**Schedule 3**

**Legal Information**

**Contents:**

* **Schedule 3A – General Instructions and Definitions for Legal Schedules**
* **Schedule 3B – Basic Legal Information and Documentation**
* **Schedule 3C – Legal Information for Ownership Transfers**

### Schedule 3A: General Instructions and Definitions for Legal Schedules

This schedule applies to all Establishment Applications (including combined Establishment and Construction) and some Administrative Applications.

**Definitions**

1. “PHL” refers to the New York State Public Health Law.
2. “SSL” refers to the New York State Social Services Law.
3. “10 NYCRR” refers to Title 10 (Health) of the Official Compilation of the Codes, Rules and Regulations of the State of New York.
4. “Department” refers to the New York State Department of Health.
5. “Commissioner” refers to the Commissioner of the Department.
6. “Article 28” refers to Article 28 of the PHL, which governs general hospitals, nursing homes, diagnostic and treatment centers, and midwifery birth centers.
7. “Article 36” refers to Article 36 of the PHL, which governs certified home health agencies and long term home health care programs.
8. “Article 40” refers to Article 40 of the PHL, which governs hospices.
9. “Article 44” refers to Article 44 of the PHL, which governs health maintenance organizations.
10. “Article 7” refers to Article 7 of the SSL, which governs adult homes, enriched housing programs and residences for adults.
11. “Facility” refers to all types of facilities, institutions, agencies or other entities regulated under Articles 7, 28, 36, 40, or 44.
12. “ESRD” refers to an Article 28 Diagnostic and Treatment Center that provides dialysis services to people with End Stage Renal Disease.

## General Instructions

1. Unless otherwise specifically indicated, the required paper copies of legal documentation submitted should be photocopies of fully executed original documents and **not** the originals themselves. The electronic copies of legal documents should be legible scanned images in PDF format of fully executed original documents.
2. Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.
3. Attachments to legal schedules should be numbered sequentially for each particular schedule. The list of attachments should be completed for each required schedule, with either the number of the attachment or a check in the “Not Applicable” column. In instances where the “Not Applicable” option is not offered, inclusion of the documentation is mandatory.

***NOTE: If you believe this submission contains information which may be excepted from disclosure pursuant to a FOIL request, you may so indicate to the NYSDOH and if so, must identify those sections of the submission. DOH will review your claim and make a determination in the event a FOIL request is received.***

**Schedule 3B – Basic Legal Information and Documentation**

**Instructions**

1. The following applicants must complete **Part I** in its entirety:
   1. Article 28 applicants seeking establishment or combined establishment and construction approval.
   2. Article 36 applicants seeking establishment approval.
   3. Article 40 applicants seeking establishment approval.
2. The appropriate section of **Part II** must also be completed, depending on the applicant’s type of legal entity, as follows:
   1. Applicants that are sole proprietors must complete Section A.
   2. Applicants that are general partnerships must complete Section B.
   3. Applicants that are registered limited liability partnerships must complete Section C.
   4. Applicants that are not-for-profit corporations must complete Section D.
   5. Applicants that are business corporations must complete Section E
   6. Applicants that are limited liability companies must complete Section F.
3. All Article 28 applicants must complete **Part III** in its entirety.
4. All Applicants
5. Is the name of the facility different from the name of the applicant’s legal entity?

Yes  No

I**f Yes**, submit the Certificate of Assumed Name. Attachment #

1. Is the applicant a natural person?  Yes  No

**If No**, type of legal entity:

Sole Proprietor (See II.A. below)

General Partnership (See II.B below)

Registered Limited Liability Partnership (See II.C below)

Not-for-Profit Corporation (See II.D below)

Business Corporation (See II.E below)

Limited Liability Company (See II.F below)

Other, specify

1. For Article 36 and Article 28 ESRD-exclusive applicants only: Does the applicant have any partners, members or stockholders that are not natural persons?  Yes  No

I**f Yes**, the applicant must comply with the requirements of PHL 3611 or PHL 2801-a(15), as applicable.

1. For Article 36 and Article 28 ESRD-exclusive business corporations only: Is the corporation publicly traded?  Yes  No

I**f Yes**, submit the most recently filed Securities Exchange Commission Form 10K.

Attachment #

1. Submit documentation of how the applicant has or will obtain site control. Lease agreements for Article 28 facilities, and for hospice residences and the inpatient components of Article 40 facilities, must contain the language set forth in 10 NYCRR 600.2(d) or 790.2(d), respectively. Attachment #
2. Are any of the directors or owners (partners, stockholders or members) of the applicant physicians who are in a position to make referrals to the facility?  Yes No

I**f Yes**, submit a signed statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

Attachment #

1. Submit an organizational chart showing the applicant’s legal structure.

Attachment #

1. Does the applicant intend to enter into any agreement(s) involving the management, administrative, billing and/or consulting services for the facility, including, but not limited to, operational policies?  Yes  No

***N.B.:*** *Only Article 28 facilities licensed as general hospitals may enter into a management contract to permit an outside entity to manage the day-to-day operations of an entire facility or a defined patient care unit of the facility. These management contracts must meet the requirements of 10 NYCRR 405.3(f). For Article 28 facilities that will be operated by a Limited Liability Company or a Business Corporation with a Limited Liability Company Shareholder that have non-member managers overseeing the management of the Limited Liability Company, refer to the requirements for Operating Agreements included in Schedule 14--Additional Legal Information for Article 28 entities in Schedule 14A for Business Corporation and Schedule 14B for Limited Liability Companies.*

I**f Yes**, submit the proposed agreement(s) and the remaining questions in this part I.

Attachment #

**If No**, skip to Part II as applicable.

1. Has the proposed management entity previously received establishment approval under either Article 7, 28, 36 or 40 of the PHL?  Yes  No
2. Enter on the following chart, or upload as an attachment, the addresses of the facilities/agencies owned, operated or managed by the proposed management entity and the time period that each was owned, operated or managed by the proposed management entity. Include out-of-state entities. Attachment #

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| --- | --- | --- | --- |
| Facility Name | Type of Facility | Facility Address | Time Period Owned or Managed |
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1. For each facility named in Question J above, documentation must be submitted reflecting its current and past compliance with the applicable regulations in the state in which it operates. This information is required for the most recent ten-year period, or for the period it was owned, operated or managed by the proposed management entity, whichever is less. *See Schedule 2D for instructions on how to acquire this documentation.*
2. Has the proposed management entity been the subject of an administrative action related to the ownership, operation or management of any health care facility or agency?

Yes  No

I**f Yes**, provide further details regarding the administrative action in the space below, or upload as an attachment. Attachment #

1. Are there any criminal actions pending against the proposed management entity?

Yes  No

I**f Yes**, provide further details regarding the criminal action in the space below, or upload as an attachment. Attachment #

1. Are there now or have there been any civil or administrative actions initiated by either the Medicare or Medicaid programs against the proposed management entity?

Yes  No

I**f Yes**, provide further details regarding the administrative action in the space below, or upload as an attachment. Attachment #

***N.B.:*** *All principals, officers, directors, proprietors, members and shareholders of a proposed management entity must submit Schedule 2. Refer to Schedule 2 instructions*.

1. **Additional Documentation Depending on Type of Legal Entity**

Submit the following legal documentation as applicable for the applicant’s type of legal entity.

1. **Sole Proprietors**
   1. Name of Individual Proprietor:

* 1. Certificate of Doing Business: Attachment #
  2. Schedules 2A and 2B

1. **General Partnerships**
2. On the following chart, or uploaded as an attachment, list the partners, partnership interest and percentage ownership for each partner: Attachment #

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| --- | --- | --- |
| Partner Name | Partnership Interest | Percentage Ownership |
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1. Partnership Agreement: Attachment #
2. Certificate of Assumed Name: Attachment #
3. Schedules 2A and 2B for each partner

***N.B.*** *Partnership agreements for Article 28, Article 36 and Article 40 applicants must contain the language set forth in 10 NYCRR 600.1(b)(5)(ii), 760.2 (c)(2) or 790.1 (c)(2), respectively.*

1. **Registered Limited Liability Partnerships**
2. On the following chart, or uploaded as an attachment, list the partners, partnership interest and percentage ownership for each partner: Attachment #

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| --- | --- | --- |
| Partner Name | Partnership Interest | Percentage Ownership |
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1. Partnership Agreement: Attachment #
2. Certificate of Assumed Name: Attachment #
3. Certificate of Registration: Attachment #
4. Schedules 2A and 2B for each partner.

***N.B.*** *Partnership agreements for Article 28, Article 36 and Article 40 applicants must contain the language set forth in 10 NYCRR 600.1(b)(5)(ii), 760.2 (c)(2) or 790.1 (c)(2), respectively.*

1. **Not-for-Profit Corporations**
   1. Does the corporation have any members?  Yes  No

**If Yes**, list the names of the members below, or upload as an attachment. Attachment #

1. On the following chart, or uploaded as an attachment, list the names of the officers and directors of the applicant corporation and indicate the position held by each.

Attachment #

|  |  |
| --- | --- |
| Officer/Director Name | Position Held |
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1. Certificate of Incorporation: Attachment #
2. Bylaws: Attachment #
3. Board Resolution: Attachment #
4. If the applicant is not a New York corporation, Application for Authority to Do Business in New York: Attachment #
5. Schedule 2A for each director.
6. Schedule 2B for directors who contribute capital in support of the project.
7. Schedule 2C for directors who do not contribute capital in support of the project.

###### Business Corporations

1. On the following chart, or uploaded as an attachment, list the stockholders, stock interest and percentage of ownership for each stockholder. Attachment #

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| --- | --- | --- |
| Stockholder Name | Stock Interest | Percentage Ownership |
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1. On the following chart, or uploaded as an attachment, list the names of the officers and directors of the applicant corporation and indicate the position held by each.

Attachment #

|  |  |
| --- | --- |
| Officer/Director Name | Position Held |
|  |  |
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1. Certificate of Incorporation: Attachment #
2. Bylaws: Attachment #
3. Board Resolution: Attachment #
4. If the applicant is not a New York corporation, Application for Authority to Do Business in New York: Attachment #
5. Schedule 2A for each officer, director and stockholder.
6. Schedule 2B for each stockholder.

***N.B.*** *Only stockholders who own ten percent or more of a certified home health agency’s issued stock must submit Schedule 2B. Stockholders of all other applicants, regardless of percentage ownership, must submit Schedule 2B.*

1. Limited Liability Companies
2. On the following chart, or uploaded as an attachment, list the members, membership interest and percentage of ownership for each member. Attachment #

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| --- | --- | --- |
| Member Name | Membership Interest | Percentage Ownership |
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1. List the managers below, or upload as an attachment. Attachment #

1. Articles of Organization: Attachment #
2. Operating Agreement: Attachment #
3. Consent of Managers or Members, if necessary: Attachment #
4. If the applicant is not a New York limited liability company, Application for Authority to Do Business in New York: Attachment #
5. Schedule 2A for each member and manager.
6. Schedule 2B for each member.

***N.B.*** *Only members who own ten percent or more of a CHHA’s membership interest must submit Schedule 2B. Members of all other applicants, regardless of percentage of ownership, must submit Schedule 2B.*

1. **Representative Governance**
   1. **Ownership**
2. Is the applicant, or any of its owners, employed by, an owner, officer, director, or manager of, or in any way affiliated with, or acting on behalf, or for the benefit of, an outside entity which will be involved with (including through a lease, contract or agreement), or benefit from, the ownership or operation of the proposed facility?  Yes  No

**If Yes**, in the space below, or uploaded as an attachment, identify the outside entity and the nature of the relationship. Attachment #

1. Are there any contractual restrictions, existing or proposed, on the ability of the owners of the applicant to assign, transfer or sell their ownership interests or voting rights in the applicant?  Yes  No

**If Yes**, provide copies of the existing or proposed arrangements. Attachment #

1. **Consulting/Administrative Agreements**
2. Does this proposal include a consulting or administrative agreement?

Yes No

**If No**, skip to Section C.

I**f Yes**, attach a copy of the agreement (if not already submitted with the CON), and continue with the questions in this section. Attachment #

Attach a copy of the Attestation for Service Agreements. Attachment #

1. Describe in the space below, or uploaded as an attachment, the services to be provided under the agreement. Attachment #

1. Describe in the space below, or uploaded as an attachment, the relationship between the applicant/operator and the consultant. Attachment #

1. Who/what owns the consultant entity?

1. Which individual, by name or title, will manage the subject facility on a day-to-day business?

1. Who employs the facility manager?

1. Will there be any subcontracts or assignments with other entities?

Yes  No

I**f Yes**, attach copies of the agreements. Attachment #

Describe the agreements below, or upload as an attachment. Attachment #

1. What percentage of facility revenues flow to the consultant?      %
2. Is the consultant also an equipment lessor for the facility?  Yes  No
3. Is the consultant a real property lessor for the facility?  Yes  No
4. Who is responsible for financial decisions and by whom is this person is employed?

1. **Financing**

Will another entity provide financing for this CON project?

Yes  No

I**f Yes**, define the lender and it relationship to the applicant and consultant below, or upload as an attachment. Attachment #

Completed by (Name):

Enter Date:

***Continue on next page for the required Schedule B Attachment chart***

**Schedule 3B Attachments**

Complete the section labeled “All Applicants.” Then, check the box(es) that apply to your organizational structure and enter the corresponding information for each attached document. If the document is not applicable, enter “N/A" in the column labeled “Attachment Title.” PDF format preferred.

|  |  |  |
| --- | --- | --- |
| **DOCUMENT** | **Attachment Title** | **Attachment #** |
| **ALL APPLICANTS** | | |
| Certificate of Assumed Name |  |  |
| Form SEC 10K |  |  |
| Documentation of Site Control |  |  |
| Anti-Kickback Statement |  |  |
| Organizational Chart |  |  |
| Management Agreement |  |  |
| List of Out-of-State Entities |  |  |
|  | | |
| **SOLE PROPRIETORS** | | |
| Certificate of Doing Business |  |  |
|  | | |
| **GENERAL PARTNERSHIPS** | | |
| List of Additional Partners |  |  |
| Partnership Agreement |  |  |
| Certificate of Doing Business as a Partnership |  |  |
|  | | |
| **REGISTERED LIMITED LIABILITY PARTNERSHIPS** | | |
| List of Additional Partners |  |  |
| Partnership Agreement |  |  |
| Certificate of Doing Business as a Partnership |  |  |
| Certificate of Registration |  |  |
|  | | |
| **NOT-FOR-PROFIT CORPORATIONS** | | |
| List of Additional Officers & Directors |  |  |
| Certificate of Incorporation |  |  |
| Bylaws |  |  |
| Board Resolution |  |  |
| Application for Authority to do Business in NYS |  |  |

**Schedule 3B Attachments, continued**

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| --- | --- | --- |
| **DOCUMENT** | **Attachment Title** | **Attachment #** |
| **BUSINESS CORPORATIONS** | | |
| List of Additional Stockholders |  |  |
| List of Additional Officers & Directors |  |  |
| Certificate of Incorporation |  |  |
| Bylaws |  |  |
| Board Resolution |  |  |
| Application for Authority to do Business in NYS |  |  |
|  | | |
| **LIMITED LIABILITY COMPANIES** | | |
| List of Additional Members |  |  |
| Articles of Organization |  |  |
| Operating Agreement |  |  |
| Consent of Managers or Members |  |  |
| Application for Authority to do Business in NYS |  |  |
|  | | |
| **REPRESENTATIVE GOVERNANCE** | | |
| Restrictions on Ability of Applicant to Assign Ownership |  |  |
| Consulting/Administrative Agreement |  |  |
| Subcontracts or Assignments with Other Entities |  |  |
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| **OTHER ATTACHMENTS (SPECIFY)** | | |
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**Schedule 3C – Legal Information for Ownership Transfers**

**Instructions**

All applicants seeking full establishment approval for a change of ownership must complete **Part I**. The appropriate section of **Part II** must also be completed, depending on the type of ownership transfer. Refer to Department of Health Guidance regarding when a Transfer of Ownership Interest Notice may be submitted in place of this Schedule.

***N.B.:*** *Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.*

1. **General Information**
2. Type of Ownership Change (check one)

Transfer of Assets (also Section II.A)

Change in Active Member of an Article 28, 36 or 40 Facility (also Section II.B)

Change in Passive Member of an Article 36 Certified Home Health Agency (also Section II.C)

Statutory Merger or Consolidation (also Section II.D)

Transfer of Partnership Interest (also Section II.E)

Total Percentage Interest to be Transferred:      %

Transfer of Stock (also Section II.E)

Total Percentage Interest to be Transferred:      %

Transfer of Membership Interest (also Section II.E)

Total Percentage Interest to be Transferred:      %

1. Will there be a change in the facility name after the ownership transfer?  Yes  No

I**f Yes**, current name of facility:

New name of facility:

Submit a fully executed proposed version the following document reflecting the name change

Certificate of Assumed Name: Attachment #     ..

1. Will there be a change in the legal name of the operator after the ownership transfer?

Yes  No

Submit a fully executed proposed version of one of the following documents reflecting the name change, as appropriate (check one).

Certificate of Amendment to the Certificate of Incorporation: Attachment #     .

Certificate of Amendment to the Articles of Organization: Attachment #

1. Submit one of the following.

A financial statement setting forth the purchase price for the ownership interest or assets being acquired and the financial resources of the applicant to make the purchase, or the basis on which the acquisition will be financed; **or**

If a transfer by gift; submit a statement of the relationship between the parties.

Attachment #

1. For applicants acquiring interests in facilities entitled to receive Medicaid payments for services rendered, submit an original affidavit from the applicant, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or any surcharges, assessments or fees due to the transferor pursuant to Article # of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. A model affidavit is found below or in Schedule 4B. Attachment #
2. **Additional Information Depending on Type of Ownership Change**

Submit the following legal documentation as applicable for the type of ownership transfer.

* 1. **Asset Transfers**

1. Evidence that all assets necessary for the ownership and operation of the facility, including site control, will be transferred to the applicant. Such documentation might include:
   1. Purchase and Sale Agreement: Attachment #     ;
   2. Contribution Agreement: Attachment #     ;
   3. Assignment and Assumption Agreement: Attachment #     ; or
   4. Additional Transfer Documents: Attachment #     .
2. Applicable legal documentation as for initial establishment, depending on the type of facility and the type of legal entity, if not included in Schedule 3B. Attachment #
3. The following documentation, depending on the seller’s type of legal entity and whether it will be dissolved following the proposed transfer:
   1. If the seller is a not-for-profit corporation or a business corporation, a fully executed, proposed Certificate of Amendment to its Certificate of Incorporation or Certificate of Dissolution, as the case may be.

Attachment #

1. If the seller is a limited liability company, a fully executed, proposed Certificate of Amendment to its Articles of Organization or Articles of Dissolution, as the case may be.

Attachment #

1. **Change in Active Member of an Article 28, 36 or 40 Facility**

Complete Schedule 15, 21G or 22F, depending on the type of facility.

1. **Change in Passive Member of an Article 36 Facility**

Complete Schedule 21G

1. **Statutory Merger or Consolidation**
2. Agreement of Merger or Consolidation, as applicable: Attachment #

Certificate of Merger or Consolidation, as applicable: Attachment #

Board Resolution(s), as applicable: Attachment #

1. **Ownership Interest Transfers**

Complete Schedules 15, 21G or 22F, depending on the type of facility.