled to rely upon statements of fact furnished to them by persons reasonably believed by them to be credible, and such counsel shall have no liability or responsibility for the accuracy of the facts so relied upon, nor shall such counsel have any liability for the exercise of their own judgment as to matters of fact or law forming a part of the process of providing such opinion. The fees and disbursements of counsel engaged to render such opinion shall be paid by the Corporation whether or not such counsel ultimately are able to render the opinion that is the subject of their engagement.

3. Combinations. Unless the Board shall determine otherwise with reference to a particular merger or consolidation or other combination, for purposes of this *Article VII*, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation or other combination which, if its separate existence had continued, would have had power and authority to indemnify its trustees, directors, officers, employees or agents, so that any person who is or was a trustee, director, officer, employee or agent of such constituent corporation, or is or was serving at the written request of such constituent corporation as a trustee, director, officer, partner, employee or agent (or in a like capacity) of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this *Article VII* with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

4. Advances of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit

or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the member of the Board or an officer, employee or agent of the Corporation to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation as authorized by the Not-for-Profit Corporation Law, and then, only to the extent such advances do not exceed the indemnification to which such person is entitled.

5. Insurance. Subject to Section 726 of the New York Not-for-Profit Corporation Law, the Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a member of the Board or an officer, employee or agent of the Corporation or is or was serving at the written request of the Corporation as a director, trustee, officer, partner, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of these Bylaws or otherwise.

6. Employee Benefit Plans. References herein to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a corporate agent that imposes duties on, or involves services by, the corporate agent with respect to an employee benefit plan, its participants or beneficiaries. A person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner not opposed to the best interests of the Corporation.

## **ARTICLE VIII**

### **CONFLICTS OF INTEREST**

1. No Trustee, officer or salaried employee of the Corporation shall engage in any activity or relationship which shall in any way conflict or be incompatible with the performance of the functions and duties of the office or position held within the Corporation. No Trustee shall allow, at any time, a situation to arise which would place him in a position of conflict of interest or would jeopardize the Corporation's exempt status under the Code. The Corporation shall adopted a detailed Conflicts of Interest Policy which supplements these provisions and which shall be followed by all Trustees, officers and salaried employees.

2. No Trustee shall receive compensation or benefit of any kind for his or her service as a Trustee, except the compensation paid to the President for the performance of administrative and contractual duties and except for reimbursement of reasonable expenses incurred in connection with such service.

3. No transaction involving benefit or payment of any kind to a Trustee or to an organization of which a Trustee is a member, officer, director or ten percent 10% stockholder shall be entered into by the Corporation without full disclosure by the interested Trustee and the approval of the Board. No Trustee so involved may have a vote in such approval or be counted as part of a quorum in which such a vote is made.

4. No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to any Trustee or officer, or to any other corporation, firm, association or other entity in which one or more of the Trustees or officers are directors or officers or hold a substantial financial interest, except, if the Corporation is a Type B corporation, to another Type B corporation.

5. Every Trustee, in a manner and form to be prescribed by the Governance Committee, shall annually make a full disclosure of any possible conflict of interest to the Board.

6. If the Board determines, in its sole discretion, the existence of a conflict or appearance of same, the Board shall resolve the matter as it determines appropriate. The procedure shall include, but not be limited to, disqualification of the affected member from voting on the question, making a quorum or continued appearance at the meeting.

#### **ARTICLE IX BONDING**

The Board may secure the fidelity of any or all officers or other agents of the Corporation by bond or otherwise, on such terms and with such surety or sureties, conditions, penalties or securities as the Board shall require.

#### **ARTICLE X EXEMPT PURPOSE**

1. Exempt Purpose. Notwithstanding any other provision of these Bylaws, no Trustee, officer, employee or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt under Section 501(c)(3) of the Code, or by an organization contributions to which are deductible under Section 170(c)(2), Section 2055(a)(2), and Section 2522(a)(2) of the Code.

2. Prohibition on Sharing in Corporate Earnings. No Trustee, officer or employee, member of a committee, or person connected with the Corporation, or any other private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided, that this shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as shall be fixed by the Board; and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation.

#### **ARTICLE XI AMENDMENTS**

These Bylaws may be altered, amended or repealed solely by action of the Board.



*Exhibit A*  
*Current Trustees*  
[Attached]

# **Exhibit**

# **C**

**PLAN OF DISSOLUTION  
OF  
BRIDGE REGIONAL HEALTH SYSTEM, INC.**

The Board of Directors of Bridge Regional Health System, Inc. ("Corporation"), having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and in the best interests of the Corporation, and the Board having approved a Plan for a voluntary dissolution of the Corporation, does hereby resolve, that the Corporation be dissolved in accordance with the following Plan:

**PROCEDURE FOR DISSOLUTION.**

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. The New York State Attorney General and the New York State Department of Public Health and Health Planning Council must consent to the dissolution of the Corporation.
3. The Corporation has no assets and no known liabilities.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Name:

Title:

# **Exhibit**

# **D**

**RESOLUTIONS  
OF THE  
BOARD OF DIRECTORS  
OF  
BRIDGE REGIONAL HEALTH SYSTEM**

*Approving Dissolution of Bridge Regional Health System*

The Board of Directors of Bridge Regional Health System ("Corporation"), at a meeting duly noticed and held, discussed the following in connection with the proposed dissolution of the Corporation:

- The Corporation is a New York not-for-profit corporation formed to support the purposes, missions, objectives, operations and activities of Richmond University Medical Center ("RUMC") and Bayonne Medical Center.
- At the time the Corporation was formed, RUMC was part of the St. Vincent's Health System and was the only hospital that survived a bankruptcy proceeding. The Corporation was formed to facilitate the acquisition of RUMC assets from the bankruptcy proceeds.
- Currently, the only activity of the Corporation is ratifying decisions of the RUMC Board of Directors (there are mirror boards).
- The Corporation is no longer the sole member of Bayonne Medical Center which is now part of the CarePoint Health system.
- The Corporation never had any revenues and does not currently hold any assets or liabilities.
- Board of Directors has considered the advisability of voluntarily dissolving the Corporation.

Based on the foregoing, it is

RESOLVED: that the Board of Directors, after due consideration, has deemed it advisable and in the best interests of the Corporation to voluntarily dissolve because the purpose for this the Corporation was formed is no longer needed; and it is further

RESOLVED: that the Board of Directors does hereby adopt and approve the Plan of Dissolution, in the form attached hereto; and it is further

RESOLVED: that the Board of Directors hereby authorizes the filing of a Certificate of Dissolution with the New York State Department of State, subject to the consent of the Attorney General's Office and the New York State Department of Health Public Health and Planning Council; and it is further

RESOLVED: that the directors of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions.

IN WITNESS WHEREOF, I certify that the foregoing resolutions were approved at a meeting duly noticed and held on June \_\_\_\_, 2023.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title:

**ATTACHMENT:**

Plan of Dissolution

**VOTING INFORMATION**

Total # Directors: \_\_\_\_\_

Total # of Directors Present: \_\_\_\_\_

Votes Approving: \_\_\_\_\_

Votes Against: \_\_\_\_\_

Votes Abstained: \_\_\_\_\_

**PLAN OF DISSOLUTION  
OF  
BRIDGE REGIONAL HEALTH SYSTEM, INC.**

The Board of Directors of Bridge Regional Health System, Inc. ("Corporation"), having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and in the best interests of the Corporation, and the Board having approved a Plan for a voluntary dissolution of the Corporation, does hereby resolve, that the Corporation be dissolved in accordance with the following Plan:

**PROCEDURE FOR DISSOLUTION**

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. The New York State Attorney General and the New York State Department of Public Health and Health Planning Council must consent to the dissolution of the Corporation.
3. The Corporation has no assets and no known liabilities.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Name:

Title:

**CERTIFICATE OF DISSOLUTION**  
**OF**  
**BRIDGE REGIONAL HEALTH SYSTEM, INC.**  
**Under Section 1003 of the Not-for-Profit Corporation Law**

THE UNDERSIGNED, being the \_\_\_\_\_ of Bridge Regional Health System, Inc. ("Corporation"), does hereby certify:

1. The name of this Corporation is Bridge Regional Health System, Inc.
2. The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of New York on July 2, 2006, and amended by the filing of a Certificate of Amendment of the Certificate of Incorporation on August 30, 2006.
3. The names and addresses of the remaining directors and officers of the Corporation are as follows:

<b>NAME/TITLE</b>	<b>ADDRESS</b>
Timothy Colton Harrison/Chair and Director	80 Benedict Road Staten Island, NY 10304
John C. Santora/Vice Chair and Director	220 Chelsea Street Staten Island, NY 10307
Daniel Messina, Ph.D./ President, CEO and <i>Ex Officio</i> Director	17 Coverly Place Staten Island, NY 10301
Francesco Rotatori, M.D./President of the Medical Staff and <i>Ex Officio</i> Director	227 92nd Street Brooklyn NY 11209
Jill O'Donnell-Tormey, Ph.D./ Secretary and Director	263 Howard Ave. Staten Island, NY 10301
Pankaj R. Patel, M.D./Assistant Secretary and Director	34 Amy Court Staten Island, NY 10314
David McGoy/Director	9 Davis Court Staten Island, NY 10310
Alan Bernikow, CPA/Director	207 Benedict Ave. Staten Island, NY 10314
Marcello Sciarrino/Director	9 Benedict Road Staten Island, NY 10304
Robert Urs/Director	14 Silver Ct Staten Island, NY 10301
Thomas Delmastro/Treasurer and Director	85 Dutchess Avenue Staten Island, NY 10304
Sara Warren Gardner, MPH/Director	47 Parkview Place Staten Island, NY 10310



Kenneth Corey/Director	66 Florence Place Staten Island, NY 10309
Steven M. Klein/ Director	11 Woodview Drive Howell, NJ 07731
Anita Laremont/Director	10 Overlook Drive Staten Island, NY 10304
Courtney Moore/Director	5 Scheffelin Ave, Staten Island, NY 10306
Wing Law/Director	120 McVeigh Ave Staten Island, NY
Hon. Rosemarie Maldonado/Director	26 Harbor View Court Staten Island, NY 10301
John Vincent Scalia, Sr./Director	28 Eltingville Blvd. Staten Island, NY 10312
Samala Swamy, M.D./Director	96 Benedict Road Staten Island, NY 10304
John Tapinis/Director	6 Twin Lakes Drive Colts Neck NJ 07722
Joe Torres/Director	199 Benedict Ave Staten Island, NY 10314

4. The Corporation is a charitable corporation.
5. At the time of authorization of the Corporation's Plan of Dissolution as provided in Not-for-Profit Corporation Law Section 1002, the Corporation holds no assets which are legally required to be used for a particular purpose.
6. The Corporation elects to dissolve.
7. The dissolution was authorized by at least two-third vote of directors present at a meeting at which a quorum was present. The corporation has no members.
8. The Corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing, a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.

IN WITNESS WHEREOF, the undersigned has signed this Certificate this \_\_\_\_ day of \_\_\_\_\_, 2023.

---

Name:  
Title:

**CERTIFICATE OF DISSOLUTION**  
**OF**  
**BRIDGE REGIONAL HEALTH SYSTEM**  
**Under Section 1003 of the Not-for-Profit Corporation Law**

**FILED BY:**

**Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604**

**RESOLUTIONS  
OF THE  
BOARD OF DIRECTORS  
OF  
BRIDGE REGIONAL HEALTH SYSTEM**

*Approving Dissolution of Bridge Regional Health System*

The Board of Directors of Bridge Regional Health System ("Corporation"), at a meeting duly noticed and held, discussed the following in connection with the proposed dissolution of the Corporation:

- The Corporation is a New York not-for-profit corporation formed to support the purposes, missions, objectives, operations and activities of Richmond University Medical Center ("RUMC") and Bayonne Medical Center.
- At the time the Corporation was formed, RUMC was part of the St. Vincent's Health System and was the only hospital that survived a bankruptcy proceeding. The Corporation was formed to facilitate the acquisition of RUMC assets from the bankruptcy proceeds.
- Currently, the only activity of the Corporation is ratifying decisions of the RUMC Board of Directors (there are mirror boards).
- The Corporation is no longer the sole member of Bayonne Medical Center which is now part of the CarePoint Health system.
- The Corporation never had any revenues and does not currently hold any assets or liabilities.
- Board of Directors has considered the advisability of voluntarily dissolving the Corporation.

Based on the foregoing, it is

RESOLVED: that the Board of Directors, after due consideration, has deemed it advisable and in the best interests of the Corporation to voluntarily dissolve because the purpose for this the Corporation was formed is no longer needed; and it is further

RESOLVED: that the Board of Directors does hereby adopt and approve the Plan of Dissolution, in the form attached hereto; and it is further

RESOLVED: that the Board of Directors hereby authorizes the filing of a Certificate of Dissolution with the New York State Department of State, subject to the consent of the Attorney General's Office and the New York State Department of Health Public Health and Planning Council; and it is further

RESOLVED: that the directors of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions.

IN WITNESS WHEREOF, I certify that the foregoing resolutions were approved at a meeting duly noticed and held on June 27, 2023.

Dated: July 26, 2023

Katherine A. Connors

Name: Katherine A. Connors  
Title: Secretary

ATTACHMENT:

Plan of Dissolution

VOTING INFORMATION

Total # Directors:	<u>20</u>
Total # of Directors Present:	<u>18</u>
Votes Approving:	<u>18</u>
Votes Against:	<u>0</u>
Votes Abstained:	<u>0</u>

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 20th day of June 2024, approves the filing of the Certificate of Dissolution of Bridge Regional Health System, Inc., as attached.



## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Alexa Nagy, Senior Attorney  
Bureau of Program Counsel  
Division of Legal Affairs

**Date:** May 20, 2024

**Subject:** Proposed Dissolution of Moses-Ludington Nursing Home Company, Inc.

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

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel requesting approval of the proposed Verified Petition, with all exhibits, and Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc., dated March 20, 2024;
- 3) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc., dated November 20, 2023;
- 4) A photocopy of the Certificate of Incorporation for Moses-Ludington Nursing Home Company, Inc., dated February 16, 1973, filed on May 4, 1973, consented to by the Commissioner of Health on April 13, 1973, and the Consent to File Letter of the Public Health Council for Moses-Ludington Nursing Home Company, Inc., dated April 17, 1973;
- 5) A photocopy of the Certificate of Amendment of the Certificate of Incorporation of Moses-Ludington Nursing Home Company, Inc., dated July 2, 1998, and filed on July 14, 1998;
- 6) A copy of the Corporate Bylaws of Moses-Ludington Nursing Home Company, Inc., amended and restated, adopted as of March 18, 2014;
- 7) A verified petition seeking the Attorney General's approval of the sale of assets of Moses-Ludington Nursing Home Company, Inc., dated March 12, 2018;
- 8) A copy of the Resolutions of the Board of Directors of Moses-Ludington Nursing Home Company, Inc., dated November 16, 2023, approving and authorizing the dissolution; and
- 9) An executed, proposed Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc.

Attachments

## MEMORANDUM

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

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

**Date:** May 20, 2024

**Subject:** Proposed Dissolution of Moses-Ludington Nursing Home Company, Inc.

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Moses-Ludington Nursing Home Company, Inc. requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003.

The Public Health Council consented to the filing of Moses-Ludington Nursing Home Company Inc.'s Certificate of Incorporation on April 17, 1973, which was subsequently filed with the New York State Department of State on May 4, 1973.

Moses-Ludington Nursing Home Company, Inc. was the licensed operator of a nursing home and adult home located at 1019 Wicker Street, in Ticonderoga, New York. Moses-Ludington Nursing Home Company, Inc. is dissolving because the Corporation experienced several years of losses and as a result, could not continue operating. Moses-Ludington Nursing Home Company, Inc. sold its facilities in 2018, which sale was approved by an Order of the Supreme Court entered on March 12, 2018. As such, Moses-Ludington Nursing Home Company, Inc. carried out the sale of its facilities and proceeded to wind down its activities, including payment of all outstanding liabilities. Moses-Ludington Nursing Home Company, Inc. has no current operations and will not undertake operations at any point in the future. Moses-Ludington Nursing Home Company, Inc. has no remaining assets or liabilities.

The Board of Directors of Moses-Ludington Nursing Home Company, Inc. approved and authorized dissolution and authorized the filing of the Certificate of Dissolution on November 16, 2023.

The enclosed documents include: a proposed Verified Petition to the Attorney General; a Plan of Dissolution; and a proposed Certificate of Dissolution with supporting organizational documents of Moses-Ludington Nursing Home Company, Inc.; and resolutions of the board of directors of Moses-Ludington Nursing Home Company, Inc. authorizing the dissolution. A letter from the legal counsel for Moses-Ludington Nursing Home Company, Inc. advocating for dissolution, is also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc.

Attachments





Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792

**Laura N. Quant**  
Paralegal

Attorneys at Law  
nixonpeabody.com  
@NixonPeabodyLLP

T / 585.263.1766  
F / 585.263.1600  
lquant@nixonpeabody.com

March 20, 2024

**VIA FEDERAL EXPRESS**

New York Department of Health  
Division of Legal Affairs  
Corning Tower, Room 2464  
Empire State Plaza  
Albany, New York 12237

**RE: Moses-Ludington Nursing Home Company, Inc.  
Dissolution**

Dear Sir or Madam:

We are writing to respectfully request the approval of the enclosed Certificate of Dissolution for **Moses-Ludington Nursing Home Company, Inc.** ("Corporation") by the Public Health and Health Planning Council ("PHHPC").

The Corporation is no longer conducting activities and has no remaining assets or liabilities.

At this time, the Corporation requests consent from PHHPC to dissolve. Copies the following materials in support of the Corporation's application for approval of its dissolution are enclosed:

1. Verified Petition, with all exhibits; and
2. Certificate of Dissolution of the Corporation.

Thank you for your time and attention to this matter. Please contact me should you require any additional information.

Very truly yours,

A handwritten signature in cursive script that reads "Laura N. Quant".

Laura N. Quant  
Paralegal

Enclosures

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
43 DURKEE STREET – SUITE 700, PLATTSBURGH, NEW YORK 12901

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In the Matter of the Application of

MOSES-LUDINGTON NURSING HOME COMPANY, INC.

For Approval of Certificate of Dissolution  
pursuant to Section 1003 of the Not-for-Profit  
Corporation Law

**VERIFIED PETITION**

AG # \_\_\_\_\_

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TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF ESSEX

Petitioner, Moses-Ludington Nursing Home Company, Inc., by its attorneys, Nixon Peabody LLP, Anita L. Pelletier, Esq., for its Petition herein respectfully alleges:

1. Petitioner, whose principal office is located in the County of Essex, was incorporated pursuant to New York's Not-for-Profit Corporation Law on May 4, 1973. Copies of Petitioner's Certificate of Incorporation, as amended as well as complete and current Bylaws are attached as **Exhibits A** and **B**, respectively.

2. The names and addresses of all remaining directors and officers of Petitioner are listed below.

<u>NAME &amp; ADDRESS</u>	<u>TITLE</u>
Roland Allen 1019 Wicker St. Ticonderoga, NY 12883	Director/Chairperson
Robert Dedrick 1019 Wicker St. Ticonderoga, NY 12883	Director/Vice-Chairperson
Ross Kelley 1019 Wicker St. Ticonderoga, NY 12883	Director/Treasurer
Chattie Van Wert 1019 Wicker St. Ticonderoga, NY 12883	Director/Secretary

<u>NAME &amp; ADDRESS</u>	<u>TITLE</u>
Matthew Nolan 1019 Wicker St. Ticonderoga, NY 12883	President
Alan Chardavotne 1019 Wicker St. Ticonderoga, NY 12883	Chief Financial Officer
Dr. Glen Chapman 1019 Wicker St. Ticonderoga, NY 12883	Director
Michael Diskin 1019 Wicker St. Ticonderoga, NY 12883	Director
Walter Lender 1019 Wicker St. Ticonderoga, NY 12883	Director
David Shelmidine 1019 Wicker St. Ticonderoga, NY 12883	Director

3. The purposes for which Petitioner was organized are:

"The purpose for which the Corporation is formed is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law."

4. Petitioner is a charitable corporation.

5. Inter-Lakes Health, Inc. ("ILH") is a New York not-for-profit and serves as sole corporate member of Petition.

6. Petitioner operated a nursing home and adult home for many years and operated at a deficit. Petitioner determined it could not survive as an independent nursing home and sold the nursing home and adult home and upon the sale determined it was in its best interest to dissolve.

7. Pursuant to an Order of the Supreme Court entered in the Essex County Clerk's Office on March 12, 2018, the Petitioner transferred all of its remaining assets to Post Acute Partners Acquisition, LLC and Elizabeth Community Hospital. A copy of the Order is attached hereto as Exhibit C.

8. Petitioner sold its assets and wound down its activities in preparation for dissolution.

9. Pursuant to Petitioner's Bylaws, the members of Petitioner's Board of Directors are the same members of the ILH Board of Directors.

10. Filing of the Certificate of Dissolution was authorized and approved by majority vote of the entire Board of Directors of both Petitioner and ILH at a duly called meeting on November at which a quorum of 6 directors out of 8 total directors was present, and approved by 6 votes in favor, 0 votes against. A copy of the resolutions is attached hereto as **Exhibits D**.

11. The Petitioner has no assets or liabilities as of the date hereof.

12. The Corporation has filed a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities.

13. Other than approval of the Attorney General, no other governmental approvals of the dissolution and distribution of assets are required.


14. No previous application for approval of the dissolution and distribution of assets has been made.

*[SIGNATURE PAGE FOLLOWS]*

WHEREFORE, Petitioner requests that the Attorney General approve the filing of the Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc., pursuant to the Not-for-Profit Corporation Law Section 1003.

Dated: November 20, 2023

NIXON PEABODY LLP

By:  \_\_\_\_\_

Anita L. Pelletier, Esq.

Anita L. Pelletier, Esq.  
Nixon Peabody LLP  
Counsel for Petitioner  
1300 Clinton Square  
Rochester, New York 14604

VERIFICATION

STATE OF NEW YORK )  
 )  
 ) :SS  
 )  
COUNTY OF ESSEX )

Chattie Van Wert, individually, being duly sworn affirms and verifies that she has read the annexed Verified Petition, knows the contents thereof and the same is true to her knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters she believes them to be true. My belief, as to those matters herein not stated upon knowledge, is based upon the files maintained by Petitioner.

*Chattie Van Wert*

Name: Chattie Van Wert  
Title: Secretary

Sworn to before me this 20<sup>th</sup>  
day of November, 2023

*Kristen True*  
\_\_\_\_\_  
Notary Public

KRISTEN TRUE  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01TR6270204  
Qualified in Essex County  
Commission Expires October 15, 2024

# **Exhibit**

# **A**

CERTIFICATE OF INCORPORATION

OF

MOSES-LUDINGTON NURSING HOME COMPANY, INC.

Under Section 402 of the Not-For-Profit Corporation Law and the Public Health Law

We, the undersigned, for the purpose of forming a Nursing Home Corporation pursuant to the Not-For-Profit Corporation Law and the Public Health Law of the State of New York, hereby certify:

The name of the proposed Corporation is MOSES-LUDINGTON NURSING HOME COMPANY, INC. (Hereinafter referred to as the "Corporation").

II

The Corporation is not formed for pecuniary profit or financial gain. All income and earnings of the Corporation shall be used exclusively for its corporate purposes.

The Corporation is a corporation as defined in subparagraph (A) (5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.

III

The purpose for which the Corporation is formed, is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be "Type D".

RECEIVED

APR 12 1973

DEPUTY COMMISSIONER  
HEALTH



IV

The territory in which the operation of the Corporation will be principally conducted is the State of New York.

V

The principal office of the Corporation is to be located in the Town and Village of Ticonderoga, Essex County, State of New York.

VI

The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation.

VII

The names and addresses of the initial Directors are:

<u>Name</u>	<u>Address</u>
Kirby D. Wilcox	Ticonderoga, New York
John E. Lawson	Ticonderoga, New York
Lloyd Watts	Ticonderoga, New York
Robert V. Touchette	Georgetown, South Carolina
Ernest Tobin	Ticonderoga, New York
Gerald J. Lawson	Ticonderoga, New York
Perry Harding	Glens Falls, New York
Francis Malaney	Ticonderoga, New York
Dr. Thomas R. Cummins	Ticonderoga, New York
David M. Jones	Ticonderoga, New York

VIII

The duration of the Corporation shall be two years from the date of the filing of this Certificate by the Secretary of State.

2

IX

The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law.

X

The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XI

The Corporation is organized and shall be operated as a non-profit organization, shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Articles II and III hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Corporation shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Corporation the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, distribute all of the remaining assets of the corporation exclusively for the purposes of the corporation or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt

organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provisions of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government with the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of this Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.

#### XII

All of the incorporators of this corporation are natural persons over the age of nineteen years.

#### XIII

The following consents and approvals are annexed hereto:

1. The consent of the Commissioner of Health to the filing of this Certificate of Incorporation with the Secretary of State.
2. The approval of the Justice of the Supreme Court, who serves in the district wherein the Corporation is to have an office, to the formation of this Corporation.
3. The approval of the Public Health Council.

4

XIV

The post office address to which the Secretary of State shall mail a copy of any notice required by law is Wicker Street, Ticonderoga, New York 12883.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 16th day of February, 1973.

John F. Lawson  
Ticonderoga, New York

*John F. Lawson*

Kirby D. Wilcox  
Ticonderoga, New York

*Kirby D. Wilcox*

Lloyd H. Watts  
Ticonderoga, New York

*Lloyd H. Watts*

STATE OF NEW YORK )

COUNTY OF ESSEX )

ss.

On this 16<sup>th</sup> day of February, 1973, before me personally came JOHN F. LAWSON, KIRBY D. WILCOX, LLOYD WATTS to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation of MOSES-LUDINGTON NURSING HOME COMPANY, INC. and they duly acknowledged to me that they executed the same.

*Madeline M. Cardwell*  
Notary Public

6

CONSENT TO INCORPORATION BY  
COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M. D., Commissioner of Health of the State of New York, do this 13<sup>th</sup> day of April, 1973 pursuant to Article 28-A of the Public Health Law hereby certify that I consent to the filing of the foregoing Certificate of Incorporation of MOSES-LUDINGTON NURSING HOME COMPANY, INC. with the Secretary of State of the State of New York.

HOLLIS S. INGRAHAM  
Commissioner of Health

By Donald Decker  
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the State of New York, County of Essex, wherein is located the principal office of MOSES-LUDINGTON NURSING HOME COMPANY, INC., hereby approves the within Certificate of Incorporation of MOSES-LUDINGTON NURSING HOME COMPANY, INC., and the filing thereof.

Dated: April 30, 1973

John P. Brown  
Justice of the Supreme Court

2

7



STATE OF NEW YORK  
DEPARTMENT OF LAW

ALBANY, N. Y. 12224

Telephone: 474-7206

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

April 17, 1973

John F. Lawson, Esq.  
Lawson & Lawson, Esqs.  
Montcalm Street  
Ticonderoga, New York 12883

Dear Mr. Lawson:

Re: Moses Luddington Nursing Home Co., Inc.

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ  
Attorney General

BY:   
JOSEPH R. CASTELLANI  
Assistant Attorney General

STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY

# PUBLIC HEALTH COUNCIL

April 17, 1973

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, 1973, I hereby certify that the Certificate of Incorporation of Moses-Ludington Nursing Home Company, Inc. is

APPROVED:

*Andrew Krieger*  
ANDREW KRIEGER  
Secretary

Sent to: John F. Lawson, Esq.  
Montcalm Street  
Ticonderoga, New York  
12883

COUNCIL

NORMAN S. MOORE, M.D.  
CHAIRMAN  
GEORGE BAHR, M.D.  
ELONORA P. BOND  
ETHEL V. BRONX, Ph.D.  
GORDON C. BROWN

MORTON P. HYMAN  
CHARLES T. LANIGAN  
GERALD M. MANLEY, M.D.  
GEORGE H. McCALL  
W. KENNETH NIAND  
JOHN F. ROACH, M.D.

HOWARD A. ... M.D.  
JOHN M. ...  
... M.D.

9



Following is a true copy of a resolution duly adopted by  
the Board of Directors of Moses-Ludington Hospital at a meeting  
of said Board at Ticonderoga, New York on the 3rd day  
of May, 1973.

"Whereas, there has been proposed the formation of a corporation pursuant of the laws of the State of New York under the name of Moses-Ludington Nursing Home Company and the Secretary of State has requested the expression of an opinion by this Board concerning the similarity of the proposed name to this corporation.

Now, therefore, be it resolved that in the opinion of this Board the mentioned proposed name does not so nearly resemble that of this Corporation as to be calculated to deceive and consent to the use therefore."

*John J. Purvis*  
President

Seal

*Margaret J. Haroff*  
Secretary

10

A 69479

CERTIFICATE OF INCORPORATION

OF

MOSES-LUDINGTON NURSING HOME  
COMPANY, INC.

Under Section 402 of the Not-For-Profit  
Corporation Law and the Public Health  
Law.

Original

LAW OFFICES OF  
LAWSON & LAWSON  
MONTCALM STREET,  
TICONDEROGA, NEW YORK

*Handwritten notes:*  
New York  
1/14

*Handwritten initials:*  
HA J. J. D.

STATE OF NEW YORK  
DEPARTMENT OF STATE

TAX \$ None  
FILING 30

FILED MAY 4 - 1973

*Handwritten signature:*  
John B. ...

Secretary of State

*Handwritten notes:*  
1 to Esset  
Typed  
2 yr. duration

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF

MOSES-LUDINGTON NURSING HOME COMPANY, INC.

Under Section 803 of the Not-For-Profit  
Corporation Law and the Public Health Law

A 90744

We, the undersigned, hereby certify:

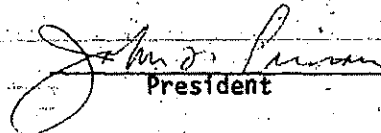
1. The name of the corporation is MOSES-LUDINGTON NURSING HOME COMPANY, INC. It was formed under that name and the name has not been changed.
2. The Certificate of Incorporation of said corporation was filed by the Department of State on May 4, 1973. The Corporation was formed under the Not-For-Profit Corporation Law and the Public Health Law.
3. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 (Definition) of the Not-For-Profit Corporation Law, and is a Type D corporation under Section 201 (Purposes).
4. The post office address to which the Secretary of State shall mail a copy of any notice required by Law is Wicker Street, Ticonderoga, New York, 12883.
5. Paragraph VIII of the Certificate of Incorporation relating to the two year duration of the Corporation is amended to read as follows:  
"VIII. The duration of the Corporation shall be perpetual."
6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the entire Board of Directors, voting in person, at a meeting of the Board of Directors, duly called for that purpose upon due notice to all Directors of record given in the manner required for a special meeting of the Corporation; said meeting was held at the Moses-Ludington Hospital, Wicker Street, Ticonderoga, New York, at 2:00 P.M. on May 4, 1973; a majority of the entire Board of Directors was present; the

Certificate of Incorporation of the corporation does not require the consent of more than a majority of the entire Board of Directors to change the duration of the Corporation from two years to perpetual. There are no members entitled to vote.

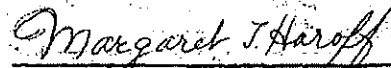
7. The following approvals or consents were endorsed on or annexed to the Certificate of Incorporation and any Amendments thereto at the time they were filed with the Department of State: Commissioner of Health, Justice of the Supreme Court, Attorney General and Public Health Council; and the following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State: Commissioner of Health, Justice of the Supreme Court, Attorney General and Public Health Council.

IN WITNESS WHEREOF, we have executed this Certificate this 4<sup>th</sup> day of May, 1973.

John F. Lawson  
Ticonderoga, New York

  
\_\_\_\_\_  
President

Margaret T. Haroff  
Severance, New York

  
\_\_\_\_\_  
Secretary

STATE OF NEW YORK |  
COUNTY OF ESSEX |

ss.:

JOHN F. LAWSON and MARGARET T. HAROFF, being severally, duly sworn, depose and say that they are the President and Secretary, respectively, of MOSES-LUDINGTON NURSING HOME COMPANY, INC., and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of MOSES-LUDINGTON NURSING HOME COMPANY, INC., and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

John F. Lawson  
President

Margaret T. Haroff  
Secretary

Subscribed and sworn to before me  
this 4<sup>th</sup> day of May, 1973.

Melvin M. Cardwell  
Notary Public

STATE OF NEW YORK |

COUNTY OF ESSEX |

ss.:

JOHN F. LAWSON and MARGARET T. HAROFF, being severally, duly sworn,  
depose and say:

1. That John F. Lawson is the President of MOSES-LUDINGTON NURSING HOME COMPANY, INC. mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to change the duration of the Corporation from two years to perpetual.

2. That Margaret T. Haroff is the Secretary of MOSES-LUDINGTON NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein to change the duration of the Corporation from two years to perpetual.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the entire Board of Directors at a special meeting.

4. Such consent was given by affirmative votes cast in person by a majority of the entire Board of Directors at a meeting of the Directors duly called for that purpose after due notice to the entire Board of Directors of the Corporation given in the manner required for a special meeting of the Corporation; said meeting was held at Ticonderoga, New York on May 4, 1973, at 2:00 P.M.; a majority of the entire Board of Directors was present. There are no members entitled to vote.

5. That the Certificate of Incorporation of this Corporation does not require a consent of more than a majority of the entire Board of Directors to change the duration of the Corporation from two years to perpetual.

*John F. Lawson*  
President

*Margaret T. Haroff*  
Secretary

Subscribed and sworn to before  
me this 4<sup>th</sup> day of May, 1973.

*Modeline M. Cordova*  
Notary Public

CONSENT TO AMENDMENT OF CERTIFICATE OF INCORPORATION  
BY COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health of the State of New York, do this 1 day of August, 1973, pursuant to Article 28-A of the Public Health Law and Section 804 of the Not-For-Profit Corporation Law hereby certify that I consent to the filing of the foregoing Certificate to change the duration of the Corporation from two years to perpetual with the Secretary of State of the State of New York.

HOLLIS S. INGRAHAM, M.D.  
COMMISSIONER OF HEALTH

By *Robert A. Walcott*  
Deputy Commissioner

CONSENT TO AMENDMENT OF CERTIFICATE OF INCORPORATION  
BY A RESIDENT SUPREME COURT JUSTICE

I, Guy A. Graves, Justice of the Supreme Court of the State of New York for the Fourth Judicial District hereby approve the within Certificate to change the duration of the MOSES-LUDINGTON NURSING HOME COMPANY, INC. from two years to perpetual.

Dated: 10 May, 1973

*Guy A. Graves*  
Justice of the Supreme Court



STATE OF NEW YORK  
DEPARTMENT OF LAW

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

ALBANY, N. Y. 12224

Telephone: 474-7206

May 4, 1973

John F. Lawson, Esq.  
Lawson & Lawson, Esqs.  
Montcalm Street  
Ticonderoga, New York 12883

Dear Mr. Lawson:

Re: Moses Luddington Nursing Home Company, Inc.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment of the certificate of incorporation of the above organization is hereby admitted.

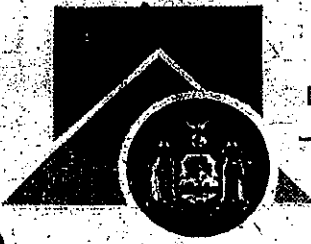
The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ  
Attorney General

BY: *Joseph R. Castellani*  
JOSEPH R. CASTELLANI  
Assistant Attorney General





STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY  
**PUBLIC HEALTH COUNCIL**

July 30, 1973

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 27th day of July, 1973, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Moses-Ludington Nursing Home Company, Inc., is APPROVED.

*Andrew Krieger*  
ANDREW KRIEGER  
Secretary

Sent to: John F. Lawson, Esq.  
President  
Moses-Ludington Hospital  
Wicker Street  
Ticonderoga, New York 12883

John Harty, Esq.  
Harty, Springer, Mattern and Symons  
Suite 921, The Fairfax  
4616 Fifth Avenue  
Pittsburgh, Pennsylvania 15213

COUNCIL

NORMAN S. MOORE, M.D.  
CHAIRMAN  
GEORGE BAEHR, M.D.  
BLONEVA P. BOND  
DETLEV BRONK, Ph. D.  
*Norman S. Moore, M.D.*

MORTON P. HYMAN  
CHARLES T. LANIGAN  
GERALD B. MANLEY, M.D.  
GEORGE R. METCALF  
W. KENNETH RILAND, D.O.  
*Morton P. Hyman, M.D.*

HOWARD A. RUSK, M.D.  
JOHN N. WALSH

HOLLIS S. INGRAHAM, M.D.  
*Hollis S. Ingraham, M.D.*

A 90744

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

MOSES-LUDINGTON NURSING HOME  
COMPANY, INC.

STATE OF NEW YORK  
DEPARTMENT OF STATE

TAX \$ None

FILING FEE \$ 30

FILED AUG-7 1973

*John P. ...*

Secretary of State

BY *M*

16 Cases  
typed

NFP  
typed

5/4/73

Ticonderoga, Inc.

# A69479-11

not add. Wicken St, Ticonderoga

12803

LAW OFFICES OF

LAWSON & LAWSON

MONTCALM STREET

TICONDEROGA, NEW YORK

153 Montcalm

12883

F 980714000 721

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF

**MOSES-LUDINGTON NURSING HOME COMPANY, INC.**

Under Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, President and Secretary of Moses-Ludington Nursing Home Company, Inc. hereby certify that:

1. The name of the corporation is Moses-Ludington Nursing Home Company, Inc. (hereinafter the "Corporation"). The name of the Corporation has not changed.
2. The Certificate of Incorporation of the Corporation was originally filed in the office of the Secretary of State on May 4, 1973, under the Not-For-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.
4. The Corporation is a Type D corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York, and it shall continue to be a Type D corporation.
5. The corporate purposes and powers of the Corporation are not enlarged, limited or otherwise changed by this Certificate of Amendment.
6. The Certificate of Incorporation of the Corporation is amended:
  - (a) to ADD a provision that identifies the Members of the Corporation and the powers reserved to the Members. A new Paragraph XV will be added as follows:

"The Corporation is a membership corporation. The sole Member of the Corporation is Moses-Ludington Corporation, a New York not-for-profit corporation. As such, Moses-Ludington Corporation shall be entitled to all rights and powers of a member under New York law (except as otherwise limited or provided in this certificate of incorporation or the bylaws of the Corporation), the certificate of incorporation of the Corporation and the bylaws of the Corporation.

Action by the Corporation shall not be taken until Moses-Ludington Corporation has exercised its reserved powers. The following powers are reserved to Moses-Ludington Corporation:

1. To approve, interpret and change the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;
2. To elect and remove, with or without cause, the President of the Corporation;
3. To approve and amend the bylaws and Certificate of Incorporation of the Corporation;
4. To approve any plan of merger, consolidation or dissolution of the Corporation;
5. To appoint, fix the number of, and remove, with or without cause, the directors of the Corporation;
6. To approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
7. To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member;
8. To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;
9. To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;
10. To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations of the Corporation; and
11. To approve the strategic plan of the Corporation, provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council.

Should compliance with any of the restrictions in this provision require the Corporation to take any action which may contravene any law or regulation to which the Corporation may now or hereafter be subject, or require the licensure or

2

establishment of the Member under Article 28 of the Public Health Law, such restriction shall be null and void."

- (b) to DELETE Paragraph VI which specifies the number of directors of the Corporation and the method of appointment of certain directors to the Board;
- (c) to DELETE from Paragraph XI those portions of the Paragraph which describe how any remaining assets of the Corporation are to be distributed upon dissolution and to ADD a new Paragraph XVI as follows:

"In the event of the dissolution of the Corporation, the Board shall, after paying or making provision for the payment of all liabilities of the Corporation, transfer all of its assets to Moses-Ludington Corporation. If Moses-Ludington Corporation is not then in existence, all the assets of the Corporation shall be disposed of by the Board in a manner consistent with the purposes for which the Corporation was established. At no time shall any of the assets of the Corporation upon dissolution be distributed to any organization which is not organized and operated exclusively for charitable, educational or scientific purposes and qualified as an exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended."

- 7. The Secretary of the State of New York<sup>2</sup> is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is: c/o Moses-Ludington Nursing Home Company, Inc., Wicker Street, Ticonderoga, New York 12883
- 8. The foregoing amendments to the Certificate of Incorporation were authorized by unanimous written consent of all the members of the Corporation entitled to vote thereon and all the members of the Corporation's Board of Directors entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment and affirmed as true the statements made therein under penalties of perjury this 2<sup>nd</sup> day of July, 1998.

Joan W. Grishkoff  
Its President, Joan W. Grishkoff

Margaret R. Broadhead  
Its Secretary, Margaret R. Broadhead

F 980714000721

JUL 14 5 45 PM '98

FILED

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

MOSES-LUDINGTON NURSING HOME COMPANY, INC.

Under Section 803 of the Not-For-Profit Corporation Law

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*JLW*

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STATE OF NEW YORK  
DEPARTMENT OF STATE

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# **Exhibit**

# **B**

**MOSES-LUDINGTON NURSING HOME  
COMPANY, INC.  
(DBA Heritage Commons Residential Healthcare)  
Ticonderoga, New York**

**AMENDED AND RESTATED  
BYLAWS  
Adopted as of March 18, 2014**



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**ARTICLE I  
NAME**

**Section 1.01. Name.** The name of the Corporation is Moses-Ludington Nursing Home Company, Inc. (herein called the "Corporation" or the "Nursing Home").

**ARTICLE II  
PRINCIPAL OFFICE**

**Section 2.01. Principal Office.** The principal office of the Corporation shall be located at 1019 Wicker Street in the Town of Ticonderoga, County of Essex, and State of New York.

**ARTICLE III  
PURPOSES AND POWERS**

**Section 3.01. Purposes and Powers.** The purposes for which the Corporation is formed and the powers which may be exercised by the Corporation, in addition to the general purpose and powers conferred by law, are those set forth in its Certificate of Incorporation, to wit:

to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the Public Health Law and an adult care facility pursuant to the Social Services Law

**Section 3.02. Exempt Purposes.** The purposes of the Corporation are limited exclusively to charitable, educational or scientific purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Service law.

1. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any private shareholder or individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.
2. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting 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, except as authorized under the Internal revenue Code.

**Section 3.03. Provisions Relating to Tax Exemption.** Notwithstanding any other provisions of the Bylaws, the Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are

deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future United States Internal Revenue Code Law).

**Section 3.04. Dissolution.** In the event of the dissolution of the Corporation, the Board shall after paying or making provision for the payment of all liabilities of the Corporation, transfer all of its assets to the Member. If the Member is not then in existence, all the assets of the Corporation shall be disposed of by the Board in a manner consistent with the purposes for which the Corporation was established. At no time shall any of the assets of the Corporation upon dissolution be distributed to any organization which is not organized and operated exclusively for charitable, educational or scientific purposes and qualified as an exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

#### **ARTICLE IV MEMBER**

**Section 4.01. Member.** The Corporation is a membership corporation. The sole member of the Corporation is Inter-Lakes Health, Inc., a New York Not-For-Profit corporation (hereinafter referred to as the "Member") which shall be entitled to all the rights and powers of a member under New York law and under the Certificate of Incorporation and Bylaws of this Corporation.

**Section 4.02. Annual Meeting.** The Annual Meeting of the Member of the Corporation shall be held in May of each year. The Board of Directors of the Corporation shall designate by resolution the specific time, date and place of such Annual Meeting. The Annual Meeting shall be for the purpose of electing directors and transacting such other business as may properly come before the meeting.

**Section 4.03. Special Meetings.** Special Meetings of the Member of the Corporation may be called at any time by the Chairperson of the Corporation upon written request of the Member. Such request shall state the purpose of the requested meeting.

**Section 4.04. Place of Meetings.** All meetings, either annual or special, may be held either within or without the State of New York in such place as is chosen by the Board of Directors of the Corporation; provided, however, that in the absence of designation of a place for the meeting by the Board of Directors, the President or Secretary may fix a place for such meeting.

**Section 4.05. Notice of Meetings.** Notice of the date, time and place of all meetings shall be given in writing by the Secretary or any other officer designated to give notice by the Board of Directors not less than 20 days before the date of the meeting to the Member. The notice to the Member shall be hand delivered or mailed to the Member by certified mail, return receipt requested.

**Section 4.06. Waiver of Notice.** Notice of any meeting of the Member may be waived in writing by the Member by filing a written waiver with the Secretary of the Corporation, either before or after the meeting. Any waiver of notice need not specify the purpose of the meeting. Presence of the Member at any meeting shall constitute waiver of notice

of the meeting unless the Member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

**Section 4.07. Written Consent.** Any action required or permitted to be taken by the Member of the Corporation may be taken without a meeting, without prior notice and without vote, if, before or after the action, the Member consents thereto in writing.

**Section 4.08. Actions Requiring Member Approval.** Anything herein to the contrary notwithstanding, the following actions of the Corporation shall become effective only upon written approval of the Member:

1. To approve, interpret and change the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;
2. To elect and remove, with or without cause, the Chief Executive Officer of the Corporation;
3. To approve and amend the Bylaws and Certificate of Incorporation of the Corporation.
4. To approve any plan of merger, consolidation, dissolution or reorganization of the Corporation or any sale, lease or other disposition of all or substantially all of its assets
5. To appoint, fix the number of, and remove, with or without cause, the directors of the Corporation;
6. To approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
7. To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member;
8. To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;
9. To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;
10. To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations of the Corporation;
11. To approve the strategic plan of the Corporation, provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health and Health Planning Council.

12. to approve any application to the New York State Department of Health by the Corporation for a Certificate of Need;
13. to approve any final settlement by the Corporation related to Medicaid or any other payor audits; and
14. to approve any rate appeals to be initiated by the Corporation.

## ARTICLE V GOVERNING AUTHORITY

**Section 5.01. Board of Directors.** The property, affairs, business and concerns shall be managed by the Board of Directors of the Corporation in a manner consistent with the applicable statutes and regulations of the State of New York and the purposes and powers set forth in the Certificate of Incorporation and these Bylaws. Such duties shall include, but not be limited to, responsibility for the Corporation's organization, operation and quality of patient care, the preparation of such written policies and procedures as may be required; compliance with federal, state and local laws; monitoring, supervising and reviewing the performance of the Corporation's Chief Executive Officer; maintenance of a properly equipped and staffed facility and physical plant; preparing, reviewing and implementing the Nursing Home's institutional and strategic plan; protecting the Nursing Home's assets and insuring the financial viability of the Nursing Home; preparing and approving budgets for the allocation of corporate resources in a manner consistent with the Nursing Home's statement of mission and philosophy; appointing the members of the Medical Staff and approving the appointment of the Medical Director; and operating the Nursing Home in accordance with its mission and philosophy. No assignment, referral or delegation of authority by the Board shall relieve the Board of any of its responsibilities nor limit any of the Board's power.

**Section 5.02. Conflict of Interest.** The Board of Directors shall adopt a Conflict of Interest policy addressing possible conflicts between the interests of the Corporation, and/or any of its subsidiaries, and the interests of any person who is in the position to manage or to influence the management of the Corporation, and/or any of its Subsidiaries (hereinafter "Influential Person"). Influential Persons shall include all directors and officers of the Corporation or any of its Subsidiaries, members of a committee of the Board, and highly compensated employees of the Corporation (as defined in the Conflict of Interest policy). The conflict of interest policy adopted by the Board shall be included in the minutes of the proceeding of the Board.

**Section 5.03. Number.** The Board of Directors shall consist of such number of members, not less than 9 nor more than 13, as is designated from time to time by the Board of Directors which includes the President, or other elected representative, of the Medical staff of the Corporation.

**Section 5.04. Qualifications.** To facilitate an affiliation among the Corporation, Moses-Ludington Hospital, and Inter-Lakes Health, Inc. (hereinafter referred to as the "ML Corporations"), the ML Corporations have agreed that the boards of each such corporation shall

be composed of the same members. As such, each member of the Corporation's Board shall be a member of the Board of Directors of Moses-Ludington Hospital and a member of the Board of Directors of Inter-Lakes Health, Inc. (hereinafter "ILH"). If any member of the Corporation's Board ceases to be a member of the Board of Directors of Moses-Ludington Hospital or a member of the Board of Directors of ILH, his/her seat on the Corporation's Board shall be deemed vacant.

Candidates for the Board of Directors shall: (i) demonstrate basic qualities of honesty, integrity, justice, good judgment and sound moral character; (ii) be committed to uphold the mission, philosophy and general policies of the Corporation, as stated in its Certificate of Incorporation, as amended from time to time, and in these Bylaws; (iii) have the willingness and ability to devote necessary time to board activities; (iv) have particular expertise or experience deemed necessary or desirable by the Board; (v) be able to apply experience and expertise to Board decisions objectively and realistically; (vi) recognize and protect the confidential nature of the information discussed at Board meetings; and (vii) be able to fulfill the statement of responsibilities of individual board members as may be adopted by the Corporation.

**Section 5.05. Classification of Directors.** The Directors of the Corporation shall be elected at the Annual Meeting of Members for three (3) year terms.

At each Annual Meeting of Members, the successors to the class of Directors whose term shall then expire shall be elected to hold office until the third succeeding Annual Meeting and until their successors are elected and qualify.

**Section 5.06. Term of Office.** Directors shall serve regular terms of three (3) years and until their successors have been appointed. Directors may be appointed for successive terms, but in no event more than three consecutive three-year terms. Any director appointed to three consecutive three-year terms on the Board is ineligible for appointment to the Board for a period of one (1) year following the expiration of the third three-year term.

**Section 5.07. Resignation.** Any Director of the Corporation may resign at any time by giving his or her resignation in writing to the Chairperson of the Board or the Secretary, which resignation shall specify its effective date. A resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

**Section 5.08. Removal of a Director.** Any Director may be removed from the Board at any time for any reason, or for no reason, with or without cause, by the affirmative vote of at least three-fourths (3/4) of the directors then in office.

**Section 5.09. Vacancies.** Vacancies among the Directors may be filled by the Board of Directors. A Director appointed to fill a vacancy shall serve the remainder of the term of the director being replaced and until his or her successor is appointed.

**Section 5.10. Compensation.** The directors shall not receive any compensation for their services as Directors, but they may be reimbursed for any reasonable expenses incurred on behalf of the Corporation. A Director may, however, serve the Corporation in another capacity and may receive compensation therefore.

## ARTICLE VI MEETINGS OF THE BOARD

**Section 6.01. Regular Meetings.** Regular meetings of the Board of Directors shall be held at least monthly and at such times and places as may be determined by the Board.

**Section 6.02. Annual Meeting.** The Annual Meeting of the Board of Directors of the Corporation shall be held in May of each year. The Board of Directors shall designate by resolution the specific time, date and place for the Annual Meeting. At such meeting, the Corporation may transact any business as may be necessary and proper.

**Section 6.03. Special Meetings.** Special meetings of the Board of Directors shall be held at such time and at such places within or without the State of New York as the Board of Directors may determine. Special meetings may be called by the Member, the Chairperson of the Board or by a majority of the directors.

**Section 6.04. Notice of Meetings of Board of Directors.** Notice of the time and place of each meeting of the Board of Directors shall be given by the Chairperson of the Board or the Secretary, or by the members of the Board calling the same, to each member of the Board not less than seven (7) days before the meeting by mailing the notice, postage prepaid, addressed to each member of the Board at his residence or usual place of business, or not less than three (3) days before the meeting by delivering the notice to each member of the Board personally, or by telephone. No notice of any meeting of directors need be given to, and no waiver of such notice need be given by, a director who attends a meeting without protesting the failure to give him notice of such meeting prior to or at the commencement of the meeting. The meeting shall be duly called and held if notice is given to, or is waived by, all absent directors.

**Section 6.05. Quorum and Voting.** At all meetings of the Board of Directors, except where otherwise provided by law or these Bylaws a quorum must be present to take action. A majority of the entire membership of the Board shall constitute a quorum. The affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the act of a greater number of voting directors is required by the Certificate of Incorporation, these Bylaws, or applicable law. No director of the Corporation may act by proxy on any matter. A majority of the directors present at any meeting, although less than a quorum, may adjourn the meeting to another time and place, without notice other than announcement at the meeting.

**Section 6.06. Absences.** It is understood that each member of the Board is expected to attend every meeting of the Board. Should any member of the Board be absent from three consecutive meetings of the Board without previously in each case notifying the Chairperson of the Board (or such Chairperson's designee for such purpose) stating the reason for the absence, or should such member's excuse not be acceptable by the Chairperson, such member's seat on the board shall be deemed vacant and the Chairperson of the Board shall notify such member thereof. Special meetings shall be restricted to the purpose for which the meeting was called.

**Section 6.07. Annual Report.** The Board of Directors shall keep an accurate record of all of the transactions of the Corporation, a report of which, prepared in accordance with the



provisions of the Not-for-Profit Corporation Law, shall be presented in writing to the Member at each annual meeting of the Member executed by the Chairperson of the Board and Treasurer. The report shall be filed in the Corporation's records and a copy of the report shall be entered in the minutes of the proceedings of the Annual Meeting of the Member.

**Section 6.08. Action without Meeting.** Any action which the Board or a committee thereof is required or permitted to take may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action or subsequently confirm the action by resolution. The consent may be executed in one or more counterparts, all of which together will constitute one unanimous consent of the Board or the committee as the case may be. The authorizing resolutions and written consents, and/or the confirming resolutions, as the case may be, shall be filed with the minutes of the proceedings of the Board or the committee.

**Section 6.09. Use of Conference Telephone.** One or more of the members of the Board or any committee of the Board may participate in a meeting of the Board or of such committee by means of a conference telephone or similar communications equipment, allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

## ARTICLE VII OFFICERS OF THE CORPORATION

**Section 7.01. Officers.** The officers of the Corporation shall consist of a Chairperson, Vice Chairperson, Secretary and Treasurer. No person may hold the offices of Chairperson and Secretary simultaneously. The Board of Directors may elect such other officers as it may, from time to time, deem desirable, including, but without limiting the generality thereof, Assistant Secretaries and Assistant Treasurers. In the event of any such offices being created and officers being elected thereto they shall have such duties and responsibilities as the Board or the Chairperson may, from time to time, prescribe or as are normally attendant upon such offices.

**Section 7.02. Election of Officers.** The Chairperson, the Vice Chairperson, the Secretary, the Treasurer, and any other officers created by the Board shall be elected annually by the Board of Directors to serve during the ensuing year.

**Section 7.03. Vacancies.** Vacancies in any office elected by the Member may be filled by the Member and vacancies in any office elected by the Board may be filled by the Board. The person selected shall serve the unexpired term of the vacancy.

**Section 7.04. Term of Office.** The Vice Chairperson of the Board, the Secretary and the Treasurer shall be elected for one-year terms. Immediately after their election, those elected shall assume their responsibilities of their offices.

**Section 7.05. Removal of Officers.** The Chairperson or the CEO may be removed at any time with or without cause by the Member. All officers elected by the Board may be removed at any time with or without cause by the affirmative vote of a majority of the Board of Directors.

**Section 7.06. The Chairperson of the Board.** The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors. The Chairperson shall have the general powers and duties of supervision of the Corporation which usually pertain to his/her office, including but not limited to:

1. Being knowledgeable of Board issues, management effectiveness, community affairs, health care industry trends, legislative matters, and relative to State and Federal standards;
2. Conducting well organized, timely and effective meetings insuring that Board members are provided with needed information prior to the meeting;
3. Insuring agendas and presentations are carefully tailored to facilitate responsible decision making;
4. Insuring development of the overall goals and effective strategic plans for the organization;
5. Insuring that the Board and its committees are staffed with appropriate talent and that decision-making channels are clear;
6. Serving as an ex-officio member of all committees, with a vote on all matters coming before the committee;
7. Facilitating a positive relationship with the Member;
8. Insuring that Board members receive on-going education;
9. Taking a leadership role on the Board in setting performance objectives and evaluating the President in collaboration with the Member; and
10. Assuring that issues relating to board members are dealt with in a timely fashion.

The Chairperson shall also perform all such other duties as are properly required by the Board of Directors or the Member.

**Section 7.07. The Vice Chairperson of the Board.** The Vice Chairperson, in the absence or incapacity of the Chairperson, shall perform the duties of the Chairperson. The Vice Chairperson shall also have such powers and perform such duties as usually pertain to the office or as are properly required by the Board.

**Section 7.08. The Secretary and Assistant Secretaries.** The Secretary shall issue notice of all meetings of corporate members and directors where notices of such meetings are required by law or these Bylaws. The Secretary shall attend all meetings of the Board and keep the minutes thereof. The Secretary shall affix the corporate seal to and sign such instruments as require the seal or the signature of the Secretary, and shall perform such other duties as usually pertain to the office or as are properly required of the Secretary by the Board.

The Assistant Secretaries, if any (or any officer of the Corporation), may, in the absence, disability or request of the Secretary, perform the duties and exercise the powers of the Secretary, and shall perform such other duties as the Board shall prescribe.

**Section 7.09. Treasurer and Assistant Treasurers.** The Treasurer shall be responsible for the care and custody of all moneys and securities of the Corporation. The Treasurer shall be responsible for the keeping of full and accurate accounts of all the moneys received by the Corporation and paid by the Corporation. The Treasurer shall deliver such reports, statements and instruments as may be required of the Treasurer by the Board of Directors or by the laws of the United States or of the State of New York, and shall perform such other duties as usually pertain to this office or as are properly required by the Board. However actual custody and maintenance of the Corporation's records shall be entrusted to competent employees who shall make available all financial reports and other relevant data on day-to-day operations.

**Section 7.10. The Chief Executive Officer.** The CEO shall be an employee of the Corporation, appointed by the Member, and shall perform all such duties as usually pertain to this office. The CEO shall have the necessary authority and be held responsible for the general administration of the Nursing Home in all of its activities and departments in accordance with such policies as may be adopted and such orders as may be issued by the Board of Directors or by any of its committees to which the Board has delegated power for such action. The CEO shall act as the duly authorized representative of the Board unless the Board has specifically designated some other person for that specific purpose.

The CEO shall have authority to execute contracts, negotiable instruments, instruments of conveyance, and other documents, when such authority shall not specifically have been reserved to the Board of Directors, a committee thereof or delegated by the Board or such committee to some other person or persons.

1. The CEO shall have, but shall not be limited to, the following authority and duties:
2. To serve as chief executive officer of the Corporation and to oversee the day to day operation and administration of the Corporation.
3. To be responsible for carrying out all policies established by the Board of Directors.
4. To attend all meetings of the Board of Directors and appropriate meetings of its committees.
5. To supervise all business affairs of the Corporation.
6. To ensure that all funds are collected and expended to the best possible advantage of the Corporation.
7. To submit regularly to the Board of Directors or its authorized committee periodic reports detailing the financial activities of the Corporation.
8. To prepare and submit such special reports as are required by the Board of Directors.

9. To prepare or cause to be prepared an annual budget for the Corporation showing the expected receipts and expenditures and make recommendations to the Board relating to the operation of the Corporation and long-range planning.
10. To prepare and submit to the Board of Directors for approval a plan of organization of the personnel and other concerns with the operation of the Corporation.
11. To develop and maintain personnel policies and practices for the Corporation.
12. To work with the Medical Staff and with all those concerned with the rendering of professional services to the end that the best possible care may be rendered to all residents.
13. To serve as the liaison for all official communications between the Board of Directors or any of its committees and the Medical Staff.
14. To represent the Corporation in local, regional, state and national organizations and their activities.
15. To develop and direct planned programs of community relations to gain acceptance and support of the Corporation by the community it serves.
16. To ensure that all physical properties are kept in a good state of repair and sound operating condition.
17. To maintain an adequate insurance program to conserve the assets of the Corporation.
18. To prepare and submit such business plans, budgets and reports to the Member.
19. To report to the Board at least annually or at such other times as the Board may direct.
20. To perform any other duty that may be necessary in the best interest of the Corporation.

**Section 7.11. Officers Holding Two or More Offices.** The offices of Treasurer and Secretary may be held by the same person, but no corporate officer shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

**Section 7.12. Compensation.** The officers of the Corporation other than the CEO shall not receive compensation for fulfilling their duties as officers but shall be reimbursed for any reasonable expenses which they may incur on behalf of the Corporation in the conduct of its affairs.

## **ARTICLE VIII COMMITTEES OF THE BOARD**

**Section 8.01. Executive Committee.** By resolution adopted by a majority of the entire Board of Directors authorizing the same, the Board may designate from among its

members an Executive Committee of at least four (4) directors, including the Chairperson, which committee, to the extent permitted by law and by the authorizing resolution, shall have all the authority of the Board of Directors in the interim between meetings of the Board except as to matters set forth in Section 712 (a) of the Not-For-Profit Corporation Law. The Executive Committee shall keep minutes of its meetings and shall present those minutes at the next Board Meeting. The ML Corporations have agreed that the Executive Committee of each ML Corporation shall be composed of the same individuals. As such, each member of the Corporation's Executive Committee shall be (i) a member of the Executive Committee of Moses-Ludington Hospital (hereinafter the "Hospital") and (ii) a member of the Executive Committee of ILH. If any member of the Corporation's Executive Committee ceases to be a member of the Executive Committee of the Hospital or a member of the Executive Committee of ILH, his/her seat on the Corporation's Executive Committee shall be deemed vacant.

**Section 8.02. Other Committees.** The Board of Directors may, by resolution adopted by a majority of the entire Board, create such other committees as it deems necessary. The Chairperson of the Board shall appoint the committee chairpersons and committee members who shall serve in this capacity until the next annual meeting of the Board of Directors of the Nursing Home. All members of Committees of the Board shall be members of the Board or employees of the Nursing Home, except that an Advisory Committee, if any is appointed, may have members who are not members of the Board or employees of the Nursing Home.

**Section 8.03. Record of Proceedings.** Minutes shall be kept of all committee meetings which shall reflect all business conducted at the meeting, including findings, conclusions and recommendations. Copies of the minutes shall be supplied to each member of the Committee and to all Board members.

## ARTICLE IX MEDICAL DIRECTOR

**Section 9.01. Medical Director.** The CEO shall appoint a Medical Director with the approval of the Board. The Medical Director for the Corporation, Moses-Ludington Hospital, and Inter-Lakes Health, Inc. shall be the same person. The Medical Director has direct responsibilities to the CEO. The Medical Director shall have the general responsibility for assuring the adequacy and appropriateness of medical care rendered to residents. The specific responsibilities and the description of the Medical Director shall be set forth in a written agreement between the Medical Director and the Corporation. Such specific duties shall include but not be limited to: assisting in developing procedures to provide for continuous physician coverage and the emergency treatment of residents in the case of medical emergencies, assisting in the development of resident transfer procedures, serving as a member of the medical staff and helping to assure the preparation, review, revision and adherence to the medical staff Bylaws, rules and regulations, reviewing and advising the Board as to the quality of medical care being rendered to residents by members of the medical staff, monitoring the health status of employees and advising the administration on employee health policies, reviewing and evaluation incident reports, identifying hazards to health and safety and developing written Bylaws, rules and regulations which are approved by the governing body and include delineation of the responsibilities of attending physicians.

## ARTICLE X MEDICAL STAFF BYLAWS

**Section 10.01. Medical Staff Bylaws.** The Medical Staff shall submit Bylaws, Rules and Regulations for its organization and governance for the approval of the Board. Such Bylaws, Rules and Regulations shall among other things, direct and insure that only licensed practitioners with the appropriate clinical privileges are directly responsible for a resident's diagnosis and treatment; provide for the discharge of the Medical Staff's responsibilities to the Board; establish a hearing procedure for dealing with grievances related to Medical Staff appointments and the granting of clinical privileges and require the members of the Medical Staff to abide by all of the terms and conditions of the Bylaws, Rules and Regulations as a condition of their Staff membership. The Bylaws of the Medical Staff shall be reviewed and approved by the Board and may not be adopted or amended without the approval of the board and constitute the policy of the Corporation governing its relationship with its Medical Staff.

## ARTICLE XI INDEMNIFICATION

**Section 11.01. Right of Indemnity.** The Corporation shall indemnify to the full extent authorized or permitted by law any person made, or threatened to be made, a party to any action or proceeding (whether civil or criminal or otherwise) by reason of the fact that such person, or the testator or intestate of such person, is or was a director or officer of the Corporation.

**Section 11.02. Determination of Right to Indemnification.** Upon the request of any person who may be entitled to indemnification under this Article, the Board of Directors shall act promptly to determine whether the director or officer has met the standard of conduct required for such indemnification and, if such standard has been met, to authorize indemnification under this Section. Such determination may be made, in the discretion of the Board of Directors, (i) by the Board of Directors by majority vote of a quorum consisting of directors are parties to such action, suit or proceeding were not directors of the Corporation or (ii) if such a quorum is not obtainable, or, even if attainable, if a quorum of disinterested directors so directs, by the Member. For purposes of this Article, determination of any civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not itself create a presumption that a new director or officer did not act in good faith for the purpose which he or she reasonably believed to be in the best interests of the Corporation.

**Section 11.03. Expenses.** Expenses (including reasonable attorney's fees) incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an express undertaking in writing by on behalf of the director or officer to replace such amount if it shall ultimately be determined that he or she is not entitled to such amount or, where indemnification is granted, to the extent the expenses so advanced by the Corporation exceed the indemnification to which he or she is entitled; provided, however, that no indemnification shall be made if a determination is made in the manner provided in Section 11.02 of this Article that

indemnification is not proper on the circumstances because he or she is not met the applicable standard of conduct.

**Section 11.04. Indemnification with Respect to Internal Investigations.** The Corporation shall indemnify to the full extent authorized or permitted by law, any director or officer made the subject of an internal investigation by the Corporation, and each heir or successor of any thereof, against all reasonable costs and expenses, including attorney's charges actually and necessarily incurred as a result of such investigation, unless it is determined that such person did not act in good faith, for a purpose which he or she believed to be in the best interests of the Corporation. Any such determination as to good faith which would prevent indemnification under this Section 11.04 must be made by the Board of Directors acting by a quorum consisting of directors are not the subject of the same internal investigation as if such directors who are the subject of such internal investigation were not directors of the Corporation, or if such a quorum is not obtainable with to due diligence, by the Member. Any determination made by the Board of Directors that indemnification under this Section is not permitted by law must be made on the basis of an opinion in writing of independent legal counsel. In addition, any indemnification under this Section shall be conditioned upon receipt or an agreement in form satisfactory to the Corporation and its legal counsel obligating the indemnified person to repay upon demand all or so much of any amount paid pursuant to this Section as may be determined not to have been paid in accordance with applicable law.

**Section 11.05. Non-Exclusivity of this Article XI.** The indemnification provided by this Article XI shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of the heirs, executors, administrators or successors of such a person. The right of indemnification herein provided shall not be deemed exclusive of any other rights to which any such director, officer or other person may now or hereafter be otherwise entitled and specifically, without limiting the generality of the foregoing, shall not be deemed exclusive of any other rights, pursuant to statute or otherwise, of any such director, officer or other person in any such action or proceeding to have awarded are allowed in his or her favor, against the Corporation or otherwise, his or her costs and expenses incurred in connection therewith or any part thereof.

**Section 11.06. Insurance.** The Board of Directors may authorize the Corporation to purchase and maintain insurance, at its expense, to protect itself and its directors and officers against such liability, cost and expense to the extent permitted by law.

## **ARTICLE XII CLERGY**

**Section 12.01. Clergy.** The Corporation shall be nonsectarian in regard to religious administration. Clergy and layman of all denominations and faiths are welcome whether their visits are sought or volunteered. Their attention to residents and occupants, however, must be subject to the house rules and regulations.

**ARTICLE XIII  
MISCELLANEOUS**

**Section 13.01. Corporate Seal.** The Seal of the Corporation shall be circular in form and shall bear the present name and year of the original organization of the Corporation as more particularly shown in the following impression.

**Section 13.02. Fiscal Year.** The fiscal year of the Corporation shall be the calendar year.

**Section 13.03. Audit.** At the end of each fiscal year and at such other times as the Board of Directors may authorize, the Board shall cause to be performed an independent audit of the accounts of the Corporation.

**Section 13.04. Biennial Review.** An ad hoc committee of the Board shall review these Bylaws at least every two years for the purpose of determining and recommending to the Board any necessary or desirable revisions. The Bylaws shall be dated to indicate the time they were last reviewed.

**Section 13.05. Amendment or Repeal.** Subject to the provisions of Article V, amendment or repeal of the Bylaws shall be by affirmative vote of two-thirds (2/3) of all of the voting members of the Board. Notice shall be mailed to each member of the Board at least thirty days prior to a meeting to consider such amendment or repeal of the Bylaws. Such notice shall fully present the current Bylaws and the proposed amendments thereof.



# **Exhibit C**

SUPREME COURT  
STATE OF NEW YORK COUNTY OF ESSEX

In the Matter of the Application of

MOSES-LUDINGTON NURSING HOME COMPANY, INC., ORDER

In a Proceeding pursuant to Section 510 and 511 of Not-For-Profit Corporation Law for an Order Approving the Sale of All or Substantially all of Petitioner's Assets.

Index No.: CV18-0068  
RJN No. 15-1-2018-0033

Upon reading and filing of the Verified Petition (the "Petition") of Moses Ludington Nursing Home Company, Inc. ("Petitioner"), verified on February 9, 2018 by John R. Remillard, the President of Petitioner, requesting an Order pursuant to Sections 510 and 511 of the Not-For-Profit Corporation Law, approving the sale of all or substantially all of the assets of Petitioner as described in the Petition herein, in particular the sale of: (i) Petitioner's real property located at 1019 Wicker Street, Ticonderoga, New York, more particularly described as Tax Map No. 150.42-1-1.100) (the "Real Property"), including three connected buildings located thereon (together with the Real Property, the "Premises"), to Elizabethtown Community Hospital (the "ECH"); and (ii) certain assets utilized in the operation of Petitioner's skilled nursing and adult care facilities located on the Premises (the "Operating Assets") to Post Acute Partners Acquisition, LLC ("PAPA"), Petitioner will sell the Premises to ECH for the purchase price of \$7,200,000 (the "Premises Purchase Price") pursuant to the terms of a Real Property Purchase Agreement, included as an Exhibit to the Petition, and will sell the Operating Assets to PAPA for the purchase price of \$50,000 (the "Assets Purchase Price") pursuant to the terms of an Asset Purchase Agreement, included as an Exhibit to the Petition, in accordance with Sections 510 and 511 of the Not-for-Profit Corporation Law.

NOW, THEREFORE, it is hereby

ORDERED, that Petitioner is hereby authorized to sell all or substantially all of its assets, including the Operating Assets to ECH for the Premises Purchase Price, and the Premises, to

4852-4341-8972.1

*and upon the New York State Attorney General's Waiver of Notice and Consent to Order Approving Sale of Assets, sworn to on February 13, 2018.*

PAPA for the Assets Purchase Price, as more fully set forth in the respective sale agreements, included as Exhibits to the Petition, and as more fully described in the Petition; and it is further

ORDERED, that Petitioner will use proceeds from the sale of the Operating Assets and the Premises to pay expenses relating to transitioning the operation of the skilled nursing and adult care facilities to PAPA, and to pay Petitioner's outstanding mortgages, debts and liabilities and the costs of winding-up of the affairs of Petitioner in anticipation of dissolution; and it is further

ORDERED, that a signed copy of this Order will be provided to the Attorney General; and it is further

ORDERED, that the Attorney General's office will be notified when the transaction has been completed, abandoned or is still pending after ninety (90) days of the date of this Order.

Dated: March 12, 2018

ENTER: Jessica Spruiell, NY

Glen T. Bruening  
J.S.C.

GLEN T. BRUENING, AJSC

# **Exhibit**

# **D**

**RESOLUTIONS  
APPROVING DISSOLUTION  
OF  
MOSES-LUDINGTON NURSING HOME COMPANY, INC.**

The dissolution of Moses-Ludington Nursing Home Company, Inc. ("MLNHC") was approved at a meeting duly called and held on Nov. 16<sup>th</sup>, 2023:

- MLNHC is a New York not-for-profit corporation, whose sole member is Inter-Lakes Health, Inc. ("ILH"), another New York not-for profit corporation.
- The individuals who serve as directors of MLNHC also serve as directors of ILH. Therefore, these resolutions document approval of both the MLNHC Board of Directors as well as the ILH Board of Directors, as sole member of MLNHC.
- MLNHC operated an 84-bed skilled nursing home ("Nursing Home") and 23-bed adult home ("Adult Home"; together with the Nursing Home, the "Facilities") for many years and operated at a deficit.
- MLNHC sold its Facilities in 2018, which sale was approved by an Order of the Supreme Court entered in the Essex County Clerk's Office on March 12, 2018.
- MLNHC carried out the sale of its Facilities and proceeded to wind down its activities, including payment of all outstanding liabilities.
- MLNHC has no remaining assets or liabilities and is ready to proceed with dissolving.

Based on the foregoing, it is

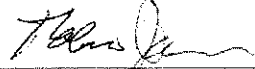
RESOLVED: that the MLNHC Board of Directors confirms that it is in the best interests of MLNHC to dissolve because it has sold the Facilities, paid all liabilities and has no remaining assets; and it is further

RESOLVED: that the MLNHC Board of Directors approves the dissolution of MLNHC and the ILH Board of Directors, as MLNHC's sole member, also approves MLNHC's dissolution; and it is further,

RESOLVED: that the dissolution must be approved by the New York State Department of Health and the New York State Attorney General; and it is further

RESOLVED: that the officers of MLNHC are hereby authorized and empowered to execute such documents, to make any necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions, including, but not limited to, filing a Certificate of Dissolution with New York State after all approvals are received.

I certify that the foregoing resolutions were adopted at a duly called and held meeting of the MLNHC on Nov. 16<sup>th</sup>, 2023.



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Name: Roland Allen  
Title: Chairperson

**Voting Information**

Total # of Directors:	<u>8</u>
# Directors Present:	<u>6</u>
# Approving Votes:	<u>6</u>
# Against Votes:	<u>0</u>
# Abstained Votes:	<u>0</u>



**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 DISSOLUTION  
OF  
MOSES-LUDINGTON NURSING HOME COMPANY, INC.**

*(Name of Corporation)*

Under Section 1003 of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is:

Moses-Ludington Nursing Home Company, 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 with the Department of State on:

May 4, 1973

**THIRD:** The name and address of each officer and director of the corporation is:

- Roland Allen, 101 Adirondack Drive, Ticonderoga, NY 12883
- Robert Dedrick, 101 Adirondack Drive, Ticonderoga, NY 12883
- Ross Kelley, 101 Adirondack Drive, Ticonderoga, NY 12883
- Chattie Van Wert, 101 Adirondack Drive, Ticonderoga, NY 12883
- Matthew Nolan, 101 Adirondack Drive, Ticonderoga, NY 12883
- Alan Chardavoine, 101 Adirondack Drive, Ticonderoga, NY 12883
- Dr. Glen Chapman, 101 Adirondack Drive, Ticonderoga, NY 12883
- Michael Diskin, 101 Adirondack Drive, Ticonderoga, NY 12883
- Walter Lender, 101 Adirondack Drive, Ticonderoga, NY 12883
- David Shelmidine, 101 Adirondack Drive, Ticonderoga, NY 12883

**FOURTH:** The corporation is a: *(check the appropriate box)*

- charitable corporation
- non-charitable corporation.

**FIFTH:** At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

*(Check the appropriate statement)*

- assets which are legally required to be used for a particular purpose.
- no assets which are legally required to be used for a particular purpose.

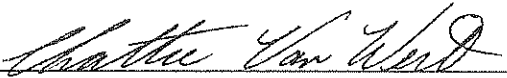
**SIXTH:** The corporation elects to dissolve.

**SEVENTH:** *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

**EIGHTH:** *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X   
(Signature)

Chattie Van Wert

(Print or Type Name of Signer)

Secretary

(Capacity of Signer)



**CERTIFICATE OF DISSOLUTION  
OF  
MOSES-LUDINGTON NURSING HOME COMPANY, INC.**

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*(Name of Corporation)*

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Laura N. Quant, Paralegal

Company, if applicable: Nixon Peabody LLP

Address: 1300 Clinton Square

City, State and Zip Code: Rochester, NY 14604

**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](http://www.dos.ny.gov).
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

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*For DOS Use Only*

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 20th day of June 2024, approves the filing of the Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc., as attached.

## MEMORANDUM

**To:** Michael Stelluti  
Division of Health Facility Planning and Development  
  
Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Vincent DiCocco, Senior Attorney  
Bureau of Program Counsel  
Division of Legal Affairs

**Date:** May 20, 2024

**Subject:** First Chinese Presbyterian Community Affairs Home Attendant Corp. - Amended and Restated Certificate of Incorporation

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Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (PHHPC) from Kathy Marks, Department of Health General Counsel;
- 2) A December 13, 2022 e-mail to the PHHPC from Andy Gong, representing First Chinese Presbyterian Community Affairs Home Attendant Corp. requesting approval of the proposed Amended and Restated Certificate of Incorporation;
- 3) A copy of the Certificate of Incorporation of First Chinese Presbyterian Community Affairs Home Attendant Corp. dated December 3, 1979;
- 4) A copy of the Bylaws of First Chinese Presbyterian Community Affairs Home Attendant Corp.;
- 5) A copy of the December 4, 2022 resolution of the members of First Chinese Presbyterian Community Affairs Home Attendant Corp. approving the Amended and Restated Certificate of Incorporation; and
- 6) A copy of the proposed Amended and Restated Certificate of Incorporation of First Chinese Presbyterian Community Affairs Home Attendant Corp.

Attachments.

cc: J. Corvino

## MEMORANDUM

**To:** Public Health and Health Planning Council

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

**Date:** May 20, 2024

**Subject:** First Chinese Presbyterian Community Affairs Home Attendant Corp. - Amended and Restated Certificate of Incorporation

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First Chinese Presbyterian Community Affairs Home Attendant Corp. ('The Corporation' or 'FCP') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed amendment and restatement of its Certificate of Incorporation.

The Corporation is a New York not-for-profit corporation incorporated on December 3, 1979. Its stated purpose is "[t]o provide personal care services to individuals designated exclusively by the New York State Department of Social Services as a result of said individuals being classified as qualifying for the receipt of services under the Social Security Act.... Persons classified as elderly, blind or disabled..."

FCP is requesting to amend its corporate purpose to include a broader range of social services offered to the population it serves, by providing "...social service programs (including personal care assistance, food assistance and education programs) to elderly people and people with disabilities of limited financial means in New York." The amendment was approved by vote at the Corporation's annual meeting of the Members on December 4, 2022, with a quorum present.

Attached is an e-mail dated December 13, 2022, from Andy Gong from Lowenstein Sandler, LLP representing FCP, requesting PHHPC approval of an amendment of the corporate purpose in the Certificate of Incorporation, and the reasons behind the proposed amendment. Also attached are the corporate documents of FCP, the vote of the members dated December 4, 2022 approving the amendment, as well as the proposed Amendment and Restatement of the Certificate of Incorporation.

There is no legal objection to the change in corporate purposes in the Certificate of Amendment of the Certificate of Incorporation of First Chinese Presbyterian Community Affairs Home Attendant Corp.

Attachments

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**From:** Gong, Andy <[AGong@lowenstein.com](mailto:AGong@lowenstein.com)>  
**Sent:** Tuesday, December 13, 2022 3:03 PM  
**To:** doh.sm.PHHPC <[p hhpc@health.ny.gov](mailto:p hhpc@health.ny.gov)>  
**Cc:** Repka, Kelsey <[KRepka@lowenstein.com](mailto:KRepka@lowenstein.com)>; Holder, Christina <[CHolder@lowenstein.com](mailto:CHolder@lowenstein.com)>  
**Subject:** Question re: DOH Approval for Restated Certificate of Incorporation

You don't often get email from [agong@lowenstein.com](mailto:agong@lowenstein.com). [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hello,

We are representing the First Chinese Presbyterian Community Affairs Home Attendant Corp., an NY nonprofit corporation, on a pro bono basis. Our client's members recently approved a restated certificate of incorporation ("COI") to amend the COI purposes clause to include a broader range of social services. We don't think that DOH approved the COI when it was initially filed in the 1970s, but the client is a DOH licensed provider of personal care services now. Could you please confirm whether this change requires DOH approval?

I was unable to reach your office at the number (518) 402-0964, but would be happy to hop on a call to discuss. Please let us know (and please point us in the right direction if this is the wrong office to reach out to).

Thanks,  
Andy

**Andy Gong**  
Associate  
Lowenstein Sandler LLP

T: [\(212\) 419-6015](tel:(212)419-6015)

HAC  
CI

**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  
August 30, 2019.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

— 10  
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(1)

CERTIFICATE OF INCORPORATION  
OF  
THE FIRST CHINESE PRESBYTERIAN  
COMMUNITY AFFAIRS HOME ATTENDANT CORP.

435317

*Obtained*  
*4/1/81*

STATE OF NEW YORK  
DEPARTMENT OF STATE

PAID DEC 13 1979

AMT OF CHECK \$ 5.20  
FILING FEE \$ 3.00  
TAX \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_

*PAID*  
*Type B*

H. SPENCER KUPPERMAN  
ATTORNEY AT LAW  
166 MONTAGUE STREET  
BROOKLYN, N. Y. 11201  
(212) 692-4211

CERTIFICATE OF INCORPORATION  
OF  
THE FIRST CHINESE PRESBYTERIAN  
COMMUNITY AFFAIRS HOME ATTENDANT CORP.  
UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

I, THE UNDERSIGNED, am of the age of nineteen years or over, for the purpose of forming a corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of New York, do hereby certify:

FIRST: The name of the corporation is THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS HOME ATTENDANT CORP. \*

SECOND: That the corporation is a corporation as defined in subparagraph (a)(5) of Section 102.

THIRD: The purposes for which the corporation is formed and the objects to be carried on and promoted by it, are as follows:

(a) To provide personal care services as mandated by Title XIX of the Social Security Act.

(b) To provide personal care services to individuals designated exclusively by the New York State Department of Social Services as a result of said individuals being classified as qualifying for the receipt of services under

A627638



the Social Security Act.

The individuals so designated by the Department of Social Services are persons classified as elderly, blind and/or disabled. The recipients of the services provided by the company receive the personal care services administered by trained employees of the company without fee or charges. The type of services provided is paid entirely by New York City, New York State and the United States Government.

Were it not for this type of service, the general public would have to incur great costs resulting from recipients of this program having to be hospitalized as opposed to being cared for in their own homes.

Besides providing the administration of this service at the lowest possible cost to the City of New York, the company directly assists the public by using funds it receives from the New York City Department of Social Services to employ individuals who would otherwise be on the welfare rolls or unemployed. The employment and personal care service training provided by the company allows people to join the ranks of the gainfully employed.

(c) In general, to do any and all things necessary or proper in connection with or incidental to the aforesaid purposes and to exercise any and all powers in connection therewith which may now or hereafter be lawful for the corporation to do and exercise under and in pursuance of the Not-for-Profit Corporation Law of the State of New York or

any law or laws of the State of New York or the United States of America that may be now or hereafter applicable to the corporation, provided the same shall not be inconsistent with the provisions of this certificate and further provided that no work shall be done and no institution shall be operated by this corporation for profit but solely for the purposes hereinbefore set forth and further provided that no part of the net earnings of this corporation shall inure to the benefit of any member thereof, and further provided that this corporation shall not disseminate or carry on propaganda or engage in any activity or activities for the purpose of influencing or attempting to influence any legislation.

(d) To apply for, obtain and contract with any Federal, State or City governmental agency in the implementation of providing services as a home attendant vendor.

(e) To engage in any kind of activity, and to enter into, perform, and carry out contracts of any kind, necessary or in connection with, or incidental to the accomplishment of any one or more of the non-profit purposes of the corporation.

(f) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law.

(g) No part of the income of the corporation shall

IF HAC  
Closes -  
where does  
money go?

inure to the benefit of any member, trustee, director, 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, 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.

(h) No part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

(i) In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501 (c)(3) of the Internal Revenue Code of 1954, as amended, subject to an order of a Justice of the Supreme Court of the State of New York.

(j) The corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954, as amended; and the corporation shall not (a) engage in any act of self-dealing as defined in Section

4941[d] of the Code; (b) retain any excess business holdings as defined in Section 4943[c] of the Code; (c) make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or (d) make any taxable expenditures as defined in Section 4945[d] of the Code.

(k) The corporation shall not engage in any transaction described or defined as a "prohibited transaction" by Section 503 (c) of the Internal Revenue Code of 1954 (26 U.S.C.A. §503(c)), as the same may be amended from time to time; nor shall the income of the corporation be unreasonably accumulated or invested in such a manner as to jeopardize the carrying out of the purpose of the corporation within the intentment of Section 504 (a) of the Internal Revenue Code of 1954 (26 U.S.C.A. §504[a]), as the same may be amended from time to time.

(l) Notwithstanding any other provision of these articles, the corporation is organized exclusively for charitable, educational, religious, and scientific purposes as specified in Section 501 (c)(3) of the Internal Revenue Code of 1954 and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501 (c)(3) of the Internal Revenue Code of 1954.

**FOURTH:** The type of corporation it shall be under Section 201 of its Not-for-Profit Corporation Law is Type B.

FIFTH: In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 202 N-PCL, together with the power to solicit grants and contributions for corporate purposes.

SIXTH: The office of the corporation is to be located in the City of New York, County of New York, State of New York.

SEVENTH: The territory in which the operations of the corporation will principally be conducted is New York County.

EIGHTH: The names and addresses of the persons constituting the initial Board of Directors of the corporation are:

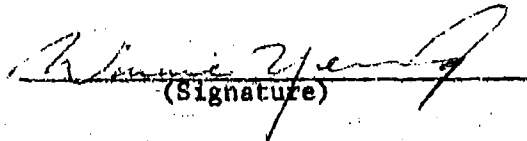
WINNIE YOUNG	41-17 97th Place Corona, New York
JENNIFER CHENG	1016 E. 102nd Street Brooklyn, New York
KWOK KIT WU	105-24 63rd Avenue Forest Hills, New York
HO YIN TSUI	35 Montgomery Street Apt. 3E New York, New York
WYMAN WUN	20-22 150th Street Whitestone, New York
PHILLIP LAW	100-22 Avenue L Brooklyn, New York

NINTH: The post office address to which the Secretary of State shall mail a copy of any notice required by law is: 61 Henry Street, New York, New York 10002.

TENTH: The name and address of the registered agent which is to be the agent of the corporation upon whom process against it may be served, is H. SPENCER KUPPERMAN, 166 Montague Street, Brooklyn, New York 11201.

ELEVENTH: That all approvals or consents required by the Not-for-Profit Corporation Law or any other statute are endorsed upon or attached to this Certificate of Incorporation.

IN WITNESS WHEREOF, I have made and signed this certificate this 3rd day of December A.D. 1979 and I affirm the statements contained therein are true under penalties of perjury.

  
(Signature)

WINNIE YOUNG  
(Name of Incorporator)

41-17 97th Place  
Corona, New York 11368  
(Address)

APPROVAL OF CERTIFICATE OF INCORPORATION

BY

SUPREME COURT JUSTICE

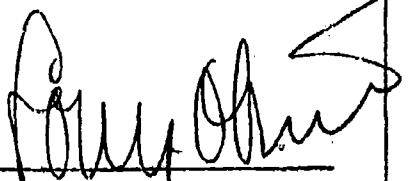
I, **LOUIS OKIN**, a Justice of the  
Supreme Court of the State of New York, *FIRST* Judicial  
District, do hereby approve the foregoing Certificate of  
Incorporation of **THE FIRST CHINESE PRESBYTERIAN  
COMMUNITY AFFAIRS HOME ASSOCIATION CORP.**  
and consent that the same be filed.

DATED: **DEC 6 - 1979**

Supreme Court, New York County

Special Term, Part 2

New York, New York

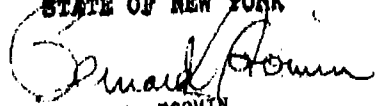


Justice of the Supreme Court  
*FIRST* Judicial District  
**LOUIS OKIN**

*December 5, 1979*

**THE UNDERSIGNED HAS NO  
OBJECTION TO THE GRANTING  
OF JUDICIAL APPROVAL  
HEREON AND WAIVES  
STATUTORY NOTICE**

**ROBERT ABRAMS  
ATTORNEY GENERAL  
STATE OF NEW YORK**



**BERNARD TOOMIN  
Assistant Attorney General**

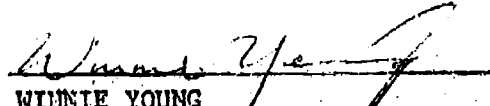


RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
THE FIRST CHINESE PRESBYTERIAN CHURCH  
COMMUNITY AFFAIRS CORP.

The following is a true copy of a resolution duly adopted by the Board of Directors of THE FIRST CHINESE PRESBYTERIAN CHURCH COMMUNITY AFFAIRS CORP. at a meeting of the said Board at 61 Henry Street, New York, N.Y. on December 3, 1979.

WHEREAS, there has been proposed the formation of a corporation pursuant to the laws of the State of New York under the name of THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS HOME ATTENDANT CORP. and the Secretary of State has requested the expression of an opinion of this Board concerning the similarity of the proposed name to that of this corporation.

NOW THEREFORE, be it resolved that in the opinion of this Board, the above-mentioned proposed name does not so nearly resemble that of this corporation as to tend to confuse or deceive and it consents to the use of such name.

  
WINNIE YOUNG  
Chairman of the Board



RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
THE FIRST CHINESE PRESBYTERIAN CHURCH  
COMMUNITY AFFAIRS CORP.

The following is a true copy of a resolution duly adopted by the Board of Directors of THE FIRST CHINESE PRESBYTERIAN CHURCH COMMUNITY AFFAIRS CORP. at a meeting of the said Board at 67 Henry Street, New York, N.Y. on December 3, 1979.

WHEREAS, there has been proposed the formation of a corporation pursuant to the laws of the State of New York under the name of THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS HOME ATTENDANT CORP. and the Secretary of State has requested the expression of an opinion of this Board concerning the similarity of the proposed name to that of this corporation.

NOW THEREFORE, be it resolved that in the opinion of this Board, the above-mentioned proposed name does not so nearly resemble that of this corporation as to tend to confuse or deceive and it consents to the use of such name.

  
WINNIE YOUNG  
Chairman of the Board

9

BYLAWS  
OF  
THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS  
HOME ATTENDANT CORPORATION

This document is gender neutral. Any reference to “he” or “she” shall read “he/she”; “his” or “her” shall read “his/her”, etc.

Adopted on: November 16, 1980  
Revision 1: November 27, 1994  
Revision 2: November, 2001  
Revision 3: November, 2005  
Revision 4: November, 2011  
Revision 5: November, 2014

## **BYLAWS**

### ARTICLE I

#### OFFICES

The principal office of The First Chinese Presbyterian Community Affairs Home Attendant Corporation (the "Corporation") shall be in the City of New York, County of New York, State of New York. The Corporation may also have offices at such other places as the Board of Directors (the "Board") may from time to time determine or the business of the Corporation may require.

### ARTICLE II

#### MISSION

- (a) The mission of the Corporation is to provide social service programs (including personal care assistance, food assistance and education programs) to New Yorkers of limited financial means; and
- (b) The Corporation shall always be subject to the Constitution and laws of the United States of America, the constitution and laws of the State of New York, and also to the constitution of the Presbyterian Church (USA). The Corporation shall endeavor to improve and promote social services such as developing cultural education, health care and public welfare in the community. Members of the Board shall minister to those in need, to the sick, to the friendless and to any who may be in distress, in accordance with the Scriptural duties of Christian love and after the example of the Lord Jesus.

### ARTICLE III

#### MEMBERS

Section 1. Membership. Membership shall be open to the congregation members of the First Chinese Presbyterian Church (the "Church") that are:

- a) At least nineteen (19) years of age; and
- b) receive baptism in the First Chinese Presbyterian Church;

or

transferred from other churches to the First Chinese Presbyterian Church;

or

reaffirmed faith in the First Chinese Presbyterian Church.

Section 2. [RESERVED].

Section 3. Classes of Membership. The Corporation shall have only one class of Membership.

Section 4. Meetings. The annual meeting of the Members (the “Annual Meeting of the Members”) for the election of the Directors and for the transaction of such other business as may come before the Members, including the delivery of a financial statement (explicitly required pursuant to Section 519 of the NPCL) shall be held each year at the place (which may be either within or outside the State of New York), time and date, as may be fixed by the Board, or, if not so fixed, as may be determined by the Chairperson of the Board. Special Meetings shall be held whenever called by resolution of the Board, the Chairperson of the Board, or by a written demand to the Secretary of ten percent (10%) of the Members eligible to vote. The Secretary, upon receiving the written demand or resolution, shall promptly give notice of such meeting as provided below, or if the Secretary fails to do so within five (5) business days thereafter, any member signing such demand may give such notice. The Board may, in its sole discretion, determine that any meeting, which for the avoidance of doubt shall include the Annual Meeting of the Members, be held solely by means of electronic communication, as more fully set forth in Section 5 of this Article III.

Section 5. Electronic Communication. If the Board, in its sole discretion, determines that the Annual Meeting of the Members or any special meeting of the members be held solely by means of electronic communication, the platform or service of such meeting shall be the place of the meeting.

Section 6. Notice of Meetings. Written or electronic notice of each member meeting shall be given, personally or by mail or electronic transmission or notification through the Church’s weekly bulletin, to each Member entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of the meeting; provided, however, that such notice may be given by any other class of mail not fewer than thirty (30) nor more than sixty (60) days before the date of the meeting. The notice shall state (i) the place, date, and hour of the meeting, (ii) the means of electronic communications, if any, by which members may participate in the proceedings of the meeting and vote at such meeting, and (iii) unless it is the Annual Meeting of the Members, the purpose or purposes for which the meeting is called and indicate that the notice is being issued by or at the direction of the person or persons calling the meeting.

Section 7. Quorum, Adjournments of Meetings. At all meetings of the Members, ten percent (10%) of the Members eligible to vote (or one hundred (100) Members eligible to vote, whichever is less), present in person, shall constitute a quorum for the transaction of business. In the absence of a quorum, the Members present in person shall adjourn the meeting from that time until a quorum is present. Notice of the new meeting is not required if the time and place for the new meeting is announced at the meeting at which the adjournment is taken, and at the new meeting any business may be transacted which might have been transacted at the meeting as originally called.

Section 8. Organization. The Chairperson of the Corporation shall preside at all meetings of the Members or, in the absence of the Chairperson, an acting Chairperson shall be chosen by the Members present. The Secretary of the Corporation shall act as Secretary at all meetings of the Members, but in the absence of the Secretary, the presiding Member may appoint any person to act as Secretary of the meeting.

Section 9. Voting. At any meeting of the Members, each Member present, in person, shall be entitled to one (1) vote. Upon demand of any Member, any vote for Directors or upon any question before the meeting shall be by ballot. The record eligibility of voting rights shall be set ten (10) days before the date of the meeting.

Section 10. Adoption of the Bylaws. The Board shall call for a Special Meeting of the Members to adopt the bylaws (or the bylaws may be adopted at the Annual Meeting of the Members). The proposed bylaws are to be circulated to the Members no later than ten (10) days prior to the Annual Meeting or Special Meeting of the Members to adopt the bylaws. A majority of the votes cast at the Annual Meeting or the Special Meeting of the Members to adopt the bylaws shall be the act of the Members.

Section 11. Special Actions Requiring Vote of Members: The following corporate actions may not be taken without approval of the Members:

- (a) a plurality of the votes cast at a meeting of the Members is required for the election of the Directors of the Corporation;
- (b) a majority of the votes cast at a meeting of the Members is required for (1) any amendment of the Certificate of Incorporation, (2) a petition for judicial dissolution or (3) any matter presented to the Members by the Board; and
- (c) two-thirds (2/3) of the votes cast at a meeting of the Members is required for (1) disposing of all, or substantially all, of the assets of the Corporation, (2) approval of a plan of merger, (3) authorization of a plan of non-judicial dissolution, or (4) revocation of a voluntary dissolution proceeding, provided, however, that the affirmative votes cast in favor of

any action described in this subsection (c) shall be at least equal to the minimum number of votes necessary to constitute a quorum.

Blank votes or abstentions shall not be counted in the number of votes cast.

Section 12. Continuity of Operations. In the event the Church dissolves or the number of Members falls below nine (9), the Member voting requirements of this ARTICLE III shall cease to apply and the Board shall have unfettered control to direct the affairs and operation of the Corporation, subject to applicable law.

#### ARTICLE IV BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board shall have general power to control and manage the affairs and property of the Corporation subject to applicable law and in accordance with the purposes and limitations set forth in the Certificate of Incorporation and herein.

(a) The Board may:

- (i) Appoint and discharge advisors and consultants who have skills necessary or helpful to the Corporation.
- (ii) Employ and discharge persons for the furtherance of the purposes of the Corporation.
- (iii) Exercise all other powers necessary to manage the affairs and further the purposes of the Corporation in conformity with the Certificate of Incorporation and these Bylaws.

(b) The Board shall:

- (i) Direct the Chairperson and Treasurer of the Corporation to present at the Annual Meeting of the Board a financial report, verified by the Chairperson and Treasurer or a majority of the Directors, or certified by an independent public accountant or certified public accountant or a firm of such accountants selected by the Board. This report shall be filed with the records of the Corporation and a copy or abstract thereof entered in the minutes of the proceedings of the annual meeting of the Board. This report shall also be presented at the Annual Meeting of the Members in accordance with Article III, Section 4 of these Bylaws.
- (ii) Select all Officers for the Corporation and approve the members of any committee appointed by the Chairperson.

(c) Each Director shall:

- (i) Serve the Corporation with honesty and loyalty and not for their own interests or benefits;

- (ii) Establish a close relationship with the Church, its congregation and the employees of the Corporation;
- (iii) not participate in any activities that would or may conflict in any manner or degree with the Church or the Corporation, unless disclosed to the Corporation in accordance with the Corporation's Conflict of Interest Policy;
- (iv) make the effort to understand the contracts, commitments and obligations of the Corporation; and
- (v) attend monthly Board meetings regularly. Any Director absent from the monthly Board meetings for a total of four (4) times without any excuse within a calendar year shall be asked to resign from the Board.

Section 2. Number. The number of Directors constituting the entire Board shall be not less than three (3) and not more than nine (9). Subject to such minimum, the number of Directors may be increased or decreased from time to time, by resolution of the Board, but such action by the Board shall require a vote of a majority of the entire Board and no decrease shall shorten the term of any incumbent Director. The entire Board is currently comprised of nine (9) Directors.

Section 3. Election and Term of Office. The Directors shall hold office for three (3)-year terms, with three (3) Director elections at each Annual Meeting of the Members; provided, however, that any Director elected to fill an unexpired term (whether resulting from the death, resignation or removal or created by an increase in the number of Directors) shall hold office until the next Annual Meeting at which the election of such Director seat is in the regular order of business and until his or her successor is elected or appointed and qualified. Directors may be elected to any number of consecutive terms. To become a Director, a person shall be nominated by a Director and elected by a plurality of the Members.

Section 4. Qualification for Directors. Each Director shall (i) be an active Member (must meet the criteria for Membership set forth in Section 1 of Article III) of the Church, (ii) have worshipped at the Church for at least two (2) years and be willing to serve the Membership and (iii) not be an employee of the Corporation or an immediate family member (spouse, parent, children, sibling or in-law) of an employee of the Corporation.

Section 5. Classification of Directors. The Directors are divided into three equal as possible classes with three (3) Directors in the first class, three (3) Directors in the second class, and three (3) Directors in the third class. The term of office of the first class shall expire at the first Annual Meeting of the Corporation following the Annual Meeting at which the Directors are first designated into classes. The term of office of the second class shall expire at the following Annual Meeting and the third class at the third Annual Meeting after the annual meeting at which Directors are first designated into classes. At each Annual Meeting after Directors are first designated into classes, Directors shall be elected for a term of three (3) years to replace those whose terms shall expire.

Section 6. Removal. Any Director may be removed at any time for cause by (i) a vote of Directors then in office at a regular meeting or special meeting of the Board called for that purpose; provided that there is a quorum of not less than a majority of Directors present at such meeting or (ii) a vote of the Members in accordance with these Bylaws. For the avoidance of doubt, missing three consecutive meetings of the Board unless a majority of the Directors has excused such Director from attendance may constitute cause. In addition to the foregoing, any Director may be removed at any time without cause by a vote of the Members in accordance with these Bylaws.

Section 7. Resignation. Any Director may resign from the Board at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Corporation or the Chairperson. The acceptance of a resignation by the Board shall not be necessary to make it effective, but no resignation shall discharge any accrued obligation or duty of a Director.

Section 8. Vacancies and Newly Created Directorships. Any newly created Directorships and any vacancies on the Board arising at any time and from any cause may be filled at any meeting of the Board by a majority of the Directors then in office, regardless of their number. The Directors so elected shall serve until the next Annual Meeting at which the election of Directors is the regular order of business and his successor is elected or appointed or qualified. A vacancy in the Board shall be deemed to exist on the occurrence of any of the following:

- (a) the death, resignation or removal of any Director;
- (b) an increase in the authorized number of Directors by resolution of the Board; or
- (c) the failure of the Members, at any Annual Meeting or other meeting of Members at which any one or more Directors are to be elected, to elect the full authorized number of Directors to be voted for at that meeting.

Section 9. Meetings. Meetings of the Board may be held at any place as the Board may from time to time fix. The annual meeting of the Board shall be held at a date, time and place fixed by the Board and at such time the Board shall receive an annual report. Special meetings of the Board shall be held whenever called by the Chairperson of the Board, the Executive Director or any Director upon written demand of not less than three (3) Directors of the Board, in each case at such time and place as shall be fixed by the person or persons calling the meeting.

Section 10. Notice of Meetings. Regular meetings may be held without notice of the time and place if such meetings are fixed by the Board. Notice of the time and place of the annual meeting, each regular meeting not fixed by the Board and each special meeting of the Board shall be (i) delivered to each Director by e-mail or facsimile at least five (5) days before the day on which the meeting is to be held; or (ii) mailed to each Director, postage prepaid, addressed to him or her at his or her residence or usual place of business (or at such other address as he or she may have designated in a written request filed with the Secretary at least seven (7) days before the day on which the meeting is to be held). To discuss matters requiring prompt action, notice of special meetings may be



sent to each Director by e-mail, facsimile, or telephone, or given personally, no less than forty-eight (48) hours before the time at which such meeting is to be held, unless the meeting must be held within forty-eight (48) hours. Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. Waivers of notice sent by e-mail must be able to be reasonably determined to be sent by the Director. No notice need be given of any adjourned meeting.

Section 11. Quorum. Unless a greater proportion is required by law, the quorum shall be a majority of the entire Board. The Board may appoint an Alternate to attend a Board meeting in place of an absent Director. The appointed Alternate shall have all rights and privileges of a regular Director for the duration of the appointment. There shall be no more than two (2) alternates appointed at any Board meeting. An “Alternate” means any formerly duly elected Director that currently meets the qualification requirements of Section 1 of Article III.

Section 12. Voting. Except as otherwise provided by law or these Bylaws, at any meeting of the Board at which a quorum is present, the affirmative vote of a majority of the Directors present at the time of the vote shall be the act of the Board. If at any meeting of the Board there shall be less than a quorum present, the Directors present may adjourn the meeting until a quorum is obtained. Any one or more Directors of the Board or any committee thereof may participate in a meeting of the Board or committee by means of telephone, video conference or similar communications equipment provided that all persons participating in the meeting can hear each other at the same time and can participate in all matters before the board. Participation by such means shall constitute presence in person at a meeting. The following acts of the Board require the affirmative vote of at least two-thirds (2/3) of the entire Board:

- (a) a purchase, sale, mortgage or lease of real property of the Corporation if the property constitutes all or substantially all of the assets of the Corporation;
- (b) a sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; or
- (c) an alteration to these Bylaws or Certificate of Incorporation of the Corporation that would increase the quorum requirement to greater than a majority of the entire board or would increase the vote requirement to greater than a majority of the Board present at the time of the vote.

Section 13. Action by the Board. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all Directors of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If the consent is written, it must be signed by the Director. If the consent is electronic it must be able to be reasonably determined to have been sent by the director. The resolution and the written consents thereto by the Directors of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 14. Compensation. No compensation of any kind shall be paid to any Director for the performance of his or her duties as Director. This shall in no way limit (i) the reimbursement of reasonable expenses incurred in connection with board service or (ii) a Director's receipt of stipends from governmental agencies (e.g., the New York City Human Resources Administration) on accordance with applicable law. Subject to the Corporation's Conflicts of Interest Policy provided that there is full disclosure of the terms of such compensation and the arrangement has been determined to be fair and reasonable and approved by the Board, a Director may receive payment for services provided to the Corporation in any capacity separate from his or her responsibilities as a Director.

ARTICLE V  
OFFICERS, EMPLOYEES AND AGENTS

Section 1. Number and Qualifications. The Officers of the Corporation shall be a Chairperson, a President, a Secretary, a Treasurer and such other Officers, if any, including one or more Vice-Chairs, as the Board may from time to time appoint. One person may hold more than one office in the Corporation except that no one person may hold the offices of Chairperson and Secretary. The Chairperson shall be a Director of the Corporation and shall not be an employee of the Corporation. No instrument required to be signed by more than one Officer may be signed by one person in more than one capacity.

Section 2. Election and Term of Office. The Officers of the Corporation shall be elected for a **[one year term]** at the annual meeting of the Board, and each shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

Section 3. Employees and Other Agents. The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties and shall receive such reasonable compensation, if any, as the Board may from time to time determine. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities and duties.

Section 4. Removal. Any Officer, employee or agent of the Corporation may be removed with or without cause by a vote of the majority of the Board.

Section 5. Vacancies. In case of any vacancy in any office, a successor to fill the unexpired portion of the term may be elected by the Board.

Section 6. Chairperson: Powers and Duties. The Chairperson shall preside at all meetings of the Board and the Executive Committee. The Chairperson shall have general supervision of the affairs of the Corporation and shall keep the Board fully informed about the activities of the Corporation. He or she has the power to sign and execute alone in the name of the Corporation all contracts authorized either generally or specifically by the Board, unless the Board shall specifically require an additional signature. The

Chairperson shall perform all the duties usually incident to the office of the Chairperson and shall perform such other duties as from time to time may be assigned by the Board.

Section 7. Vice-Chairs: Powers and Duties. Each Vice-Chair shall have such powers and duties as may be assigned to him or her by the Board. In the absence of the Chairperson, the Vice-Chair(s), in the order designated by the Board, shall perform the duties of the Chairperson.

Section 8. President: Powers and Duties. The President shall attend all meetings of the Board. He or she shall perform the duties prescribed by these Bylaws and those proper to the office, including responsibility to conduct and manage the business of the Corporation, and announce decisions when made. The President is responsible for assuring that an accurate set of minutes, properly dated and signed, showing all matters discussed and actions taken, are properly filed in the Corporation's books and records. The President carries out instructions of the Board and signs documents on behalf of the Corporation.

Section 9. Secretary: Powers and Duties. The Secretary shall keep the minutes of the annual meeting and all meetings of the Board in books provided for that purpose. He or she shall be responsible for the giving and serving of all notices of the Corporation, receiving the annual disclosure statements required by the Corporation's conflict of interest policy and shall perform all the duties customarily incident to the office of the Secretary, subject to the control of the Board, and shall perform such other duties as shall from time to time be assigned by the Board.

Section 10. Treasurer: Powers and Duties. The Treasurer shall have the care and custody of all the funds and securities of the Corporation, and shall deposit said funds in the name of the Corporation in such bank or trust company as the Board may elect; he/she shall, when duly authorized by the Board, sign and execute all contracts in the name of the Corporation, when countersigned by the Chairperson; he/she shall also sign all checks, drafts, notes, and orders for the payment of money, which shall be duly authorized by the Board and shall be countersigned by the Chairperson; he/she shall at all reasonable times exhibit his/her books and accounts to any Director of the corporation upon application at the office of the Corporation during ordinary business hours. At the end of each corporate year, he/she shall have an audit of the accounts of the Corporation made by a committee appointed by the Chairperson, and shall present such audit in writing to the Board.

Section 11. Compensation. Any Officer who is not a Director but is an employee or agent of the Corporation is authorized to receive a reasonable salary or other reasonable compensation for services rendered to the Corporation as an employee or agent when authorized by a majority of the entire Board, and only when so authorized.

Section 12. Sureties and Bonds. In case the Board shall so require, any Officer or agent of the Corporation shall execute for the Corporation a bond in such sum and with such surety or sureties as the Board may direct, conditioned upon the faithful performance of his or her duties to the Corporation and including responsibility for negligence and for the accounting for all property or funds of the Corporation that may come into his or her hands.

ARTICLE VI  
COMMITTEES

A committee of the Board is one that shall have authority to bind the Corporation and shall be comprised solely of Directors. There may be committees of the Board, as follows:

- (a) Executive Committee. An Executive Committee which shall consist of at least three (3) Directors, one of whom shall be the Chairperson of the Board, who shall also serve as chair of the Executive Committee. The other members of the Executive Committee shall be appointed by the Chairperson, subject to the approval of the entire Board. The Executive Committee shall have all the authority of the Board except as to the following matters:
- (i) the filling of vacancies on the Board or on any committee;
  - (ii) the amendment or repeal of the Bylaws or the adoption of new Bylaws;
  - (iii) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable;
  - (iv) the fixing of compensation of the Directors for serving on the Board or any committee;
  - (v) the election or removal of officers and directors;
  - (vi) the approval of a merger or plan of dissolution;
  - (vii) the authorization of a transaction involving the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation; and
  - (viii) the approval of amendments to the certificate of incorporation.
- (c) Finance Committee. A Finance Committee which shall consist of at least three (3) Directors, one of whom shall be the Treasurer. The other members of the Finance shall be appointed by the Chairperson of the Board, subject to the approval of the Board. The Finance Committee shall advise the Treasurer and the Board in regard to the investments and general fiscal policy of the Corporation.
- (d) Audit Committee. An Audit Committee comprised at least three (3) directors each of whom is an Independent Director as defined in Article XV, Section 3. The members of the Audit Committee shall be appointed by the Chairperson of the Board, subject to the approval of the Board.
- (e) Other Committees of the Board. By resolution of the Board at a meeting at which a quorum is present the Board may establish and appoint other

committees of the Board consisting of at least three (3) Directors with such powers and duties as the Board may prescribe. The members of such committees shall be appointed by the Chairperson of the Board, subject to the approval of the Board.

ARTICLE VII  
ADVISORS TO THE CORPORATION

Section 1. Powers. The Board by resolution may appoint from time to time any number of persons, including the Pastor of the Church and the chairperson of the Trustees of the Church, as advisors of the Corporation. No such advisors shall have the authority to bind the Board or the Corporation. Each advisor shall hold office during the pleasure of the Board and shall have only the obligations as the Board may from time to time determine. The advisors may be invited to attend the meetings of the Board or any committee of the Board.

Section 2. No Compensation. No advisor to the Corporation shall receive, directly or indirectly, any salary or compensation for any service rendered to the Corporation as a member of a committee of the Corporation, except that the Board may authorize reimbursement of expenditures reasonably incurred on behalf of activities for the benefit of the Corporation.

ARTICLE VIII  
CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS

Section 1. Checks, Notes and Contracts. The Board is authorized to select the banks or depositories it deems proper for the funds of the Corporation and shall determine who shall be authorized on the Corporation's behalf to sign checks, drafts or other orders for the payment of money, acceptances, notes or other evidences of indebtedness, to enter into contracts or to execute and deliver other documents and instruments.

Section 2. Investments. The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the Board may deem desirable.

ARTICLE IX  
BOOKS

There shall be kept at the office of the Corporation correct books of account of the activities and transactions of the Corporation including the minute book, which shall contain a copy of the Certificate of Incorporation, a copy of these bylaws, and all minutes of meetings of the Board.

ARTICLE X  
FISCAL YEAR

The fiscal year of the Corporation shall be determined by the Board.

ARTICLE XI  
INDEMNIFICATION AND INSURANCE

Section 1. Indemnification. The Corporation shall, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he or she or his or her testator was a Director or officer of the Corporation (such person, an “Indemnitee”), against any expenses, judgments, fines, settlements and other amounts actually and reasonable incurred in connection with any liability, suit action, loss, or damage arising or resulting from the Indemnitee’s service as a Director or officer of the Corporation, subject to the limits on the indemnification described in this Article XI.

Section 2. Insurance. The Corporation shall have the power to purchase and maintain all insurance policies deemed to be in the best interest of the Corporation including insurance to indemnify the Corporation for any obligation which it incurs as a result of its indemnification of Directors, Officers and employees pursuant to Article XI, Section 1 above, or to indemnify such persons in instances in which they may be indemnified pursuant to Article XI, Section 1 above.

Section 3. Exceptions to Indemnification. The Indemnitee will not be entitled to indemnification if:

- (a) in the case of a civil claim, the Indemnitee did not act in good faith and in reasonable manner; provided, however, the termination of any claim or action by judgment, order, or settlement or its equivalent will not, of itself, create a presumption that the person did not act in good faith and in a reasonable manner;
- (b) the claim or action is of a criminal nature;
- (c) the actions or conduct of the Indemnitee constituted willful misconduct or was knowingly fraudulent or deliberately dishonest;
- (d) the Indemnitee will or has received payment under a valid and collectible insurance policy, except where payment under this insurance policy, clause, bylaw or agreement is not sufficient to fully indemnify the Indemnitee in which case the Corporation will be responsible for any shortfall in payment received; or
- (e) an action or proceeding was initiated in whole or in part by the Indemnitee whether alone or along with one or more other claimants, unless the action or proceeding has the written consent of the Corporation.

Section 4. Notice of Claim. In the event of any claim or action, the Indemnitee will promptly provide the Corporation with written notice of the claim or action and will notify the Corporation within five (5) business days of the commencement of any legal proceedings relating to the claim or action. The Indemnitee will provide the Corporation with all available information known to the Indemnitee relating to the claim or action.

Section 5. Authorization of Indemnification. In any case where the Indemnitee requires indemnification, the Corporation will make the determination of whether indemnification is appropriate having given consideration to the terms described in the Exceptions to Indemnification section, above. If the Indemnitee disagrees with the determination of the Corporation then the matter must be referred for review and determination to independent legal counsel reasonably satisfactory to the Indemnitee. In all cases the Corporation will bear all costs of any independent determination.

Section 6. Assumption of Defense. On being notified of any impending action or claim, the Corporation may, at its own expense, participate in the defense of any action or claim and may, alone or with any other indemnifying party, assume the defense against the action or claim using counsel that are reasonably satisfactory to the Indemnitee. Once the Corporation has notified the Indemnitee of the intention to assume the defense, the Corporation will no longer be liable to the Indemnitee for any further legal or other expense subsequently incurred by the Indemnitee in relation to the defense of the claim. Once the Corporation provides notice to the Indemnitee that the defense of claim has been assumed by the Corporation, the Indemnitee may employ or continue to employ its own legal counsel, however any fees or expenses incurred by the Indemnitee subsequent to the notice of assumption of defense by the Corporation will be the sole responsibility of the Indemnitee.

Section 7. Failure to Defend. If the Corporation elects not to assume the defense against the claim or action, then the Indemnitee may defend against the claim or action in any manner the Indemnitee deems appropriate.

Section 8. Settlement. The Indemnitee will not settle any claim or action without first obtaining the written consent of the Corporation. The Corporation will not be liable for any amounts paid in settlement of any claim or action where written consent of the Corporation was not first obtained.

## ARTICLE XII AMENDMENTS

These Bylaws may be amended or repealed by the Members of the Corporation at a meeting duly called for the purpose of altering these Bylaws. Any amendment or repeal of these Bylaws is authorized only at a duly called and held meeting of the Members for

which written notice of such meeting, setting forth the proposed alteration, is given in accordance with the notice provisions for special meetings set forth in Article III, Section 6 of these Bylaws.

ARTICLE XIII  
NON-DISCRIMINATION

In all of its dealings, neither the Corporation nor its duly authorized agents shall discriminate against any individual or group for reasons of race, color, creed, sex, age, ethnicity, national origin, marital status, sexual orientation, gender identity, mental or physical disability or any category protected by state or federal law.

ARTICLE XIV  
REFERENCE TO CERTIFICATE OF INCORPORATION

References in these Bylaws to the Certificate of Incorporation shall include all amendments thereto or changes thereof unless specifically excepted by these Bylaws. In the event of a conflict between the Certificate of Incorporation and these Bylaws, the Certificate of Incorporation shall govern.

ARTICLE XV  
DEFINITIONS

Section 1: Affiliate. An affiliate of the Corporation is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Corporation.

Section 2: Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement (including direct or indirect remuneration as well as gifts or favors that are not insubstantial), or other arrangement involving the Corporation.

Section 3: Independent Director. A member of the Board of Directors who:

- is not and has not been an employee or a Key Person of the Corporation or an Affiliate of the Corporation within the last three years;
- does not have a Relative who is or has been a Key Person of the Corporation or an Affiliate of the Corporation within the last three years;
- has not received and does not have a Relative who has received more than \$10,000 in compensation directly from the Corporation or an Affiliate of the Corporation in any of the last three years (not including reasonable compensation for services or reimbursement for expenses reasonably incurred as a Director of the Corporation, as set by the Corporation);
- does not have a substantial Financial Interest in and is not an employee of, and does not have a Relative who has a substantial Financial Interest in or is an Officer (as defined below) of, any entity that has provided payments,



property or services to, or received payments, property or services from, the Corporation or an Affiliate of the Corporation in excess of the following, as applicable: (i) the lesser of \$10,000 or 2% of the entity's consolidated gross revenue in any of the last three fiscal years if such consolidated gross revenue was less than \$500,000; (ii) \$25,000 if the entity's consolidated gross revenue in any of the last three fiscal years was \$500,000 or more but less than \$10,000,000; or (iii) \$100,000 if the entity's consolidated gross revenue in any of the last three fiscal years was \$10,000,000 or more;

- is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the Corporation's outside auditor or who has worked on the Corporation's audit at any time during the past three years;
- is not in an employment relationship under control or direction of any Related Party (as defined below) and does not receive payments subject to approval of a Related Party; or
- does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Director.

Section 4: Key Person. A Key Person is a person, other than an Officer or Director of the Corporation, who:

- has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of directors and officers;
- manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or
- alone or with others controls or determines a substantial portion of the Corporation's capital expenditures or operating budget.

Section 5: Related Party. Persons who may be considered a Related Party of the Corporation or an Affiliate of the Corporation under this Bylaws include:

- Directors, Officers, or Key Persons of the Corporation or an Affiliate of the Corporation;
- Relatives of Directors, Officers, or Key Persons;
- any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%;
- Founders of the Corporation;
- substantial contributors to the Corporation (within the current fiscal year or the past five fiscal years);
- persons owning a controlling interest (through votes or value) in the Corporation;
- any non-stock entity controlled by one or more Key Persons; and

- any other person who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of the Corporation

Section 6: Relative. A Relative is a spouse or domestic partner (as defined in section 2994-A of the New York Public Health Law), ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half blood), or spouse or domestic partner of a child (whether natural or adopted), grandchild, great grandchild or sibling (whether whole or half blood).

**First Chinese Presbyterian Church  
Community Affairs Corporation  
61 Henry Street  
New York, NY 10002**

**2022 Annual Meeting  
Minutes**

**Date & Time:** Sunday, Dec. 4, 2022, 12:30 PM

**Place:** 61 Henry St., Sanctuary and Zoom

**Attendance:**

**Board Member:** Tony Chan, Peng Leong, Milton Mui, Jimmy Shek, Elaine Tso (Zoom)  
Jeanne Yong, Winston Chin (Zoom), William Tsang

**Board Member Absent:** None

**FCPC Congregation:** 72 members (on-site and Zoom attendances)

**Minutes recorded by:** Milton Mui 

1. The Congregation Meeting was attended by 72 church members. The voting for the proposed changes to the Certificate of Incorporation (COI) and Bylaws was moved to the Congregation Meeting to preserve the quorum, since many members usually leaves right after the congregation meeting. Milton presented the proposed changes to the Congregation and fielded questions in Cantonese. The 4 major changes listed below were voted on and all approved by a majority of the congregation. One change was made during the discussions and is indicated below:
  - A. COI - Not limiting the Corporation to only personal healthcare, and other updates.
  - B. Bylaw:
    - 1) Minimum Quorum for Community Affairs Corporation Meeting set to 100 or 10% of membership, whichever is less.
    - 2) Allowing meeting through electronic means, such as Zoom
    - 3) Continuity of Operation – Language approved with exception of changing the minimum number to 9 instead of 12.

█ 

█ 

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE FIRST CHINESE PRESBYTERIAN  
COMMUNITY AFFAIRS HOME ATTENDANT CORP.  
UNDER SECTION 805 OF THE  
NOT-FOR-PROFIT CORPORATION LAW**

The undersigned, Winston Chin, being an authorized officer of First Chinese Presbyterian Community Affairs Home Attendant Corp., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York, does hereby certify as follows:

- (1) The name of the corporation is the First Chinese Presbyterian Community Affairs Home Attendant Corp. (the "Corporation").
- (2) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 1 02 of the New York Not-for-Profit Corporation Law (the "N-PCL").
- (3) The Certificate of Incorporation was filed with the New York State Department of State on December 3, 1979 pursuant to the Not-for-Profit Corporation Law.
- (4) The Certificate is hereby restated to effect the following changes authorized by the N-PCL:
  - (a) Amend Article SECOND, which sets forth the language indicating how the Corporation is defined under the N-PCL, by including language referencing Section 201 of the N-PCL, accordingly Article SECOND is amended to read in its entirety as follows:

"SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law (the "N-PCL") and shall be a Charitable Corporation under Section 201 of the N-PCL."
  - (b) Amend Article THIRD, which sets forth the purpose for which the Corporation was formed, by deleting such language in the Article in its entirety, replacing it with language indicating the name of the Corporation, accordingly Article THIRD is amended to read in its entirety as follows:

"THIRD: The Corporation is formed for charitable purposes within the meaning of section 102(3-B) of the N-PCL, including for the purposes of providing social service programs (including personal care assistance, food assistance and education programs) to elderly people and people with disabilities of limited financial means in New York."
  - (c) Amend Article FOURTH, which sets forth the type of corporation under Section 201 of the N-PCL that the Corporation is, by deleting such language in its entirety, replacing it with language indicating that the Corporation is

formed to engage in an activity or purpose which requires consent or approval from any state official, department, board, agency or other body, and that such approval is attached, accordingly, Article FOURTH is amended to read in its entirety as follows:

“FOURTH: The Corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.”

- (d) Amend Article FIFTH, which sets forth the general power of the Corporation’s directors, by deleting such language in the Article in its entirety, replacing it with language indicating that the Corporation shall have all general rights, powers, and privileges enumerated in the N-PCL, accordingly, Article FIFTH is amended to read in its entirety as follows:

“FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the N-PCL and such other powers as are now or hereafter permitted by law for a corporation organized for the foregoing purposes, including, without limitation, the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.”

- (e) Amend Article SIXTH, which sets forth the location of the office of the Corporation, by deleting such language in the Article in its entirety, replacing it with language indicating that the Corporation is organized exclusively for charitable, religious and educational purposes, and intends at all times to qualify and remain qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and that the Corporation is not formed for and shall not be conducted nor operated for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual or individuals, and that no substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code, and that no part of the activities of the Corporation shall be devoted to participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office, and the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or by a corporation contributions to which are deductible under section 170(c)(2) of the Code, accordingly, Article SIXTH is amended to read in its entirety as follows:

“SIXTH: Notwithstanding any other provision of these articles, the Corporation is organized exclusively for charitable, religious and educational purposes, and intends at all times to qualify and remain

qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (and corresponding provisions of current and future United States Treasury rules and regulations) and, in connection therewith:

- (a) the Corporation is not formed for and shall not be conducted nor operated for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual or individuals, provided that nothing herein shall prevent the Corporation from paying reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes;
- (b) no substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code whether pursuant to an election under Section 501(h) or otherwise, and no part of the activities of the Corporation shall be devoted to participating or intervening in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office; and
- (c) the Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code (or the corresponding provision of any future U.S. Internal Revenue Law) or (ii) by a corporation contributions to which are deductible under section 170(c)(2) of the Code (or the corresponding provision of any future U.S. Internal Revenue Law).”
- (f) Amend Article EIGHTH, which sets forth the names and residences of the Corporation’s initial directors, by deleting such language in the Article in its entirety, replacing it with language indicating that the office of the Corporation shall be located in the County of New York, accordingly, Article EIGHTH is amended to read in its entirety as follows:

“EIGHTH: The office of the Corporation shall be located in the County of New York, State of New York.”
- (g) Amend Article NINTH, which sets forth the address for notice to the Corporation, by deleting such language in the Article in its entirety, replacing it with language designating the Secretary of the State of New York as the agent of the Corporation upon whom process against the Corporation may be served and setting forth the post office address to which

the Secretary shall mail a copy of any process against the Corporation served upon the Secretary, accordingly, Article NINTH is added to read in its entirety as follows:

“NINTH: The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon the Secretary is 100 East Broadway, Suite 401, New York, NY 10002.”

- (h) Amend Article TENTH, which sets forth the name and the address of the registered agent of the Corporation, by deleting such language in its entirety, replacing it with language regarding dissolution of the Corporation, accordingly, Article TENTH is added to read in its entirety as follows:

“TENTH: In the event of dissolution or other termination of the Corporation, the remaining assets and property of the Corporation shall, after payment of all necessary expenses thereof, be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding provisions of any future Federal tax code, or shall be distributed to the Federal government or State or local governments for a public purpose.”

- (i) Amend Article ELEVENTH, which confirms that required consents are attached, by deleting it in its entirety.
- (5) The provisions of this Restated Certificate of Incorporation (the “Restated Certificate”) were authorized in the manner of Friends by a consensus of all members of the Corporation present and authorized to take such action at a meeting duly called and held on November 27, 2022, said members constituting a quorum of the members of the Corporation.
- (6) The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon the Secretary 100 East Broadway, Suite 401, New York, NY 10002.
- (7) In accordance with Section 805(c) of the N-PCL, this Amended and Restated Certificate of Incorporation omits the prefatory language and Article SIXTH of the original Certificate, which set forth the names and places of the initial subscribers and directors of the Corporation.
- (8) The text of the Certificate of Incorporation as amended hereby is restated to read in its entirety as follows:



- FIRST: The name of the corporation is the First Chinese Presbyterian Community Affairs Home Attendant Corp. (the “Corporation”).
- SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law (the “N-PCL”) and shall be a Charitable Corporation under Section 201 of the N-PCL.
- THIRD: The Corporation is formed for charitable purposes within the meaning of section 102(3-B) of the N-PCL, including for the purposes of providing social service programs (including personal care assistance, food assistance and education programs) to elderly people and people with disabilities of limited financial means in New York.
- FOURTH: The Corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.
- FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the N-PCL and such other powers as are now or hereafter permitted by law for a corporation organized for the foregoing purposes, including, without limitation, the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.
- SIXTH: Notwithstanding any other provision of these articles, the Corporation is organized exclusively for charitable, religious and educational purposes, and intends at all times to qualify and remain qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (and corresponding provisions of current and future United States Treasury rules and regulations) and, in connection therewith:
- (a) the Corporation is not formed for and shall not be conducted nor operated for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual or individuals, provided that nothing herein shall prevent the Corporation from paying reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes;
  - (b) no substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code whether pursuant to an election under Section 501(h) or otherwise, and no part of the activities of

the Corporation shall be devoted to participating or intervening in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office; and

- (c) the Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code (or the corresponding provision of any future U.S. Internal Revenue Law) or (ii) by a corporation contributions to which are deductible under section 170(c)(2) of the Code (or the corresponding provision of any future U.S. Internal Revenue Law).

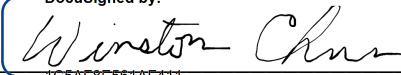
SEVENTH: The territory in which the operations of the corporation will principally be conducted is New York County.

EIGHTH: The office of the Corporation shall be located in the County of New York, State of New York.

NINTH: The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon the Secretary is 100 East Broadway, Suite 401, New York, NY 10002.

TENTH: In the event of dissolution or other termination of the Corporation, the remaining assets and property of the Corporation shall, after payment of all necessary expenses thereof, be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding provisions of any future Federal tax code, or shall be distributed to the Federal government or State or local governments for a public purpose.

**IN WITNESS WHEREOF** this certificate has been signed and the statements made herein affirmed as true under the penalties of perjury this fifth day of December, 2022.

DocuSigned by:  
  
TCSAF8E56TAF411...  
**Incorporator**  
Winston Chin  
100 East Broadway  
Suite 401  
New York, NY 10002

**Amended and Restated**  
**Certificate of Incorporation**  
**of**  
**First Chinese Presbyterian Community Affairs Home Attendant Corp.**  
**Under Section 805 of the**  
**New York Not-for-Profit Corporation Law**

**Submitted by: Lowenstein Sandler LLP**

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 20th day of June 2024, approves the filing of the Restated Certificate of Incorporation of The First Chinese Presbyterian Community Affairs Home Attendant Corp. dated December 5, 2022.



## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Alexa Nagy, Senior Attorney  
Bureau of Program Counsel  
Division of Legal Affairs

**Date:** May 20, 2024

**Subject:** Seniors First Foundation, Inc. – Corporate Purpose Change

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

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel for Seniors First Foundation, Inc., Bridget L. Kehm, dated April 15, 2024;
- 3) A copy of the certified resolutions of the Board of Directors of Seniors First Foundation, Inc., dated January 24, 2024, authorizing the change of corporate purpose and amendment of the Certificate of Incorporation, with a proposed Restated Certificate of Incorporation;
- 4) A copy of the Amended and Restated Corporate Bylaws of Seniors First Foundation, Inc.;
- 5) A photocopy of the original Certificate of Incorporation for Seniors First Foundation, Inc. (originally filed as Kirkhaven Foundation Inc.), dated February 23, 1990, and filed on April 6, 1990, and Consent to File Letter of the Public Health Council for Seniors First Foundation, Inc., dated March 26, 1990, and associated corporate documents and consents;
- 6) A photocopy of the Certificate of Amendment of Certificate of Incorporation for Seniors First Foundation, Inc. (to change the name of the Corporation from Kirkhaven Foundation, Inc. to Seniors First Foundation, Inc.), dated December 9 2003, and filed on September 15, 2004, and Consent to File Letter of the Public Health Council for Seniors First Foundation, Inc., dated August 3, 2004, and associated corporate documents and consents; and
- 7) An executed photocopy of the proposed Restated Certificate of Incorporation of Seniors First Foundation, Inc., signed by James DeVoe, as Chief Executive Officer, dated January 24, 2024.

Attachments

## MEMORANDUM

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

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

**Date:** May 20, 2024

**Subject:** Seniors First Foundation, Inc. – Corporate Purpose Change

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Seniors First Foundation, Inc. requests Public Health and Health Planning Council (“PHHPC”) approval to expand its corporate purpose. PHHPC consented to the filing of Seniors First Foundation, Inc.'s Certificate of Incorporation on March 26, 1990, and the Certificate of Incorporation was subsequently filed with the NYS Department of State on April 6, 1990. On August 3, 2004, PHHPC approved an amendment to the Certificate of Incorporation of Seniors First Foundation, Inc., which was filed with the NYS Department of State on September 15, 2004.

Seniors First Foundation, Inc. requests approval of the following amendment to modify the purposes of the corporation in its Restated Certificate of Incorporation. Article II, subsection (b) of the Certificate of Incorporation is amended to read in its entirety as follows:

"(b) The Corporation is a charitable corporation under Section 201 of the Not-For-Profit Corporation Law, formed exclusively for charitable purposes, specifically:

To receive, maintain and distribute funds and property to assist and support other organizations serving seniors within the Greater Rochester area in furtherance of their corporate purposes. Nothing contained in this Certificate 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, or a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively of the Public Health Law.

To sponsor and promote social and supportive programs, scholarships and projects related to the field of geriatrics. Nothing contained in this Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

To solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes."

Pursuant to NY N-PCL § 804(a)(i) and 10 NYCRR § 600.11, PHHPC must consent to the requested changes prior to the filing of any amended certificate.

There is no legal objection to the change in corporate purpose and the Restated Certificate of Incorporation of Seniors First Foundation, Inc. is in legally acceptable form.

Attachments

LAW OFFICES OF  
**Pullano & Farrow**  
PLLC

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www.lawpf.com

Name: Bridget L. Kehm Esq.  
Phone: 585-730-4773  
Email: bkehm@lawpf.com

April 15, 2024

VIA ELECTRONIC MAIL  
[colleen.leonard@health.ny.gov](mailto:colleen.leonard@health.ny.gov)

Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council  
NYS Department of Health  
Corning Tower, Room 1805  
Albany, New York 12237

Re: Certificate of Amendment of the Certificate of Incorporation  
SeniorsFirst Foundation, Inc.

Dear Ms. Leonard:

Enclosed is the proposed Certificate of Amendment of the Certificate of Incorporation of SeniorsFirst Foundation, Inc. for your review. SeniorsFirst Foundation, Inc. is not an operator of a facility, however, it originally received PHHPC consent when its Certificate of Incorporation, and prior Certificate of Amendment were filed (a copy of those filings are enclosed, along with the certified resolutions of action taken at a meeting). The corporation seeks your consent to file the Certificate with the New York State Division of Corporations to expand the organization's purpose.

Please feel free to contact our office with any questions.

Very truly yours,

PULLANO & FARROW

*Bridget L. Kehm*

Bridget L. Kehm, Esq.

Encls

CERTIFIED RESOLUTIONS OF THE  
BOARD OF DIRECTORS  
OF  
PRESBYTERIAN HOMES AND SERVICES OF GENESEE VALLEY, INC. AND  
SENIORSFIRST FOUNDATION, INC.

WHEREAS, at a regular meeting of the Board of Directors of Presbyterian Homes and Services of Genesee Valley, Inc. (“Parent Organization”) and Seniorsfirst Foundation, Inc., a New York Not-for-profit corporation with its primary offices at 254 Alexander Street, Rochester, New York 14607 (“Corporation”), duly held on January 24, 2024, with all due notice properly given, the following resolutions were reviewed and approved by the Board:

WHEREAS, the affairs of the Corporation are managed by or under the direction of the Board of Directors of Corporation (“Board”), which is a mirror board to the board of directors of Parent Organization; and

WHEREAS, the Board desires to amend its corporate purposes and bylaws to expand the purposes for which the Corporation is formed; and

WHEREAS, a proposed Certificate of Amendment to the Certificate of Incorporation of the Corporation, and a proposed Amended and Restated Bylaws of the Corporation, are attached hereto as Exhibit A and B; and

WHEREAS, the Board deems it desirable and in the best interest of the Corporation to submit to the Attorney General of the State of New York and/or Justice of the Supreme Court, a Verified Petition for approval to amend its corporate purposes; and

WHEREAS, 5 of the 7 Directors were present at the meeting and voted in favor of the adoption of the resolutions.

NOW, THEREFORE, BE IT RESOLVED, that Corporation hereby adopted and approved the following actions at its January 24, 2024 meeting:

RESOLVED, that the Corporation and Parent Organization approved the amended purposes of the Corporation, as contained in the attached proposed Certificate of Amendment to the Certificate of Incorporation attached as Exhibit A.

RESOLVED, that the Corporation and Parent Organization approved the proposed Amended and Restated Bylaws of the Corporation, as contained in the attached Exhibit B.

RESOLVED, that the Corporation authorized and further authorizes the officers of the Corporation to work with the Law Offices of Pullano & Farrow PLLC to finalize all necessary documents to submit to the Attorney General’s Office/Justice of the Supreme Court for review and approval.



RESOLVED, that the Corporation authorized and further authorizes the officers of the Corporation to work with the Law Offices of Pullano & Farrow PLLC to finalize all necessary documents to request consent to the filing of the Certificate of Amendment to the Certificate of Incorporation.

RESOLVED, that James DeVoe, as Chief Executive Officer, (and such other persons designated by him), be and hereby is, authorized and directed to take such actions as is necessary to implement the foregoing resolutions, including, but not limited to, verifying the Verified Petition.

RESOLVED, that any and all prior actions taken by the Board and officers, were hereby ratified, confirmed and approved in all respects.

[Remainder of Page Intentionally Left Blank. Signature Page to Follow.]

IN WITNESS WHEREOF, the Chair of the Board of Directors of the Corporation certifies that the foregoing resolutions were duly adopted by the Board of Directors of the Corporation and that such resolutions have not been modified or rescinded as of the date thereof.

Dated: January 24, 2024

PRESBYTERIAN HOMES AND SERVICES OF  
GENESEE VALLEY, INC



A handwritten signature in black ink, appearing to read 'Mark Muthig', is written over a horizontal line.

By: Mark Muthig  
Title: Chair of the Board of Directors

SENIORSFIRST FOUNDATION, INC.



A handwritten signature in black ink, appearing to read 'Mark Muthig', is written over a horizontal line.

By: Mark Muthig  
Title: Chair of the Board of Directors

EXHIBIT A  
SEE NEXT PAGE

CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
SENIORSFIRST FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

**FIRST:** The name of the corporation is: Seniorsfirst Foundation, Inc. The name under which the corporation was formed is Kirkhaven Foundation, Inc.

**SECOND:** The certificate of incorporation was filed by the Department of State on April 6, 1990.

**THIRD:** The corporation was formed under 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: Article II, subsection (b) of the Certificate of Incorporation is hereby amended to modify the purposes of the corporation. Article II, subsection (b) is amended to read in its entirety as follows:

(b) The corporation is a charitable corporation under Section 201 of the Not-For-Profit Corporation Law, formed exclusively for charitable purposes, specifically:

To receive, maintain and distribute funds and property to assist and support other organizations serving seniors within the Greater Rochester area in furtherance of their corporate purposes. Nothing contained in this Certificate 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, or a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively of the Public Health Law.

To sponsor and promote social and supportive programs, scholarships and projects related to the field of geriatrics. Nothing contained in this Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

To solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.

**SIXTH:** The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery is: 254 Alexander Street, Rochester, New York 14607.

**SEVENTH:** The certificate of amendment was authorized by vote of a majority of the entire board of directors. The corporation has no members.

**EIGHTH:** Prior to the delivery of this certificate of amendment to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed to this certificate.

[Remainder of Page Intentionally Remains Blank. Signature Page Follows]

IN WITNESS WHEREOF, this certificate has been subscribed to this \_\_\_\_ day of \_\_\_\_\_, 2024 by the undersigned.

---

James DeVoe, Chief Executive Officer

---

CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
SENIORSFIRST FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

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FILED BY:

**Pullano & Farrow**  
— 401 Main Street —  
East Rochester, New York 14445

EXHIBIT B  
SEE NEXT PAGE



Certified to be a true and correct copy of the  
By-laws of the Corporation adopted on  
January 24, 2024.

## **AMENDED AND RESTATED BY-LAWS**

**of**

## **SENIORSFIRST FOUNDATION, INC.**

### **ARTICLE I**

#### **MEMBERS**

The Corporation has no members and all powers and duties of members shall be vested in the Board (defined below) as permitted by applicable law.

### **ARTICLE II**

#### **BOARD OF GOVERNORS**

Section 2.1. Number. The board of governors of Presbyterian Homes and Services of Genesee Valley, Inc. ("Seniorsfirst") shall nominate and elect the board of governors of the Corporation (the "Board"). The number of the Board shall be at least five (5) and no more than ten (10). Governors shall serve a term of three (3) years and may not serve more than two (2) consecutive terms.

Section 2.2. Meetings. An annual meeting of the Board shall be held for elections and the transaction of other business at such time as may be fixed by the Board. Regular meetings of the Board shall be held at such times as the Board may from time to time determine. Special meetings of the Board shall be held at any time, upon call from the Chairperson or by any member of the Board upon written demand of not less than one-fifth (1/5) of the entire Board.

Section 2.3. Place of Meetings. Regular and special meetings of the Board shall be held at the principal office of the Corporation, or at such other place, within or without the State of New York as may from time to time be determined by the Board or the person or persons authorized to call the meeting.

Section 2.4. Notice of Meeting. No notice need be given of a regular meeting of the Board. Notice of the place, day and hour of every special meeting shall be given to each member of the Board by delivering the same to him or her personally or sending the same to him or her by electronic means or leaving the same at his or her residence or usual place of business, at least one (1) day before the meeting, or shall be mailed to each member of the Board, postage prepaid and addressed to him or her at his or her last known address according to the records of the Corporation, at least three (3) days before the meeting. No notice of any adjourned meeting of the Board need be given other than by announcement at the meeting.

Section 2.5. Waiver of Notice. Notice of a meeting need not be given to any member of the Board who submits a signed written waiver thereof whether before, during or after the meeting nor to any such member who attends the meetings without protesting, prior thereto or at its commencement, the lack of notice to him or her.

Section 2.6. Quorum. One-half (1/2) of the entire Board shall be necessary to constitute a quorum for the transaction of business at each meeting of the Board. If the number of the members of the entire Board shall be eighteen (18) or more, the quorum shall be one-third (1/3) of the entire Board. However, if at any meeting there is less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice other than by announcement at the meeting, until a quorum shall attend.

Section 2.7. Action by the Board.

(a) Each member of the Board shall be entitled to one (1) vote on each matter properly submitted to the Board for action at all meetings of the Board. Unless otherwise required by law or these By-laws, the vote of a majority of the members of the Board present at a meeting at which a quorum has been established at the time of the vote shall be the act of the Board.

(b) The Certificate of Incorporation or the By-laws of the Corporation may be amended, repealed or adopted by an affirmative vote of two-thirds (2/3) of the entire Board. The text of any proposed amendment of the Certificate of Incorporation or the By-laws shall be included with notice of any meeting at which action will be taken.

(c) The merger, consolidation, voluntary (non-judicial) dissolution or sale of all or substantially all the assets of the Corporation shall be approved by two thirds (2/3) of the entire Board.

(d) Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee thereof consent in writing or by electronic means to the adoption of a resolution authorizing the action. The resolution and written or electronic consent thereto

by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

(e) Any one or more members of the Board, or of any committee thereof, may participate in a meeting of such Board or committee by means of a conference telephone or other electronic means that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 2.8. Compensation. Members of the Board as such shall not receive any compensation for their services. Nothing in this section shall prevent compensation to a person for services rendered to the Corporation as an employee or as otherwise engaged by the Corporation.

Section 2.9. Annual Report. The appropriate officers shall present at a designated meeting of the Board each year a report, verified by the appropriate officers or certified by an independent public or certified accountant or a firm of such accountants selected by the Board, showing in appropriate detail the following:

(a) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve (12) month fiscal period of the Corporation prior to said meeting;

(b) the principal changes in assets and liabilities, including trust funds, during said fiscal period;

(c) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and

(d) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period.

Each such report shall be filed with the records of the Corporation and a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting at which the report is presented.

## ARTICLE III

### COMMITTEES

Section 3.1. Committees of the Corporation. The Board may, in its discretion, by an affirmative vote of a majority of the entire Board, appoint an Executive Committee, Audit & Finance Committee or any other committee of the board, to consist of any three (3) or more independent governors as the Board may from time to time determine. The Executive Committee shall have and may exercise between meetings of the Board all the powers of the Board in the management of the business and affairs of the Corporation. All other committees shall have those powers conferred upon them by the Board, except that no committee shall have power:

- (a) to fill vacancies in the Board or in any committee thereof;
- (b) to fix compensation of governors for service on the Board or any committee thereof;
- (c) to repeal, amend or adopt bylaws;
- (d) to amend or repeal any Board resolution which does not, by its terms, make it amendable or repealable by such committee; or
- (e) to remove or fix the compensation of officers who are elected or appointed by the Board.

In the absence of any member of the Executive Committee or of any other committee, the members thereof present at any meeting may appoint a member of the Board previously designated by the Board as a committee alternate to act in place of such absent member. The Board shall have the power at any time to change the membership of any committee, to fill vacancies in it, or dissolve it. The Executive Committee and any other committee may make rules for the conduct of its business, and may appoint such committees and assistants as may from time to time be necessary, unless the Board shall provide otherwise. A majority of the members of the Executive Committee and of any other committee shall constitute a quorum, and vote of a majority of the members at meeting at which a quorum is present, shall be sufficient to constitute the act of such committee.

Section 3.2. Committees of the Corporation. The Board may, in its discretion, by an affirmative vote of a majority of the entire Board, designate such other committees of the corporation to consist of any three (3) or more individuals (including at least one (1) Board member) from the staff of the Corporation or its affiliates or the community as the Board may from time to time determine. The resolution creating such committee shall state the specific purpose(s), duration, membership and reporting procedure to the Board for each such committee. Upon the completion of the stated purpose(s) or upon reaching the end of the time limitation as

set forth in the enabling resolution, such committee shall automatically disband without further action of the Board.

## **ARTICLE IV**

### **OFFICERS**

Section 4.1. Election of Officers. The elected officers of the Corporation shall consist of a Chairperson, a Vice Chairperson and a Secretary/Treasurer, and any other officers as the Board may deem necessary. Officers shall be elected at a duly held meeting of the Board from among its membership. Each such officer shall serve at the pleasure of the Board for a term determined thereby until his or her successor shall have been duly elected or appointed and qualified, or until he or she shall have resigned, died, or been removed in the manner provided in this Article. Any two (2) offices may be held by the same person, except that no person shall hold the office of Chairperson and Secretary/Treasurer concurrently. Any vacancies in the above offices shall be filled in the same manner. Officers shall fill their positions as of the annual meeting of each year unless fulfilling an unexpired term.

Section 4.2. Removal. Any officer of the Corporation may be removed with or without cause by a vote of a majority of the entire Board.

Section 4.3. Compensation. Elected officers as such shall not receive compensation for their services. Nothing in this Section shall prevent a person from receiving compensation for services rendered to the Corporation as an employee or as otherwise engaged by the Corporation.

Section 4.4. Chairperson. The Chairperson shall preside over all meetings of the Board and shall, subject to the direction of the Board, supervise the operation of the Corporation and shall perform such other duties and exercise such other functions as may be designated by the Board. The Chairperson shall be chairperson of the Executive Committee and an ex-officio member of all other committees. Subject to confirmation of the Board, the Chairperson shall appoint all committee members and chairpersons of committees and shall recommend to the Board the creation of committees.

Section 4.5. Vice Chairperson. At the request of the Chairperson or when the Chairperson is absent or unable to perform his or her duties, the Vice Chairperson shall perform the duties and exercise the functions of the Chairperson. The Vice Chairperson shall have such other powers and duties as may be designated by the Board or the Chairperson.

Section 4.6. Secretary/Treasurer. The Secretary/Treasurer shall ensure that full minutes of all meetings of the Board are kept in the Corporation's books and records. The Secretary/Treasurer shall see that all notices are duly given in accordance with the provisions of the By-laws or as required by applicable law and shall be the custodian of the records and of the seal of the Corporation. The Secretary/Treasurer shall affix the seal to all documents, the affixation of

which on behalf of the Corporation is duly authorized by the Board or otherwise necessary required, and when so affixed may attest the same. The Secretary/Treasurer shall ensure that correct and complete books and records of account for the Corporation are kept. The Secretary/Treasurer shall have such other powers and duties as may be designated by the Board and the Chairperson.

## **ARTICLE V**

### **FINANCES**

Section 5.1. Bills and Notes. All checks or demands for money and notes or other instruments evidencing indebtedness or obligations of the Corporation shall be made in the name of the Corporation and shall be signed by such officer or officers or such other person as the Board may from time to time designate. No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board.

Section 5.2. Dividends. No part of the assets or net earnings of the Corporation shall be distributed to or inure to the benefit of any individual by means of dividends or otherwise except that reasonable compensation may be paid for services rendered to the Corporation.

Section 5.3. Fiscal Year. The fiscal year of the Corporation shall be the period commencing January 1st and ending December 31st.

## **ARTICLE VI**

### **PROPERTY AND INVESTMENTS**

Section 6.1. Property. All real or personal property received by the Corporation by bequest, devise, gift, grant or otherwise, unless otherwise specified within the terms of such bequest, devise, gift, grant, or other instrument, shall be held or disposed of by the Corporation according to such terms and conditions, not inconsistent with the objectives and purposes of the Corporation, as the Board shall determine. Unless otherwise designated by the Board, the Chairperson of the Corporation is hereby designated as the officer of the Corporation authorized to vote any and all shares of stock held by the Corporation and he or she shall have the power and authority to vote such shares in person or by proxy, or by written consents in lieu of formal meetings.

Section 6.2. Investments. Unless otherwise specified by the terms of a particular bequest, devise, gift, grant or other instrument, the funds of the Corporation may be invested from time to time in such manner as the Board may determine, whether or not the investments are of the character which would be required by law for similar funds if held by trustees.

Section 6.3. Investment Advisor or Agent. The Board may contract with any independent investment advisor, investment counsel or manager or other financial agent or agents as the Board shall deem advisable to represent and to advise it in the investment or reinvestment of funds of the Corporation or to provide security custodial services. The Board is further authorized to pay reasonable compensation for such services. The Board shall be relieved of all liability for the investment and reinvestment of corporate funds by, and for the other acts or omissions of, persons to whom authority is so delegated or with whom contracts are so made.

## ARTICLE VII

### INDEMNIFICATION

Section 7.1. Indemnification. The Corporation shall indemnify and hold harmless any person made or threatened to be made a party to any action or proceeding by reason of the fact that he or she or his or her testator or intestate (i) is or was a member of the Board or officer of the Corporation or (ii) is or was a member of the Board or officer of the Corporation who serves or served, in any capacity, any other entity at the request of the Corporation (hereinafter an "Indemnitee"), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by the Indemnitee in connection therewith. Notwithstanding the foregoing, no indemnification may be made to or on behalf of any member of the Board or officer if a judgment or other final adjudication adverse to the member of the Board or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 7.2. Advancement of Expenses. All expenses reasonably incurred by an Indemnitee in connection with an actual or threatened action or proceeding with respect to which such Indemnitee is or may be entitled to indemnification under this Article shall be advanced to him or her or promptly reimbursed by the Corporation in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by him or her or on his or her behalf to repay the amount of such advances, if any, as to which he or she is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent such advances exceed the indemnification to which he or she is entitled.

Section 7.3. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and advancement of

expenses to any employee or agent of the Corporation with the same scope and effect as provided in this Article to members of the Board and officers of the Corporation.

## **ARTICLE VIII**

### **ADVISORY BOARD**

The Board may appoint an Advisory Board to be comprised of former Board members, consultants, experts in field helpful to the Corporation, consultants or other key individuals determined by the Board to be of continuing benefit to the Corporation. There shall be no set number of members nor shall there be specific terms or term limitations. The members of the Advisory Board shall be recognized at the annual meeting. The members of the Advisory Board shall have no vote and shall not be required to attend any Board meetings. Their role shall be to lend their wisdom, time and talents to the benefit of the Corporation and to carrying out its purposes.

## **ARTICLE IX**

### **AMENDMENTS**

Subject to applicable law and the other provisions set forth herein, the Board shall have the power to adopt, amend or repeal the By-laws of the Corporation by a two-thirds (2/3) vote of the entire Board at any meeting of the Board. The text of any proposed By-laws amendment shall be included in the notice of the meeting at which such amendment is presented for action.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

Section 10.1. Procedure. Except as otherwise authorized by the Board, all meetings of the Board and of any committee designated by the Board shall be conducted in conformity with Roberts Rules of Order, as amended from time to time.

Section 10.2. Number. All nouns and pronouns herein, and any variations thereof, shall be deemed to refer to the singular or plural as the identity of the person or persons may require.

Section 10.3. Headings. All headings contained in the By-laws are inserted only as a convenience and for reference, and do not define, limit or extend the intent or meaning of any section hereof.



New York State Department of State  
Division of Corporations, State Records and Uniform Commercial Code  
**COPY REQUEST/CERTIFICATE OF STATUS RECEIPT**

LAW OFFICES OF PULLANO & FARROW PLLC  
69 CASCADE DRIVE  
SUITE 307  
ROCHESTER NY 14614

**DATE:** 08/29/2023                      **TRANSACTION NUMBER:** 202308290001109

**ENTITY INFORMATION:**

**ENTITY NAME:** SENIORSFIRST FOUNDATION, INC.  
**DOS ID:** 1437604  
**DATE OF INITIAL DOS FILING:** 04/06/1990

<b><u>REQUESTED SERVICES:</u></b>	<b><u>NUMBER REQUESTED:</u></b>	<b><u>FEE:</u></b>
UNCERTIFIED COPY(\$5.00)	2	\$10.00
CERTIFIED COPY(\$10.00)	0	\$0.00
CERTIFICATE OF STATUS - SHORT FORM(\$25.00)		\$0.00
CERTIFICATE OF STATUS - LONG FORM(\$25.00)		\$0.00
EXPEDITED HANDLING		\$0.00

**TOTAL PAYMENTS RECEIVED:** \$10.00  
CASH: \$0.00  
CHECK/MONEY ORDER: \$0.00  
CREDIT CARD: \$0.00  
DRAWDOWN ACCOUNT: \$10.00  
REFUND DUE: \$0.00

<b><u>REQUESTED COPY</u></b>	<b><u>FILE DATE</u></b>	<b><u>FILE NUMBER</u></b>
CERTIFICATE OF AMENDMENT	09/15/2004	040915000956
CERTIFICATE OF INCORPORATION	04/06/1990	C127508-10

0127508

CERTIFICATE OF INCORPORATION  
OF  
KIRKHAVEN FOUNDATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law, hereby certifies:

ARTICLE I

The name of the Corporation is Kirkhaven Foundation, Inc.

ARTICLE II

(a) The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law.

(b) The Corporation is a type B corporation under section 201 of the Not-for-Profit Corporation Law, formed exclusively for charitable purposes; specifically:

To solicit, receive, maintain and distribute funds and property to assist the Genesee Valley Presbyterian Nursing Center, Inc. doing business as Kirkhaven (hereafter "Kirkhaven") in the City of Rochester, New York, in the furtherance of its corporate purposes.

To provide, conduct, sponsor and promote programs and projects to assist Kirkhaven and to provide materials, services, property and other goods to Kirkhaven as may be deemed appropriate in the discretion of the Board of Directors of this Corporation. Nothing contained in this Certificate 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, or a certified home

health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law.

To provide, conduct, sponsor and promote instructional, social and supportive programs and projects related to the field of geriatrics. Nothing contained in this Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

(c) The Corporation shall do lawfully all and everything necessary, suitable and proper for the attainment of any of these purposes, the accomplishment of any of these objects, or the furtherance of any of the powers hereinabove set forth; and have, enjoy and exercise any and all rights, powers, privileges, and exemptions which are now or which may hereinafter be conferred upon not-for-profit corporations organized under the laws of the State of New York.

(d) The foregoing clauses shall be construed both as objects and powers, in furtherance, and not in limitation, of the general powers conferred by the laws of the State of New York, and the enumeration herein of specific objects and powers shall not be held to limit or restrict in any way the general powers of the Corporation.

### ARTICLE III

The office of the corporation is to be located in the County of Monroe, State of New York.

ARTICLE IV

The names and addresses of the initial directors of the Corporation are:

Carol L. Adler	16 South Pittsford Hill Lane Pittsford, New York 14534
Grace J. Bonnar	40 Indian Spring Lane Rochester, New York 14518
Neal D. Madden	10 Park Place Rochester, New York 14610

ARTICLE V

(a) The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against it may be served.

(b) The post office address to which the Secretary of State shall mail a copy of process against the Corporation which may be served upon him or her is:

Kirkhaven Foundation, Inc.  
254 Alexander Street  
Rochester, New York 14607

ARTICLE VI

(a) Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"), and shall not carry on any activities not permitted to be carried on by a

corporation exempt from federal income tax under such section or corresponding provisions of any subsequent federal tax law.

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director, officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, 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.

(c) No substantial part of the activities of the corporation shall be carrying on propaganda or otherwise attempting to influence legislation, except as otherwise provided by section 501(h) of the Code. The Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office in any manner, including the publishing or distributing of statements.

(d) In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses thereof, be distributed to another organization or organizations exempt under section 501(c)(3) of the Code, or corresponding provisions of any subsequent federal tax laws, giving first preference (if it then qualifies as such

organizations) to Kirkhaven, subject to the approval of a Justice of the Supreme Court of the State of New York.

(e) In any taxable year in which the corporation is a private foundation as described in section 509(a) of the Code, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under section 4942 of the Code, and the Corporation shall not (1) engage in any act of self-dealing as defined in section 4941(d) of the Code, (2) retain any excess business holdings as defined in section 4943(c) of the Code, (3) make any investments in such manner as to subject the corporation to tax under section 4944 of the Code, or (4) made any taxable expenditures as defined in section 4945(d) of the Code or corresponding provisions of any subsequent federal tax laws.

#### ARTICLE VII

(a) The governing body of the Corporation shall be the Board of Trustees.

(b) The Corporation shall have no members.

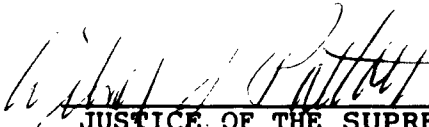
IN WITNESS WHEREOF, this Certificate has been signed by the subscriber, being at least eighteen years of age, this 23<sup>rd</sup> day of February, 1990 and the subscriber does by his signature hereto affirm the truth of the statements contained herein under penalty of perjury.

Neal D. Madden

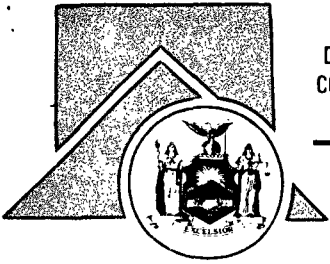
Neal D. Madden  
700 Midtown Tower  
Rochester, New York 14604

The undersigned, a Justice of the Supreme Court of the State of New York, Seventh Judicial District, does hereby approve the foregoing Certificate of Incorporation.

Dated: 24 April 30, 1990



JUSTICE OF THE SUPREME COURT



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

RECEIVED

March 26, 1990

MAR 28 1990

MER

Ms. Mary E. Ross  
Harter, Secrest & Emery  
Attorneys at Law  
700 Midtown Tower  
Rochester, NY 14604-2070

Re: Certificate of Incorporation of Kirkhaven Foundation, Inc.

Dear Ms. Ross:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of March, 1990, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Kirkhaven Foundation, Inc., dated February 23, 1990.

Sincerely,

*Karen S. Westervelt*

Karen S. Westervelt  
Executive Secretary

7



RESOLUTION

RESOLVED, that the Public Health Council, on this 23rd day of March, 1990, approves the filing of the Certificate of Incorporation of Kirkhaven Foundation, Inc., dated February 23, 1990.

8



STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. McSPARRON  
DEPUTY FIRST ASSISTANT  
ATTORNEY GENERAL

Telephone: (518) 473-3683

March 14, 1990

Gina Carney  
Colby Attorneys Service, Co., Inc.  
53 Howard Street  
P.O. Box 737  
Albany, NY 12201-0737

Dear Ms. Carney:

RE: KIRKHAVEN FOUNDATION, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS  
Attorney General

By:

  
RICHARD S. REDLO  
Assistant Attorney General

-10

912750g

9127508

CERTIFICATE OF INCORPORATION  
OF  
KIRKHAVEN FOUNDATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

ALL TYPE B

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 06 1990

AMT. OF CHECK \$	60
FILING FEE \$	50
TAX \$	
COUNTY FEE \$	
COPY \$	
CERT \$	
REFUND \$	
SPEC HANDLE \$	

BY:

*[Signature]*  
Type B

593817

040915000956

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
KIRKHAVEN FOUNDATION, INC.**

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

1. The name of the Corporation is Kirkhaven Foundation, Inc.
2. The date of the filing of the Certificate of Incorporation with the Department of State is April 6, 1990. The Corporation was formed under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The Corporation is a Type B corporation. The Corporation will remain a Type B corporation following filing of this Certificate of Amendment.
4. The amendments effected by this Certificate of Amendment are as follows:

Article I of the Certificate of Incorporation is amended to read in its entirety as follows:

The name of the Corporation is Seniorsfirst Foundation, Inc.

Article II, subsection (b) of the Certificate of Incorporation is amended to read in its entirety as follows:

(b) The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law, formed exclusively for charitable purposes, specifically:

To solicit, receive, maintain and distribute funds and property to assist Presbyterian Homes and Services of Genesee Valley, Inc., Genesee Valley Presbyterian Nursing Center, Presbyterian Residence Center Corporation and PRESCOR Inc., or any future affiliates of the foregoing (the "Affiliates"), in furtherance of their corporate purposes.

To provide, conduct, sponsor and promote programs and projects to assist the Affiliates and to provide materials, services, property and other goods to them as may be deemed appropriate in the discretion of the Board of Directors of this Corporation. Nothing contained in this Certificate 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, or a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law.

To provide, conduct, sponsor and promote instructional, social and supportive programs and projects related to the field of geriatrics. Nothing contained in this

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Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

5. This Certificate of Amendment was authorized by the unanimous vote of the Board of Directors at a meeting on December 9, 2003.

6. 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 254 Alexander Street, Rochester, New York 14607.

7. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed to this Certificate.

Dated: December 9, 2003



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James E. DeVoe, President



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

'AUG 0 9 2004

MER

August 3, 2004


Ms. Mary E. Ross, Partner  
Hartner, Secrest & Emery LLP  
1600 Bausch & Lomb Place  
Rochester, New York 14604-2711

Re: Certificate of Amendment of the Certificate of Incorporation of Kirkhaven Foundation, Inc.

Dear Ms. Ross:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 30<sup>th</sup> day of July, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Kirkhaven Foundation, Inc., dated December 9, 2003.

Sincerely,

  
Karen S. Westervelt  
Executive Secretary

/md

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**JGC**  
AUG 23 2004

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER  
Attorney General

REGIONAL OFFICE DIVISION  
Rochester Regional Office

August 24, 2004

Joseph G. Casion, Jr., Esq.  
Harter, Secrest & Emery LLP  
1600 Bausch & Lomb Place  
Rochester, New York 14604-2711


Re: Kirkhaven Foundation, Inc.  
Certificate of Amendment

Dear Mr. Casion:

The Attorney General has no objection to the filing of the proposed certificate of amendment with the Secretary of State, and will not appear at time of application.

Please provide a copy of the filing receipt and judicial approval so I may close the Attorney General's file on the matter.

Very truly yours,

  
Audrey Cooper  
Assistant Attorney General

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At an Ex-Parte, Part \_\_\_\_\_, of  
the Supreme Court of the  
State of New York, held in  
and for the County of Monroe, at  
\_\_\_\_\_, on the \_\_\_ day of  
\_\_\_\_\_, 2004

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

PRESENT:

HON: **DAVID MICHAEL BARRY**

Justice.

\_\_\_\_\_  
In the Matter of the Application )  
of )  
Kirkhaven Foundation, Inc. )  
For approval and authorization of the filing of a )  
Certificate of Amendment under )  
Section 803 of the Not-for-Profit Corporation Law )  
\_\_\_\_\_

ORDER  
Index No. \_\_\_\_\_

Kirkhaven Foundation, Inc., having duly made an application for an order, pursuant to Section 803 of the Not-for-Profit Corporation Law, approving the Certificate of Amendment of said corporation and authorizing the filing thereof, and said application having regularly come on to be heard, and it appearing that the interest of the corporation and the public interest will not be adversely affected by thereby, and that the Attorney General and the Public Health Council having no objection thereto, and that the approval of no other governmental agency is required.

NOW THEREFORE, it is

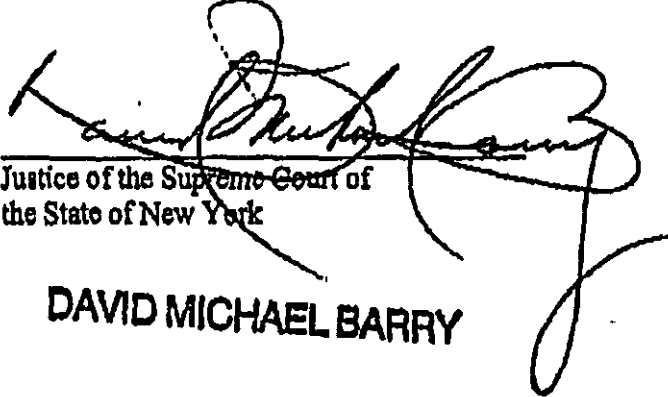
ORDERED, that the Certificate of Amendment of the Certificate of Incorporation of Kirkhaven Foundation, Inc. in the form presented in the application, be and the same hereby is approved, and it is further

ORDERED, that the aforesaid Certificate of Amendment is authorized to be filed by the Department of State in accordance with Section 803 of the Not-for-Profit Corporation Law, to which certificate a certified copy of this order shall be annexed.

5



Dated: 9-8-2004  
Rochester, New York

  
Justice of the Supreme Court of  
the State of New York  
**DAVID MICHAEL BARRY**

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040915000956

CERTIFICATE OF AMENDMENT

OF

THE CERTIFICATE OF INCORPORATION

OF

KIRKHAVEN FOUNDATION, INC.

Under Section 803 of the Not for Profit Corporation Law

*Munroe*

FILED

2004 SEP 15 PM 3:52

2004 SEP 15 11:03

Filer:  
Harter, Secrest & Emery  
1600 Bausch & Lomb Place  
Rochester, NY 14604-2711

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED SEP. 15 2004  
TAX \$ \_\_\_\_\_  
BY: *QVL*  
*Munroe*

Customer Reference #2115

**LCS**

**DRAWDOWN - #AL**

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040915000992

CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
SENIORSFIRST FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

FIRST: The name of the corporation is: Seniorsfirst Foundation, Inc. The name under which the corporation was formed is Kirkhaven Foundation, Inc.

SECOND: The certificate of incorporation was filed by the Department of State on April 6, 1990.

THIRD: The corporation was formed under 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: Article II, subsection (b) of the Certificate of Incorporation is hereby amended to modify the purposes of the corporation. Article II, subsection (b) is amended to read in its entirety as follows:

(b) The corporation is a charitable corporation under Section 201 of the Not-For-Profit Corporation Law, formed exclusively for charitable purposes, specifically:

To receive, maintain and distribute funds and property to assist and support other organizations serving seniors within the Greater Rochester area in furtherance of their corporate purposes. Nothing contained in this Certificate 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, or a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively of the Public Health Law.

To sponsor and promote social and supportive programs, scholarships and projects related to the field of geriatrics. Nothing contained in this Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

To solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery is: 254 Alexander Street, Rochester, New York 14607.

SEVENTH: The certificate of amendment was authorized by vote of a majority of the entire board of directors. The corporation has no members.

EIGHTH: Prior to the delivery of this certificate of amendment to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed to this certificate.

[Remainder of Page Intentionally Remains Blank. Signature Page Follows]

IN WITNESS WHEREOF, this certificate has been subscribed to this 24<sup>th</sup> day of January, 2024 by the undersigned.

  
\_\_\_\_\_  
James DeVoe, CEO  
Chief Executive Officer

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CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
SENIORSFIRST FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

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FILED BY:

Pullano & Farrow  
— 401 Main Street —  
East Rochester, New York 14445

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 20th day of June 2024, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Seniors First Foundation, Inc., as attached.



**Department of Health** **Public Health and Health Planning Council**

**Project # 231328-B**  
**HSS Long Island ASC, LLC**

**Program:** Diagnostic and Treatment Center      **County:** Nassau  
**Purpose:** Establishment and Construction      **Acknowledged:** July 17, 2023

**Executive Summary**

**Description**

HSS Long Island ASC, LLC (HSS), to be renamed HSS Long Island Ambulatory Surgery Center, LLC (the Center), an existing limited liability company, requests approval to establish and construct a single specialty ambulatory surgery center for orthopedic surgery at 90 Merrick Avenue, East Meadow, New York (Nassau County). The Center will be in leased space and have two (2) operating rooms with shell space and sufficient infrastructure to add one (1) operating room in the future. The Center will enter into an administrative services agreement with HSS. Additionally, Non-Article 28 physician space for HSS medical staff and a proposed Hospital for Special Surgery Article 28 X-ray extension clinic will be in separate spaces within the same building. A separate CON application will be filed to certify the HSS extension clinic.

The Hospital for Special Surgery will have an aggregate membership interest of 87%, which includes a 67% Class B membership interest and a 20% Class A membership interest. HSS ASC Development Network, LLC (ADN) owns a 13% Class C membership interest.

The proposed medical director will be Michael Ast, M.D. NYU Langone Hospital- Long Island will be the backup hospital, which is located 5.3 miles or 13 minutes away.

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**

The applicant projects 1,033 procedures in Year One and 1,849 in Year Three, with Medicaid at 4.27% and Charity Care at 2.00% by Year Three.

**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 \$30,805,493 will be met with \$383,118 in equity, a bank loan of \$27,571,000 at an interest rate of 6% for a ten-year term, and a tenant improvement allowance of \$2,851,375. The funds for the tenant allowance will come from Hospital for Special Surgery, which is the sub sub-landlord.

	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Revenues	\$18,830,229	\$35,805,502
Expenses	<u>19,121,110</u>	<u>25,531,041</u>
Net Income	(\$290,881)	\$10,274,461

**Health Equity Impact Assessment**

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 16, 2023.



## 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. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DASNY]
4. Submission of a bank loan that is acceptable to the Department of Health. [BFA]
5. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]

#### Approval conditional upon:

1. This project must be completed by **May 20, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 20, 2024**, and construction must be completed by **February 20, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: [https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

### Council Action Date

June 20, 2024

# Need Analysis

## Project Description

HSS Long Island ASC, LLC is seeking approval to establish a single-specialty ambulatory surgery center providing orthopedic surgery at 90 Merrick Avenue, East Meadows, 11554 in Nassau County. The proposed center will have two (2) operating rooms with shell space and sufficient infrastructure to add one (1) operating room (OR) in the future.

## Background and Analysis

The primary service area consists of Nassau County. The population of Nassau County is projected to increase to 1,429,023 by 2029 based on Cornell Program of Applied Demographics estimates. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Nassau County	New York State
Total Population-2022 Estimate	1,389,160	19,994,379
Hispanic or Latino (of any race)	17.2%	19.5%
White (non-Hispanic)	58.3%	53.8%
Black or African American (non-Hispanic)	11.0%	13.8%
Asian (non-Hispanic)	10.5%	8.8%
Other (non-Hispanic)	3.1%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)

In 2021, 95.9% of the population of Nassau County had health coverage as follows:

Employer Plans	59.3%
Medicaid	10.5%
Medicare	13.2%
Non-Group Plans	12.7%
Military or VA	0.205%

Source: Data USA

### Ambulatory Surgery within a 10 Mile Radius of Proposed Center

Facility Name	Type	Patient Visits		
		2020	2021	2022
Nassau University Medical Center	Hospital	2,598	3,608	3,803
Garden City Surgi Center	ASC	5,628	7,066	7,127
NYU Langone Hospital-Long Island ASC	Extension Clinic	4,414	5,792	6,178
NYU Langone Hospital-Long Island	Hospital	15,484	18,699	20,030
St. Joseph Hospital	Hospital	2,787	2,811	3,206
Mount Sinai South Nassau	Hospital	11,518	14,782	15,772
Mercy Hospital	Hospital	7,389	9,365	9,491
East Hills Surgery Center	ASC	3,964	4,886	5,559
Long Island Jewish Valley Stream	Hospital	2,596	3,355	3,349
Lynbrook Surgery Center	ASC	5,647	6,207	5,689
<b>Total Visits</b>		<b>62,025</b>	<b>76,571</b>	<b>80,204</b>

Source: HFIS and SPARCS

All the facilities listed above provide multi-specialty services, there are currently no ASCs operating in Nassau County that provide just orthopedic surgical services.

The applicant projects 1,033 procedures in the first year and 1,849 in the third with Medicaid at 4.27% and Charity Care at 2.00% . All of the procedures moving to this center are currently being performed in a hospital setting. HSS anticipates that 225 procedures will shift to the new center in the first year and 603 will shift to the center in the third year following approval.

The table below shows Year One and Year Three's projected payor source utilization.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins MC	837	81.03%	1,463	79.12%
Medicare FFS	102	9.87%	180	9.73%
Medicare MC	28	2.71%	48	2.60%
Medicaid FFS	10	0.96%	38	2.06%
Medicaid MC	11	1.06%	41	2.21%
Charity Care	21	2.03%	37	2.00%
Other	24	2.34%	42	2.28%

This project is a partnership between HSS and its physicians. Hospital for Special Surgery will own an aggregate membership interest of 87%, which includes 67% Class B membership and a 20% Class A membership interest in this proposed ASC. HSS will shift less complex outpatient surgeries to this center to free up OR time in the main hospital building for higher acuity orthopedic surgeries.

The center plans to obtain contracts with the following Medicaid Managed Care plans: Affinity, Emblem, Fidelis, Healthfirst, and United Healthcare. The center will work collaboratively with local Federally Qualified Health Centers, local family shelters, and homeless shelters to provide service to the under-insured in their service area. The center's utilization projections reflect Medicaid and Charity Care volume based on HSS's charity care policy, as well as the current proportion of Medicaid and Charity Care provided by orthopedic surgeries in Nassau County. The center will adopt HSS's financial assistance policy.

### **Conclusion**

Approval of this project will provide improved access to orthopedic surgery services in an outpatient setting for the residents of Nassau County.

## Program Analysis

### Project Proposal

HSS Long Island ASC, LLC d/b/a HSS Long Island Ambulatory Surgery Center LLC seeks approval to establish and construct a Single Specialty Ambulatory Surgery Center for the provision of Orthopedic Surgery to be located at 90 Merrick Avenue in East Meadow (Nassau County).

<b>Proposed Operator</b>	HSS Long Island ASC, LLC
<b>To Be Known As</b>	HSS Long Island Ambulatory Surgery Center, LLC
<b>Site Address</b>	90 Merrick Avenue East Meadow, NY 11554 (Nassau County)
<b>Surgical Specialties</b>	Ambulatory Surgery-Single Specialty Orthopedic Surgery
<b>Operating Rooms</b>	2 Operating Rooms
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7 am to 7 pm, if needs dictate, hours will be expanded
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	31.8 FTEs / 40.7 FTEs
<b>Medical Director(s)</b>	Michael M. Ast, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by: NYU Langone Long Island 5.3 miles / 13 minutes away
<b>After-hours access</b>	If the patient requires assistance during hours when the Center is not in operation, the patient will have the number of an on-call service which will be available 24/7 to immediately refer the patient to the Center's on call physician.

### Character and Competence

The list of members of HSS Long Island ASC, LLC are:

<u>Name</u>	<u>Membership Interest</u>	<u>Class Units</u>
HSS	<b>67%</b>	Class B Units
HSS (Individual Surgeon Investors)	<b>20%</b>	Class A Units
HSS ASC Development Network, LLC*	<b>13%</b>	Class C Units
<b>Total</b>	<b>100%</b>	

<u>Member</u>	<u>Ownership in HSS ASC Development Network, LLC</u>	<u>Indirect Ownership in HSS Long Island ASC, LLC</u>
Albert, Todd*	1%	0.13%
Allen, Answorth	0.5%	0.065%
Ast, Michael	1%	0.13%
Blaine, Theodore	1%	0.13%
Blevins, Jason	1%	0.13%
Boettner, Friedrich	1%	0.13%
Bostrom, Mathias*	1%	0.13%
Carli, Alberto	1%	0.13%
Chalmers, Brian	1%	0.13%
Cody, Elizabeth	0.5%	0.065%
Coleman, Struan	1%	0.13%
Cordasco, Frank	1%	0.13%
Cushner, Fred	1%	0.13%

<b>Member</b>	<b>Ownership in HSS ASC Development Network, LLC</b>	<b>Indirect Ownership in HSS Long Island ASC, LLC</b>
DiFelice, Gregory	1%	0.13%
Dines, Joshua	0.5%	0.065%
Dowdell, James	0.5%	0.065%
Drakos, Mark	1%	0.13%
Elliot, Andrew	1%	0.13%
Ellis, Scott	1%	0.13%
Fabricant, Peter	0.5%	0.065%
Fu, Michael	1%	0.13%
Fufa, Duretti	1%	0.13%
Gausden, Elizabeth	1%	0.13%
Gomoll, Andreas	1%	0.13%
Gonzalez Della Valle, Aljandro	1%	0.13%
Green, Daniel	1%	0.13%
Gulotta, Lawrence	1%	0.13%
Haas, Steven	0.5%	0.065%
Huang, Russel	1%	0.13%
Iyer, Sravisht	1%	0.13%
Jerabek, Seth	1%	0.13%
Johnson, A. Holly	1%	0.13%
Kang, Lana	0.5%	0.065%
Kim, Han Jo	1%	0.13%
Lebl, Darren	1%	0.13%
Lee, Gwo-Chin	1%	0.13%
Lee, Steve	0.5%	0.065%
Long, William	1%	0.13%
Marx, Robert	1%	0.13%
Mayman, David	1%	0.13%
McCarthy, Moira	1%	0.13%
McLawhorn, Alexander	1%	0.13%
Nawabi, Danyal	1%	0.13%
Ode, Gabriella	1%	0.13%
O'Malley, Martin	0.5%	0.065%
Osei, Daniel	1%	0.13%
Parks, Michael	1%	0.13%
Pearle, Andrew	1%	0.13%
Queshi, Sheeraz	1%	0.13%
Ranawat, Amar	1%	0.13%
Ranawat, Anil	1%	0.13%
Ricci, William*	1%	0.13%
Roche, Martin	1%	0.13%
Rodeo, Scott	1%	0.13%
Rodriguez, Jose	1%	0.13%
Rozbruch, S. Robert	1%	0.13%
Sama, Andrew*	1%	0.13%
Sama, Nicholas	1%	0.13%
Sandhu, Harvinder	1%	0.13%
Sculco, Peter	1%	0.13%
Simovitch, Ryan	1%	0.13%
Sink, Ernest	1%	0.13%
Sokunbi, Gbolabo	0.5%	0.065%
Strickland, Sabrina	1%	0.13%
Su, Edwin	1%	0.13%
Swenson, Stephanie Buza	0.5%	0.065%

Member	Ownership in HSS ASC Development Network, LLC	Indirect Ownership in HSS Long Island ASC, LLC
Taylor, Samuel	1%	0.13%
Trehan, Samir	1%	0.13%
Vigdorchik, Jonatyhan	1%	0.13%
Wnag, John	1%	0.13%
Wanich, Tony	1%	0.13%
Westrich, Geoffrey	1%	0.13%
Williams, Riley	0.5%	0.065%
Wolfe, Scott	1%	0.13%
<b>Sub-Total Physicians</b>	<b>68%</b>	<b>8.84%</b>
<b>HSS</b>	<b>32%</b>	<b>4.16%</b>
<b>Total</b>	<b>100%</b>	<b>13%</b>

HSS Long Island ASC, LLC Board of Managers	
Bryan T. Kelly, MD	Justin Oppenheimer
Stacey L. Malakoff	Michael Ast, MD
Irene M. Koch	

Board of Trustee Members HSS		
	Giammaria Giuliani	Mary Kathryn Navab
Answorth Allen, M.D	Robert Goldstein	Terence M. O'Toole
Daniel C. Benton	Warren B. Kanders	Douglas Padgett, M.D.
Herbert Black	Scott Kapnick	Matthew H. Peltz
Mathias Bostrom, M.D.	Monica Keany	Steven Rattner
S. Louis Bridges, Jr. M.D.	Bryan T. Kelly M.D.	Scott Rechler
Michael C. Brooks	Sacha Lainovic	William M. Ricci, M.D.
Kathryn Chenault	Laurie Hodges Lapeyre	Andrew A. Sama M.D.
Chase Coleman	Pablo Legorreta	Edward Skyler
Leslie Cornfeld	Lara R. Lerner	Jonathan Sobel
Cynthia Foster Curry	Kathy Lenenthal	Deirdre Stanley
Anthony de Nicola	Thomas H. Lister	Robert K. Steel
James G. Dinan	Patrice J. Louvet	Jonathan Tisch
Katherine Doerge	Alan S. MacDonald	Frances Townsend
Anne Ehrenkranz	Susan Maher, PhD	Robert Vince
Michael Esposito	Celene Menschel	Jeff Wilpon
Wayne A.I. Frederick M.D	Andy O. Miller M.D.	Ellen M. Wright
Marina Kellen French	Sarah E. Nash	Robert D. Yaffa

*\*Character & Competence Reviews were conducted on 128 individuals who comprise the Board of Trustees & Officers of the Hospital for Special Surgery*

Volume Source	Year 1	Year 3
Sum of Surgeon Letters	885	885
Surgeries from Main Campus	570	945
<b>Total</b>	<b>1,455</b>	<b>1,830</b>

**Michael Ast, M.D.** is the proposed Medical Director. Dr. Ast graduated from Temple University in 2003 and Temple University School of Medicine in 2007. Residency was completed in 2012 from North Shore LIJ Health system and a Fellowship for Adult Reconstruction and Joint Replacement was completed at the Hospital for Special Surgery in 2013. Dr. Ast is registered in both New York through April 2025 and New Jersey through June 2025.

Dr. Ast currently is employed since 2018 at Weill Cornell Medical College as an Assistant professor Orthopedic Surgery, and as the Chief Medical Innovation Officer at Hospital for Special Surgery since

2021. Other positions held: Senior Clinical Associate Orthopedic Surgery at Weill Cornell Medical College (1 year), Associate Attending Orthopedic Surgeon Robert Wood Johnson University Hospital (5 years) also serving as Medical Director for Robotic Joint replacement Surgery. Orthopedic Surgeon Capital Health Medical Center (5 years), Associate Attending orthopedic surgeon at St. Mary Medical Center (5 years), Associate Attending orthopedic surgery at University Medical Center of Princeton (3 years), and others simultaneously.

Interest/Ownership: Mercer County Surgery center from 2015-2018 (9%) NJ -. Affidavit in lieu of 2D sent.

Lawsuits: 11/17/2022 New York Supreme Court, NY County *Audrey Birster v. Michael Ast, MD, Et Al.* This matter involves a then 49-year-old female with complaints of bilateral knee pain. On 2/10/2020, patient underwent a right patellofemoral replacement which was complicated with pain and swelling. Plaintiff obtained a second opinion with Dr. Ast, where she expressed concerns related to a metal allergy. Patient alleged failure to consider metal allergy as cause of pain.

3/16/2017 *Unknown vs. Michael P. Ast, M.D. et al.*, Patient alleged the use of the improper sized ball in total hip replacement surgery which resulted in recurrent dislocations. Patient required revision surgery. Settled and closed. MD share: \$200,000.

**Answorth Allen:** Dr. Allen completed his MD degree at Cornell Medical in New York, NY. Dr. Allen is licensed in NY state and registered through 7/31/2025. Dr. Allen was employed at New York Presbyterian as a resident from 1983-1993, then at UPMC in Pennsylvania for a one-year fellowship. Dr. Allen worked for 3 years at Hospital for Special Surgery then went into private practice for 21 years at which time Dr. Allen returned to Hospital for Special Surgery and remained there from 2018 until the present time.

Interest/Ownership: HSS Director Board of Trustees since 9/2023 Hospital for Special Surgery. HSS West Side ASC, New York, NY, voting manager of Entity formed in 2016 (9%)

Lawsuits: 2020 NY Supreme Court; Kings County: Three ongoing cases. 2020 – *Anif Tasoren b. Answorth Allen MD, Michael Ho, MD and HSS.* 36 YO male, presented to Dr. Allen for Left sided knee pain that developed after an altercation while working as an NYPD officer on 12/23/2019. Dr. Allen performed a partial meniscectomy without documented complications. Following surgery, plaintiff reported pain, swelling and numbness of the left lower extremity. On 1/7/2020 plaintiff was diagnosed with a DVT in the left peroneal vein and was treated with anticoagulation. Patient alleged failure to identify compartment syndrome, despite no clinical indication of the condition. 3/9/2016 New York Supreme Court, NY County. *Ethan Barnett b. Answorth Allen, MD and HSS.* Patient alleges partial right sciatic nerve injury that occurred during right ACL reconstruction performed by Dr. Allen on 11/2/2015 in a 24-year-old male, resulting in right foot drop.

12/04/2018 New York Supreme Court, NY County. *Courtney Pabst v Answorth Allen MD, et al.*, 21-year-old female underwent revision of left ACL repair on 5/11/17 with Dr. Allen. During the procedure the patient sustained a cardiopulmonary arrest/embolic event requiring life-sustaining measures and transfer to external hospital for further care. Subsequently the patient underwent right below the knee amputation on 11/14/2018 and was diagnosed with left peroneal nerve palsy. Plaintiff alleges improper performance of ACL reconstruction, which caused fat embolus and arrest.

8/10/2017 New York Supreme Court, NY County. *Mitchell Eilenberg v Answorth Allen MD, et al.*, 50-year-old male presented to Dr. Allen for history of left shoulder dislocations. On 7/23/2009 Dr. Allen performed a left shoulder arthroscopy, labral debridement, subacromial bursectomy, arthroscopy AC joint excision and acromioplasty. The patient subsequently reported persistent pain and weakness in the left arm which patient attributed to surgical technique.

**Todd Albert:** Education includes Amherst College and University of Virginia Medical School. Dr. Albert holds current medical licensure in New York expiring on 5/31/2025 and New Jersey expiring on 6/30/2025. Dr. Albert has completed an internship at Pennsylvania Hospital Surgery, A residency at Thomas Jefferson University Hospital, Pennsylvania, and a fellowship at the Minnesota Spine Center. Dr. Albert has been employed since 2014 at both Hospital for Special Surgery and New York Presbyterian Hospital. Prior to that Dr. Albert worked at Rothman Orthopedic Specialty Hospital (4 Years), Main Line

Health (18 years), Attending orthopedic surgeon at Thomas Jefferson University Hospital for 11 years, and simultaneous positions.

Interest/Ownership: Hospital for Special Surgery ex officio on board of trustees.

Lawsuits: April 17, 2018 – *Olivier Vidal V. HSS, Chad Craig, MD, and Todd Albert, MD*. 71-year-old male suffered an MI following cervical spine decompression and fusion performed by Dr. Albert on 8/12/2015. Patient alleges improper medical clearance prior to surgery. Settled \$750,000. October 27, 2017 – *John Fanneron v Todd Albert et al.* 56-year-old male that underwent C5-C7 cervical dissection/fusion on 11/23/2016 for cervical radiculopathy. Subsequent imaging was concerning for retained sponge, which required additional surgery for removal.

January 6, 2020 - *Sedat Biringen v. Todd Albert, M.D., Et Al*. Decedent, 72-year-old male, who presented to Dr. Todd Albert on 6/19/17 with complaints of left leg pain and sciatic dysfunction. Plaintiff medical history included bladder cancer that was treated with surgery in 2012. MRI of the pelvis identified an abnormal lumbar plexus, which could be considered neoplastic or non-neoplastic. The decedent was referred to his oncologist and was diagnosed with Stage IV metastatic urothelial carcinoma in early 2018.

August 6, 2020 - *Lawrence Finnegan v. Todd Albert, MD and HSS*, Patient, 45-year-old male, who underwent a Synvisc injection to the right knee on 12/6/17. Following the injection, patient developed severe right knee pain and swelling. On 12/8/17 HSS received recall notice for injection. Dr. Albert, Surgeon-in-Chief at the time, notified medical staff of recall. Patient claims delay in notification to staff.

**Daniel Benton:** Most recent education is from Harvard University completed in 1984 with a master's in business administration. Daniel Benton has worked for Andor Capital Management at a hedge fund company 2001 – present. In addition, from 2017- present Daniel Benton worked at Benton Capital Management as CEO at the family office.

Interest/Ownership: Board of Trustee membership as HSS Director of Hospital for Special Surgery.

**Herbert Black:** Graduated High School in 1961 and holds an aviation pilot license in Canada through May 2026. Current employment since 1962 is President and CEO of American Iron & Metal Company Inc. in Canada. 60 years of experience in metal recycling.

Interest/Ownership: Director Board of Trustees Hospital for Special Surgery.

**Theodore Blaine:** Dr. Blaine completed medical school at the University of Connecticut in 1993. Dr. Blaine has current licensure in: New York, registered through 1/31/25; Connecticut, registered through 7/24; New Jersey, registered through 6/25 and Rhode Island, registered through 6/24. Dr. Blaine presently works at Attending Physician for Hospital for Special Surgery, NYP Hospital, Orthopedic surgeon at Hartford Hospital, Yale New Haven Hospital, Greenwich Hospital, and Westerly Hospital. Dr. Blaine held attending physician privileges since 2004 at various facilities and as Orthopedic surgeon since 2007 at various facilities.

Interest/Ownership: Hartford Hospital Physicians LLC. Bone and Joint Institute, CT since 2018 Physician in chief.

**Jason Blevins:** Dr. Blevins most recent education is from University of Maryland School of Medicine received MD degree in 2013, and residency/fellowship completed in 2019. Dr. Blevins holds a NY licensure that expires 1/31/2026. Employment history includes Residency until 2018, Fellowship in Adult reconstruction and joint replacement completed in 2019, and Assistant Attending Orthopedic Surgeon at Hospital for Special Surgery since 2019.

**Friedrich Boettner:** Dr. Boettner graduated in 1997 from Rostock University in Germany. Dr. Boettner currently holds medical licenses in New York registered through 5/31/2025 and New Jersey registered through 6/30/2025.



Dr. Boettner is currently employed at Hospital for Special Surgery since 2006 as Associate and then Attending Surgeon, and at Friedrich Boettner MD PC since 2008.

**Mathias Bostrom:** Dr. Bostrom graduated with a medical degree from Johns Hopkins University School of Medicine in 1989. Their residency was completed at the Hospital for Special Surgery in 1995. Currently licensed in the states of New York through 2/2025, New Jersey through 6/2025, and Connecticut through 3/2024.

Currently, Dr. Bostrom is an attending orthopedic surgeon at Hospital for Special Surgery, New York Presbyterian Hospital, and is also the Chief of Adult Reconstruction and Joint Replacement service at Hospital for Special Surgery. Dr. Bostrom also serves as a Professor of Orthopedic Surgery at Weill Medical College of Cornell University since 2007. They also teach orthopedics at the University of Lund in Sweden since 2011. At the Hospital for Special Surgery, they are the Senior Scientist in the Division of Research and the Chair in Adult Reconstruction and Joint Replacement.

Interest/Ownership: Director ex officio since 2020 for Hospital for Special Surgery.

Open legal disclosures:

5/22/2019 *Marcia Miller v. Mathias Bostrom, MD, et al.*, New York Supreme Court, NY County. Patient, 68-year-old female, presented to Dr. Bostrom on 9/30/2016 for evaluation of metallosis of a left metal on metal total hip replacement that was performed at an outside hospital. On 11/21/16, she underwent aspiration of the left hip with radiology. On 11/26/16, the patient was diagnosed with infection and required explant with placement of a spacer; reimplantation occurred on 2/15/17. Patient claims aspiration was not indicated and caused the infection.

12/08/2022 *Edward Degroff V. Marthias Bostrom MD and HSS.* New York Supreme Court, NY County. Patient, 72-year-old male, presented to Dr. Bostrom for evaluation of right hip pain and underwent right total hip replacement on 11/29/18. Patient subsequently reported hearing an audible pop and inability to bear weight on 4/19/19 and patient required hip revision. Patient suffered right hip dislocation on 7/15/22, and patient underwent revision for broken constrained liner and ring failure. Patient claims initial surgery was improperly performed.

Settled or dismissed:

6/6/2017 *Robert Debois v. Marthias Bostrom, MD, et al.* New York Supreme Court; NY County. This litigation involves a 64-year-old male who underwent bilateral total knee arthroplasty by Dr. Bostrom on 3/23/15. Patient was transferred to St. Charles Hospital Rehabilitation on 3/27/15. Three weeks later, he suffered a non-hemorrhagic stroke. Patient alleged failure to identify DVT, which resulted in a stroke. Defense expert contended impossibility of DVT, and matter was dismissed on motion.

7/1/2020 *Nancy Damato v. Marthias Bostrom MD and HSS.* New York Supreme Court; New York County. Patient developed PE after total hip replacement causing residual neurologist deficits. Dr. Bostrom was senior resident at the time of care and was dismissed from the action.

**Stanley Bridges:** Education includes graduation from Louisiana State University School of Medicine New Orleans in 1984 with an M.D. in medicine and from University of Alabama at Birmingham in 1995 with a Ph.D. in Microbiology. Dr. Bridges completed a residency at the University of Texas Medical Branch followed by a fellowship in immunology and Rheumatology at the University of Birmingham. Current licensure includes LA through 08/2024; AL through 12/2024; TX inactive; NY through 07/2025; FL inactive.

Dr. Bridges currently holds several teaching positions as well as an Attending physician at the Hospital for Special Surgery since 2020 and at Memorial Sloan Kettering Cancer Center since 2021. Prior employment includes a Staff Physician at Veteran Administration Medical Center in Birmingham, AL.

Dr. Bridges is on the Board of Trustees at the Hospital for Special Surgery.

**Michael Brooks:** received their MBA from Harvard Business School in 1973.

Mr. Brooks is currently a consultant to Venerock venture investment firm, where he was previously a General Partner from 2000 - 2013.

They also currently serve on the US Ski and Snowboard Association board as well as a Trustee on the board of Hospital for Special Surgery.

**Alberto Carli:** Education at McGill University in Montreal QC with MDCM in 2008, MSC in 2012 and FRCSC in 2016. Dr. Carli holds licensure in NY through 3/2025 and in NJ through 6/2025. Dr. Carli completed two fellowships at the Hospital for Special Surgery in 2015. Then continued to a Fellowship in Hip Reconstruction from The Hip Society/Maurice Muller Foundation and a second at Rothman Ranawat Fellowship – the Hip Society.

Dr. Carli is currently employed as an Associate Attending surgeon for the Hospital for Special Surgery since 2018. Prior to that D. Cali worked for two (2) years as staff orthopedic Surgeon at the Ottawa Hospital in Canada.

**Brian Chalmers:** Dr. Chalmers completed education at the University of Kansas in 2014. Dr. Chalmers went on to the Mayo Clinic to an ortho residency which was completed in 2019 and then to the Hospital for Special Surgery for a fellowship completed in 2020. Dr. Chalmers currently holds licensure in NY through 8/31/2024, NJ through 12/31/2024, and CT through 9/2024.

Dr. Chalmers is presently employed since 2020 at the Hospital for Special Surgery as Assistant Professor of Orthopedic Surgery, Weill Cornell Medical College as an Assistant Professor of Orthopedic Surgery, and at New York Presbyterian Hospital as an Assistant Attending orthopedic surgeon.

**Kathryn Chenault:** Most recently graduated in 1980 from NYU School of Law. Kathryn Chenault has been retired since 1989.

Ms. Chenault has provided the following additional details regarding her experience: • HSS Board of Trustees, member of the HSS Board of Trustees since April 28, 2011 • The Studio Museum in Harlem, Board member since November 2001 • The Pratt Institute, Board member since December 13, 2012 • Lincoln Center, Board member since September 2023 Interest/Ownership: Hospital for Special Surgery Board of Trustees Director.

**Elizabeth Cody:** Dr. Cody graduated from Columbia University College in 2012. Dr. Cody completed a residency at the Hospital for Special Surgery for orthopedic surgery in 2017 and a fellowship in foot and ankle surgery at Duke University in 2018. Dr. Cody currently holds licensure in NY through 7/2024 and in CT through 8/2024.

Dr. Cody is currently employed as an Assistant Attending orthopedic surgeon since 2018 at the Hospital for Special Surgery, and at Weill Cornell. Dr. Cody was previously an instructor in orthopedic surgery at Weill Cornell from 2018 – 2021. Dr. Cody is currently an instructor of orthopedic surgery from 2020 at New York Medical College.

**Charles Coleman:** Graduated with a master's degree from Williams College. Current employment is with Tiger Global Management from 2001 until present. Charles Coleman has a history of working in the investment industry with this company.

Interest/Ownership: Director Board of Trustees at the Hospital for Special Surgery.

**Struan Coleman:** Graduate of Columbia P and S in 1995 with medical degree. Completed residency and fellowship at Hospital for Special Surgery and completed in 2002. Currently licensed in NY through 12/31/2024; PA through 12/31/2024; and FL through 1/31/2026.

Current employment is Associate professor of clinical orthopedic surgery since 2013 at Weill Cornell Medical College. Dr. Colman is also the Director at Vincera Hip Preservation Center since 2013; Orthopedic surgeon at Vincera Institute since 2013; Associate attending orthopedic surgeon at the

Hospital for Special Surgery since 2013; and an Associate attending orthopedic surgeon at New York Presbyterian since 2013. Prior employment as associate orthopedic attending surgeon at New York Presbyterian from 2002-2012.

Ownership/Interest: The Vincera Institute in PA since 2013. 10% real estate and 10% ASC.

Noted on Philadelphia web site for ASCs, "Vincera 2022 2567." The survey results were released to the facility today 12/12/22, for plan of correction submission. Plan of correction was submitted. The facility is operational.

**Frank Cordasco:** Dr. Cordasco graduated from Rutgers University with a medical degree in 1985. Dr. Cordasco currently holds licensure in NY through 9/2024. Residency for general surgery at the University of Arizona Health Sciences Center and for Orthopedic Surgery at Columbia University, College of Physicians and Surgeons. A fellowship was completed for Shoulder and Elbow surgery at Columbia University, College of Physicians and Surgeons.

Dr. Cordasco currently holds academic positions as a Senior Research Scientist since 2017 for the Hospital for Special Surgery and as a professor of orthopedic surgery at Cornell University since 2014. Dr. Cordasco holds hospital positions since 2014 as an Attending orthopedic surgeon at the Hospital for Special Surgery and The New York Presbyterian Hospital.

Disclosure: Ownership interest - 2015 until present Hospital for Special Surgery ASC of Manhattan. (2.98%).

Disclosure Legal: Open Cases

04/26/2022 *WEISS, ANTHONY E. V. DANIEL GREEN, MD, FRANK CORDASCO, MD, FRANK CORDASCO, PC & HSS* Leg length discrepancy.

5/25/2021 *SCHULTHEIS, DYLAN V. DANIEL GREEN, MD, FRANK CORDASCO, MD, FRANK CORDASCO, MD, PC, RYAN R. FADER, MD, REBECCA JOHNSON, PA & HOSPITAL FOR SPECIAL SURGERY* Growth Plate Interference.

Settled Cases:

6/16/2017 *Alexander Anastassopoulos, by his parent and natural guardian, Kathryn Anastassopoulos v. HSS, Dr. Frank Cordasco and Dr. Daniel Green.* Growth plate interference – settled.

**Leslie Cornfeld:** Graduated from Harvard Law School in 1985. Had been licensed in NY but is currently not active.

Currently employed at National Education Equity Lab as Founder and CEO since 2018. Prior employment was at the Office of the Mayor of NYC 2006-2013; US President Barack Obama Administration 2015-2017.

Interest/Ownership: Director on the Board of Trustees for Hospital for Special Surgery.

**Cynthia Curry:** Graduated in 1990 from Harvard Business School with a master's in business administration.

Currently holds a Real Estate license through 01/2026.

Cynthia Curry has retired in 2022. Past employment includes Cushman/Wakefield 1994-2015; Colliers International 2015-2021; Lex-Markets 2021-2022.

Interest/Ownership: Director Board of Trustees Hospital for Special Surgery.

**Fred Cushner:** Dr. Cushner graduated from the Medical University of South Carolina in 1988. Dr. Cushner currently holds licensure in NY through 5/31/2025; NJ pending, CT through 6/30/2024.

Dr. Cushner is currently employed at the Hospital for Special Surgery since 2019 as an Orthopedic Surgeon. And as an Associated Clinical Professor. Previous Employment was at Northwell Health from May 2005 – May 2019.

Disclosure: Ownership interest in Business ventures – Canary Medical (Medical Device Company)

Legal information: (Disclosed after DOH inquiry)

Open Court Cases:

*2/16/2021 - April Connors v. Fred David Cushner, MD - Alleged improper performance of cartilage plug to the patella placement.*

*3/24/2022 - Virgil Shuler against Fred Cushner, M.D., and Hospital for Special Surgery - Patient, 67-year-old male, presented to Dr. Cushner with bilateral knee pain and on 1/22/21, Dr. Cushner performed a left total knee replacement without complication. Patient made slow progress postoperatively due to pain and stiffness and was lost to follow-up after 6 months.*

*1/9/2023 - Greg Lopez against Frederick Cushner, M.D., Jesu Ysit and Hospital for Special Surgery - Patient, 55-year-old male, presented to Dr. Cushner for instability of the left knee after a TKR performed at an OSH. After completing an unremarkable revision on 10/11/19, Dr. Cushner performed a right TKR on 7/2/2020 that was complicated by infection. Dr. Cushner performed I&D with liner exchange on 7/28/2020. Patients complained of pain and instability bilaterally.*

Settled or Dismissed Cases:

*9/27/2019 - Erasmo Beras against Fred Cushner, M.D. - Patient 65-year-old male underwent left total knee replacement surgery with Dr. Cushner on 9/19/14 without complication. The patient claimed Dr. Cushner used the wrong-sized tibial component and failed to properly treat the patient postoperatively. The matter was dismissed on summary judgment. Dismissed*

*1/29/2018 - Catalina Castillo against Fred Cushner, MD, Et al - Patient underwent a left total knee arthroplasty that was complicated by thrombosis in her popliteal artery. Despite prompt treatment, she developed past perfusion syndrome resulting in amputation. Settled at \$1.5 M and discontinued.*

*5/2/2018 - Melissah Milroy against Fred Cushner, M.D. Et al - Patient underwent total knee replacement on 11/2/12 for right knee arthritis with Dr. Cushner. Postoperatively, she reported increased pain and suffered a poor outcome. She was noted to be at high risk for chronic pain due to prior use of opioids. Settled at \$100K and discontinued.*

**Anthony DeNicola:** Graduated with a master's in business administration from Harvard Business School in 1988. Anthony DeNicola has been employed at Welsh, Carson, Anderson & Stowe since 1994. Anthony DeNicola has been a general partner since then and has held the title of president and managing partner from 2007-2021 at which time Anthony DeNicola became Chairman of the firm.

Interest/Ownership: Director on Board of Trustees for Hospital for Special Surgery.

**Gregory DiFelice:** Dr. DiFelice graduated medical school from UMDNJ in 1994. Dr. DiFelice is currently licensed in NY through 6/2025 and in NJ through 6/2025. Residency was completed in 1999 from Hospital for Special Surgery and a Fellowship was completed in 2000 from Washington University School of Medicine in MO.

Dr. DiFelice is currently employed at Hospital for Special Surgery as an Attending Surgeon since 2010 and is self-employed at DiFelice Orthopedics, PC since 2016. Dr. DiFelice notes he has helped to manage the outpatient units at multiple hospitals he previously worked at.

Legal Disclosures:

Open Cases:

8/22/2018 (Disclosed after DOH inquiry) *Sandra George v. Gregory S. DeFelice, MD, New York City Health and Hospitals Corp. and Jacobi Medical Center* - Alleged failed right total knee replacement due to defective or improperly placed/misaligned hardware.

1/10/2023 - *Charles Bostwick v. Gregory DiFelice, MD, and HSS*- Patient, 60-year-old male, presented to Dr. DiFelice with right hip pain. On 7/15/21, Dr. DiFelice performed a right THR that was complicated by right sided foot drop. Plaintiff was taken back to the OR on 7/17/21 for wound exploration and sciatic neurolysis where a stitch in the nerve was identified. Patient alleged improper performance of surgery causing direct injury to the sciatic nerve.

Settled Cases:

10/14/2021 - *Martha Henderson V. Gregory Difelice, MD, and HSS* - Patient, 65-year-old female, presented to Dr. DiFelice on 10/7/19 for evaluation of a left proximal humerus fracture. On 10/11/19, Dr. DiFelice performed an ORIF of the fracture. Five days later, there was notable migration of the greater tuberosity fragment on x-ray. Patient underwent revision 10/31/19 and the fracture healed well.

12/16/2015 - *Larry Grissom vs. New York Presbyterian Hospital, Gregory S. DiFelice, M.D., and HSS* - Patient underwent ORIF of tibia/fibula fracture with IM nail in March 2011. The patient later developed painful clawing of toes and alleged that compartment syndrome was missed. Documented did not support this allegation.

**James Dinan:** Graduated most recently in 1985 from Harvard Business School. Current employment at York Capital Management since 1991.

James Dinan discloses that he is on the Board of Trustees for Hospital for Special Surgery.

**Joshua Dines:** Dr. Dines graduated in 2001 from Weill Cornell Medical College. Dr. Dines is Licensed in NY through 6/2025; NJ through 6/30/2025; CT through 7/31/2024; and CA through 7/31/2025.

Dr. Dines is employed since 2001 at David Dines MD PC as Vice president/orthopedic Surgeon and at the Hospital for Special Surgery as an Orthopedic surgery/researcher and teaching from 2008 to present.

Disclosure: Ownership in HSS West Side ASC (6%) since 2017

Legal Disclosures: Dr. Dines discloses a settled case from 2014, *Raymond Bailey & Natielle Fernandez-Bailey vs. Joshua Dines, MD et al*, Patient, 53-year-old male, alleged Dr. Dines negligently performed a left total knee replacement resulting in need for revision surgery. Settled – Dr. Dines.

**Katherine Doerge:** is the Principal of Kate Doerge Consulting, a stock market management company. Ms. Doerge graduated from Hamilton College double majoring in Communications and Art History.

Principal of Kate Doerge Consulting, an investing firm. Prior employment with iStar as the Head of Marketing. Also, was a partner at Paul Wilmont Communications, a public relations firm. 1996-2017

Interest/Ownership: HSS Director since 2022 Board of Trustees Hospital for Special Surgery.

**James Dowdell:** Dr. Dowdell graduated from Jefferson Medical College in 2014. Dr. Dowdell is currently licensed in NY through 5/2025; NJ through 6/2025; and CT through 6/24. Dr. Dowdell served a Residency for hospital orthopedics at Mount Sinai Hospital that was completed in 2019 and went on for a Resident and Fellowship at Hospital for Special Surgery.

Dr. Dowdell currently works at Hospital for Special Surgery as a Sine Surgery Attending from 2020.

Legal Disclosure: Dr. Dowell discloses one case from 2022 which is currently open in Supreme court New York County, *Patalano, Joseph v. Matthew Cunningham, MD, James Dowdell III, MD, and HSS*, 36-year-old male, presented with complaints of low back pain and right foot weakness following 2 prior lumbar spine procedures performed outside HSS. On 8/12/19, a patient underwent a L3-L4

microdecompression/microdiscectomy that was complicated by right-sided foot drop. Patient underwent revision surgery with repair of dural tear, without improvement and required further revision on 8/26/19.

**Mark Drakos:** Graduated from SUNY at Stony Brook in 2003 with a medical degree and followed with residency and fellowship at the Hospital for Special Surgery completed in 2008. A second fellowship was completed in 2010 from Brown University. Dr. Drakos is licensed in NY through 8/2025.

Current employment includes the Hospital for Special Surgery as an associate orthopedic surgeon attending foot and ankle services since 2011 and New York Presbyterian Hospital at Cornell as an associate professor since 2011.

Ownership/Interest disclosure: Manhattan ASC since 2015. (2.98%)

Legal disclosure: 3 Open Cases:

7/29/2021 - *MURPHY, TARA V. HOSPITAL FOR SPECIAL SURGERY & MARK DRAKOS, MD, MISSED DIAGNOSIS*

7/9/2021 - *MAXWELL, RYAN V. HOSPITAL FOR SPECIAL SURGERY & MARK DRAKOS, MD, 37-year-old male who presented to HSS with complaints of stiffness in the right leg. Patient underwent an Achilles lengthening on 9/17/2020. Plaintiff reported nerve pain postoperatively and developed neuroma of the sural nerve, which required resection and cryoablation. Postoperatively, patient continued to report nerve pain and was referred to pain management. NERVE DAMAGE - S/P FOOT/ANKLE*

2/5/2021 - *WALLACH, BRUCE V. HSS AND MARK DRAKOS, MD, 72-year-old male who presented to Dr. Mark Drakos with left foot pain. Dr. Drakos identified a hammertoe of 2nd digit and bunion deformity; he performed a Scarf bunion correction, with Akin osteotomy and 2nd hammertoe correction on 6/20/17. Plaintiff developed pain in the 2nd digit and imaging showed slight subluxation. On 8/16/18, Dr. Drakos performed a hammertoe revision. Plaintiff again reported pain in the 2nd digit and MRI showed subluxation and dislocation of the 2nd MTP joint. PAIN - S/P FOOT*

Settled/Dismissed:

6/19/2017 - *SCONZO, THOMAS V. DRAKOS, MARK, HENRY, MICHAEL, MD & HSS, INFECTION - S/P FOOT/ANKLE - dismissed.*

7/10/2018 - *WOLFE-SANTOS, MARIVI V. TURTLETAUB, LAUREN, MD, DRAKOS, MARK, MD, PAPARELLA, NICOLE, PA, ROSENBAUM, ANDREW, MD, Infection. Settled HSS*

**Anne Ehrenkranz:** Graduated in 2000 with a Ph.D from City University.

Recent employment is with working on boards including vice-chair of the Board of Visiting Nurse Service and Vice Chair of the Institute of Fine Arts of New York University, for ten years.

Interests/Ownership: HSS Director Board of Trustees for Hospital for Special Surgery.

**Andrew Elliott:** Dr. Elliott graduated from Harvard Medical School in 1991. Dr. Elliott served an orthopedic residency at Yale Medical from 1991-1996 and a Fellowship at Hospital for Special Surgery (foot and ankle) completed in 1997. Dr. Elliott is licensed in NY through 8/2025 and NH through 6/2025.

Dr. Elliott is currently employed as an Assistant Clinical Professor of Orthopedic Surgery at the Hospital for Special Surgery since 2001. Dr. Elliott has had hospital appointments at the Hospital for Special Surgery as Assistant Attending Orthopedic Surgeon since 2001 and Assistant Attending Orthopedic Surgeon at New York Presbyterian Hospital since 2001. Dr. Elliott has been the Assistant Team Physician for New York Redbulls MLS Soccer team since 2013.

Disclosure: Dr. Elliot discloses 0.99% ownership interest in the Hospital for Special Surgery ASC of Manhattan since 2015.

**Scott Ellis:** Dr. Ellis graduated from Johns Hopkins in 2002. Current licensure in NY through 9/2024; NJ through 6/2025; and CT through 10/24.

Current employment is associate attending or orthopedic surgery at NY Presbyterian Hospital and the Hospital for Special Surgery since February 2015 and Full Professor Scientist on the surgery tract Attending for Hospital for Special Surgery since January 2022.

Dr. Ellis discloses ownership in Hospital for Special Surgery ASC in Manhattan since 2015 (2.98%).

Dr. Ellis discloses two (2) legal cases:

9/16/2014 - *TAUBER, ROSLYN v. HSS, AND SCOTTELLIS, MD*, - Pain s/p foot – Settled by HSS and Dr. Ellis

1/6/2015 - *PEREZ, MARISOL V. ELLIS, SCOTT, M.D., COSTIGLIOLA, STEPHEN, P.A., HSS, JOHN DOE, DEFENANT MDs 1-10, and JANE DOE, R.N. DEFENDANTS 1-10*, pain s/p foot – settled by HSS

**Michael Esposito:** Graduated from Harvard Business School in 1992 with a master's in business administration. Employment from 3/1992 through 2020 as Partner MD in Goldman Sachs & Co. Prior to that Michael Esposito worked for Franchise Equity Partners from 2021 – present as co-managing partner.

Interest/ownership: Director on the Board of Trustees for Hospital for Special Surgery. Trustee since 2020 at New York Presbyterian Hospital.

**Peter Fabricant:** received their MD from Yale University School of Medicine in 2008, and their Master of Public Health from Columbia University in 2013. Dr. Fabricant completed their residency at the Hospital for Special Surgery in 2014. Current licensure in NY through 4/2025 and CT through 5/2024.

Currently employed as an attending orthopedic surgeon at the Hospital for Special Surgery and have been since 2016.

Legal Disclosure: 6/24/2020 - *Daniel Kurtz v. David Hansel, Et Al.*, This matter involves the care of a then 2-month-old infant who was presented to Dr. Peter Fabricant for evaluation on 8/23/18 of a left femur fracture. Parents reported that the injury occurred due to a fall on 8/8/18. The infant was initially evaluated at NYPH and then at Mt. Sinai Hospital, where a femur fracture was diagnosed. Due to concerns surrounding the mechanism of the injury, and after consulting with providers at NYPH and with ACS, HSS submitted a report to ACS and the children were removed. Parents claimed HSS improperly reported the incident to ACS. The matter was dismissed on motion. Dismissed

**Wayne Frederick:** received a Medical Doctorate from Howard University in 1994 and a Master of Business Administration from there in 2011. Dr. Fredrich was previously a practicing physician in Washington DC, Maryland, Texas, Connecticut, and Trinidad and Tobago. Current licensure with District of Columbia through 12/2024.

Currently Dr. Fredrich is the President of Howard University and has been since 2014.

HSS Director Board of Trustees for Hospital for Special Surgery.

**Marina French:** completed their education at the Université de Lausanne in Switzerland in 1962. Marina French volunteers her time with development skills based on volunteering for various organizations for greater than 40 years.

For the last 10 years, Ms. French has served on the Boards of: • The Metropolitan Museum of Art • European Sculpture and Decorative Arts Department (Chairman) • Carnegie Hall • Metropolitan Opera • The Morgan Library (Life Trustee) • The American Academy in Berlin • The World Monuments Fund • National Gallery of Art in Washington DC (Trustee Council)

Currently a board member at the Hospital for Special Surgery.

**Michael Fu:** received a Master of Health Science and a Medical degree simultaneously in 2014 from Yale University. Dr. Fu is currently licensed in New York through 2/2025, New Jersey through 6/2025, and Connecticut through 3/2024.

Current employment includes Attending Orthopedic surgeon and physician at the Hospital for Special Surgery from 2020 and attending Physician at Rush University Medical Center in Chicago.

**Duretti Fufa:** Dr. Fufa graduated from Harvard Medical School in 2006. Dr. Fufa is currently licensed in NY through 8/2025, NJ through 6/2025, CT through 11/2024 and FL. Dr. Fufa completed an internship in general surgery at New York Presbyterian Hospital Cornell in 2007, a residency in Orthopedic Surgery at the Hospital for Special Surgery in 2011, a fellowship in Hand and Upper extremity surgery at Washington University in MO, and a Fellowship in trauma and microvascular surgery in 2013.

Dr. Fufa is currently employed at New York Presbyterian Hospital Weill Cornell Medical College since 2019 as an Associate Professor of Orthopedic Surgery and at the Hospital for Special Surgery since 2018 as Program Director Orthopedic Surgery Residency and since 2019 as an Associate Attending Orthopedic Surgeon.

Disclosure: Dr. Fufa disclosed an ownership interest of 2.06% in the Hospital for Special Surgery ASC of Manhattan since 2015.

Legal Disclosure: 11/10/2015 - *LEWIS, STEVEN v. FUFA, DURETTI, M.D., & HSS INFECTION - S/P HAND* Dismissed

10/25/2018 - *SONI, ROHIT V. LANE, JOSEPH, MD, FUFA, DURETTI, MD, KELLY, ANTON G. MD, and NYPH* Delayed Diagnosis - Settled HSS only.

01/19/2019 - *LARRY, ERIC V. FUFA, DURETTI, MD, NYPH/WEILL CORNELL MEDICAL CENTER* Poor Hand Outcome – Dismissed

OPEN CASE (1/25/2021)- *STAHL, CELINE V. DURETTI FUFA, MD, AND HSS* – Pain s/p Hand

**Elizabeth Gausden:** Dr. Gausden graduated from Weill Cornell Medical College in 2012. Dr. Gausden is licensed in NY through 3/2025. Dr. Gausden served a residency at the Hospital for Special Surgery from 2014-2018. Two fellowships: The University of Texas Health Science Center at Houston completed in 2019 and Mayo Clinic Hospital completed in 2020 for orthopedics.

Dr Gausden is an Attending surgeon at the Hospital for Special Surgery since 2020.

**Giammaria Giuliani:** Graduated with a bachelor's degree in science from Northeastern University in 1998. Employment from 2003-2014 at Giuliani S.p.A. in Italy as a member of the Board of Directors at NGR. 2016-2022 at NOGRA Group SICAF as Chairman of the Board of Directors. 2018-2023 GISEV Family Office S.A. Member of the Board of Directors at GISEV Family Office.

Interest/Ownership: Director at Board of Trustees for Hospital for Special Surgery.

**Robert Goldstein:** Graduated from Binghamton University with a bachelor's degree in economics in 1994. Robert Goldstein is COO BlackRock since 2014. Prior to that position Robert Goldstein was the institutional Client Business, Robert started at BlackRock in 1994.

Interest/Ownership: HSS Director Board of Trustees for Hospital for Special Surgery.

**Andreas Gomoll:** Dr. Gomoll graduated Ludwig Maximilians University Medical School in Germany in 1997 and Technisch Universitaet Muenchen n Germany in 1998. Dr. Gomoll is currently licensed in NY through 10/2024, NJ through 6/2025, and CT through 11/2024. Dr. Gomoll served an internship at Bigham and Women's Hospital for general surgery completed in 2001; a residency for orthopedic surgery at Harvard combined orthopedics completed in 2005; a fellowship at Rush University Medical Center



completed in 2006 for orthopedic sports medicine; a fellowship at Brigham and Women's Hospital for orthopedic Surgery completed in 2020.

Dr. Gomoll held Associate professor positions in orthopedic surgery at Harvard 2008-2018; Weill Cornell Medical School 2018-2022 and as a professor of clinical orthopedic surgery from 2022-present. Dr. Gomoll was employed by the Hospital for Special Surgery as an associate orthopedic surgeon from 2018 – 2022 and as an orthopedic surgeon from 2022 – present.

Disclosure: Dr. Gomoll claims 1.55% ownership interest in Hospital for Special Surgery ASC of Manhattan since 2015.

**Aljandro Gonzalez Della Valle:** Dr. Gonzalez Della Valle graduated from the University of Buenos Aires in Argentina in 1992. Dr. Gonzalez Della Valle holds licensure in NY through 10/2024. Dr. Gonzalez Della Valle served a residency at Hospital Italiano de Buenos Aires from 1993-1998 and completed a fellowship for orthopedics at the same hospital in 1999. Dr. Gonzalez Della Valle then served a fellowship at the Hospital for Special Surgery in 2002-2004.

Dr. Gonzalez Della Valle held an Attending Surgeon position from 2005 to present at the Hospital for Special Surgery. Also, at Alejandro Gonzalez Della Valle Medical, PLLC name from 2007 – present as attending surgeon.

**Daniel Green:** Dr. Green graduated from UTMD in Texas in 1991. He currently holds licensure in NY through 8/2025 and TX through 8/24. Dr. Green served residency from 1992-1996 at the Hospital for Special Surgery and a Fellowship at Children's hospital Los Angeles completed in 1997.

Dr. Green has been a Professor of Clinical Orthopedic Surgery position at Weill Cornell Medical College since 2015. Also, Assistant and Associate Attending positions at New York Presbyterian Hospital since 1998 and Attending at Hospital for Special Surgery since 2015.

Legal Disclosure (disclosed after DOH inquiry): Open Cases:

5/25/2021- *Dylan Schultheis v. Daniel W. Green, MD, Frank Cordasco, MD, Ryan R. Fader, MD, Rebecca A. Johnson, PA, and HSS- Patient*, 13-year-old male, who presented to Dr. Daniel Green with a left ACL tear. He along with another surgeon, they performed an ACL reconstruction on 4/11/17. Approximately 2 years after the surgery, the patient was diagnosed with flexion contracture and limb length discrepancy that was treated with multiple surgical procedures performed by another provider. Patient alleged disruption of growth plate during ACL repair causing limb length discrepancy.

4/27/2022 - *Anthony Weiss v. Daniel Green, MD, Frank Cordasco, MD, and HSS- Patient*, 10-year-old male presented to Dr. Daniel Green with ACL tear. On 6/4/14, Dr. Green along with another surgeon performed a right all epiphyseal ACL reconstruction. Approximately two years postoperatively, patient reported limb length discrepancy with valgus and flexion deformity. Plaintiff transferred care to another surgeon and underwent multiple procedures to correct the deformity. Patient alleged disruption of growth plate during ACL repair causing limb length discrepancy.

Dismissed or Settled:

12/23/2005 - *Elena Mendez-Rico v. Daniel Green, MD, Et Al.* Premature infant twin (400g at birth) with cerebral palsy, developed IV infiltrate that affected the femur – dismissed.

**Lawrence Gulotta:** Graduate of Harvard Medical College in 2003. Residency was completed at the Hospital for Special Surgery in 2009; followed by two (2) fellowships completed in 2007 for science research and in 2010 for shoulder surgery. Dr. Gulotta is licensed in NY through 12/2025.

Current employment is with Hospital for Special surgery since 2010 as an assistant attending orthopedic surgeon then as an attending since 2018.

Interest/Ownership – Manhattan ASC from 2015. (2.98%)

Legal disclosure:

7/12/2016 SMITH, NICHOLAS v. GULOTTA, LAWRENCE, M.D., & HSS - POOR OUTCOME – SHOULDER Settled Dr. Gulotta and HSS

11/10/2014 GILLOOLEY, VIRGINIA, V. GULOTTA, LAWRENCE, M.D., & HSS – poor outcome – shoulder – Settled HSS

**Steven Haas:** completed a Doctor of Medicine at the University of Rochester School of Medicine in 1985 and is licensed to practice in New York State through 3/2025. Dr. Haas also received a Master of Public Health from the University of Rochester School of Medicine in 1985. Completed residency in orthopedic surgery in 1991.

Dr. Haas has been an Assistant Scientist in the Research Division at the Hospital for Special Surgery since 1991 and a Professor of Clinical Orthopedics at Weill Medical College since 2010. Dr. Haas an Associate Attending Orthopedic Surgeon since 1991 at Hospital for Special Surgery. Dr. Haas became Chief of Knee Service as well at the Hospital for Special Surgery in 2006.

Dr. Steven Haas disclosed after DOH inquiry:

11/06/2018 - *Janet Karanavich-Dono v. Steven Haas, MD, Steven Haas, MD, PC and HSS.* The patient underwent right total knee replacement with Dr. Haas on 5/16/12 and left total knee replacement on 6/13/16. The patient claimed that knee replacements were improperly performed as she experienced pain. She underwent revisions with outside providers. Claimed related to the right knee were dismissed as time barred. **Case Dismissed.**

9/12/2018 - *Jonathan Durst v. Steven Haas, MD, Steven Haas, MD, PC and HSS.* Patient, 62-year-old male, with a history including left knee meniscectomy, underwent left total knee replacement on 10/7/15 with Dr. Haas that required 2 stage revision that was further complicated by a failed patellar component/patellar fracture and heterotopic ossification. The patient claims knee replacement was improperly performed and has negatively affected his quality of life. **Case ongoing.**

Dismissed or Settled:

12/09/2015 – *Maureen Eagan, v. Steven Haas, M.D., John Lyden, MD, Et Al* - Patient, sought treatment with Dr. Haas after poor outcome following left total knee replacement by another provider. On 3/7/11, Dr. Haas performed revision surgery that required manipulation under anesthesia without improvement in pain and stiffness. Patient claimed Dr. Haas improperly performed revision surgery as there was no notable improvement. Dr. Haas was discontinued.

11/12/2015 - *Janis Altman v. Steven Haas, MD, Steven Haas, MD, PC and HSS* - Patient underwent left total knee replacement on 5/12/09, for severe knee pain with Dr. Haas. Postoperatively the sought treatment with pain management and claimed it was directly related to the knee replacement surgery. Dr. Haas was discontinued from the matter.

**\*\*\*Russell Hutchinson:** Most recently graduated from the University of Chicago in 2001 with a Master of Business Administration. Russell Hutchinson worked in the financial industry for 25 years. Employment history includes Chief Strategy Officer for Goldman Sachs since 2001 and became director in 2008 and a partner in 2016.

Russell Hutchinson discloses that he is Director from 2021 for the Hospital for Special Surgery.

**Russel Huang:** Education includes graduation from Yale School of Medicine in 1998. Dr. Huang went on to residency at Hospital for Special Surgery and graduated in 2003 followed by a fellowship at Case Western Reserve University completed in 2024. Licensed in NY through 2/2025: CT through 3/2024.

Legal Disclosure:

8/18/2023 – *MONTEFORTE, LEONARD AND LISA MONTEFORTE V. JAMES FARMER, MD, RUSSEL HUANG, MD, KEITH LYONS, MD, MITCHELL FOURMAN, MD, LEAH PERINE, RN, MARIA PARSUDIAL, RN, AND HSS* - This matter involves a 58-year-old male who presented with signs of cervical myelopathy. On 5/5/22, plaintiff underwent a posterior cervical laminectomy and decompression. On post-op day one, plaintiff experienced new onset bilateral upper and lower extremity sensory and motor loss. MRI showed fluid collection and Dr. Huang brought plaintiff to the OR for evacuation of a seroma. Plaintiff was discharged to rehab and progressed slowly. Ongoing.

4/7/2015 - *SIMMONS, ROBIN V. HSS AND RUSSEL HUANG, MD* - 53-Year-old female presented to HSS Clinic on 8/8/2012 with progressive and severe myelopathy affecting upper and lower extremities. Patient underwent a cervical/thoracic posterior fusion on 8/10/12, performed by Dr. Huang resulting in post op infection. Dismissed.

**Sravisht Iyer:** is a licensed physician in the state of New York, New Jersey, and Connecticut. Dr. Iyer received medical credentials from Harvard Medical School in 2011. Dr. Iyer completed a residency at Hospital for Special Surgery in Orthopedics in 2017. Dr. Iyer remained at the Hospital for Special Surgery as an Attending Surgeon from 2018 to this present day.

Disclosed after DOH Inquiry:

Dr. Iyer was named in three infractions. *QUYNH MADANS AS ADMINISTRATOR OF THE ESTATE OF JEFFREY MADANS AND QUYNH MADANS, INDIVIDUALLY V. HSS, SRAVISHT IYER, MD, NEW YORK PRESBYTERIAN HEALTHCARE SYSTEM, INC., KATHARIN ROONEY, MD, CHARLES MALTZ, PHD., MD, TRANG M. BUI, MD, MILI SHUM, MD, BRIAN LYONS, PA, AND CAMERON NICHOLSON, PA.* This matter involves the 63-year-old male who presented to Dr. Iyer with left sided low back pain. He had a history of constipation and postoperative ileus. On 6/25/21, Dr. Iyer performed a left L4-L5 XLIF via right sided approach, without any documented complications. During the postoperative period, the patient reported abdominal distension and discomfort that progressed. On 6/27/21 the patient decompensation and was transferred to the OSCU, then NYPH where he underwent colon resection. Patient died at NYPH on 6/28/21. **Case ongoing.**

*KUCZYNSKI, ROBERT v. SHARIF. H. ELLLOZY, MD, SRAVISHT IYER, MD AND HSS* This matter involves the care and treatment of a 74-year-old male who presented to Dr. Iyer on 12/17/19 with complaints of L leg pain. Dr. Iyer in concert with another physician performed an anterior lumbar interbody fusion L5- S1 with posterior instrumentation on 2/20/2020. Intraoperatively, the patient suffered a left iliac vein injury that resulted in asystole/PEA with return to NSR within 30 seconds after initiation of full ACLS protocol. The patient lost 25-30 L of blood that required massive transfusion PRBCs, cell saver, FFP, platelets and cryo. He was then transferred to the SICU at NYP for further management. The patient was readmitted to HSS on 2/29/2020 and discharged home. **VASCULAR INJURY - S/P SPINE. Case ongoing.**

*FANNERON, JOHN V. TODD ALBERT, MD ET. AL.* Unintentionally retained surgical sponge during cervical discectomy/fusion in 56-year-old; surgery to remove **RETAINED FOREIGN BODY.** Settled for \$250,000 by HSS.

**Seth Jerabek:** Obtained a Medical degree from the University of Michigan Medical School in 2005. Residency at Harvard Combined Orthopedic Surgery followed by two (2) fellowships from Hospital for Special Surgery and Massachusetts General Hospital completed in 2012. Currently licensed in NY through 6/2025.

Employment history is from Hospital for Special Surgery as an attending surgeon from 2012-2014. Followed by Personal LLC Company Seth Jerabek MD PC from 2014 to present. Working as an attending surgeon.

Legal disclosure – Dismissed/Settled:

9/6/2016 - *Eliud Nieves v. Amar Ranawat, MD, Seth Jerabek, MD, and HSS* - This litigation involves a complex course of multiple knee revision arthroplasties, dislocations, infection and ultimate above the knee amputation in a 54-year-old male following total knee replacement surgery performed at outside hospital. Patients postoperative course was complicated by intermittent imprisonment that caused delay in treatment and follow up surgery. Patient claimed that amputation was related to the surgeries performed at HSS. Matter was dismissed after death of the patient. Dismissed

02/02/2018 - *Ozra Abbassi v. Seth Jerabek, MD, HSS, Raymond Gutierrez And Visiting Nurse Service Of New York*- Patient, 75-year-old female, underwent left total knee replacement by Dr. Jerabek on 5/18/16 without complication. During home physical therapy session with non-HSS physical therapist on 6/3/16 she sustained a quadriceps tendon rupture that required surgical repair. Course was complicated by infection that required multiple procedures. Plaintiff made very slow progress and required knee brace thereafter. Matter discontinued as exercises recommended by physical therapist were not appropriate following total knee replacement. Discontinued.

**Ann Holly Johnson:** Dr. Johnson graduated from the University of Chicago in 2001 and is registered as a physician in NY through 3/2025, CT through 4/2024, and CT through 4/2024. Dr. Johnson served an internship at New York Presbyterian Hospital Weill Cornell Medical College, and a residency followed by a fellowship in foot and ankle surgery at Hospital for Special Surgery Weill Cornell Medical College.

Dr. Johnson holds an assistant professor in orthopedic surgery instructor at Weill Cornell Medical College since 2018. Hospital appointments include Assistant Attending of Orthopedic Surgery at Hospital for Special Surgery since 3/2018; and orthopedic foot and ankle surgeon Massachusetts General Hospital from 12/2008 – 11/2018

Legal Disclosure: Open Cases.

5/4/2021 - *Heripsime Ohanian v. Anne H. Johnson, MD, Eugene A. Goytizolo, MD, Dakota Ward, CRNA, James D. Beckman, MD, Hospital for Special Surgery, East River Medical Associates, PC, and Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC* - Patient, 69-year-old female physician, presented to Dr. Johnson for treatment of bilateral bunions. on 7/2/2020, she underwent right bunionectomy/correction of hammertoes and left bunionectomy, second hammertoe correction on 12/23/2020. Patient reported low back/right lower extremity pain and numbness/tingling to right foot following the first surgery with escalating complaints during recovery. Patient was diagnosed with mild neuropraxia in the distribution of the right sciatic nerve, which patient claimed was due to anesthesia surgical technique.

**Warren Kanders:** Graduated in 1979 from Brown University in RI with a bachelor's degree in economics. Employment history as President of Kanders & Company, Inc since 1990.

Interest/ownership – since 2012 Warren Kanders served as the CEO and member of the Board of Directors of Cadre Holdings, Inc. Also, HSS Director for Hospital for special surgery on the Board of Trustees.

**Lana Kang:** Education is graduation from University of CA San Francisco in 1998 followed by residency and most recent fellowship at Hospital for Special Surgery in 2005 for surgery. Currently licensed in NY through 4/2024.

Current employment is at Lana Kang MD PC since 2000 self-employed orthopedic hand surgery and at the Hospital For Special Surgery since 2005 as Attending surgeon.

**Scott Kapnick:** graduated from the University of Chicago Law School and Business School with an MBA degree. Currently employed with HPS Investment Partners, LLC since 2007 as Chief Executive Officer.

Interest/ownership disclosure: Director on Board of Trustees for Hospital for special surgery.

**Monica Keany:** Graduated in 1998 from Harvard Business School with a master's in business administration. Monica Keany retired from Morgan Stanley in 2010 after holding the position of managing director and continues to hold a position on the board of organizations.

Monica Keany currently serves on the Board of Trustees for the Hospital for Special Surgery as HSS Director.

**Bryan Kelly:** Graduate of Duke University in 1996 with a medical degree and from NYU STEM in 2019 with a master's in business administration. Currently licensed in NY through 11/24; NJ through 6/25; FL through 1/25; and CT through 12/2024.

Dr. Kelly is currently The President and CEO of the Hospital for Special Surgery since 2001. Dr. Kelly also currently holds the position of attending Orthopedic Surgeon at the Hospital for Special Surgery since 2016, and as an associate professor at New York Presbyterian College, Weill Cornell. Dr. Kelly is the Co-director for the Center for Hip Preservation and the assistant scientist on the clinical track for the Hospital for Special Surgery.

Ownership/Interest – HSS Director since 2019 on the Board of Trustees for the Hospital for Special Surgery. HSS ASC of Manhattan since 2014 (HSS owns 52%) Dr. Kelly is one of the managers. HSS West Side ASC, LLC since 2016 (HSS owns 62%) Dr. Kelly is one of the managers. HSS-Florida Physicians, LLC, West Palm Beach since 2018 (HSS owns 51%). HSS Florida Physicians, LLC Wellington since 2018 (HSS owns 51%). HSS Palm Beach Ambulatory Surgery Center, LLC (HSS owns 42.14%). HSS Paramus Outpatient Center since 2014 (HSS owns 100%).

**Han Jo Kim:** Dr. Kim graduated in 2006 from Columbia University. Dr. Kim is registered as a Physician in NY through 4/2025 and was registered in MO through 2014. Residency was completed at Hospital for Special Surgery in 2011 followed by a fellowship completed in 2012. Dr. Kim had a private business from 2012-2018 and worked at HJK Spinal Innovations, LLC from 2012- present. Dr. Kim has also been working at the Hospital for Special Surgery since 2022 as an attending surgeon.

#### Legal Disclosures:

11/02/2020 - *Nicholas Desilvio v. Han Jo Kim, MD, Et Al* - Patient, 37-year-old male, with history of 4 scoliosis surgeries, presented to Dr. Kim on 3/3/17 for evaluation of progressive neck and back pain. On 2/14/18, Dr. Kim performed revision surgery that was complicated by numbness and weakness of the left arm. He was diagnosed with left ulnar nerve neuropathy and underwent ulnar nerve transposition on 6/24/19. Patient alleges neurologic deficits were related to positioning during revision.

6/4/2019 - *Rana Prabhakar v. Han Jo Kim, MD, Et Al.* - Decedent, 82-year-old male, presented to Dr. Kim for chronic back pain. On 7/10/18, Dr. Kim performed an uncomplicated posterior lumbar fusion at L4-5. Post-operatively, the patient developed an ileus that progressed to a small bowel obstruction, and pancreatitis. Patient was transferred to another facility on 7/23/18 and was hospitalized for approximately one year, dying during the hospitalization. Patient alleged spine surgery was not indicated, which was contrary to decedent's clinical presentation.

7/3/2018 - *Daniel Moran v. Frank Schwab, MD, Andy Miller, MD, Han Jo Kim, MD, and HSS* - Patient, 66-year-old male, underwent bilateral laminoforaminotomy of the L2-L3, L3-L4 and L4-L5 and posterolateral fusion of L3-L4 and L4-L5 on 1/5/16. On 2/4/16, the distal portion of the wound opened, and he developed a post-operative wound infection, which initially resolved. On 6/12/16 the wound dehiscd and on 6/23/16 he underwent a I & D with Dr. Kim. He was treated for the infection and developed a non-union. Patient claimed improper management of the infection. Case was dismissed by motion as patient failed to obtain new counsel.

9/15/2017 - *Angelica Schwartz v. Kenton Fibel, MD, Et Al* - Pro se patient, 47-year-old female, presented to Dr. Han Jo Kim for bilateral upper extremity pain on 10/2/2015. Dr. Kim recommended cervical spine fusion which was completed on 10/6/2015. Plaintiff continued to have pain postoperatively. Plaintiff

alleged surgery was unnecessary and shoulder pain persisted. The case was dismissed via motion for failure to provide discovery.

**Irene Koch:** Graduated from Fordham Law School in 1989. Irene Koch is licensed as an attorney in NY through May 2024.

Irene Koch has worked as executive Vice President and Chief Legal Officer since 2015 for the Hospital for Special Surgery. Irene Koch is also employed since 2013 at Helthix, Inc. as Vice President and General Counsel. Prior to that, Irene worked at Brooklyn Health Information Exchange 2007-2013.

Interest/Ownership disclosure – voting manager since 2014 for the Hospital of Special Surgery ASC Manhattan. Irene Koch is a manager (HSS owns 52%). Also, Secretary since 2015 for the Hospital for Special Surgery.

**Sacha Lainovic:** Most recent education was graduation from Stanford University in 1981 with a Master of Business Administration. Sacha Lainovic has worked for Invus Financial Advisors, LLC since 2006 and is currently Managing Director.

Owner/Interest Disclosure: HSS Director Board of Trustees Hospital for Special Surgery.

**Laurie Lapeyre:** Received an MBA from New York University in 1985.

Laurie Lapeyre is a retiree since 2000. They along with their spouse are the new owners of the Upper Saranac Lake luxury resort property purchased February 2024.

Interest/Ownership: Director on Board of Trustees Hospital for Special Surgery.

**Darren Lebl:** Dr. Lebl graduated from Stanford University in 2005 with a medical degree. Dr. Lebl also received a master's in business administration from The Wharton School, The University of Pennsylvania in 2017. Dr. Lebl is registered in NY state through 6/2025. Dr. Lebl completed a residency from Harvard Orthopedic Surgery Residency program in 2010 followed by a fellowship in Spine and Scoliosis at the Hospital for Special Surgery completed in 2011.

Dr. Lebl currently holds three academic appointments, two at the Hospital for Special Surgery – One from 2019 as an Associate Attending Orthopedic Surgeon and the second as an Associate Scientist, Clinical Tract. Also, at New York Presbyterian Hospital Weill Cornell as associate professor of orthopedic surgery.

Legal Disclosure:

*8/5/2019 - Jonathan Klein v. Darren Lebl, MD, Darren Lebl, MD, PC and Hospital for Special Surgery - Patient, 62-year-old married Ironworker, presented to Dr. Darren Lebl on 3/22/16 for complaints of radiating low back pain. On 7/13/16 Dr. Lebl performed a posterior fusion. Following the procedure, plaintiff continued to report radicular pain in the left lower extremity. Imaging taken on 2/6/17 showed that the L5 pedicle screw breached out of the bone, and he required revision surgery. Patient alleged improper placement of L5 screw which caused new radicular symptoms.*

*11/6/2020 - Cirolli, George v. Darren Lebl, MD and HSS - Patient, 48-year-old male with a history of lumbar (1988) and cervical spine surgery (2015) for congenital spinal stenosis, presented to Dr. Lebl for signs of myelopathy. On 6/18/18, Dr. Lebl performed T3-T4 and L2-S1 laminectomy and upon waking, patient reported the inability to move his lower extremities and he was brought back to the OR for exploration. postoperatively, patient reported persistent right sided foot drop.*

**Gwo-Chin Lee:** Dr. Lee Graduated Baylor College of Medicine in 1998. Dr. Lee is registered in NY through 12/2025, PA through 12/2025 and NJ through 6/2024. Dr. Lee served a residency for orthopedic surgery completed in 2003, followed by a fellowship in adult reconstruction at Insall Scott Kelly Institute completed in 2004.

Dr. Lee currently holds an Assistant Professor of orthopedic surgery since 2022 at Weill Cornell Medical Center. Dr. Lee was Attending at Pennsylvania Hospital from 2007-2022 then from 4/2022 until present is an Attending physician at the Hospital for Special Surgery.

**Steve Lee:** Graduated with a Doctor of Medicine from Duke University School of Medicine in 1993 and is licensed to practice in New York State through 6/2025. Dr. Lee completed their residency at Yale Univ School of Medicine in 1998.

Dr. Lee is a professor at Dept of Orthopedic Surgery at Weill Cornell Medical College since 2020 and Research Director at the HSS Center for Brachial Plexus and Complex Nerve Injury since 2011. Dr. Lee is an Attending Orthopedic Surgeon at New York Presbyterian Hospital in New York, NY.

Interest/Ownership: Ownership in Manhattan ASC since 2015 Hospital for Special Surgery (2.98%)

Legal Disclosures: Infractions were disclosed after DOH inquiry.

*6/25/2015 STROHLEIN, KERSTIN V. HSS, STEVE LEE, MD AND SOUMEN DAS DE, MD:* Case alleged WRONG SITE, case resulted in \$112,500.00 paid on Dr. Lee's behalf.

*10/30/2015 JAIN, MOHIT V. STEVE LEE, MD, HSS, NYPH, AND SOUMITRA EACHEMPATI,* case alleged NERVE DAMAGE, case resulted in a dismissal.

*9/28/2016 Michael Elkin v. Steve K. Lee, MD, Jorge Roman, MD,* and New York University Hospital for Joint Diseases: Patient presented to Dr. Lee at NYU when he was on staff there. Complaint involves ongoing issues with upper extremity after surgery and delay in diagnosis of CRPS. Case resulted in Jury Defense Verdict, dismissed.

**Pablo Legorreta:** Graduated in 1985 from Univeridad Iberoamericana Ciudad de Mexico with a Bachelor of Arts degree in Industrial Engineering. Current employment is with Royalty Pharma since 1996 in the position of Founder and CEO. Buyer of biopharmaceutical royalties and funder of innovation across the biopharmaceutical industry.

Interest/Ownership: HSS Director Board of Trustees for Hospital for Special Surgery.

**Lara Lerner:** Education includes University of Pennsylvania and Wharton Business School where Bachelorettes degrees were obtained in 1992.

Lara Lerner retired in 1997. Has had 30 years of experience in the finance and design industries.

Lara Lerner is an HSS director on the Board of Trustees.

**Kathy Leventhal:** graduated with a bachelor's degree from TUFTS University in 1977. Kathy Leventhal retired in 1995. Prior employment history includes: 1994-1998 President of Lucky Lady Distributing Company managing operations for wholesale distributions enterprise, and 1983-1994 The Conde Nast Publications, Inc. in positions as sales development manager, sales manager, advertising director, Founding Publisher for Allure Magazine, and Publisher for Vanity Fair Magazine.

Kathy Leventhal discloses interest in the Hospital for Special Surgery on the Board of Trustees.

**Thomas Lister:** Graduated in 1991 from Harvard Business School with a master's in business administration. Currently employed at the Hospital for Special Surgery since 2011 as co-chairman of the Board.

Interest/Ownership – Board of Trinity (Undergrad College) Duke University since 2015; Member of the Board and Chair of Greens Committees at Deepdale Golf Club since 2017; Board member of HSS since 2011.

**William Long:** Graduate from University of Western Ontario in 2000 with a Doctor of Medicine. Completed residency in 2005 from Queen's University at Kingston. Followed by two (2) fellowships that

were completed in 2007. Most recently Dr. Long graduated from a Surgeon Leadership Program from Harvard in 2022. Currently licensed in NY through 03/2025.

Current employment is with the Hospital for Special Surgery from 2021. Prior to that Dr. Long worked from 2007-2021 for Insall Scott Kelly Institute for Orthopedics and Sports Medicine as an attending orthopedic surgeon.

Dr. Long discloses ownership from 2014-2022 in Midtown Surgery Center of two (2) shares. East Hills Surgery Center from 2017-2021 for 1.89 shares. Present ownership in Surgicare of Westside.

Legal disclosures (after DOH inquiry): Open Cases:

8/8/2018 - *Margaret Frasca against St. Francis Hospital, William Long, MD, et al* - Decedent, 66-year-old female, underwent left total hip replacement with Dr. Long. The CRNA during the procedure was unable to administer spinal anesthesia and general was used. Postoperatively, decedent experienced progressive left sided weakness and was diagnosed with epidural hematoma that required surgical decompression.

Settled/Dismissed:

8/29/2014 - *Virginia Reath vs. William J. Long, M.D., et al* - Patient, 60-year-old female underwent bilateral total knee replacement surgery with Dr. Long. Patient alleged that the procedure was improperly performed as the patient developed valgus deformity and required revision surgery. Settled

Unknown - *Unknown vs. William J. Long, M.D.* - Patient, 43-year-old female, alleged the failure to properly perform left total hip replacement surgery resulting in need for revision surgery. Settled

2015 - *Patricia Pendola v. William J. Long, MD* -

2/27/2017 - *Costas Theodorou v. William J. Long, MD and Insall Scott Kelly Orthopedics* - Order to Show Cause/Petition regarding request for copy of medical records; Order signed 8/16/2018 – Dismissed.

**Patrice Louvet:** Most recently graduated from the University of Illinois with a master's in business administration. Patrice Louvet is the current President and CEO of the Ralph Lauren Corporation since 2017. Prior experience is with Proctor & Gamble from 1989-2017 holding the Group President for P & G Beauty.

Patrice Lovet is a Hospital for Special Surgery Board of Trustees Director.

**Alan MacDonald:** Graduated with a Master of Science in Economics from the London School of Economics in 1968 and a PhD from Cambridge University in the United Kingdom in 1976.

Alan MacDonald is the Vice Chairman of CitiCorp, where he has been employed since 1974.

Interest/Ownership: HSS Directory Board of Trustees Hospital for Special Surgery.

**Suzanne Maher:** Graduated from Trinity College in Ireland in 2001 with a Ph.D. Competed fellowships in 2000 for Mechanical and Manufacturing Engineering 2002 from Trinity College in Dublin and Weill Cornell Medical College in 2002 for Biomechanics.

Currently holds positions as associate Scientist Department of Biomechanics Hospital for Special Surgery since 2011; Weill Cornell University as associate professor at the department of Surgery; Cornell University adjunct associate professor since 2011. Most recently became Chief Research Officer for the Hospital for Special Surgery.

Interest/Ownership: since 2023 HSS Director Board of Trustees Hospital for Special Surgery.

**Stacey Malakoff:** Most recently graduated from Washington University in 1985 with a Bachelor of Business Administration degree. Stacey Malakoff held a Certified Public Accountant license that was obtained in 1987 but is not currently active.



Stacey Malakoff has worked for the Hospital for Special Surgery since 1990 as the Chief Financial and Administrative officer.

Stacey Malakoff discloses ownership/interest in:

Hospital for Special Surgery of Manhattan - Management and Treasurer (HSS owns 52%)

Hospital for Special Surgery West Side ASC, LLC. – Management and Treasurer (HSS owns 62%)

Hospital for Special Surgery – Florida Physicians, LLC (West Palm Beach)– Management (HSS owns 51%)

Hospital for Special Surgery – Florida Physicians, LLC (Wellington) – Management (HSS owns 51%)

HSS Paramus Outpatient Center (HSS owns 100%)

Stanley Malakoff is on the Board of Trustees for the Hospital for Special Surgery as an HSS Director and has been treasurer since 1998.

**Robert Marx:** Graduated from McGill University in Canada Medical College in 1991, and from University of Toronto with a master's degree in Epidemiology in 1996. Dr. Marx served residency at the University of Toronto followed by a fellowship in sports medicine and shoulder service at NYP Cornell. Currently licensed in NY through 4/2025.

Current employment includes Attending Orthopedic Surgeon at Hospital for Special Surgery New York Presbyterian Hospital; Professor of Orthopedic Surgery, at Weill Medical College of Cornell University; Vice Chair of Orthopedic Surgery for Faculty Development, at Hospital for Special Surgery; Assistant Team Physician, New York Rangers Hockey; Head Orthopedic Consultant, Ultimate Fighting Championship; Head Orthopedic Consultant, The Juilliard School.

Interest/Ownership in Manhattan ASC since 2015 (2.98%)

Legal:

4/26/2016 - *ISACSSON, RAYMOND V. ROBERT MARX, MD*- POOR OUTCOME – KNEE SCOPE- \$200,000 PAID ON DR. MARX'S BEHALF.

**David Mayman:** Most recently graduated with a medical degree in 1998 from Queens University. Dr. Mayman is registered in NY through 8/2025, NJ through 6/2025, and CT through 9/2024. Dr. Mayman served a Residency through 2003 at Queens University and followed with fellowships at both Hospital for Special Surgery completed in 2004 and at Harvard University completed in 2005.

From 2205-2010 Dr. Mayman worked as an Attending Surgeon at the Hospital for Special Surgery then started a private business in 2010 until present as an Attending Surgeon at David Mayman, MD, PC.

Legal (not initially disclosed): Open:

8/2/2022 - *David Prina v. HSS and David Mayman, MD* - This suit involves a then 51-year-old male who presented to Dr. Mayman with right knee pain. On 12/17/2020 Dr. Mayman performed a right total knee replacement without complication. At approximately 4 weeks postop, plaintiff sustained a patellar fracture after buckling incident and he was placed in a brace to allow the patella to heal. Plaintiff developed pain and stiffness and required lysis of adhesion. Plaintiff sought treatment elsewhere and underwent revision at outside hospital. -Poor outcome knee

Dismissed/Settled:

5/3/2016 - *Maxine Martell vs. David J. Mayman, M.D. Alana Serota, MD, and HSS*- This litigation involves an alleged failure to properly diagnose and treat bilateral hip necrosis in a 58-year-old female. Plaintiff claims that more conservative measures should have been undertaken prior to performing hip replacement surgery. Dr. Mayman performed a left primary hip replacement on 10/18/13. Preoperatively, plaintiff was seen by Dr. Serota for metabolic bone assessment that concluded plaintiff had osteoporosis. At the sixth week postoperative evaluation, the femoral implant had sunk approximately 2-3 mm into the femoral canal with resultant limb length discrepancy. Plaintiff claims Dr. Mayman removed too much bone

from the acetabulum leaving her left leg 5 mm shorter than her right leg. This discrepancy has caused her much pain and due to her underlying osteoporosis, she claims she is not a candidate for revision surgery. POOR OUTCOME – HIP Settled - HSS

3/9/2019 - *Dorothy Green vs. David J. Mayman, M.D., Hollis Potter, MD, and HSS* - This litigation involves persistent pain and motion range limitation in a then 69-year-old female who underwent knee replacement by Dr. Mayman on 1/31/14. Postoperative course was marked by manipulation on 4/18/14 and lysis of adhesions on 10/10/14. Despite these measures, her complaints persisted. She consulted with non-party physicians, Dr. Boettner and Dr. Cross. Neither surgeon recommended surgery. Dr. Boettner administered steroid and anesthetic injection on 6/23/15 and thereafter, she underwent acupuncture which appears to have relieved her symptoms and improved her function. PAIN - S/P KNEE Dismissed.

9/1/2017 - *Richard Bonanno v. Andy Miller, MD, Peter Sculco, MD, Thomas Sculco, MD and HSS* - This litigation involves an alleged failure to properly perform total knee arthroplasty in a 74-year-old male on 11/14/14 resulting in further degeneration, fracture, infection, multiple left knee arthroscopies and revision surgeries through 2017.- POOR OUTCOME – KNEE Case Dismissed.

**Moira McCarthy:** Received a Medical degree in 2008 from Columbia University. Residency and fellowship at the Hospital for Special Surgery completed in 2014. Currently Licensed in NY through 11/24 and CT through 12/2024.

Dr. McCarthy is currently an instructor of orthopedic surgery at Weill Cornell since 2014. Other current employment is with the Hospital for Special Surgery since 2014 and Stamford Hospital since 2015.

**Alexander McLawhorn:** Dr. McLawhorn received a Medical Degree from Columbia University in 2010. Dr. McLawhorn is registered in NY through 7/2025 and in CT through 8/2024. Dr. McLawhorn served residency and fellowship at the Hospital for Special Surgery from 2010-2016.

Dr. McLawhorn was employed by the Hospital for Special Surgery as an orthopedic surgeon from 2016-2018. Then started a private practice at the Hospital for Special Surgery from 2018 – present.

**Celene Menschel:** Graduated from Harvard Business School in 2013 with an MBA degree. Currently employed at Trenchcoat Advisors, LLC as COO and partner since 2022. Prior employment is with Six Trees Capital as COO since 2021, as Head of Operations prior to 2019, and VP of Operations from 2017. Celene Menschel also worked at Godman Sachs & co. in 2016 and 2017; and at Associate, Consumer Retail Healthcare Group from 2013-2016.

Interest/Ownership disclosure HSS Director on Board of Trustees for Hospital for Special Surgery.

**Andy Miller:** Dr. Miller graduated from Harvard Medical in 2001. He is currently licensed in FL through 01/25, NJ through 6/25, CT through 6/24, and NY (medical telehealth) through 5/25. Dr. Miller completed a residency in 2004 at Columbia-Presbyterian Medical Center followed by a Fellowship at NYU School of Medicine completed in 2006.

Dr. Miller is currently working as an Associate professor of clinical medicine at Weill Cornell since 2018. Dr. Miller is also an Associate Attending physician at the hospital for special surgery since 2018 and an Assistant attending physician at NY Presbyterian Hospital Weill Cornell since 2010. He also is Chief, Division of Infectious Diseases at the Hospital for Special Surgery since 2021.

Dr. Miller discloses that he is on the Board of Trustees at Hospital for Special Surgery.

Lawsuits: 9/1/2017 - *Richard Bonanno v. Andy Miller, MD, Peter Sculco, MD, Thomas Sculco, MD and HSS* - This litigation involves an alleged failure to properly perform total knee arthroplasty in a 74-year-old male on 11/14/14 resulting in further degeneration, fracture, infection, multiple left knee arthroscopies and revision surgeries through 2017.- POOR OUTCOME – KNEE Case Dismissed.

7/3/2018 - Daniel Moran v. Frank Schwab, MD, Andy Miller, MD, Han Jo Kim, MD, and HSS - Patient, 66-year-old male, underwent bilateral laminoforaminotomy of the L2-L3, L3-L4 and L4-L5 and posterolateral fusion of L3-L4 and L4-L5 on 1/5/16. On 2/4/16, the distal portion of the wound opened, and he developed a post-operative wound infection, which initially resolved. On 6/12/16 the wound dehisced and on 6/23/16 he underwent an I & D with Dr. Kim. He was treated for the infection and developed a non-union. Patient claimed improper management of the infection. The case was dismissed by motion as the patient failed to obtain new counsel.

9/1/2017 - Richard H. Bonanno and Phyllis L Bonanno against David Mayman, M.D., Andy Miller, M.D., Peter Sculco, M.D., Thomas Sculco, M.D., and Hospital for Special Surgery - Pro se patient, 74-year-old male, underwent total knee replacement with Dr. Mayman on 11/14/14. The patient alleges that the surgery caused further degeneration, fracture and infection that required additional surgeries, including those performed by Dr. Sculco. Matter was dismissed via motion for failure to properly oppose summary judgment motion. Dismissed.

**Sarah Nash:** Graduated in 1974 from Vassar College with an associate degree. Sarah Nash is currently employed since 2018 as owner and CEO of Novagard Solutions, Inc. Sarah Nash is also employed at HBD Industries as board director since 2013, Bath & Body Works as Board Director and Board chair. Past employment included Irving Oil from 2012-2022.

Ownership/Interest disclosures – Director for the Hospital for Special Surgery since 4/2023. Director for The New York and Presbyterian Hospital on the Board of Trustees.

Lawsuits: Nancy Lambrech alleged company failure for oversight creating a “Culture of misogyny, bullying, and harassment. Ties to Jeffrey Epstein and other alleged mismanagement. The case settled in 2022.

**Mary Kathryn Navab:** Graduated from Southern Methodist University with a bachelor’s degree in 1986. Mary Navab is an investor. Mary Navab is a long-standing supporter of HSS and is actively involved in many philanthropic, educational, community, and national organizations.

Interest/Ownership: HSS Director, Board of Trustees of Hospital for Special Surgery

**Danyal Nawabi:** Graduated in 2000 from Oxford University with a medical degree. Licensed in NY through 7/2025. Present employment with the Hospital for Special Surgery since 2011 as an attending orthopedic surgeon.

**Gabriella Ode:** Graduated from Rush Medical College in 2012. Completed residency in 2018 from Atrium Health Carolinas Medical Center. Followed with Fellowships at the Hospital for Special Surgery; CHP Ste. Gregoire/Institut Locomoteur de l’Ouest; Centre Orthopedique Sante; Nice Shoulder Institute in France in 2019. Current licensure in NY through 8/2025 and SC through 6/2025.

Current employment is with the Hospital for Special Surgery Sports Medicine Institute as an assistant attending physician and Associate Fellowship director from 2022. Weill Cornell Medical College as assistant Clinical professor from 2022. Prior employment from 2019 -2022 at the Department of Orthopedic Surgery Prisma Health – upstate.

**Martin O’Malley:** Graduated in 1986 from Case Medical in Ohio. Residency was completed in 1992 from Tufts University followed by a fellowship completed in 1993 from Hospital for Special Surgery. Dr. O’Mally is licensed in NY through 12/2024 and had held a license in CT but not at this time.

Current employment is Associate attending surgeon at New York Presbyterian Hospital since 2002 and Associate attending orthopedic surgeon at the Hospital for Special Surgery since 2002.

Ownership and Interests – Surgicore Manhattan ASC since 2021 and HSS West Side ASC since 2022.

Legal disclosures: Open Cases

11/30/2021 - *Scott Ellis against Martin J. O'Malley, M.D., Foot & Ankle Orthopedic Surgery, PC and The Hospital for Special Surgery* - Patient, 48-year-old male, presented to Dr. O'Malley with sudden onset Achilles tendon rupture. Dr. O'Malley performed a tendon repair on 5/2/19 with sciatic nerve block. Postoperatively, EMG confirmed right sural sensory and right superficial nerve neuropathy. Patient alleges nerve injury related to surgical repair.

9/21/2022 - *Laura Bryant and Harry Bryant against Martin O'Malley and Hospital for Special Surgery, M.D* - Patient, 59-year-old female, with history of DVT after prior foot surgery, presented to Dr. O'Malley with complaints of left Achilles tendon pain. Repair was performed on 8/12/2020 and she was diagnosed with DVT and PE. Patient claims she was discharged on the improper anticoagulation given her medical history.

11/12/2020 - *Kate Shevack and Brett Shevack against Martin J. O'Malley, M.D., Foot & Ankle Orthopaedic Surgery, PC, James Davies, M.D., and Hospital for Special Surgery* - Patient, 52-year-old female, sustained right ankle fracture while skiing, which was initially treated conservatively. Due to nonunion, she underwent surgical repair that was complicated by pain and 2 additional surgery. She self-referred to Dr. O'Malley who performed right ankle debridement with Achilles lengthening that was complicated by tibial nerve laceration. She underwent tibial nerve neuroplasty and nerve wrapping. Patient alleges the improper performance of surgery resulting in nerve injury.

**Justin Oppenheimer:** Graduated from Harvard Business School with a master's in business administration in 2013. Current employment at the Hospital for Special Surgery from 2013 until present.

Interest/ownership interest: HSS ASC of Manhattan since 2021, (HSS owns 52%) Justin is a manager and vice president; Manager and Vice President at Hospital of Special Surgery from 2016 (HSS owns 62%); Manager of HSS – Florida Physicians, LLC since 2018 (HSS owns 51%); Manager of HSS Palm Beach Ambulatory Surgery Center, LLC since 2016 (HSS owns 42.14%).

**Daniel Osei:** Dr. Osei received a Medical Doctorate from the University of Pennsylvania in 2006 and a Master of Sciences from Washington University in 2014. Dr. Osei is licensed in the states of New York through 8/2024, New Jersey through 6/2025, and Missouri through 01/2025.

Dr. Osei is an Associate Attending Orthopedic Surgeon at the Hospital for Special Surgery and New York Presbyterian. He is also an Associate Professor of Orthopedic Surgery at Weill Cornell Medical College.

**Terence O'Toole:** Graduate of Stanford University for MBA in 1983. Currently self-employed from 2020. Prior employment at Tincum Incorporated. Working as a Co-managing member from 2006-2020.

Interest/Ownership – Terence O'Toole discloses that he is on the Board of Trustees at Hospital for Special Surgery.

**Douglas Padgett:** received an education at New York Medical College in 1982. Dr. Padgett is licensed to practice medicine in New York through 6/2024 and Florida through 1/2026.

Dr. Padgett is the Surgeon in Chief, Medical Director, and Korein-Wilson Chair of Hospital for Special Surgery since 2023. Previously, he was HSS' Chief of Adult Reconstruction and Joint Replacement Service since 2008. Dr. Padgett is also a Professor of Orthopedic Surgery at Weill Medical College of Cornell University since 2021.

Dr Padgett is the HSS Director Board of Trustees at the Hospital for Special Surgery

**Michael Parks:** completed their medical training at the Medical University of South Carolina in 1990. Dr. Parks has been previously licensed in both New York and New Jersey but is currently eligible to practice in New York through 7/2025.

Presently, Dr. Parks is an Attending Orthopedic Surgeon at the Hospital for Special Surgery since 2008. They also are an Associate Professor of Clinical Orthopedic Surgery at Weill Cornell School of Medicine since 2020.

**Andrew Pearle:** Graduated from Stanford University in 1998 with a medical degree. Residency and Fellowship at the Hospital for Special Surgery completed in 2005. Currently licensed in NY through 11/2024.

Currently working at the Hospital for Special Surgery as an attending orthopedic surgeon and at Weill Cornell Medical College as a professor of orthopedic surgery since 2005.

Interest/Ownership: 2015 – present ownership in Manhattan ASC (2.98%)

*Dora Ortiz v. Andrew Pearle, MD, et al. - Index No. 00026725/2008.* Patient underwent total knee replacement on 8/28/06. Subsequently the patient complained of leg length discrepancy. Disposition: Settled on 6/2/11 for \$300,000 - MD Share \$0.00.

**Matthew Peltz:** Graduated from Yale University in 2006 with a bachelor's degree in Classical civilization. Current employment is with Trian's Investment Team since 2008 as a partner and named Co-Chief investment officer in 2023.

Ownership/Interest: Director on Board of Trustees at Hospital for Special Surgery.

**Sheeraz Qureshi:** Graduated in 2002 from Tufts University Medical School in Boston. Completed residency in 2007 from Mount Sinai Hospital and a fellowship from University Hospital Case Western in 2008. And a second fellowship at Multiple national and international institutions was completed in 2008. Currently licensed in NY through 10/24 and NH through 6/25.

Employment at Spine Surgeon at Hackensack University Medical Center 12/10-Current; Spine Surgeon Hudson Crossing Surgery Center 12/2010-Current; Spine Surgeon Hospital for Special Surgery 04/17-Current; Spine Surgeon Department New York Presbyterian Hospital Weill Cornell Medical Center 10/17-Current. Associate Professor Orthopedic Surgery Weill Cornell from 2017-current; Spine service research Director for Hospital for Special Surgery 2020-current.

Legal Disclosure: Open

11/27/2023 - *Maria Safuto v. Ram Kiran Alluri, MD, Todd Albert, MD, Sheeraz Qureshi, MD, and Hospital for Special Surgery* - Patient, 36-year-old female with a history significant for low back pain and sciatica, who underwent anterior lumbar decompression L5-S1 on 6/14/21 that was complicated by cauda equina and findings of hemorrhagic arachnoiditis. Patient returned to the operating room and underwent lumbar decompression L5-S1 with Dr. Qureshi on 6/17/21. Patient regained bowel/bladder control with numbness to perineum and right lower extremity paresthesia. The post-operative course was complicated by low back radicular pain and cramping requiring readmission for revision decompression on 1/25/22.

5/3/2019 - *Gurpreet Singh Walia v. Sheeraz Qureshi, MD, The Mount Sinai Hospital, The Mount Sinai Medical Center, Inc. The Spine Center at the Mount Sinai Hospital and Mount Sinai Doctors Faculty Practice* - Plaintiff underwent a posterior lumbar decompression with L5S1 implant, interbody fusion, and instrumentation on 7/1/2016; plaintiff underwent revision of decompression at L5S1 on 1/9/2017; Plaintiff alleges improper performance of surgery and placement of hardware.

6/13/2017 - *Zachary Bagdon v. Sheeraz Qureshi, MD, Mount Sinai Hospital, Andrew Hecht, MD, and Nomaan Asraf, MD* - Plaintiff alleges improper performance of posterior costotransversectomy at T7-8 with access to the disk at T7-8 to excise the disk and then thoracic laminectomy of T7 and then thoracic laminectomy of T8 for addressing central and lateral recess stenosis followed by posterior thoracic fusion at T7-T8 with pedicle screw instrumentation and local autograft bone at T7-T8 use of operating microscope for thoracic spine surgery.

Settled/Dismissed

9/25/2019 - *Robert Mann and Orly Cogan against Sheeraz Qureshi, M.D. and Hospital for Special Surgery* - Patient, 63-year-old male, underwent posterior lumbar decompression surgery with Dr. Qureshi on 1/2/2020 for low back pain that was complicated by new onset left lower extremity pain that required

revision surgery on 2/7/2020. After the revision, patient reported new onset right leg pain. Patient claims the initial surgery was improperly performed which caused further injury. Settled

9/17/2019 - *Samuel Fineman and Nyla Carleton Fineman against Sheeraz Qureshi, M.D., Hospital for Special Surgery, Ronald MacKenzie, M.D., David Lefkowitz, M.D., Elaine Yang, M.D. and Brandon Carlson, M.D.* - Plaintiff, a 70-year-old male, with a complicated cardiac history presented to Dr. Qureshi with low back pain secondary. After clearance with his outside cardiologist, Dr. Qureshi performed fusion of L2-L5. Following the surgery, patient sustained myocardial infarction and stroke and developed lower extremity weakness. Patient alleged excessive blood loss during surgery caused MI and neurologic injury. Settled

3/27/2017 - *Jose Parades v. Sheeraz Qureshi, MD* - Patient underwent Grade 1 anterior listhesis of L5-S1 with complete disc space collapse and posterior instrumentation; Plaintiff had to undergo a second surgery to remove herniated disc, inflamed tissues, bone spurs, epidural scars and perinerve scars, hypertrophy of foraminal ligaments and facets under direct vision. Dismissed.

**Amar Ranawat:** Graduation from WCMC in 1996. Completed residency in 2001 from Hospital for Special Surgery and followed with fellowship completed in 2002. Licensed in NY through 10/31/2025.

Employment at Lenox Hill Hospital from 2002-2008 as attending surgeon and current position as attending surgeon since 2008.

Legal disclosure: (disclosed after DOH inquiry). Open

12/13/2022 - *Bushra Sheikh against Amar Ranawat, M.D., and Hospital for Special Surgery* - This matter involves a then 63-year-old female who presented to Dr. Ranawat for bilateral knee pain. On 11/5/19, Dr. Ranawat performed bilateral total knee replacements without complication. In September of 2020, plaintiff noted drainage from the right knee and was diagnosed with a fungal joint infection. After consulting with Dr. Henry, on 9/29/2020, Dr. Ranawat performed a DAIR procedure. Subsequent cultures showed continued infection and after transferring her care to Dr. Carli, she underwent a two-stage revision. Plaintiff is currently doing well and is off antifungal medication.

Settled/Dismissed

7/19/2017 - *Young Ae Sun and Bong K. Sun against The Hospital for Special Surgery, Amar Ranawat, Sherwin Leu Su, and Jae Suk Choi* - This case involves a 76-year-old female who underwent a left TKR performed by Dr. Amar Ranawat on 4/15/16. Post operatively, the patient did not use call bell as instructed (in Korean) and apparently got OOB on 4/16/16 without use of walker. Patient recalled having lost her balance and attempted to brace her fall with right hand and subsequently fell on same, resulting in right distal radius/ulnar styloid fracture requiring additional surgery performed by Dr. Daluiski on 4/19/16 for repair of same. Settled

5/12/2017 - *Kathleen Farrey against Amar Ranawat, M.D., Scott Nodzo, M.D., David H. Kim, M.D., and Hospital for Special Surgery* - This case involves a 54-year-old, achondroplastic, scoliotic and spinal stenotic, female who developed acute cauda equina syndrome, bilateral lower extremity weakness/numbness, and disability s/p revision left total hip replacement. Settled

**Anil Ranawat:** Graduated from Cornell Medical College in 2001. Dr. Ranawat served residency at Hospital for Special Surgery and graduated in 2006, then went on for two (2) fellowships one at the University of Pittsburgh for surgery completed in 2007 and the second at Lenox Hill Hospital and Schulthess Klinik completed in 2008. Since that time Dr. Ranawat has worked at The Hospital for Special Surgery as an attending surgeon. Dr. Ranawat is currently licensed in NY through 01/2026, and NJ through 06/2025.

Dr. Ranawat discloses ownership of Manhattan ASC since 2015. (0.99%)

Legal Disclosure:

7/2/2015 - SZATKOWSKI, KRISTINA V. STEPHEN HARRIS, MD, ANIL RANAWAT, MD, KATHRYN DELPIZZO, MD, & HSS - NERVE DAMAGE - S/P KNEE – Settled.

**Steven Rattner:** graduated from Brown University in 1974 with a Bachelor of Science in Economics.

Steven is the Chairman and CEO of Willett Advisors LLC, an investment managing firm since 2012.

Interest/Ownership: HSS Director, Board of Trustees – Hospital for Special Surgery.

**Scott Rechler:** Most recent education is a Master of Science in Real Estate from NYU Schack Institute in 1990. From 1989 until present, he has worked as the Chairman and CEO of Reckson Associates in commercial real estate.

Scott Rechler discloses Board of Trustee Director for Hospital of Special Surgery.

**William Ricci:** Graduated from Duke School of Medicine in 1992. Dr. Ricci is currently licensed in NY through 2/2025; had licenses in MO, FL, and IL but is currently expired.

Current employment at Hospital for Special Surgery Chief Orthopedic trauma service; Weill Cornell Medical College; NYP Deputy Chief Orthopedics.

**Martin Roche:** Dr. Roche earned a medical degree at the National University of Ireland, Cork Medical College in 1990. Dr. Roche completed their residency at the Jackson Memorial Hospital, Florida in 1996 specializing in orthopedic surgery. Currently licensed in FL through 01/2026.

Currently employed at the Holy Cross Orthopedic Institute since 1996 in Ft. Lauderdale, FL.

**Scott Rodeo:** received a medical education from Cornell University in 1989. Dr. Rodeo completed a residency in orthopedic surgery at the Hospital for Special Surgery in 1994. Dr. Rodeo is licensed in the state of New York through 4/2024, New Jersey through 6/2025, and Connecticut through 5/2024.

Current employment as an attending surgeon at the Hospital for Special Surgery since 1996.

Legal Disclosure (disclosed after request from DOH): 12/12/2020 *Joseph Dillon and Rachel Dillon against Scott Rodeo, M.D., Kenneth Lin, M.D., Joseph Lamplot, M.D., Theodore T. Miller, M.D., Carolyn Sofka, M.D. and Hospital for Special Surgery, New York State Supreme Court, (805375/2022)*. Patient, 53-year-old male, presented to Dr. Rodeo and other HSS providers for right knee pain. Dr. Rodeo completed a right total knee replacement on 6/5/2020 that required manipulation due to pain and stiffness postoperatively. Patient was diagnosed with **Complex Regional Pain Syndrome** Type 1. Patient underwent right knee revision outside HSS. Patient claimed knee replacement surgery was improperly performed and caused chronic pain syndrome. Case was settled by HSS - for \$125,000.

**Jose Rodriguez:** Graduated from Columbia P & S in 1089 with a medical degree. Dr. Rodriguez completed a residency at The Hospital for Special Surgery in 1994 and followed with two (2) fellowships completed in 1995. Recent education from Maurice Miller Foundation of North America Fellowship in Surgery of the hip completed in 1995. Currently licensed in NY through 6/2024.

Legal disclosures: Open

9/25/2019 - *Judy Storm against Richard Stuart King, M.D., Jose Antonio Rodriguez, M.D., Coridon M. Huez, M.D. and Hospital for Special Surgery* - Patient, 64-year-old female, presented to Dr. Rodriguez with left knee pain and on 5/16/17, he performed left total knee replacement surgery. Postoperative, patient reported quadriceps weakness and electrodiagnostic studies showed left femoral axonal neuropathy. Patient claimed neurologic deficits were related to prolonged tourniquet time.

**S. Robert Rozbrunch:** Graduated from Cornell Medical in 1990. Dr. Rozbrunch completed an internship in general surgery in 1991 from North Shore University Hospital and a residency in Orthopedic Surgery from the Hospital for Special Surgery at Cornell University. Most recent fellowship was at Maryland Center for Limb Lengthening and Reconstruction in 1999. Current licensure is in NY through 08/2024.

Dr. Rozbruch is a professor of Clinical Orthopedic Surgery at Weill Cornell Medical College since 2012. Current employment includes Attending at the Hospital for Special Surgery 2012 to present; Service Chief Limb lengthening at Hospital for Special Surgery 2005-present, Director, limb salvage and amputation at the Hospital for Special Surgery 2015-Present, and HSS Orthopedic Leadership Council Hospital for Special Surgery 2005-presnet.

Legal Disclosure: Open

8/14/2023 - *Gail Kimbiz v. S. Robert Rozbruch, MD, and Hospital for Special Surgery* - This suit involves a then 59-year-old female who presented to Dr. Rozbruch requesting placement of osseointegration technology (OI) after left above the knee amputation that occurred in 2008. Dr. Rozbruch performed a two stage OI insertion starting on 1/17/18 that was complicated with loosening and infection. Plaintiff transferred her care to outside hospital for two stage revision and antibiotics. Plaintiff was able to ambulate using the prosthetic starting in May of 2022.

Dismissed:

11/21/2014- *Edward P. Leili v. Robert S. Rozbruch, M.D., Hospital for Special Surgery, Inc., d/b/a Hospital for Special Surgery, New York Society for the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, Inc., Hospital for Special Surgery, PHO, Inc., and Hospital for Special Surgery Fund, Inc.* - Pro se patient claimed that the defendants failed to diagnose and treat bowel perforation and peritonitis resulting in ileostomy and colostomy in a 50-year-old male following left ankle distraction arthrotomy performed by Dr. Rozbruch on 1/18/12. Patient was emergently admitted on 1/25/12 to Danbury Hospital with two abdominal abscesses and cecal perforation requiring surgery that was complicated by multiple medical complications. Case dismissed due to failure to properly serve defendants.

6/9/2016 - *Alaburda Charity against S. Robert Rozbruch, M.D.* - Pro Se patient, 34-year-old female, was treated by Dr. Rozbruch for limb length discrepancy. Plaintiff underwent multiple reconstructive procedures. On 6/20/08, Dr. Rozbruch in conjunction with a plastic surgery performed left lower extremity hardware removal and scar revision. Plaintiff claimed that the wrong lower extremity scar was addressed. Case was dismissed on motion.

**Andrew Sama:** Graduated from The University of Miami in 1995 with a Medical Degree. Followed with a residency for general and orthopedic surgery at the University of Miami and a Fellowship at the Hospital for Special Surgery for Spinal and Scoliosis Surgery completed in 2001. Current licensure with NY through 02/2025; CT through 03/2025; NJ through 06/2025.

Current employment at Hospital for Special Surgery since 2001 as assistant Clinical Scientist; Associate professor of orthopedic surgery at Cornell University Medical College since 2010; Associate Professor of orthopedic surgery at New York College of Podiatric Medicine since 2012. Hospital appointments are currently Associate Attending Orthopedic Surgeon since 2010 at both Hospital for Special Surgery and NY Presbyterian Hospital; Co-Chief Spine service at Hospital for Special Surgery since 2019 and Physician at Large HSS Board of Trustees since 2022.

Interest/Ownership: HSS Director since 2022, ex officio Board of Trustees, Hospital for Special Surgery.

Legal disclosures: Settled

5/24/2016 - *Gary Ahlert against Andrew Sama, M.D., David Lefkowitz, M.D. and Hospital for Special Surgery* - This case involves an alleged failure by Dr. Sama to properly perform a L4-5 microdiscectomy/decompression in a 68-year-old male, resulting in post op neurogenic bladder issues and unresolved pre-op left low back pain.

7/14/2015 - *Greogro Curto and Rachael Curto against Naomi Dong, M.D., Andrew Sama, M.D., and Hospital for Special Surgery* - This litigation involves left ulnar neuropathy following lumbar laminectomy



performed by Dr. Sama on 11/14/13 upon a 67-year-old, right hand dominant male. Plaintiff claims that he was not properly positioned intraoperatively which resulted in the injury.

**Nicholas Sama:** received their medical degree in 1999 from the University of Miami, School of Medicine. They completed their residency in Orthopedic Surgery in 2004 at the University of Miami School of Medicine's Department of Orthopedic Surgery. Dr. Sama is currently licensed to practice in the state of Florida through 01/2026.

Presently, Dr. Sama is employed at the Hospital for Special Surgery Florida Physicians since 2019. Dr. Sama is also appointed as an attending physician at Wellington Regional Medical Center since 2007, and Good Samaritan Medical Center since 2019.

Interest/Ownership: Ownership since 2022 in HSS Palm Beach Ambulatory Surgery Center.

Legal Disclosure: Settled

2/14/2019 - *Gregg Rosenbaum vs. Nicholas Sama, M.D., et al.* - Patient had diagnosis of avascular necrosis of his left hip. He underwent a core decompression by another surgeon which failed. I then performed a primary total hip arthroplasty. The patient reported continued pain. The patient alleged improper performance of total left hip arthroplasty requiring additional surgery. This was highly disputed by expert opinion.

**Harvinder Sandhu:** Dr. Sandhu completed a medical degree at Northwestern Medical School in 1987 and a Master of Business Administration from Columbia Business School in 2001. Currently licensed to practice in New York through 2/2025, New Jersey through 6/2025, California through 3/2024, and Connecticut through 3/2024.

Currently, Dr. Sandhu has operated a private medical practice, Harvinder S Sandhu MD, PC, since 2001.

**Peter Sculco:** Completed their education at Columbia University Medical School in 2009. Their residency in orthopedics was completed at the Hospital for Special Surgery in 2014.

Dr. Sculco has been an attending orthopedic surgeon at the Hospital for Special Surgery since 2015.

Dr. Sculco was named in one case: *Lisa Siemanowicz, As Administratrix of the Estate of Victor Siemanowicz and Lisa Siemanowicz, individually against Peter Sculco, M.D. Hospital for Special Surgery, Arthur Yee, M.D., James Calloway, M.D. and Patrick Lee, M.D. (805246/2019)*, New York Supreme Court. It is alleged the Decedent, 53-year-old male presented to Dr. Peter Sculco for bilateral knee pain and left hip pain. The patient's medical history included DVT, and a clotting disorder treated with anticoagulation. Dr. Sculco recommended proceeding with left hip replacement surgery then with staged knee replacement surgery. On 8/21/17, Dr. Sculco performed a left total hip replacement which was complicated by infection. Dr. Sculco recommended surgical revision and after consulting with the patient's Hematologist, it was decided to hold the Pradaxa until the surgery. On 12/11/17, the patient suffered a stroke prior to surgery and required long term rehabilitation. He died on 9/1/2018. Patient claimed anticoagulation was improperly held resulting in stroke. It was settled by the hospital for \$1.45 Million.

9/1/2017 - *Richard H. Bonanno and Phyllis L Bonanno against David Mayman, M.D., Andy Miller, M.D., Peter Sculco, M.D., Thomas Sculco, M.D. and Hospital for Special Surgery* - Pro se patient, 74-year-old male, underwent total knee replacement with Dr. Mayman on 11/14/14. Patient alleges that the surgery caused further degeneration, fracture and infection that required additional surgeries, including those performed by Dr. Sculco. Matter was dismissed via motion for failure to properly oppose summary judgment motion. Dismissed.

2/19/2019 - *Dennis Higgins against Hospital for Special Surgery and Peter Sculco, M.D.* - Patient, 68-year-old male, with a medical history of osteoarthritis and alcohol use, presented to Dr. Peter Sculco for complaints of left knee pain. On 9/23/16, Dr. Sculco performed a left total knee replacement. On 9/24/16, while ambulating with a mobility technologist, he fell onto his left knee and required an incision and drainage of a hematoma with wound closure. Patient attributed the fall to the need for additional surgery. Dr. Sculco was voluntarily discontinued. Settled

**Ryan Simovitch:** is a licensed physician in the state of Florida through 01/31/2026. Dr. Simovitch completed a medical degree at the Chicago Medical School in 2000.

Dr. Simovitch serves as an orthopedic surgeon at the Hospital for Special Surgery in Florida and has been doing so since 2020 as the Director of the shoulder division. Prior employment from 2006-2020 at Palm Beach Orthopedic Institute as an Orthopedic Surgeon.

**Ernest Sink:** Dr. Sink received a medical degree at the University of Texas Southwestern Medical School in 1994 and completed a residency there in 1999. Currently licensed to practice in New York through 12/2024, and New Jersey 6/2025. Has also held licensure in Colorado but not at this time.

Currently, Dr. Sink is an attending orthopedic surgeon at the Hospital for Special Surgery and has been since 2011. Dr. Sink has also been the professor of clinical orthopedic surgery at HSS since 2022 and is the Chief for the Hip Preservation Service there as well.

2001 Dr. Sink has one lawsuit: *Polk vs. Ernest Sink, M.D., et al.* Patient, 6'7" 330-pound football player patient presented for complex meniscus repair and ACL reconstruction. Intraoperatively, the sutures securing the graft to the bone pulled through the bone, Dr. Sink was able to reconstruct the joint without laxity. Postoperatively, patient was found to have Rhabdomyolysis and partial lower extremity nerve impairment. Case settled \$95,000. Infraction was not initially disclosed.

**Edward Skyler, Esq.:** graduated with a Juris Doctorate in 2000 from Fordham University in 2000; Current license in NY through April 2024. Current member of the New York Bar Association.

Current employment as the head of Enterprise Services and Public Affairs at Citi a company part of Citigroup and Citibank, N.A. since 2010.

Interest/Ownership: HSS Director since 2023 Board of Trustees for Hospital for Special Surgery.

They have been named as a defendant in the following Supreme Court case, *Beter v. Baughman et al* (1:24-cv-00079) Southern District of New York. This is a personal injury lawsuit that alleges charges of RICO and sexual assault. Edward Skyler is not the actual alleged offender, but an alleged to have knowledge of the incident. They are part of a countersuit against the plaintiff *Baughman et al v. Baughman et al v. Beter* (1:23-cv-11278) District of Massachusetts. *Beter* (1:23-cv-11278) District of Massachusetts. Both cases are ongoing. On January 5, 2024, Mr. Baughman removed the case to the US District Court for the Southern District of New York. On February 2, 2024, Ms Beter filed a motion for remand. Opposition to the motion for remand is due on February 16, 2024, and any reply brief must be filed by February 23, 2024. Mr. Skyler has not been served with the complaint and therefore he is not a party to the litigation. To the extent that Mr. Skyler becomes a party to the litigation, he intends to vigorously defend himself. May 7, 2024, motion to dismiss without prejudice ordered.

**Jonathan Sobel:** Graduated in 1988 with a bachelor's degree from Columbia University.

Employment is with DTF Holdings, LLC as a managing member and advisor. Employment is with Goldman Sachs & Co. from 1987-2008 as Global head of the mortgage department.

Interest/Ownership – Jonathan Sobel disclosed he is on the Board of Trustees for the Hospital for Special Surgery as a Director.

**Gbolabo Sokunbi:** Most recently graduated from Robert Wood Johnson Medical School in 2006. Dr. Sokunbi is currently licensed in NY through 3/2025 and in NJ through 6/2025. Current employment as Associate Professor of Orthopedic Surgery at Weill Cornell Medical Center since 2021. Also, at the Hospital for Special Surgery from October 2021 and Section Chief Spinal Surgery since 2015.

Legal Disclosure:

3/23/2018 - *Joseph Merigris vs. Gbolabo O. Sokunbi, M.D.* – Alleged Complication related to dorsal column stimulation implant. Unknown closure.

**Dierdre Stanley:** received a Juris Doctorate from Harvard Law School in 1989 and is currently an attorney in New York.

Deidre is currently the Executive Vice President and General Counsel for The Estee Lauder Companies, Inc. since 2019. Previously Deidre was the General Counsel and Senior Executive for Thompson Reuters, a technology firm from 2008 to 2019.

Interest/Ownership: HSS Director Board of Trustees Hospital for Special Surgery.

**Robert Steel:** Current employment is at Perella Weinberg Partners since 2014, current position is Vice Chairman, Partner.

Robert Steel discloses interest in Hospital for Special Surgery as Director of the Board of Trustees.

**Sabrina Strickland:** Completed medical credentials at the Rush Medical College in 1996. Dr. Strickland is a licensed orthopedic surgeon in the state of New York through 8/2024.

Dr. Strickland is currently employed at the Hospital for Special Surgery and has been since 2006. Additionally, she is an associate professor at Weill Cornell Medical College.

Interest/Ownership: Ownership in Manhattan ASC since 2015 (2.98%)

Legal disclosure: Open

11/17/2022 - *BIRSTER, AUDREY V. SABRINA STRICKLAND, MD, MICHAEL AST, MD, & HSS* – Poor outcome s/p knee.

**Edwin Su:** Graduated from Weill Cornell Medical Center in 1997. Completed residency and fellowship at the Hospital for Special Surgery in 2003. Licensed in NY through 10/2025.

Employment at the Hospital for Special Surgery from 2003-2005 as an attending surgeon. Currently self-employed at Edwin P. Su MC PC 2005- present.

Legal disclosure: Disclosed after DOH inquiry Open.

10/14/2022 - *Sarah Higgins and Bradford Lyon against Hospital for Special Surgery and Edwin Su, M.D.* - Patient, 62-year-old female, presented to Dr. Su with complaints of left hip pain and underwent left total hip replacement on 3/2/2020. The patient was lost to follow up due to the COVID pandemic and when she returned, she reported a limb length discrepancy and right ankle pain. Dr. Su recommended right total hip replacement to address the length discrepancy. Patient alleged improper performance of total hip replacement.

9/20/2022 - *Stephen Petrillo against Edwin P. Su and Hospital for Special Surgery* - Patient, 59-year-old male, presented to Dr. Su with right hip pain. On 3/6/2020 Dr. Su performed a right hip resurfacing without complication. Approximately one year postop, plaintiff complained of pain and swelling. Due to concern for a metal allergy, Dr. Su performed a conversion to a total hip replacement on 5/3/21 that was complicated by infection. Patient alleged delay in identifying and treating infection.

2/16/2022 - *Frank DeRuggiero and Haydee DeRuggiero against Hospital for Special Surgery and Edwin P. Su, M.D.* - Patient, 59-year-old male, presented to Dr. Su with bilateral hip pain and was diagnosed with right avascular necrosis and left hip arthritis. Patient proceeded with left hip resurfacing, which was performed on 8/19/21. Following the surgery, plaintiff continued to report severe groin pain. Patient asserted improper performance of hip resurfacing.

Settled/Dismissed

4/26/2017 - *Ilene Rosenfeld and Gadi Rosenfeld against Edwin P. Su, M.D., Hospital for Special Surgery and Edwin P. Su, M.D. PC* - This matter involves the alleged failure by Dr. Su to properly perform unicompartmental knee replacement in 70-year-old female. Plaintiff claims the angle in the anteroposterior tibial cut was too acute and revision surgery was required. Settled

4/26/2017 - *Phillip J. Smith and Magdalena Smith against Edwin P. Su, M.D., John Anderson, M.D., Hospital for Special Surgery* - Patient, 61-year-old male, underwent left total knee replacement on 8/20/2010 that was complicated by persistent pain and arthrofibrosis. Patient underwent manipulation without improvement. Dismissed

**Stephanie Swenson Buza:** completed her education at NYU School of Medicine in 2013 and is licensed in New York through 10/2024. Dr. Buza completed her residency at NYU Langone Orthopedic Hospital in 2018 and a fellowship at the Hospital for Special Surgery in 2020.

Dr. Buza is an attending physician at the Hospital for Special Surgery since 2020.

**Samuel Taylor:** Most recent education at Columbia College P & S. Followed with a residency at Hospital for Special Surgery for orthopedic surgery completed in 2013 and a fellowship at Hospital for Special Surgery for Sports Medicine and Shoulder surgery completed in 2014. Dr. Taylor is licensed in NY through 2/2026; CT through 3/2025; and NJ through 6/2025.

Since 2014 Dr. Taylor has worked as assistant professor of orthopedic Surgery at Weill Cornell Medical College and as Assistant Attending Orthopedic Surgeon at the Hospital for special surgery. Dr. Taylor currently holds these positions.

Legal disclosure: Open

1/4/2021 - *Sarah Labance against Samuel A. Taylor, M.D., PC, Samuel Arthur Taylor, and The Hospital for Special Surgery* - patient, 46-year-old female, presented to Dr. Taylor with a history of recurrent bilateral shoulder dislocations. On 11/29/18, Dr. Taylor performed a Latarjet procedure on the left shoulder and within 6 weeks of surgery, imaging showed collapse of the left humeral head. Plaintiff subsequently underwent shoulder replacement surgery at another facility. Patient claims Latarjet procedure was contraindicated and improperly performed.

**Jonathan Tisch:** received a Bachelor of Arts from Tufts University in 1976.

Jonathan is currently the Executive Chairman of the Loews Corporation, a hotel company, where Jonathan has been employed since 2012.

**Frances Fragos Townsend:** Graduated from the University of San Diego Law in 1985 with a JD. Currently licensed as an attorney in NY, CA, and DC.

Frances Townsend runs an independent consulting business service as EVP of Corporate Affairs, Chief Compliance Officer, and Corporate Secretary at Activision Blizzard. Frances Townsend also serves as senior counsel to the CEO and Board of Directors. Prior employment was ten years at MacAndrews' portfolio companies.

Interest/Ownership: HSS Director Board of Trustees Hospital for Special Surgery.

**Samir Trehan:** received an education in medicine at Brown Medical School in 2011. Residency in orthopedic surgery was completed in 2016 at the Hospital for Special Surgery. Dr. Trehan is licensed in the state of New York through 7/31/2024.

Dr. Trehan is an assistant attending orthopedic surgeon for hand and upper extremity service and has been since 2018 at Hospital for Special Surgery, New York. Additionally, Dr. Trehan is an assistant professor of orthopedic surgery at Weill Cornell Medical College, since 2018.

Interest/Ownership: Since 2015 Manhattan ASC (2.06%)

Dr. Trehan has one legal infraction (disclosed after DOH inquiry): *CHADWICK, DOUGLAS V. NYPH, SAMIR TREHAN, MD, & RESMI CHARALEL, MD*, Bronx Supreme Court (29486/2019E). The case alleges a vascular injury; however, the case was dismissed in 2022.

**Jonathyan Vigdorichik:** Graduate of the University of Missouri – Columbia School of Medicine in 2007. Residency completed in 2012 from Detroit Medical Center followed by a fellowship completed in 2013 for Surgery at the Hospital for Special Surgery. Currently licensed in NY through 11/2025.

Current employment is with JV Medical PC as an attending surgeon since 2022. Prior employment includes Hospital for Special Surgery as an attending surgeon from 2019 – 2021 and NYU as an attending surgeon from 2013 through 2018.

Legal Disclosures: Open

6/18/2019 - *Souzana Stamatelos against Jonathan Vigdorichik, M.D., Dora Leung, M.D., The Hospital for Special Surgery, Craig Antell, D.O., Jason Fritzhand, D.O., Preston Robert Tisch Center for Men's Health, Donator R. Pacione, M.D., NYU Langone Neurosurgery Associates, Jason Kim, DPM, NYU Langone Ambulatory Care West Side, NYU Langone Health System, Nicholas Megdanis, DPM, Greater Queens Podiatry, PLLC, Zeeshan Sardar, M.D., Columbia Doctors Midtown, Columbia University Irving Medical Center and New York Presbyterian Healthcare System, Inc.* - Patient, 64-year-old female, presented to Dr. Vigdorichik with right hip pain and he performed a right total hip replacement on 6/18/19. Following the surgery, patient woke with right sided foot drop that was attributed to stretch injury. Patient alleged nerve laceration caused foot drop.

8/20/2020 - *Puezant Yogumyan and Homira Yogumyan against Jonathan Vigdorichik, M.D., Kyle Alpaugh, M.D., Terry Lin, P.A., Joshua Goodfarb, P.A., and Hospital for Special Surgery* - Patient, 58-year-old male, presented to Dr. Vigdorichik with bilateral hip pain and underwent bilateral total hip replacement on 8/20/2020. Patient woke with left sided foot drop and was brought back to the OR for wound exploration and evacuation of hematoma; nerve was intact. Patient alleged delay in treating foot drop and direct injury to the sciatic nerve.

Dismissed

12/10/2015 - *Ramona Blash vs. Jonathan M. Vigdorichik, M.D., et al.* - Patient presented to Dr. Vigdorichik with bilateral hip and knee pain. On 4/2/15, Dr. Vigdorichik performed left hip replacement with right taking place on 12/10/15. 5 mm limb length discrepancy was identified. Patient advised discrepancy would improve with physical therapy and time. Matter discontinued after attorneys moved to be relieved.

**Robin Vince:** received a Bachelor of Arts from the University of Nottingham in the United Kingdom in 1994.

Robin is the CEO of Bank of New York Mellon since 2021 and was the Participating Managing Director of Goldman Sachs from 1994 – 2020.

Interest/Ownership: HSS Director since 9/2023 Board of Trustees at Hospital for Special Surgery.

Legal disclosure (disclosed after DOH inquiry). On October 22, 2020, The Goldman Sachs Group Inc. and certain of its subsidiaries reached coordinated resolution (including United States v. The Goldman Sachs Group, Inc., Docket No. 20-CR-00437-MKB) with criminal and civil authorities in the United States, the United Kingdom, Singapore, and elsewhere with respect to violations of law in connection with Goldman's role in underwriting three bond deals for 1Malaysia Development Bhd. (1MDB). Mr. Vince had no involvement in the underlying violations and was not named, or involved, in the criminal or civil investigations and settlements. Mr. Vince was named by Malaysian authorities in the 1MDB matter solely as a result of his service as a member of the Board of Directors of Goldman Sachs International, one of three Goldman Sachs entities charged by Malaysian authorities in December 2018. Further, as noted in the attached Goldman Sachs press release from July 2020, the government of Malaysia has withdrawn all charges against Goldman Sachs and its employees, including Mr. Vince, and no new charges will be

brought. The matter is now fully resolved. <https://www.goldmansachs.com/media-relations/press-releases/current/announcement-24-july-2020.htm>.

*Tante T. URBAN, Jr., Plaintiff, v. Jason Lee COTTON; Vincent Kruse; Peter Stone; TMLF LLLC; Shawn Nakoia; Rush Moore LLP; Wendy Deweese; BNY Mellon; Robin Vince; State of Hawai'i, Defendants.* The following is a summary of the lawsuit involving Robin Vince: Mr. Vince was not previously aware of the pro se lawsuit (*Tante T. Urban, Jr. v. Jason Lee Cotton, et al. (Civ. No. 23-00043)*), filed in January 2023, by an individual named Tante Urban, Jr. in federal court in Hawaii against 10 defendants, including the State of Hawaii, several state officials, The Bank of New York Mellon, and Robin Vince. The lawsuit alleged that the foreclosure of Mr. Urban's house due to failure to pay his mortgage loan was a violation of his civil rights. Mr. Urban argued that the state foreclosure statute was not a valid law and violated the Hawaii State Constitution. The Bank of New York Mellon was named a defendant because it was the trustee of a mortgage-backed security that owned Mr. Urban's mortgage loan, so the foreclosure was brought nominally in The Bank of New York Mellon's name, although a servicer for the mortgage-backed security was responsible for the foreclosure. Mr. Urban did not allege that Mr. Vince engaged in any wrongdoing but named him as a defendant because he is the CEO of The Bank of New York Mellon. Mr. Urban did not serve the lawsuit on either Mr. Vince or The Bank of New York Mellon, so neither was required to respond to it. In June 2023, the court dismissed the lawsuit against all defendants – including Mr. Vince – because it found the lawsuit was an improper attempt to attack a state court foreclosure judgment in federal court.

**John Wang:** Graduated in 2005 from Georgetown University with a medical degree. Dr. Wang is currently licensed in FL through 1/2025.

Employment for Dr. Wang is currently at the Hospital for Special Surgery Florida Orthopedic Surgery Practice since 2020 holding the position of attending orthopedic surgeon. Prior to Dr. Wang's current employment Dr. Wang was Attending orthopedic surgeon from 2016-2020 at Orthopedic Surgery Associates, Inc. and from 2011 – 2016 at Atlantis Orthopedics.

Ownership/Interests: Delray Beach Surgical Suites, LLC in Delray Beach FL 2017-2020 Medical Director, and investor. This facility is open and in compliance with regulations.

**Tony Wanich:** completed a medical education at Tufts University School of Medicine in 2002. Dr. Wanich completed an orthopedic residency at the Hospital for Special Surgery in 2008. Current licensure in NY through 6/2025, NJ through 6/2025, and MD through 9/2023.

Presently, Dr. Wanich is an Attending Surgeon at the Hospital for Special Surgery, since 2022. Previously, Dr. Wanich was employed by High Mountain Orthopedics from 2012 – 2022.

Interest/Ownership: Same Day Procedures, LLC (NJ) since 2016 (5%) and Board member.

Legal Disclosure:

11/17/2014 - *Kathleen Raftery against Montefiore Medical Center and Tony Wanich, M.D.* - Patient, 61-year-old female, underwent an surgery to repair comminuted left lateral and proximal tibia fracture. Six months later, patient underwent removal of hardware and meniscus repair due to chronic pain. Postoperatively, patient developed collapse of lateral tibial plateau and she required left total knee replacement that was complicated by CRPS. Patient claims that removal of hardware was premature and improperly performed. Settled

**Geoffrey Westrich:** Graduated with a medical degree from Tufts Medical College in 1990. Completed residency in orthopedic surgery at the Hospital for Special Surgery in 1995 and Fellowship for orthopedic trauma in Switzerland in 1996. Currently licensed in NY through 4/2024.

Present employment as Senior Scientist for Hospital for Special Surgery since 2015; Professor of Clinical Orthopedics Weill Cornell Medical College since 2014. Hospital positions are Attending orthopedic

Surgeon for NY Presbyterian and Hospital for Special Surgery since 2014 and prior to that from 2004-2014 held associate attending positions at those facilities.

Legal disclosures: Open

8/2/2022 - *Glenn Wollman against Geoffrey H. Westrich, M.D., Hospital for Special Surgery, John Does 1-10 and ABC Corporations* - Patient, 64-year-old male, presented to Dr. Westrich with right knee pain. On 2/13/2020, Dr. Westrich performed a right total knee replacement that was complicated by infection. On 7/27/2020, Dr. Westrich performed explant with placement of antibiotic spacer, with reimplantation on 9/17/2020. Patient alleged improper treatment of infection.

9/1/2016 - *Faye Kerins against Geoffrey H. Westrich, M.D., The Hospital for Special Surgery* - This case involves an alleged failure to properly perform a right total hip replacement in a 77-year-old female resulting in right quadriceps weakness and numbness to the right medial thigh and medial lower leg. Settled

**Riley Williams:** completed his education at Stanford University School of Medicine in 1992. Their residency in orthopedics was completed in 1997 at the Hospital for Special Surgery. Currently licensed in NY through 02/2026.

Dr. Williams is an attending surgeon at their own practice from 1998 to 2022, the practice was converted to a contracted hospital surgeon at the Hospital of Special Surgery and is still practicing there currently.

Interest/Ownership: 2017 – present, HSS West Side ASC (9%)

Legal Disclosure: Open

8/2/2021 - *Melissa Cardinal against Riley J. Williams, M.D., and Hospital for Special Surgery* - Patient, 50-year-old female, presented to Dr. Williams with complaints of left knee pain. Dr. Williams performed a medial compartment knee replacement with ACL reconstruction. During the surgery, plaintiff sustained intraoperative fracture that was secured with a screw. Patient reported continued pain and underwent 2 additional procedures. Patient sought care elsewhere. Patient claims staged procedure should have been performed due to instability related to ACL injury.

Settled/Dismissed:

(Disclosed after DOH inquiry) *Trevor C. Noah against Riley J. Williams, III, M.D. and Hospital for Special Surgery* (805381/2021), New York Supreme Court. It alleges that Patient, 37-year-old male, presented to Dr. Williams for left knee pain and stiffness following prior knee surgery. Dr. Williams performed left knee meniscectomy with lysis of adhesions on 11/23/2020. Following the surgery, the wound opened and was treated conservatively. Patient sought a second opinion in California and underwent I&D and received antibiotics. Patient claimed Dr. Williams failed to properly treat the infection, which defense contended was not present. It was settled by hospital for \$900,000.00.

7/22/2020 - *Jane Lederer & Harry Ansorge against Riley J. Williams, III, M.D. and Hospital for Special Surgery* - Missed diagnosis of heel fracture Settled.

7/22/2014 - *Peter J. Calandrella and Lucinda Calandrella against Riley J. Williams, III, M.D. and Hospital for Special Surgery* - Patient, 43-year-old male, presented to Dr. Williams with left knee pain after multiple knee surgeries. On 1/4/12, Dr. Williams performed left knee arthroscopic debridement and placed in a Bledsoe brace. On 1/12/12, patient developed pressure injuries which required wound care treatment. Patient alleged improper placement of the brace caused injury. Settled.

**Jeffrey Wilpon:** is the Chairman and CEO of Alta Vista Partners, a real estate investment and operating platform as well as a Founding Partner of Sterling Project Development, a complex real estate advisory and management firm since 2021. Jeffrey was part of the Ownership Group and COO for NY Mets Citi Field from 2002-2021. They have no infractions or legal disclosures currently.

Ownership/interest – HSS Director Board of Trustees for Hospital for Special Surgery since 2023.

**Scott Wolfe:** Graduated with a medical degree from Cornell University Medical College in 1984 and a Master of Arts Privatum from Yale University in 2000. Dr. Wolfe completed a residency in orthopedics in 1989 at the Hospital for Special Surgery. Current licensure with NY through 7/2024 and CT through 8/2024.

Dr. Wolfe is the Senior Scientist in the Research Division of the Hospital for Special Surgery since 2012. Dr. Wolfe is also an attending Orthopedic Surgeon and a professor of Orthopedic Surgery at Weill Cornell Medical College since 2000.

Interest/Ownership: Manhattan ASC since 2015 (1.98%)

(Disclosed after DOH inquiry) Dr. Wolfe has been named one infraction: *LEBOWITZ, LORIE. V. WOLFE, SCOTT, MD HSS, ERIC SCHOENFELD, MD, & ERIC SCHOENFELD, M.D., P.C., Nassau Supreme Court* (614103/2017). Case alleges PAIN - S/P HAND, case is ongoing.

**Ellen Wright:** Graduate of Mill College in California with a bachelor's degree in 1961.

As a Board member of HSS Ellen Wright brings requisite fundraising and management skills based on experience with boards of various organizations over the course of many years.

Ownership/interest – HSS Director Board of Trustees for Hospital for Special Surgery. Has ownership in HSS Paramus Outpatient Center NJ.

**Robert Yaffa:** Graduated in 1990 from Muhlenberg College with a bachelor's degree. Licensed in NY for Real Estate through 12/2025.

Currently employed at RDY Advisors, LLC since 2019 as president and managing principal for a real estate investment and advisory firm. Prior employment includes Cushman & Wakefield as Executive Managing Director and Partner from 2015-2019 and Cassidy Turley as Executive Managing Director from 2012-2015.

Interest/Ownership: Director Board of Trustees Hospital for Special Surgery.

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.

### **Integration with Community Resources**

The Applicant will serve all patients needing care, regardless of their ability to pay or the source of payment. The procedures to be performed at the Center will be among those listed in 10 NYCRR, Section 86- 4.40, under the Products of Ambulatory Surgery groupings to be provided at the Center. These will be procedures that can safely be performed on an ambulatory basis, based on recognized standards of medical care. The Center will work with the transferring hospital to ensure there is backup emergency care coverage for any patient that is in need.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

### **Conclusion**

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



## Financial Analysis

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$30,805,493, further broken down as follows:

Renovation and Demolition	\$15,927,920
Design Contingency	1,886,000
Construction Contingency	1,886,000
Architect/Engineering Fees	1,576,000
Construction Manager Fees	528,080
Other Fees (Consultant)	2,304,000
Moveable Equipment	4,880,000
Interim Interest Expense	1,647,000
CON Fee	2,000
Additional Processing Fee	<u>168,493</u>
Total Project Cost	\$30,805,493

The applicant's financing plan appears as follows:

Equity	\$383,118
Bank Loan (6% for a ten-year term)	\$27,571,000
Tenant improvement allowance (via equity from Hospital for Special Surgery)	\$2,851,375

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u> <u>(2025)</u>		<u>Year Three</u> <u>(2027)</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:				
Commercial Managed Care	\$21,687	\$18,152,399	\$23,567	\$34,479,007
Medicare Fee for Service	\$5,926	604,468	\$6,072	\$1,092,950
Medicare Managed Care	\$7,741	216,748	\$8,081	\$387,874
Medicaid Fee for Service	\$4,686	46,858	\$4,154	\$157,849
Medicaid Managed Care	\$2,834	31,178	\$2,900	\$118,915
Other	\$2,878	69,082	\$2,718	\$114,168
Bad Debt		<u>(290,504)</u>		<u>(545,261)</u>
Total Revenues		\$18,830,229		\$35,805,502
Expenses:				
Operating	\$13,476	\$13,920,974	\$10,998	\$20,334,473
Capital	<u>\$5,034</u>	<u>\$5,200,136</u>	<u>\$2,810</u>	<u>5,196,568</u>
Total Expenses	\$18,510	\$19,121,110	\$13,808	\$25,531,041
Net Income		(\$290,881)		\$10,274,461
Utilization: (Procedures)		1,033		1,849

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

- The increases and decreases in revenue rates between Year One and Year Three are due to varying reimbursement rates of sub-specialties that are decanting volume from HSS to the ASC, as well as the introduction of spine surgical volume starting in Year Three.

- Reimbursement rates are based off specific geographical rates and the experience of HSS and the applicant's individual members with commercial payers.
- Expense assumptions are based on the experience of the applicant and its members in providing ambulatory surgery services, as well as the projections and experience of other FASC's in New York State.

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

	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Commercial MC	81.03%	79.12%
Medicare FFS	9.87%	9.73%
Medicare MC	2.71%	2.60%
Medicaid FFS	.96%	2.06%
Medicaid MC	1.06%	2.21%
Charity Care	2.03%	2.00%
Other	<u>2.34%</u>	<u>2.28%</u>
Total	100%	100%

### **Development and Administrative Services Agreement**

The applicant has submitted an executed development and administrative services agreement, which is summarized below:

Date	May 23, 2023
Owner	HSS Long Island ASC, LLC
Contractor	New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery.
Services Provided	HSS will assist the Owner in overseeing the accounting, treasury and financial operations of Owner, provide ordinary billing and collection services for the Center's facility services, assist the Owner in preparation of budgets and financial planning, provide administrative support for the Owner's compliance with applicable laws, rules and regulations, provide contract negotiation and administrative services for third party payor contracts, will provide oversight of housekeeping personnel and provide assistance and services for the design, implementation and continued maintenance of the Center's internal control policies.
Fee	6.5% of ASC revenue and other add on services that are based on cost plus a fair market value markup.
Term	10-year term with a 5 year renewal period

This agreement is in compliance with 10 NYCRR Section 600.9c (An individual, partnership or corporation which has not received establishment approval may not participate in the total gross income or net revenue of a medical facility), it is allowable for entities that are established, such as Hospital for Special Surgery (HSS), which is the proposed consultant and is also an existing Article 28 entity and a proposed member of this Article 28 entity,

### **Sub Sublease Agreement**

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

Premises	31,986 square feet located at 90 Merrick Avenue, East Meadow, New York.
Sublessor	HSS Properties Corporation
Sublessee	HSS Long Island ASC, LLC
Term	20 years
Rental	\$1,061,609 year one with a 2.25% increase each year thereafter.

The applicant has submitted letters from real estate brokers attesting to the reasonableness of the per square foot rental. The building of the site is owned by the County of Nassau and Mitnfield Properties, LLC then will lease it to FRO CLK 90 Merrick Owner, LLC (lessee). The lessee will sublease this property to HSS Properties Corporation (Sublessor) then the sublessor will sub sublease the property to the applicant. The applicant has submitted an affidavit that there is no relationship between them and the master landlord.

**Capability and Feasibility**

Total project cost of \$30,805,493 will be met with equity of \$383,118 from the owners of HSS Long Island ASC, LLC, a bank loan of \$27,571,000 at an interest rate of 6% for a ten-year term, and a tenant improvement allowance of \$2,851,375, of which the funds will come from Hospital for Special Surgery.

Working capital requirements are estimated at \$4,241,379, equivalent to two months of third-year expenses. The applicant will provide equity to meet the working capital requirement. Presented as BFA Attachment B is the 2022 Certified Financial Statements of the New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net loss of \$290,881 in Year One and a net income of \$10,274,461 in Year Three. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

**Conclusion**

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

<b>Attachments</b>
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BHFP Attachment	Map
BFA Attachment A	Ownership structure of HSS Long Island ASC, LLC
BFA Attachment B	Financial Summary- 2022 Certified Financial Statements of New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 20th day of June 2024, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty ambulatory surgery center for orthopedic surgery at 90 Merrick Avenue, East Meadow, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

231328 B

FACILITY/APPLICANT:

HSS Long Island ASC, LLC t/b/k/a HSS Long Island Ambulatory Surgery Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DASNY]
4. Submission of a bank loan that is acceptable to the Department of Health. [BFA]
5. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **May 20, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 20, 2024**, and construction must be completed by **February 20, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: [https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

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

**CON 232025 E PALMER AVENUE SNF  
OPERATIONS LLC D/B/A SARAH  
NEUMAN CENTER FOR  
REHABILITATION AND NURSING**

**\*\*\*TO BE DISTRIBUTED  
UNDER SEPARATE COVER \*\*\***