STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

ANNUAL MEETING

AGENDA

February 11, 2016

Immediately following the Committee on Codes, Regulations and Legislation (which is scheduled to begin at 9:45 a.m.)

- ***90 Church Street 4th Floor, Room 4A & 4B, New York City***

- ***New York State Department of Health Offices at the Triangle Building, 335 East Main Street, 1st Floor Video Conference Room, Rochester, NY 14604***

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. ELECTION OF OFFICERS

A. Election of Vice Chairperson

B. Announce Committee Chairpersons and Vice Chairpersons and Committee Membership

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

III. DISCHARGE THE AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CNETERS AND CHARITY CARE

IV. 2015 ANNUAL REPORT

Public Health and Health Planning Council Annual Report **Exhibit #1**
TO BE DISTRIBUTED UNDER SEPARATE COVER

V. APPROVAL OF MINUTES

Exhibit #2

December 10, 2015

VI. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Howard A. Zucker, M.D., J.D., Acting Commissioner of Health

B. Report of the Office of Health Insurance Programs Activities

Jason Helgerson, Deputy Commissioner, Office of Health Insurance Programs

C Report of the Office of Primary Care and Health Systems Management Activities

Daniel Sheppard, Deputy Commissioner, Office of Primary Care and Health Systems Management

D. Report of the Office of Public Health Activities

Sylvia Pirani, M.S.,M.P.H. Director, Office of Public Health Practice

VII. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

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

Presentation and Adoption of Report on Prevention of Maternal Mortality in New York State **Exhibit #3**

VIII. HEALTH POLICY

Report on the Activities of the Committee on Health Planning

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

IX. REGULATION

Report of the Committee on Codes, Regulations and Legislation **Exhibit #4**

Angel Gutiérrez, M.D., Chair of the Committee on Codes, Regulations and Legislation

For Adoption

13-08 Subpart 7-2 of Title 10 NYCRR – (Children's Camps)

15-13 Addition of Part 300 to Title 10 NYCRR (Statewide Health Information Network for New York (SHIN-NY)

13-26 Amendment of Part 23 of Title 10 NYCRR (Sexually Transmitted Diseases (STDs))

For Information

16-02 Addition of Section 405.33 to Title 10 NYCRR(Extended Mammography Hours for General Hospitals and Hospital Extension Clinics)

14-12 Amendment of Sections 763.7 and 766.4 of Title 10 NYCRR (Home Care Agencies to Obtain Written Medical Orders from Physicians)

X. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	152240 C	Southside Hospital (Suffolk County) Mr. Kraut - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

B. 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 **Exhibit #6**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	152202 E	St. Peter's Health Partners (Albany County)	Contingent Approval

Dialysis Services – Establish/Construct **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	151338 B	Doral Dialysis, LLC d/b/a Doral Dialysis Center (Kings County)	Contingent Approval
2.	152110 B	Hempstead Park Operating, LLC d/b/a Hempstead Park Dialysis Center (Nassau County)	Contingent Approval

Residential Health Care Facility – Establish/Construct **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	142144 E	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing & Rehabilitation (Bronx County)	Contingent Approval
2.	142146 E	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation (Nassau County)	Contingent Approval
3.	151089 E	Port Chester Operating, LLC d/b/a Port Chester Nursing & Rehab Centre (Westchester County)	Contingent Approval
4.	151307 E	Yertle Operations, LLC d/b/a Fishkill Center for Rehabilitation and Nursing (Dutchess County)	Contingent Approval
5.	151321 E	Sapphire Nursing at Wappingers, LLC (Dutchess County)	Contingent Approval
6.	151327 E	Goshen Operations, LLC d/b/a Sapphire Nursing and Rehab at Goshen (Orange County)	Contingent Approval
7.	152005 E	Newburgh Operations, LLC Sapphire Nursing at Meadow Hill (Orange County)	Contingent Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #9**

New LHCSA

Number	Applicant/Facility	E.P.R.C. Recommendation
152137 E	County of Orange (Orange County)	Contingent Approval
152298 E	Saratoga County (Saratoga County)	Contingent Approval

Changes of Ownership

Number	Applicant/Facility	E.P.R.C. Recommendation
2250 L	Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)	Contingent Approval
2512 L	Evergreen Homecare Service of NY Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
2540 L	Aquinas LLC d/b/a Senior Helpers (New York, Queens, Bronx, Richmond, Kings, and Westchester Counties)	Contingent Approval
2628 L	Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare (Allegany, Monroe, Cattaraugus, Niagara, Chautauqua, Orleans, Erie, Wyoming and Genesee Counties)	Contingent Approval
152019 E	Serenity Health & Wellness, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
152224 E	Health Acquisition Corp. d/b/a Allen Health Care Services (Dutchess, Nassau, Orange, Queens, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties)	Contingent Approval

Certificates **Exhibit #10**

Restated Certificate of Incorporation

Applicant	E.P.R.C. Recommendation
Help/PSI Services Corp.	Approval

Certificate of Amendment to the Restated Certificate of Incorporation

Applicant	E.P.R.C. Recommendation
The Greater Hudson Valley Family Health Center, Inc.	Approval
Samaritan Daytop Village, Inc.	

Certificate of Dissolution

Applicant	E.P.R.C. Recommendation
Gouverneur Nursing Home Company, Inc.	Approval
Jewish Home Lifecare, Receivership Corporation	Approval
W.K. Diagnostic and Treatment Center, Inc.	Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct **Exhibit #11**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	152323 E	Alice Hyde Medical Center (Franklin County) Dr. Rugge - Interest	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct **Exhibit #12**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	151227 E	SurgiCare of Manhattan (New York County) Mr. Kraut - Recusal	Contingent Approval
2.	152219 B	Comprehensive Care ASC, LLC (New York County) Mr. Kraut – Recusal	Contingent Approval

3.	151019 B	Liberty Endo, LLC d/b/a Liberty Endoscopy Center (New York County) Dr. Martin - Recusal	Contingent Approval

Residential Health Care Facilities – Establish/Construct **Exhibit #13**

	Number	**Applicant/Facility**	**E.P.R.C. Recommendation**
1.	151252 E	185 Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid (Essex County) Dr. Rugge - Interest	Contingent Approval
2.	152049 E	Terrace Acquisition II, LLC d/b/a Fordham Nursing & Rehabilitation Center (Bronx County) Mr. Fassler – Recusal	Contingent Approval
3.	152072 E	Dewitt Rehabilitation and Nursing Center Inc. (New York County) Mr. Fassler – Recusal	Contingent Approval
4.	152128 B	Harlem Center for Nursing and Rehabilitation, LLC (New York County) Mr. Fassler – Recusal	Contingent Approval
5.	152167 E	SBNH Acquisition, LLC d/b/a St. Barnabas Rehabilitation & Continuing Care Center (Bronx County) Ms. Carver-Cheney - Recusal	Contingent Approval
6.	152177 E	TCPRNC, LLC d/b/a The Plaza Rehab and Nursing Center (Bronx County) Mr. Fassler - Interest	Contingent Approval

7.	152218 E	Sheepshead Nursing & Rehabilitation Center (Kings County) Ms. Carver-Cheney - Recusal	Contingent Approval
8.	152363 E	HealthAlliance Senior Living Corp. d/b/a Woodland Pond at New Paltz (Ulster County) Dr. Berliner - Recusal	Contingent Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #14**

Changes of Ownership

Number	Applicant/Facility	E.P.R.C. Recommendation
2375 L	Blue Line Agency, LLC (Kings, New York, Queens, Richmond, Bronx and Westchester Counties) Ms. Carver-Cheney - Recusal	Contingent Approval

Certificates **Exhibit #15**

Certificate of Amendment of the Certificate of Incorporation

Applicant	E.P.R.C. Recommendation
Beth Israel Ambulatory Care Services Corp. Dr. Martin – Recusal	Approval
Beth Israel Medical Center Dr. Martin – Recusal	Approval

Restated Certificate of Incorporation

Applicant	E.P.R.C. Recommendation
Mount Sinai Ambulatory Ventures, Inc. Dr. Martin - Recusal	Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment an 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

XI. NEXT MEETING

March 31, 2015 - ALBANY
April 14, 2015 – ALBANY

XII. ADJOURNMENT

2015 ANNUAL REPORT

TO BE DISTRIBUTED UNDER SEPARATE COVER

State of New York
Public Health and Health Planning Council

Minutes
December 10, 2015

The meeting of the Public Health and Health Planning Council was held on Thursday, December 10, 2015 at the Empire State Plaza, Concourse Level, Meeting Rooms 2 and 3, Albany. Jeffrey Kraut, Chair of the Council presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner	Dr. Gary Kalkut
Dr. Lawrence Brown	Mr. Jeffrey Kraut
Dr. Jo Ivey Boufford	Dr. Glenn Martin
Ms. Kathleeen Carver-Cheney	Ms. Ellen Rautenberg
Mr. Michael Fassler	Mr. Peter Robinson
Ms. Kim Fine	Dr. John Rugge
Dr. Angel Gutierrez	Dr. Theodore Strange
Ms. Vicky Hines	
Mr. Thomas Holt	

DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Charles Abel
Ms. Barbara DelCogliano
Ms. Alejandra Diaz
Dr. Victoria Derbyshire
Ms. Sally Dreslin
Mr. Ken Evan – Albany via video
Mr. Mark Furnish
Dr. Nathan Graber
Ms. Karen Hagos
Mr. James Kirkwood
Ms. Yvonne Lavoie
Ms. Colleen Leonard
Mr. George Macko
Ms. Karen Madden
Ms. Megan Mutolo
Mr. JP O'Hare
Mr. Justin Pfeiffer
Ms. Linda Rush -
Mr. Timothy Shay
Ms. Lisa Thomson
Ms. Lisa Ullman
Mr. Joshua Vinciguerra
Mr. Richard Zahnleuter

INTRODUCTION

Mr. Kraut called the meeting to order and welcomed Council members, meeting participants and observers.

APPROVAL OF THE MINUTES OF OCTOBER 8, 2015

Mr. Kraut asked for a motion to approve the October 8, 2015 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval, Dr. Boufford seconded the motion. The minutes were unanimously adopted. Please refer to page 2 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Ms. Dreslin began her report by stating it was a pleasure to be in attendance and representing Dr. Zucker.

New York State of Health Insurance Marketplace

Ms. Dreslin gave an update on the New York State of Health, New York's Health Insurance Marketplace, the third open enrollment period began November 1, 2105. The enrollment in the essential plan also launched on November 1, 2105. The essential plan is New York's brand name for the basic health plan for lower income New Yorker's who are at or below 200 percent of federal poverty level and not eligible for Medicaid. As anticipated there was a lot of interest in this new option and premium for the essential plan is 20 a month per person or actually nothing depending on that individual's income. It covers the same essential services. There is no annual deductible, preventive care is free, and select services have comparatively low co-payments.

Ms. Dreslin announced that New York State of Health advertising campaign has been launched around the theme of 'You'd be Surprised.' The campaign includes TV, radio, billboards, and digital advertising. Individuals who enroll or renew by December 15, 2015 will have coverage on January 1, 2016. So while enrollment in Medicaid, Child Health Plus and the Essential plan is open all year, people can only enroll for a qualified health plan until January 31, 2016 and after that enrollment is only open if there is a major life event such as a marriage or job loss.

HIV-AIDS

Ms. Dreslin moved on to another topic of AIDS-HIV. New York is a national leader when it comes to HIV-AIDS. We HIV-AIDS treatment. Perhaps that comes from our history, in fact, of being at the epicenter of the epidemic since it began in the early 1980s. Today New York spends more than $2.5 billion a year on fighting HIV-AIDS and we have a history of producing high quality support services to people with the disease. On World AIDS Day on December 1, 2015, the Governor announced his commitment to seek $200 million in new funding for HIV-AIDS in the upcoming budget process. Earlier this year the governor had accepted the End the Epidemic blueprint signaling his support for bringing an end to the HIV AIDS epidemic in New York State. And last week he pledged additional commitments so that we can achieve our goal by 2020. These include expanding the availability of affordable housing and providing additional housing assistance for those living with HIV, making life insurance available to people with HIV between the ages of 30 and 60 years of age, investing more money into Medicaid managed care plans, and putting more money into one stop shop STD clinics so they can enhance their services which include the care of people with HIV. Governor Cuomo is also calling on the federal government to increase it is contribution nationwide for housing assistance to benefit people living with HIV and AIDS.

Ms. Dreslin has noted that New York has also been recognized as a national leader in making preexposure prophylaxis available to people who are HIV negative. P REP using the drug Truvada reduces the risk of becoming infected and since June 2014 there's been a 400 percent increase in the use of PREP among Medicaid enrollees. Perhaps the best news of all,

there have been no new cases of mother-to-child transmission of HIV reported since August 2014. So all of this gives us reason to – gave us reason to celebrate last week on World AIDS day.

Prevention Agenda

Ms. Dreslin gave a brief update on the Prevention Agenda. The Department launched the Agenda in 2013 with five broad but specific goals. We have started to make some measurable impact on those. The Prevention Agenda dashboard measures progress on 96 statewide health related indicators including reductions in health disparities. Halfway through the prevention agenda we can provide a status report. We have officially extended the Prevention Agenda to 2018 in order to stay aligned with other health reform efforts that are going on in the State. As of April 2015, the Department has met 16 of the objectives. This includes the rate of preventable hospitalizations per 10,000 New Yorkers aged 18 and older. The Department has already achieved the prevention agenda objective for that measure for 2018. 22 indicators show progress with 19 showing significant improvement. Take for example the prevalence of any tobacco use by highschool students. The rate of tobacco use by highschool students decreased to 15.2 percent in 2014 from 21.8 percent in 2012, so in that two year period. That means that we are on our way to meeting Prevention Agenda objective of 15 percent by 2018. 42 indicators have not yet been met, such as obesity is one area in where progress is taking some time. In fact, the percentage of obese adults has gone up slightly. There are 13 indicators that are going in the wrong direction. One example is the rate of primary and secondary syphilis cases per 100,000 men. Those numbers are going up here in New York just as they are nationally. Also want to point out though that we're looking at progress on disparities. For example, besides tracking overall smoking rates, we also track smoking prevalence among people with an annual income below $25,000. The rates of smoking among people with low income are almost twice the rate of those with higher income. We have made modest progress which we can see in the use of smoking cessation benefits among smokers enrolled in Medicaid managed care. The Department has not met our Prevention Agenda objective for 2018. Overall, though, the Department is pleased with the progress to date. The Department continues to work with local communities, their health departments and hospitals and other organizations as they conduct community health assessments and implement improvement plans to address local public health issues.

2015 Overview

Ms. Dreslin highlighted some activities of 2015. Department of Health is always busy. The beginning of the year the Department dealt with Ebola still raging in West Africa and wondering whether it would strike again in New York. We are ending the year with the epidemic significantly declining in the three worst afflicted West African nations. There have been no new cases in Guinea and Sierra Leone and only three in Liberia. As a result of this epidemic however, New York's hospitals are better prepared than ever to deal with emerging infectious disease outbreaks, but outbreaks are never too far away.

Ms. Dreslin noted that in August, the Department came up against Legionnaires disease in the Bronx. That illness sickened 138 people and 16 people died. The illness, the cases came out of cooling towers infected with Legionella bacteria and prompted the Department to craft regulations which have been before these committees and council. That would require inspection and if necessary disinfection.

Ms. Dreslin added in 2015 the Department moved ahead with the medical marijuana program and selected five organizations to manufacture and dispense medical marijuana. The Department is now in the throes of signing up physicians interested in registering for the program. Those who successfully complete the online course can sign up to become registered practitioners. They will then be allowed to certify eligible patients for the use of medical marijuana. New York has moved more quickly than any other state in the nation to get medical marijuana to eligible patients.

Ms. Dreslin highlighted that over 2015, the Department sent several health officials to Puerto Rico to help the island address some of its health challenges and their impact on the economy there. It is the year we also expanded our list of banned substances which help us crack down on synthetic cannabinoids. These drugs which are not marijuana have become a major public health problem in parts of the state. The Department also intensified our efforts to train more people in the administration of Naloxone, a drug that reverses heroin overdoses. Among them are firefighters, law enforcement, former inmates and their loved ones. Certain pharmacies around the state will begin providing Naloxone before the end of the year as a part of the Department's comprehensive opioid overdose prevention program.

Ms. Dreslin lastly stated that the Department celebrated the official opening of the National Center for Adaptive Neurotechnologies at the Wadsworth Center. The Department of Health 2015 was another busy year and the Department expects the future to hold more of the same.

Ms. Dreslin concluded her report. Mr. Kraut thanked her and asked if members had questions. To read the complete report and comments from the members, please see pages 3 through 17 of the attached transcript.

Report of the Office of Primary Care and Health Systems Management Activities

Mr. Kraut introduced Mr. Sheppard to give his report on the Activities of the Office of Primary Care and Health Systems Management.

Mr. Sheppard spoke on the topic of the CON Process. In the Council's December 2012 report Redesigning the CON Process, it articulated the need to adapt New York's healthcare regulations and regulatory practices to changes that are sweeping through the healthcare system both at the federal level as well as what we are driving here through the Prevention Agenda, and DSRIP at the State level. As a result of the 2012 recommendations we reduced the number of outpatient services requiring certification from more than 60 to 20, streamlined the process for approval of integrating behavioral health and physical health services, we implemented a calibrated approach to financial feasibility reviews based on the balance sheet strength of the applicant. We have, as a result of statute two years ago regulatory waivers for DSRIP and our New York State electronic CON efforts for licensure and surveillance activities have reduced CON processing time by more than 63 percent in the past since 2011.

Mr. Sheppard noted what efforts the OPCHSM has been undertaking. The Center is focused on making sure we are getting the most out of reforms already in place, and also as a test bed for identifying newer forms that we can bring forward to you and others in the future. Since

July, the Center has been convening an informal workgroup composed of OPCHSM staff and staff from the Greater New York Hospitals Association, HANYS, Iroquois Healthcare and CHCANYs as well. We have been meeting every three or four weeks for a few hours to talk about the CON experience from the perspective of both the Department and the applicant, and in doing so we have been identifying areas that need clarification, areas for improvement, and then also areas for new changes. As part this effort was born out of a sense that there's a bit of a gap between how the Department sees the CON process and how the industry sees it. This effort was really borne out of something much more fundamental which is the tried and true concept that simply opening the lines of communications outside the context in this case of a specific issue, a specific CON issue or a legislative proposal can really help demystify, not just demystify things that cause challenges in the near term, to start to open up things for a much more constructive public dialog about these things as well.

Mr. Sheppard noted that the Department has been working specifically on developing recommendations for improvement that would allow projects to move more quickly to construction as well as reduce the workload on Department staff. All this while retaining the oversight of compliance with construction standards and other like safety considerations. Again, trying to fit in a framework that is sensitive to the rapid change in healthcare, what we are trying to do in DSRIP, and getting projects through the process to meet the need for change is very important, and obviously the CON process fits squarely in that.

Mr. Sheppard briefly touched on three things the Department has been looking at. The first is administrative changes to streamline the self-certification process. The second are administrative changes related to CON contingencies and conditions. The third are potential regulatory changes to CON review level thresholds. So we spend most time on self-certification because it is what the group spent most time on. Self-certification was advanced in PHHPCs 2012 report and subsequently enacted through regulation. The working group developed a framework and that framework follows. It is a continued principle which is that the Department will determine what types of projects are eligible/not eligible for self-certification as well as the policy basis for such determinations. The Department right now is not contemplating the list of projects that are not eligible for self-certification. That will not change. The Department is focused on clarifying what in effect the self-certification is and making sure that accountability is placed correctly. So upon application the provider is going to submit a certification signed by an appropriate design professional and the provider attesting that the project will be compliant with all applicable rules, regulations and standards. And so, what that means is then from the time that the Department confirms a project is eligible for self-certification, until the provider notifies the Department that is ready for a pre-opening survey, the Department is not going to conduct any interim project reviews or approval. Again, maybe saying, well, but isn't that what self-certification is about? Again, as a practical matter that's not exactly how it had been implemented. The Department is going to make available to applicants and design professionals as part of this certification process checklists, and some of these checklists particularly in areas of more complex projects will be, they will be specific to the type of projects, and that is going to help insure that in that self-certification they are going through the applicant is going through the right steps to ensure that the project they are designing but the Department is not going to review until the very end is going to be compliant in minimizing the downstream issues that might result from that. After the construction, the provider is going to submit a certification, again, signed by the design professional and the provider attesting that the project is compliant, so, front and back, and once that happens, then the Department will proceed to the pre-opening survey. This was a

principle that was instilled in the original PHHPC self-certification proposal and ensuing regulations that the provider is responsible for any corrective actions necessary to achieve regulatory compliance. Accountability is key to this process working. The Department is going to conduct periodic audits of completed self-cert projects.

Mr. Sheppard spoke on the area of contingencies and conditions. CON contingencies for projects must be met before an applicant can begin construction, and then conditions are a requirement for operation. The Department has also been requiring as contingencies and some of you may have noticed this in the applications, elements such as operational plans, professional services agreements, management contracts, operating agreements, certificates of incorporation and bylaws and transferring affiliation agreements, these are things that we can work out parallel with construction and must, still have to be nailed down prior to the operating cert being issued.

Mr. Sheppard next noted that there is a regulation that the Department is looking at increasing the current cost thresholds by review levels. Limited administrative and Full. The Department would not change any existing exceptions in terms of, that would change the review level, like the additions of beds or certain types of equipment, but generally this was an area that was identified by the industry as something we should look at. The Department is also looking as part of that process at doing a little bit more granular look at the financial strength of a particularly when it comes to certain types of what level of review there should be, distinguish a little bit more between the type of facility it is. Trying to move away from a one-size-fits-all approach on the thresholds. This requires regulation change so there will be much more to discuss with you about that going forward.

Mr. Sheppard also address questions pertaining to LHCSA's. As logic would dictate, the number of approvals that have been going through having increased, the number of facilities we are opening, we are starting to see some potential issues down the road with respect to that. Before we were looking at changes in our surveillance load and our licensing load that were not what I would characterize material. The Department is starting to see indicators that there are going to be some material impacts to that. One thing that has not changed is that no facility opens without having gone through a thorough pre-opening. The PHHPC's approval is one part of a step, but it does not automatically mean that a LHHCSA opens its doors a couple weeks later. They still have to go through a process. That process is starting to get elongated and that's something we need to address, but it is not a, but they don't open until the Department determines they are safe. The second issue is that the Department is starting to develop is some steps that we can take to make sure that as the growth of LHCSAs is happening that we can make sure that we also have the capacity to survey them. The Department will make effort to address the volume increase on a real time basis as we go through and the Center is working Ms. Gray.

Mr. Sheppard noted that the chart the members had in front of them is responsive to a question that was asked at the last meeting which is can we just see on a county by county basis, what is happening with LHCSAs and it says a couple of things. One thing it says, and I think this is certainly one of our motivating factors why it's important that we continue to have an approval process for LHCSAs is that you have a wide disparity between some counties tend to be urban or suburban counties where you have a growth in the number of licensed agencies, but not a lot of penetration in rural counties.

Mr. Sheppard concluded his report. Mr. Kraut thanked Mr. Sheppard. To see the complete report, please see pages 17 through 36 of the transcript.

Mr. Kraut introduced Mr. Robinson to give the Report of the Project Review Recommendations and Establishment Actions.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

Certificates **Exhibit #16**

Certificate of Incorporation

Applicant	Council Action
Jones Memorial Hospital Foundation Ms. Hines –Recusal Mr. Robinson – Recusal	Approval

Mr. Kraut introduced for consent to file the Certificate of Incorporation of Jones Memorial Hospital Foundation and noted for the record that Ms. Hines and Mr. Robinson have a conflict and have left the meeting room. Mr. Kraut motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries with the noted recusals. Ms. Hines and Mr. Robinson remain outside the meeting room. Please see page 36 and 37 of the attached transcript.

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Establish/Construct **Exhibit #22**

	Number	Applicant/Facility	Council Action
1.	151008 B	Pittsford Pain Center LLC (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal	Contingent Approval

Mr. Kraut moved to application 151008 and noted that Ms. Hines and Mr. Robinson have declared conflicts and are outside of the meeting room. Mr. Kraut motioned for approval, Dr. Gutiérrez seconded the motion. The motion to approve carried with the noted recusals. Ms. Hines and Mr. Robinson return to the meeting room. Please see pages 37 and 38 of the transcript.

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Construction **Exhibit #4**

	Number	Applicant/Facility	Council Action
1.	152093 C	Adirondack Medical Center – Saranac Lake Site (Franklin County) Dr. Rugge – Interest	Contingent Approval

Mr. Robinson introduces application 152093 and notes for the record that Dr. Rugge has an interest. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries. Please see page 39 of the attached transcript.

	Number	Applicant/Facility	Council Action
1.	152035 C	NYU Hospitals Center (Kings County) Dr. Boufford – Interest/Abstention Dr. Kalkut – Recusal	Contingent Approval

Mr. Robinson called application 152035 and noted for the record that Dr. Kalkut has a conflict and has left the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motioned carried with Dr. Boufford's interest/abstention. Dr. Kalkut remained outside the meeting room. Please see pages 39 through 40 of the attached transcript.

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Residential Health Care Facility – Construction **Exhibit #5**

	Number	Applicant/Facility	Council Action
1.	132127 C	Four Seasons Nursing and Rehabilitation Center (Kings County) Dr. Kalkut – Recusal	Contingent Approval

Mr. Robinson moves to application 132127 and notes for the record that Dr. Kalkut has a conflict and has remained outside the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion to recommend approval carries with Dr. Kalkut's

recusal and Dr. Strange's abstention. Dr. Kalkut returns to the meeting room. Please see pages 41 through 48 to see the members discussion.

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct **Exhibit #15**

	Number	Applicant/Facility	Council Action
1.	152116 E	Winifred Masterson Burke Rehabilitation Hospital (Westchester County) Mr. Fassler – Interest	Contingent Approval

Mr. Robinson introduces application 152116 and notes that Mr. Fassler has an interest. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 48 and 49 of the transcript.

Certificates **Exhibit #17**

Certificate of Amendment of the Certificate of Incorporation

Applicant	Council Action
North Shore-LIJ Stern Family Center for Rehabilitation Mr. Kraut - Recusal	Approval
North Shore-Long Island Jewish Health System Foundation Mr. Kraut – Recusal	Approval
North Shore-Long Island Jewish Health System, Inc. Mr. Kraut – Recusal	Approval
North Shore-Long Island Jewish Health Care, Inc. Mr. Kraut – Recusal	Approval

Mr. Robinson notes for the record that Mr. Kraut has an interest on all of the Certificate of Amendments of the Certificate of Incorporations in Category Two. Mr. Kraut exits the meeting room. Dr. Gutiérrez motions for approval to file North Shore-LIJ Stern Family Center for Rehabilitation, North Shore-Long Island Jewish Health System Foundation North Shore-Long Island Jewish Health System, Inc., and North Shore-Long Island Jewish Health System, Inc. Dr. Kalkut seconds the motion. The motion to approve carries with

Mr. Kraut's recusal and Dr. Strange's interest. Mr. Kraut remains outside the meeting room. Please see pages 49 and 50 of the attached transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct **Exhibit #20**

	Number	Applicant/Facility	Council Action
1.	151227 E	SurgiCare of Manhattan (New York County) Mr. Kraut – Recusal	No Recommendation

Mr. Robinson introduces application 151227 and notes that Mr. Kraut has a recusal and has remained outside the meeting room. Dr. Gutiérrez makes a motion for a one year extension, Dr. Kalkut seconds the motion. Member discussed the motion and it was called to question and the motion for a one year extension failed. A second motion was made by Ms. Hines to disapprove the application, Dr. Berliner seconded the motion, after hearing discussion from the members, the motion was called to question and failed. There was a third motion made by Mr. Fassler to defer and seconded by Dr. Gutiérrez, the motion to defer also failed. A forth motion was made by Dr. Rugge moved that the Council expresses it's serious concern about lack of any progress to date and is asking the Department to come back with a closure plan for consideration at the next meeting, in accordance with existing statute and regulation. The motion was seconded by Dr. Strange. Dr. Rugge's motion failed. Members discussed the application, and no further action was taken on the application and the application was tabled. Mr. Kraut returned to the meeting room. Please see pages 50 through 97 of the attached transcript.

HOME HEALTH AGENCY LICENSURES **Exhibit #21**

New LHCSA

Number	Applicant/Facility	Council Action
2291 L	Trusted Care at Home, LLC (Monroe, Ontario, Wayne and Orleans County) Ms. Hines - Interest	Contingent Approval

Mr. Robinson moved to application 2291 and noted for the record that Ms. Hines has an interest. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Ms. Hines abstention. Please see page 97 of the transcript.

CATEGORY 6: Applications for Individual Consideration/Discussion

Ambulatory Surgery Centers – Establish/Construct **Exhibit #22**

	Number	Applicant/Facility	Council Action
1.	142216 B	NHPE, LLC d/b/a New Hyde Park Endoscopy (Nassau County)	Contingent Approval

Mr. Robinson introduced application 142216 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 97 and 98 of the transcript.

The Council took a short break.

HOME HEALTH AGENCY LICENSURES **Exhibit #21**

New LHCSA

Number	Applicant/Facility	Council Action
2291 L	Trusted Care at Home, LLC (Monroe, Ontario, Wayne and Orleans County) Ms. Hines - Interest	Contingent Approval

The Council reconvened. Mr. Robinson reintroduced 2291 and noted for the record that Ms. Hines has an interest. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Ms. Hines abstention. Please see pages 100 and 101 of the transcript.

Ambulatory Surgery Centers – Establish/Construct **Exhibit #22**

	Number	Applicant/Facility	Council Action
1.	151277 B	Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC d/b/a HSS ASC of Manhattan (New York County)	Contingent Approval

Mr. Robinson introduced application 151277 and motioned for approval. Dr. Gutiérrez seconds the motion. The motion passes. Please see pages 101 through 105 of the attached transcript.

Dialysis Services – Establish/Construct **Exhibit #23**

	Number	Applicant/Facility	Council Action
1.	152094 B	Sea Crest Acquisition II, LLC d/b/a Sea Crest Dialysis Center (Kings County)	Contingent Approval
2.	152164 B	Dialyze Direct NY, LLC (Kings County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct **Exhibit #24**

	Number	Applicant/Facility	Council Action
1.	151108 B	MLAP Acquisition 1, LLC d/b/a Long Beach Nursing and Rehabilitation Center (Nassau County)	Contingent Approval

Mr. Robinson introduced applications 152094, 152164 and 151108 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve passed. Please see pages 105 and 106 of the attached transcript.

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

Acute Care Services - Construction **Exhibit #3**

	Number	Applicant/Facility	Council Action
1.	151302 C	Crouse Hospital (Onondaga County)	Contingent Approval
2.	152083 C	University Hospital (Suffolk County)	Contingent Approval

Mr. Robinson moved to Category One under the Construction projects and introduced applications 151302 and 152083 and motioned for approval. Dr. Berliner seconds the motion. The motion carries. Please see pages 106 and 107 of the transcript.

B. 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 **Exhibit #6**

	Number	Applicant/Facility	Council Action
1.	152099 E	Westfield Memorial Hospital (Chautauqua County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #7**

	Number	Applicant/Facility	Council Action
1.	152029 E	FedCare (New York County)	Contingent Approval
2.	152075 E	First Medcare Primary Care Center (Kings County)	Contingent Approval

Mr. Robinson called applications 152099, 152029, and 152075. Mr. Robinson motioned for approval and Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 107 and 108 of the attached transcript.

Dialysis Services – Establish/Construct **Exhibit #8**

	Number	Applicant/Facility	Council Action
1.	151070 E	USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis (Bronx County)	Contingent Approval
2.	151072 E	USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis (Queens County)	Contingent Approval
3.	152058 B	Associates of Fulton County, LLC d/b/a Gloversville Dialysis Center (Fulton County)	Contingent Approval
4.	152118 E	DSI Dutchess Dialysis, Inc. (Dutchess County)	Contingent Approval

5.	152172 E	Harriman Partners, LLC d/b/a Premier Dialysis Center (Orange County)	Contingent Approval

Mr. Robinson called applications 152099, 152029, 152075, 151070 and 151072 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 108 and 109 of the attached transcript.

Residential Health Care Facility – Establish/Construct **Exhibit #9**

	Number	Applicant/Facility	Council Action
1.	151046 E	Diamond Hill Operator, LLC d/b/a Diamond Hill Nursing and Rehabilitation Center (Rensselaer County)	Contingent Approval
2.	151284 E	Regeis Care Center (Bronx County)	Contingent Approval
3.	152011 E	Maximus 909 Operations, LLC d/b/a Briody Health Care Facility (Niagara County)	Contingent Approval

Mr. Robinson called applications 151046, 151284 and 152011 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 109 and 110 of the transcript.

HOME HEALTH AGENCY LICENSURES **Exhibit #10**

New LHCSA's Associated with Assisted Living Programs (ALPs)

Number	Applicant/Facility	Council Action
2638 L	Brooklyn Boulevard ALP LHCSA, LLC (Kings, Bronx, New York, Queens, Richmond and Nassau Counties)	Contingent Approval
152001 E	Brooklyn Terrace LLC d/b/a Surf Manor Home Care (Kings, Bronx, New York, Queens, Richmond and Nassau Counties)	Contingent Approval

Changes of Ownership

Number	Applicant/Facility	Council Action
2235 L	Human Care, LLC (Bronx, Kings, New York, Queens, Richmond and Nassau Counties)	Contingent Approval
2468 L	Your Choice Homecare Agency of NY, Inc. (Kings, Queens, Bronx, New York, Richmond and Nassau Counties)	Contingent Approval
2558 L	Infinicare, Inc. (New York, Bronx, Kings, Queens, Richmond and Nassau Counties)	Contingent Approval
2621 L	Steps In Home Care, Inc. (Westchester and Nassau Counties)	Contingent Approval
2644 L	EOM Management, LLC (Bronx, Kings, Queens, New York, Richmond and Nassau Counties)	Contingent Approval
151282 E	South Shore Home Health Services, Inc. (Nassau, Queens, Suffolk, and Westchester Counties)	Contingent Approval

Mr. Robinson calls applications .2638L, 152001E, 2235L, 2468L, 2558L, 2621L, 2644L, 151282E and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries. Please see pages 110 and 111 of the transcript.

Certificate of Incorporation **Exhibit #11**

Applicant	Council Action
The Foundation of New York-Presbyterian/Lawrence Hospital	Approval

Certificate of Amendment to the Restated Certificate of Incorporation **Exhibit #12**

Applicant	Council Action
Metropolitan Jewish Health System Foundation	Approval

Certificate of Amendment of the Certificate of Incorporation **Exhibit #13**

Applicant	Council Action
ECMC Lifeline Foundation, Inc.	Approval
The Foundation of Hudson Valley Hospital Center, Inc.	Approval

Certificate of Dissolution **Exhibit #14**

Applicant	Council Action
Baptist Health Family Medical Care, Inc.	Approval

Mr. Robinson called the above referenced proposed certificates and motion for approval for consent to file. Dr. Gutiérrez seconded the motion. The motion passed. Please see pages 111 and 112 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

Ambulatory Surgery Centers – Establish/Construct **Exhibit #18**

	Number	Applicant/Facility	Council Action
1.	151309 E	The Rye ASC (Westchester County)	Contingent Approval

Mr. Robinson moved to application 151309 in Category 3 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carries. Please see page 112 of the transcript.

HOME HEALTH AGENCY LICENSURES **Exhibit #19**

New LHCSA's

Number	Applicant/Facility	Council Action
2093 L	Communicare Group, Inc. (Kings, Queens, Bronx, New York and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2337 L	CarePro of NY, Inc. (Kings, Queens, Bronx, New York, Richmond and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

2403 L	Rockland Independent Seniors, Inc. d/b/a Home Instead Senior Care (Rockland County) Ms. Hines – Abstained at EPRC	Contingent Approval
2404 L	Buffalo Home Health Care Services, Inc. (Erie, Nassau, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Orleans and Livingston Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2413 L	Change A Life Time Companies, Inc. (Bronx, Kings, Queens and New York Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2419 L	Home Sweet Home Care Services, Inc. (Kings, Queens, Bronx, New York and Richmond Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2427 L	Advance Elite Solution LLC (Queens, Kings, New York, Bronx, Richmond and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2429 L	Bena Home Care Agency Inc. (Queens, Bronx, Kings, New York, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2460 L	Best Companion Homecare Services, Inc. (Suffolk, Nassau and Queens Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2466 L	NYJ Gentle Touch, LLC (Richmond, New York, Kings, Queens, Bronx and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

2479 L	Crocus Home Care LLC (Richmond, Bronx, New York, Kings, Queens and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2497 L	Matthews Homecare, Inc. d/b/a Right at Home Northern Westchester (Westchester, Dutchess and Putnam Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2510 L	LJNY Home Health Agency, Inc. (Kings, Queens, Bronx, New York, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2514 L	Lower Manhattan In-Home Care, Inc. d/b/a Right at Home Lower Manhattan (New York County) Ms. Hines – Abstained at EPRC	Contingent Approval
2527 L	Devoted Home Care LLC (Kings, Queens, Richmond, New York, Bronx and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2531 L	Empire Care Agency, LLC (New York, Bronx, Kings, Queens, Richmond and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2545 L	LifeWorx, Inc. (New York, Kings, Queens, Richmond, Bronx and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2572 L	ADC Holdings, Inc. (Kings, Bronx, Queens, New York, Richmond and Nassau Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

2582 L	Allborogh Personal Care Inc. (Kings, Queens, New York, Bronx and Richmond Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2583 L	Reliable Care Home Infusion Services, Inc. (Rockland, Orange, Putnam and Westchester Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2586 L	Eagle Eye FV, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties) Ms. Hines – Abstained at EPRC	Contingent Approval
2587 L	Stacey Ball d/b/a Changing Seasons Home Care (Onondaga, Cayuga, Madison, Oswego, Oneida, Cortland, Tomkins and Seneca Counties) Ms. Hines – Abstained at EPRC	Contingent Approval

Mr. Robinson called applications 2093L, 2337L, 2403L, 2404L, 2413L, 2419L, 2427L, 2429L, 2460L, 2466L, 2479L, 2497L, 2510L, and 2514L, 2527L, 2531L, 2545L, 2572L, 2582L, 2583L, 2586L, 2587L and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried with Ms. Hines abstention. Please see pages 112 and 113 of the attached transcript.

Mr. Robinson concludes his report. Mr. Kraut thanked Mr. Robinson and moved to Regulations.

REGULATION

Mr. Kraut introduced Dr. Gutierrez to give his Report of the Committee on Codes, Regulations and Legislation.

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

15-14 Addition of Part 4 to Title 10 NYCRR – (Protection Against Legionella)

Dr. Gutiérrez began his report by introducing Addition of Part 4 to Title 10 NYCRR – (Protection Against Legionella) and motioned for emergency adoption. The motion was seconded by Mr. Boufford. The motion carried. Please see pages 114 and 115 of the transcript.

For Adoption

15-12 Amendment of Section 9.1 of Title 10 NYCRR
(Prohibit Additional Synthetic Cannabinoids)

Dr. Gutiérrez then described Amendment of Section 9.1 of Title 10 NYCRR (Prohibit Additional Synthetic Cannabinoids) and motioned for emergency adoption and motioned for adoption. Mr. Fassler seconded the motion. The motion carried. Please see page 115 and 116 of the transcript.

For Information

15-13 Addition of Part 300 to Title 10 NYCRR
(Statewide Health Information Network for New York (SHIN-NY)

Dr. Gutiérrez described Part 300 to Title 10 NYCRR (Statewide Health Information Network for New York) and noted that it is before the Council For Information. Please see pages 116 and 117 of the attached transcript.

For Discussion

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR – (Children's Camps)

Next, Dr. Gutiérrez described to the Council For Discussion Amendment of Subpart 7-2 of Title 10 NYCRR (Children's Camp). Please see pages 117 and 118 of the transcript.

Department Update to Codes Committee

Department Timeline and Process for Consideration Regarding Laboratory Test Result Access

Dr. Gutiérrez noted that at the October 8, 2015 PHHPC meeting the Council adopted Amendments to Part 58 and 34 of Title 10 which covers laboratory test results reporting. At the Committee meeting the members asked that the Department return to the Committee during the next meeting with a timeline in process for how the recommended request from the public to remove language from the regulation that requires a clinical laboratory to direct patients inquiries regarding the meaning or interpretation of the test results to the referring health services provider will be further considered. Please see pages 118 and 119 of the attached transcript.

Dr. Gutierrez concluded his report.

Mr. Kraut introduced Dr. Boufford to update the Council on the Activities of the Committee on Public Health.

PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

Dr. Boufford began her report by introducing Ms. Pirani.

Ms. Pirani gave a brief update and presented a power point presentation on the implementation of the Prevention Agenda on local plans and local communities are implementing a range of evidence based and not evidence based interventions. She noted that they have mapped the DSRIP activities related to the Prevention Agenda in domain four.

Dr. Boufford spoke on the issues of health disparities and there is a special working group to identify a health disparity they are working on but are needing technical assistance in support of terms of taking actions going forward. She also noted that there is a survey after the first year asking hospitals to advise on which of the prevention agenda items they were identifying they were going to work on in DSRIP domain four. Accountability is not required, 50 percent of the hospitals said they were consistent, 25 percent did not know and 25 percent said they were not.

Dr. Boufford explained there is a Schedule H and the Commissioner is asking hospitals to send it in. The subcategories of the community benefit requirements, community health improvement and community building which are relatively small compared to the others, but in 2013 in New York State represented $230 million. The goal here is if you could begin to align the hospital commitments in the DSRIP section, in the schedule H and in the Prevention Agenda there could be real dollars over time aligned with priorities set by hospitals and local health departments in partnership with community stakeholders.

Dr. Boufford further noted that there is an analysis going on funded by the Robert Wood Johnson Foundation of the State, the data for the State, the last couple of years, and so we should be able to provide good information both quantitative but also understand qualitatively what the nature of the investments are and I think the important thing is bringing it to the attention of the leadership of the hospitals because very often the community relations individuals or departments have been doing the Prevention Agenda and community relations related work but not necessarily aligning it with the broader investments of the hospital, and especially now with the DSRIP expectations.

Ms. Pirani explained in the community around tobacco policy and housing, smoke-free housing and placement of tobacco products and communities in some counties are really making some strides. Obesity continues to be a challenge, which does not mean we are not seeing some improvements, we are seeing some improvements certainly in the younger children in part because we changed some of the WIC food packages, but with the older population it continues to be a challenge.

Dr. Boufford resources are now posted in an easily accessible way by county so people can now go in and really see what is going on and know who to contact and trying to encourage with the Ad Hoc Leadership Group to get businesses mobilized, to get faith-based organizations and insurers mobilized to join these local coalitions in terms of moving forward.

Dr. Boufford gave a brief update on maternal mortality, there have been a series of very informative meetings and discussions over the last two years on this issue. The Committee has had three meetings with various groups and constituencies and the first one was really reviewing State data, New York State is 47th out of 50 in maternal mortality, with huge health disparities. In earlier meetings, the Committee identified that while a lot is being done in the acute hospital setting by hospital agencies, by hospital associations, by the state, there was relatively little going on in the pre-hospital space and so the Committee decided to focus there and have had a couple of very good meetings. One meeting included a set of ambulatory care providers who are really trying and testing different ways, especially to prevent unplanned pregnancy, which is the major risk factor that one can act on, by making sure, trying to see what our methods for every time a woman of reproductive age really touches the health care system, asking them a very simple question, which is: do you plan to get pregnant in the next year? And if the answer is no, then trying to move as quickly as possible to get them into counseling or interim contraception while they come back for a regular appointment. This has been shown to be quite effective in the literature. While also looking systematically at this issue of assessment and early prevention of unplanned pregnancies across the board. Dr. Boufford noted that the patient safety and quality group, the health homes group, and the SIM-SHIP group to see how these same concerns could be embedded in the health care reform elements that are obviously at various stages of development and in practice and people have been incredibly responsive. Also identified are opportunities in each of these different buckets and some work has been done to purse action in these areas while others it is still pending. And we are developing a report based on the meetings we have had and the opportunities that have been identified and some that have been addressed and we hope to provide that to the Council shortly and we think it will be a good document with good backup attached to it with the evidence base for the concern with this issue and will help us move it forward. The Committee has the combined effort of the New York State Health Department, New York City Department of Health and Mental Hygiene, HANYS, and Greater New York, along with the New York State American College of Obstetricians and Gynecologist are working together to tackle maternal mortality issues.

Ms. Pirani stated that to get some funding to support a full-day Prevention Agenda session, there will be data from the year-two survey that the Department is collecting now from local health departments and hospitals and use that to build some skill-building sessions on how to use and also since Robert Wood Johnson County Health Rankings is paying for this, how to use that data to take action in our communities.

Dr. Boufford closed by noting that the Committee is also trying to look at some of the areas where local partnerships are having difficulty, such as the sort of implementation evaluation questions in some instances, the disparities question, and invite experts to that meeting.

Dr. Boufford and Ms. Pirani concluded their report. Mr. Kraut thanked Ms. Pirani. To read the complete report please see pages 119 through 129 of the attached transcript.

HEALTH POLICY

Mr. Kraut moved to the next topic, Health Policy and introduced Dr. Rugge to give the report on the activities of the Health Planning Committee.

Dr. Rugge began his report and explained that on November 17, 2015 the Planning Committee met to consider bed-need methodologies in the long-term care setting. It was an extended conversation that had five takeaways. First was a recognition that the bed-need methodology may need to serve a different purpose or would serve a different purpose now than the time it began THE CON process. No longer is there the same concern for capping Medicaid costs, since we have a Medicaid cap and since there's been a decline in demand for skilled-nursing beds. While at the same time it was observed that the bed-need methodology may be promoting stability within the sector, averting well-capitalized proprietary organizations from expanding their own bed capacity and jeopardizing the viability of existing not-for-profit facilities in that same community.

Dr Rugge stated that number two, it is difficult to make predictions, especially about the future and there is no clear sense of where the need is likely to go due to two countervailing forces: one, it was pointed out in very strong terms that we need to only be at the brink of the demographic explosion in terms of the number of elderly and the frail and the infirm that may need those beds; and at the same time, there is increasing sensibility and desire to stay in the home setting, an increase in the number of community-based services, and also new technologies that allow people to stay in a home that was not previously the case. Dr. Rugge explained that number three, the recognition that in a value-based payment world, things have a way of changing. For example, even since the committee meeting, the new mandates by CMS for the bundling of payments for total joint replacements may dramatically change the dynamic for the provision of rehab services in the skilled-nursing setting, with hospitals looking to avert placements of patients in those centers to reduce the cost of care. A recognition that financial viability for these long-term care settings totally depends on payer mix. It is really impossible to sustain a nursing home with Medicaid patients only and yet in some communities it is largely Medicaid that creates the demand, creating yet new pressures.

Dr. Rugge pointed out, point number four, and that is there is tremendous diversity within the State of New York in terms of level of need, kinds of resources available other than nursing home beds, and, of course, payer mix. All this led number five to Ms. Carver-Cheney suggesting that perhaps the best we may be able to do is continue the existing need methodology and that this was particularly attractive to anybody in the room as a dynamic forward viewing public policy. Raising the possibility, which is not then that it is to whether given the regional diversity, given the level of uncertainty, there could be a continuation of the current methodology with a provision, region-by-region, for adaptation. He added that perhaps we might experiment with, a regional variation based upon proposals from somewhere, perhaps with the Population Health Improvement Programs, except this might look to some stakeholders as a reversion back from HSAs and raise a whole series of concerns that remain to be addressed. No doubt there will be need for further deliberations, but these need to be proceeding very quickly because the need methodology is needed by the end of 2016. And UH needs some nine months to implement whatever new policies are promulgated in part by PHHPC.

Dr. Rugge concluded his report. Mr. Kraut thanked Dr. Rugge. To view the complete report, please see pages 129 through 133 of the attached transcript.

Report of the Office of Quality and Patient Safety

Mr. Kraut moved to the Report of the Office of Quality and Patient Safety and introduced Mr. Roohan.

Mr. Roohan gave a brief update on the SHIN-NY, State Health Information of New York—system, which is a network of networks that connects the RHIOS—the regional health information organizations, which the Department is now calling "qualified entities,' in ultimately connecting all the electronic medical records across the state. Mr. Roohan addressed two topics—progress on building the SHIN-NY, and number two, working with providers on adoption.

Mr. Roohan stated that in May, all eight qualified entities achieved certification that they can provide a basic set of services that include patient record lookup. Patient record lookup gives the clinician the ability to have electronic medical record data for all of the patient's data across the system, be accessed by that individual's provider's EHR. The alert system is a very valuable tool for the preferred provider systems, the PPSs. Improving transition of care is essential in DSRIP and specific metrics on efficiency, including the reductions of potential avoidable hospitalizations and preventable readmissions will measure success or failure of the PPSs in the state as a whole. Another core service is called the "patient clinical viewer." And the patient clinical viewer allows information available on EHR to be available to providers that do not have an EHR.

Mr. Roohan noted that in October the SHIN-NY completed connections to be a true statewide system—what we call the statewide patient record lookup is now available for all QEs. So in English, this means you can obtain information across QEs instead of within the QEs. Care costs RHIOs is relatively small across upstate, where most care is local but downstate there are four QEs that we know that there's significant patient flow from Long Island to New York City, the Hudson Valley into the Bronx, and the Hudson Valley to Manhattan. The statewide patient record lookup is essential for success downstate because of this migration. In building capacity for the statewide patient record lookup, the QEs in the New York e-health collaboratives, NYSC, as they are called, create master patient indices. These indices are incredibly important to link Pat Roohan to Pat Roohan and individual patients across the system. These systems use sophisticated algorithms to try to figure out how to match people together. There is currently over 32 million unique patients statewide in the system. Proposed regulations are in the public process as we heard earlier at Codes Committee.

Mr. Roohan secondly talked about adoption. This system only works if providers have an electronic system. So the beginning of this how do we incentivize providers to have an electronic medical record, cause many providers still do not have an electronic medical record today. Secondly, is what we call health information exchange. This is the connection of the electronic medical record to the SHIN-NY. Many large systems in New York are in the process of connecting to the SHIN-NY. Hospital adoption is high, around 90 percent, but physician adoption needs to be increased, particularly in New York City. Many physicians are actually connected to a health information exchange; however, those are typically within a large hospital or health care system. DOH, NYSC, and the QE staff have been working very closely with these large systems to connect the large systems in the City of New York particularly, directly into the

SHIN-NY. Staff from our department, Jim and others, NYSC, the QEs, have been working very closely with the PPSs on adoption. The SHIN-NY is a vehicle for electronic exchange of medical information for DSRIP, and some of that DSRIP investment has to be dedicated to providing connection to the SHIN-NY as well as adoption of EHRs. Biweekly meetings are held with the PPSs to ensure that they use the SHIN-NY and use it appropriately and also to determine if there are issues that the Department will need to address.

Mr. Roohan concluded his report and Mr. Kraut thanked Mr. Roohan. To view the complete report, please see pages 129 through 133 of the attached transcript.

Mr. Kraut introduced Dr. Gesten to give an update on the Ad Hoc Office-based Surgery Sub-Committee.

Dr. Gesten thanked the Council members for hanging in there after such a long day. He stated that looking at the data over a four-year time period beginning from 2010 to assist the Department and create some sunlight around the analyses that the Department had done and invite analyses that they think should be done to help the Department try to look at potential patterns in terms of adverse events. The focus clearly was on deaths, but the Department did look at other adverse events, as well. The Department's charge is really a charge for the Committee, which is to try to identify factors that contribute to adverse events and opportunities for the Department to act and to create safer and higher quality environments for patients that are having procedures done in these settings. Dr. Gesten explained that the Department is involved in two specific activities related to this. One is the careful review of each of the adverse events that are reported to the Department to evaluate what if any actions need to be taken based on those. Those actions can range from additional record requests, which the Department has about 75 percent of the time, to gather more information to help understand what was going on. They can include QI recommendations specifically to the practice or the practitioner. It may at times include reference to colleagues within the Department of Health, such as the Health Care Associated Infections Program, for potential investigation referral. Sometimes it leads to referrals to the accreditation organizations themselves, either for further action or for further survey or fact finding. Then while not frequent, sometimes there are referrals that go to OPMC, if the Department finds things that are of that nature, that require that level of investigation for physicians or for non-physicians to state Education Department. Those activities go on in an ongoing fashion, as well as an ongoing fashion trying to mine the data for those opportunities for improvement.

Dr. Gesten noted that historically, there have been other committee activities, investigations, and information shared with office-based surgery practices around safety related to avoiding hosiflonic flexion injuries, for example, in the case of colonoscopies. Previous review of a set of patients such as ESRD patients and vascular procedures. The membership consists of the existing standing advisory committee that we have and included a range of practitioners in relevant fields and also added Dr. Kalkut and also Peter Robison from Memorial Sloan Kettering who is involved in interventional radiology. Dr. Gesten recognized the staff who have been part of the program.

Dr. Gesten detailed some of the Subcommittee activities. The group clarified and reviewed what the legislative and regulatory history of office-based surgery. This is the private practice of medicine that has a degree of oversight related to adverse events, but a different degree of oversight than, applied to Article 28's. The Department reviewed and discussed the analysis of the adverse event that the Department had with a focus on the worst adverse event, which is death. They also discussed various kinds of quality and safety issues with a number of different interested stakeholders. There were many people that contacted the Department who were anxious to clarify or expand on or to help the Department better understand what exists or what should exist or what the professional society recommendations or activities might have been or even helped with or had questions about data that was presented. In a formal way with a set of questions that the entire subcommittee could query, a number of different organizations that have some interest, some expertise, and some insights relative to safety in office-based settings. The Department has been particularly focused on things that probably make intuitive sense, issues around standard of care in office-based settings, perspectives and roles that they might have perspectives they may have about the roles that different organizations may have for patient safety in addition to government or the practitioners themselves. The Department is anxious to try to understand what if any other reporting on adverse events were available or any other analyses that might be able to help us contextualize the information that we have and then particularly wanted to hear more about quality assurance or quality improvement, either requirements or activities that were going on either at the accreditation organization level or at the professional society level.

Dr. Gesten advised that the Department reached out to a number of different societies and professional organizations that they felt would have interest in the issue and also be helpful to the Department. The Department had specific conversations with the accreditation organizations. Dr. Gesten stated that it is important to understand that all the folks that the Department spoke to at the accreditation organization, the professional organizations believe it—whatever data the Department has, there is likely a significant underreporting of adverse events. There are about 550 or so that were reported each year. That number has remained steady while the number of accredited practices has increased. And again, depending on your lens, you could view that as good news or bad news. The positive view of that is that despite the fact that there's more practices and presumably more procedures, the number of events being reported is the same. On the other hand, we do not know how much that may represent underreporting. The other issue that confronts us is the data that we get, including when we request additional records, can have us simply missing data that makes interpretation challenging. The Department follows up on all the information or the reports that they receive. If there is missing information that we think is critical and some of that information may be explored either by the accreditation organization or by OPMC in those cases. But even in some cases this relies on or spins on whether or not what's been documented during the course of a procedure, what frequency, vitals, and so on are being recorded, or whether or not there's a record of who was in the room and who left at what point and so on and so forth.

Dr. Gesten noted that the third point is that essentially unknown to us is the issue of denominator or procedures. The Department is looking at numerators without denominators. The Department is not able to look at what is the rate of these which helps us to be clearly understand whether taking into consideration the number of times or the numbers of procedures being done whether what we're seeing is abhorrent or different or unusual. The Department at best, at this point estimate the number of procedures in office-based surgery settings and the data

over the four years and we believe that the back of the envelope calculations suggest that the number of procedures being done are in the millions that we are looking at, just as a way to try and create some context. The last issue is the lack of comparators. Again, it is safe or adverse events compared to what? Other states? National averages? Other settings? Those are some of the challenges that the Department have and despite us asking a number of organizations about comparator data, the Department is challenged in not seeing what other states or national efforts that collect the same events in the same way in this setting. There are a number of challenges, but it's really lack of comparators. In addition, an important challenge is when the Department looks at the data and analyzes it, a lot of the analysis had to rely on looking at all of adverse events, comparing deaths to non-deaths, for example, and trying to discern where there are significant differences and characteristics between the two, but the data that is needed is being able to look at those characteristics when there were not an adverse event in order for us to be able to determine whether some of those factors really are significant or not. The Department does not have an ongoing reporting system when things go well for these events. The Department may get a denominator, but that does not mean that we are going to get going forward all the detailed information that allows us to look at, for example, whether a specific anesthetic or specific level of, ASA level is clearly related to adverse events when adjusting for other factors and so on. So, despite those data limitations, which is important to be aware of, but the Department does not, we never do let those get in the way of us making use of the information we have. There are some strengths to the data, as well. The Department does, unlike some other settings and some other organizations, have a fairly clear definitions of the adverse events and he noted that he has done a lot of work to try to make sure that the description of those events is clear, have FAQs, and update them as new adverse events are added, as they have been in the recent legislation. Each event is reviewed by staff, initially nurse and physician as needed, investigated as appropriate, with referrals. Each adverse event is reviewed and the Department has a database in which we have been able to enter various characteristics of the adverse events that allowed us over the course of this past number of months to manipulate the data, try to answer various questions, what-if questions about suggestions or hunches about things that may or may not have been related to adverse events. That remains a strength of the data that we have. Looking at these years, 2010 to 2013.

Dr. Gesten explained that the Department's analysis of events in 2014 and so far in 2015 are essentially of a similar nature in distribution and not otherwise substantially different. The data allows the Department to comprehensively look at data that the Department is already been through the cycle of asking for additional information. The adverse events that we are talking about, that are reportable, are patient death within 30 days. Reportable deaths could be day 29, day 30. These are not all deaths that happen at the date of the procedure. There are obviously some challenges in terms of practices being able to be aware of or know about events that happened in some temporal relationship that is not proximate to the procedure. The other reportable events are an unplanned transfer to a hospital, an unscheduled hospital admission that lasts greater than 24 hours within 72 hours of the procedure. Again, some of the challenge of underreporting clearly may be related to practices knowing when someone is admitted on day 2 or day 3. Any serious or life-threatening event—think some of the never events like "wrong site surgery" and "retained foreign body." And then any suspected transmission of blood-borne pathogens. Some new adverse events that were in play during this period of time. So the Department looked at the analysis. There was a total of over these four years of about 2,200 cases and the kinds of things that we looked at were things to again try to pick apart and evaluate the event types, procedures. The Department looked at patient demographics and clinical

conditions, looked at anesthesia, causes of death and tried to determine and look at and keep in mind the relationship of death to the procedure.

Dr. Gesten showed a power point slide that starting at the top with the 2,200 events. The first segment looks at the deaths, admissions, transfer, all the reportable events. This is done in a hierarchical fashion, that is, there may be, it is possible for in specific individuals to qualify, if you will, for more than one adverse event, the Department has categorized these in terms of percentage with sort of a hierarchy with death sort of trumping the other adverse events. About 12 percent or 261 are reported events were deaths. When the Department does the analysis on end-stage renal disease, most of them having vascular procedures specifically around thrombectomy and angioplasty related to access. Some of the Department's summary observations of the data—and again this is high summation after many hours and many pages and many analyses, recognizing that there is a lot of other amylases that went into this, but when you look at the reports of the GI and vascular procedures account for about 75 percent of the report. Other reported deaths in most frequently associated with vascular procedures that were performed to facilitate a hemodialysis access in patients with end-stage renal disease and most of those deaths determined to be unrelated specifically to the OBS encounter. The Department spent a lot of time digging into that and trying to understand that, particularly taking into consideration what we know of as the age considerations and the multiple co-morbidities of patients that we understand to be sort of the high percentage of mortality in patients with end-stage renal disease with or without any kind of procedure being done in an office. The primary complications and causes of death, both related and non-related, are not surprisingly cardiopulmonary, cardiac arrest for example, and infection related with sepsis being the most common ideology.

There were questions and comments from the members. Dr. Gesten concluded his report. To see the detailed report, please see pages 139 through 168 of the attached transcript.

ADJOURNMENT:

Mr. Kraut adjourned the Council meeting.

JEFF KRAUT: And thank you for chairing a brief meeting of the – as I was told it would be a brief meeting of the Establishment and Project Review.

So, my name if Jeff Kraut. I have the privilege of serving as Chair of the Council and I'd like to call to order the meeting of the Public Health and Health Planning Council and welcome the members. Ms. Dreslin, Executive Deputy Commissioner of Health, participants, and observers. I'd like to remind the Council members, staff and the audience, this meeting is subject to the open meetings law. It's broadcast over the internet. You may access those webcasts through NewYorkHealth.gov. The on-demand webcast are going to be available no later than seven days after the meeting for a minimum of 30 days and then a copy is retained in the archive. There's synchronized captioning. It's important we don't talk over each other. We can't actually caption it when two people speak at the same time, obviously. If you're speaking for the first time, please state your name and briefly identify yourself as a Council member or DOH staff. This will be helpful when we record the meeting. And of course as you know the microphones are hot, meaning they pick up every sound. Try not to rustle papers in front of it, and side conversations, sidebars will pick up any chatter in perpetuity. So, be mindful of that. and just to remind our audience we need

to have a record of appearance form, there's a form that needs to be filled out before you enter this room which records your attendance at meetings. It's required by the Joint Commission on Public Ethics in accordance with Executive Law section 166. It's also posted on our website at NewYorkHealth.gov under Certificate of Need. So if you haven't done so already, please do so when you take a break outside the door and sign in here, and we appreciate your cooperation in fulfilling our duties.

We're going to hear from several reports that we typically hear from and I'll go through those as I introduce them. I want to take particular note that we're going to hear on an update from Dr. Gestin about the ad-hoc office-based surgery committee which is one of the topics we asked the Department of Health to return to the Council today to do. Given the fact that this can sometimes be a little long day and I know that there are certain challenges we have of maintaining a quorum, I've asked to rearrange the agenda, when we get to Establishment and Project review, in order to make sure that we do not lose a quorum at the early part, latter part of the meeting, I'm going to have them move all the applications with recusals to the front end, so I can at least have, theoretically we'll be able to maintain a quorum on that. we're obviously batching them so I want you to take a look at that you look at it, if you've already declared an interest and a conflict that's fine. If you need to

change that please notify Lisa or Colleen to do that before we start calling the applications.

My next item on the agenda is adoption of the minutes, and I'd like a motion for adoption of the October 8, 2015 PHHPC minutes. May I have one?

[so moved]

I have adoption Dr. Berliner. A second by Dr. Boufford. All in favor, aye.

[Aye]

Opposed? Abstentions? Motion carries. It's now my pleasure to hear from Ms. Dreslin who's going to update the Council about the Department's activities since our last meeting.

SALLY DRESLIN: Thank you. Thanks very much. It's my pleasure to be here today. On behalf of Dr. Zucker who sends his regards. We've had some new developments this month including advances in the statewide health information network of New York. The most recent enrollment period for the New York State of Health, the Governor's enhanced commitment to ending the AIDS epidemic by 2020 and the Prevention Agenda. So I know Pat Roohan will be one of those who are giving reports after me, so I won't be addressing that topic. I'll talk a little bit

about the health exchange and the epidemic efforts and the Prevention Agenda, and after that I'll review some of the highlights of this year.

So, for quick update on the New York State of Health, New York's health insurance marketplace, the third open enrollment period began November 1. We're in full swing. The enrollment in the essential plan also launched on November 1. That was mentioned earlier. The essential plan is New York's brand name for the basic health plan for lower income New Yorker's who are at or below 200 percent of federal poverty level and not eligible for Medicaid. As anticipated we're seeing a lot of interest in this new option and premium for the essential plan is 20 a month per person or actually nothing depending on that individual's income. It covers the same essential services. there's no annual deductible, preventive care is free, and select services have comparatively low co-payments. New York State of Health advertising campaign, you may have seen it, it's launched around the theme of 'You'd be Surprised.' The campaign includes TV, radio, billboards, and digital advertising. Starting this week we have a new series of ads beginning featuring testimonials by New York State of Health as sisters, essential people in our successful enrolment efforts. So individuals who enroll or renew by December 15 will have coverage on January 1, 2016. So while enrollment in Medicaid,

Child Health Plus and the Essential plan is open all year, people can only enroll for a qualified health plan until January 31 of 2016. And after that enrollment is only open if there's a major life event such as a marriage or job loss.

Moving on to another topic, as most of you know, New York is a national leader when it comes to HIV-AIDS. We HIV-AIDS treatment. Perhaps that comes from our history, in fact, of being at the epicenter of the epidemic since it began in the early 1980s. Today New York spends more than $2.5 billion a year on fighting HIV-AIDS and we have a history of producing high quality support services to people with the disease. On World AIDS Day on December 1, the Governor announced his commitment to seek $200 million in new funding for HIV-AIDS in the upcoming budget process. Earlier this year the governor had accepted the End the Epidemic blueprint signaling his support for bringing an end to the HIV AIDS epidemic in New York State. And last week he pledged additional commitments so that we can achieve our goal by 2020. These include expanding the availability of affordable housing and providing additional housing assistance for those living with HIV, making life insurance available to people with HIV between the ages of 30 and 60 years of age, investing more money into Medicaid managed care plans, and putting more money into one stop shop STD clinics so they can enhance their services which include the

care of people with HIV. Governor Cuomo is also calling on the federal government to increase it's contribution nationwide for housing assistance to benefit people living with HIV and AIDS.

New York has also been recognized as a national leader in making preexposure prophylaxis available to people who are HIV negative. PREP using the drug Truvada reduces the risk of becoming infected and since June 2014 there's been a 400 percent increase in the use of PREP among Medicaid enrollees. Perhaps the best news of all, there have been no new cases of mother-to-child transmission of HIV reported since August 2014. So all of this gives us reason to – gave us reason to celebrate last week on World AIDS day.

Now I want to give an update on the Prevention Agenda. I know Dr. Boufford will be providing more information later in the meeting but we did launch the agenda in 2013 with five broad but specific goals. I'm happy to say that we started to make some measurable impact on those. The prevention agenda dashboard measures progress on 96 statewide health related indicators including reductions in health disparities. Halfway through the prevention agenda we can provide a status report. We've officially extended the prevention agenda to 2018 in order to stay aligned with other health reform efforts that are going on in the State. as of April 2015 we've actually met 16 of the objectives. This includes the rate of preventable

hospitalizations per 10,000 New Yorkers aged 18 and older. We've already achieved the prevention agenda objective for that measure for 2018. 22 indicators show progress with 19 showing significant improvement. Take for example the prevalence of any tobacco use by highschool students. The rate of tobacco use by highschool students decreased to 15.2 percent in 2014 from 21.8 percent in 2012, so in that two year period. That means that we're on our way to meeting Prevention Agenda objective of 15 percent by 2018. 42 indicators have not yet been met; obesity is one area in where progress is taking some time. In fact, the percentage of obese adults has gone up slightly. And there are 13 indicators that are going in the wrong direction. One example is the rate of primary and secondary syphilis cases per 100,000 men. those numbers are going up here in New York just as they are nationally. Also want to point out though that we're looking at progress on disparities. For example, besides tracking overall smoking rates, we also track smoking prevalence among people with an annual income below $25,000. The rates of smoking among people with low income are almost twice the rate of the those with higher income. We've made modest progress which we can see in the use of smoking cessation benefits among smokers enrolled in Medicaid managed care. But we've not met our Prevention Agenda objective for 2018. Overall, though, we are pleased with the progress to date. We continue to work with

local communities, their health departments and hospitals and other organizations as they conduct community health assessments and implement improvement plans to address local public health issues.

I'd like to take a moment now to look at some of the highlights of 2015 or at least the busiest times of 2015. Department of Health is always busy. We began the year with Ebola still raging in West Africa and wondering whether it would strike again in New York. We are ending the year with the epidemic significantly declining in the three worst afflicted west African nations. There have been no new cases in Guinea and Sierra Leone and only three in Liberia. As a result of this epidemic however, New York's hospitals are better prepared than ever to deal with emerging infectious disease outbreaks. But outbreaks are never too far away. In August, the Department came up against Legionnaires disease in the Bronx. That illness sickened 138 people and 16 people died. The illness, the cases came out of cooling towers infected with Legionella bacteria and prompted the Department to craft regulations which have been before these committees and council. That would require inspection and if necessary disinfection. 2015 is also the year we've moved ahead on our medical marijuana program. We selected five organizations to manufacture and dispense medical marijuana. We are now in the throes of signing up physicians

interested in registering for the program. Those who successfully complete the online course can sign up to become registered practitioners. They will then be allowed to certify eligible patients for the use of medical marijuana. New York has moved more quickly than any other state in the nation to get medical marijuana to eligible patients.

There are a number of other achievements we could highlight; for instance this was the year we sent several health officials to Puerto Rico to help the island address some of it's health challenges and their impact on the economy there. It's the year we also expanded our list of banned substances which help us crack down on synthetic cannabinoids. These drugs which are not marijuana have become a major public health problem in parts of the state. We also intensified our efforts to train more people in the administration of Naloxone, a drug that reverses heroin overdoses. Among them are firefighters, law enforcement, former inmates and their loved ones. Certain pharmacies around the state will begin providing Naloxone before the end of the year as a part of the Department's comprehensive opioid overdose prevention program.

And last but not least we celebrated the official opening of the National Center for Adaptive Neurotechnologies at the Wadsworth Center. The Department of Health 2015 was another

busy year and we expect the future to hold more of the same. Thank you.

JEFF KRAUT: Thank you Ms. Dreslin. Is there any questions on that admirable list of accomplishments and activities.

[we have an annual report available on the website.]

So, did you hear that? there's an annual report of the Department's activities available on the website for 2014. Dr. Brown.

LAWRENCE BROWN: I also want to salute the Department for such accomplishments. I think this was phenomenal, and I must confess that being someone whose expertise is in addiction medicine, I say I'm still somewhat cautious with the medical marijuana, just for your information you may not know, to provide information to my fellow council-persons, the American Society of Addiction Medicine really does not embrace this because of effect concerned that have been articulated many times. But I just felt the need by virtue of the fact of being a member of the ASAM as well as being here from behavioral health, I was wondering, does the Department plan certain

monitoring to see that the benefits of fully appreciated without the adverse events that we're seeing in other states that actually provide access to THC, some recreational, others in medical marijuana. So I was wondering does the Department have as a part of this program a way to monitor to make sure because we've seen with prescription drug abuse what happens with respect to that being a source for the use of prescription narcotics. So my concern is about how has the Department made sense to monitor so that this doesn't in fact reach those type of proportions.

LISA DRESLIN: Absolutely. Thank you. I mean, I would start with the fact that the certifying of patients for the medical marijuana program, those practitioners are required to consult and use the ISTOP program which has been so effective in reducing the abuse of prescriptions for opioids, so that is one particular element. We have worked very hard to construct a program that is very carefully regulated. We are requiring of course the educational courses for the prescribing practitioners and we'll continue to collect data and monitor information about areas where medical marijuana patients are certified, how the medical literature discusses key effectiveness of the use of medical marijuana for particular conditions, so we absolutely plan to continue a robust ongoing continuous analysis.

LAWRENCE BROWN: Just a quick follow up; the question and then also a comment saluting the Department for it's work, the issue about using STD clinics one stop shopping, I would hope that the Department would consider also other places where persons with high risk tend to attend and that would be places like addiction treatment programs to see if we can also incorporate that there. I want to salute you for the Naloxone. I think that's phenomenal. Will help to reduce the overdose prevalence that we see in New York, and the Prevention Agenda that you speak to, I guess you shared with us the challenges with respect to the obesity indicator. I was wondering if with respect to the prevention agenda, the, I guess – how would I characterize it? What is the encouragement by providers to actually be stellar in the Prevention Agenda? I always like to say when I grew up my grandmother taught us about the three Rs, reading, writing, arithmetic, and healthcare is issued by regulation, reimbursement, risk management. So I was wondering I'm glad to hear all the things that have happened positive. I was sort of curious what were the factors of the Department knows that lead to some providers being able to be more successful than others who have not been as successful.

JO BOUFFORD: Well, I think one of the issues, the promotion of mental health and prevention substance abuse was the second most frequently selected Prevention Agenda topic, but much of the Prevention Agenda is really about primary prevention. So, it probably would not affect necessarily providers of service. Somebody may wish to comment on it, but I think it's not the space we've been focusing on for the Prevention Agenda. It would certainly be relevant for things like advanced primary care and some of the value-based payment discussions that are going on.

LAWRENCE BROWN: So this is primary prevention, not anything beyond primary.

PETER ROBINSON: Yeah, but I think that the other –

JO BOUFFORD: We do focus on access to preventive services, but we don't go into that further area beyond that actually for the markers that we're tracking in the Prevention Agenda.

PETER ROBINSON: But I do think the Department has been very proactive with regard to DSRIP and the approach that's been taken to place an emphasis on behavioral health as a significant

factor in being able to reduce healthcare costs as well as improve access. So I think you're going to see sort of a blending together of what the Prevention Agenda is suggesting and actual implementation with the delivery systems as a result of the – if you look at the projects on the DSRIP list that applicants have most frequently put on, behavior health is at the top of the list.

LISA DRESLIN: And I would say also – I would just also say to complement the efforts and DSRIP the advanced primary care models with SHIP sort of working with practice transformation and encouraging providers to be attentive to these critically important public health elements.

JEFF KRAUT: And look, there are to the point you made about drug treatment, there are some anachronistic regulations that we have that fragment and marginalize some of the care models, and I think one of the things, and I know the State is always at that cutting edge of innovation, California was recently approved for a drug waiver that permitted it to completely restructure the Medicaid benefit for drug treatment -- that was done I think yesterday or the day before – and I think it's those kind of models that, you know, will be second into first – first into second place. But I think you're going

to see a lot more willingness to innovate in not only within DSRIP but I think, you know, think looking down the road, we can come back and look at a different model for addiction treatment and recovery and maintenance of services in a way that particularly the Medicaid program doesn't permit us to do and hopefully we'll get to that one day in the future.

Thank you very much. Is there any other questions? Yes, Dr. Kalkut then Dr. Martin.

GARY KALKUT: I just want to congratulate the Department on this year. It's remarkable what's happened and how well you've performed and that there have been no maternal fetal transmission cases since August 14, it's been a long time since that's declined and one of the pre-protease inhibitors victories in HIV along with PCP prophylaxis and that there's been none in 18 months is terrific.

Just wanted to ask, Lisa in my view looking at the agenda there's no report from the office of Medicaid and specific report on DSRIP. And I was wondering if Dan is going to speak about it or pretty much everyone in the room is involved in some way or another.

JEFF KRAUT: So, why don't we do it the next Council meeting, we'll ask the Department to come and give us an – it's

really, I guess OHIP used to do that. so we'll ask OHIP to come and give us kind of a where we are, we're starting a new year, we've had one year. Come and give us little update on DSRIP and let's schedule, let's manage our time at that next meeting to do so. Dr. Martin.

GLENN MARTIN: So it's the time of year where we review how we've done but it's also the time of year where we ask Santa for presents. So,

[I'm celebrating Hanukkah]

Whichever. Well, I'm still in the middle of Hanukkah so you can do that. It's fine. Actually very egalitarian. The – and I was just thinking, too bad Truvada doesn't treat syphilis. The, and it is remarkable, all these accomplished. But one thing just struck me, and it's hard even to note or address it, so I figured I would just address it to you. ISTOP has been very helpful and the like, but one of the disadvantages that ISTOP still has and it becomes more apparent with e-prescribing for controlled substances going to be mandated at the end of March is that it's still horribly integrated in that process and electronic medical records. Vendors generally blame the state but vendors will always blame anyone other than themselves, but it would be extraordinary – and some of them may actually be

regulatory in terms of how you can access it. But I think would be extraordinarily helpful if we could focus a little bit more on as you've been pushing everyone into electronic medical records both the State and the government and the SHIN-NY and everything, is that if we can integrate that into physicians workflow in, at the time of prescribing and EMRs it would really demonstrably increase safety in patient care and I would just like to ask if that could at least be considered going forward. Thank you.

SALLY DRESLIN: Thank you. Yeah.

JEFF KRAUT: Ok, anybody else want to sit on Santa's lap and ask –kidding. OK. Thank you Ms. Dreslin. I appreciate it. Now we'll hear from Mr. Sheppard who will give us an update of the office of primary care and health systems management.

DAN SHEPPARD: So, I fear my report is going to be real meat and potatoes as compared to my executive deputy commissioner's and next time maybe I'll gladly cede my time to OHIP to give a broader presentation.

I want to hit one main topic and then a second topic briefly at the end as well. So I'm going to talk a little bit about CON process. So everybody kick back and pull out your

iphones. So in this Council's December 2012 report redesigning the CON process, it articulated the need to adapt New York's healthcare regulations and regulatory practices to changes that are sweeping through the healthcare system both at the federal level as well as what we're driving here through the Prevention Agenda, DSRIP, etc., at the State level. So the good news is there's been a lot of progress on this front, the CON front. We're as a result of the 2012 recommendations we reduced the number of outpatient services requiring certification from more than 60 to 20, we've streamlined the process for approval of integrating behavioral health and physical health services, we implemented a calibrated approach to financial feasibility reviews based on the balance sheet strength of the applicant. We have, as a result of statute two years ago regulatory ravers for DSRIP and our New York State electronic CON and (LIEN) efforts for licensure and surveillance activities have reduced CON processing time by more than 63 percent in the past since 2011. But there's always more that we can do and we're doing it. I think a prime example of this is the work to modernize our needs methodologies for long term care and community-based services that Dr. Rugge has been reporting on and will give us an update in his committee report. However, my report to you this morning, I want to highlight for the Council a somewhat less formal effort that OPCHSM has been undertaking. It's

focused on making sure we're getting the most out of reforms already in place, and also as a test bed for identifying newer forms that we can bring forward to you and others in the future.

So, since July we've been convening an informal workgroup composed of OPCHSM staff and staff from the Greater New York Hospitals Association, HANYS, Iroquois Healthcare and CHCANYs as well. And we've been meeting probably every three or four weeks for a few hours to talk about the CON experience from the perspective of both the Department and the applicant, and in doing so we've been identifying areas that need clarification, areas for improvement, and then also areas for new changes. And part this effort was born out of a sense that there's a bit of a gap between how the Department sees the CON process and how the industry sees it. And this is even when we're looking at the same requirements or processes. And I'm not talking philosophically or from policy, public policy standpoint, I'm really just talking mechanically. And so, maybe I guess it's all, this effort was really borne out of something much more fundamental which is the tried and true concept that simply opening the lines of communications outside the context in this case of a specific issue, a specific CON issue or a legislative proposal can really help demystify, not just demystify things that cause challenges in the near term, but I think really start

to open up, open things up for a much more constructive public dialog about these things as well.

So, I'm pleased to say that in the first couple of months they haven't just been illuminating, not just a lot of good discussions, but they've also been productive, and we've been working specifically on developing recommendations for improvement that would allow projects to move more quickly to construction as well as reduce the workload on Department staff. All this while retaining the oversight of compliance with construction standards and other like safety considerations. Again, everything we do, you know, virtually now is we're trying to fit in a framework that's sensitive to the rapid change in healthcare, what we're trying to do in DSRIP, and getting projects through the process to meet the need for change is very important, and obviously the CON process fits squarely in that.

So, I'm going to pretty briefly touch on three things we've been looking at. The first is administrative changes to streamline the self-certification process. The second are administrative changes related to CON contingencies and conditions. The third are potential regulatory changes to CON review level thresholds. So we spend most time on self-certification because it's what the group spent most time on.

So, early in the workgroup discussions it became real clear that one of the areas where the Department industry were not on

the same page was the self-certification process, and as you may recall, self-certification or essentially the Department's acceptance of a written certification by a licensed architect or engineer that a project complies with regulations governing standards for construction for health facilities. This is all in the context of limited administrator view. This was reformed, self-certification was reformed advanced in PHHPCs 2012 report and subsequently enacted through regulation. But basically through the discussion we were having what became apparent was that the Department in what I characterize as sort of a belt and suspenders approach, we were conducting interim project reviews at an abundance of caution and this was not just adding additional workload for us, but slowing the process down, I think in a way that certainly the industry and in doing my own literature review having not been around at the time that I don't know that PHHPC anticipated. So, to address these concerns in a manner that I think we believe will ultimately improve compliance with construction standards. So no just B projects but improved compliance with construction standards, the working group developed a framework and that framework follows the, what I'm going to articulate to you is a couple of major elements. So, one, it is in effect, it's not a change, it's a continued principle which is that DOH will determine what types of projects are eligible/not eligible for self-

certification as well as the policy basis for such determinations. So right now we're not contemplating the list of projects that are not eligible for self-certification. That will not change. So just to give you sense of what those types of high-risk projects are that will continue to require more in depth evaluation by the Department are operating rooms, projects that have bulk oxygen, and then any project that is requesting a waiver is not eligible for self-certification. That's not changing. What we are focused on is really clarifying the, what in effect the self-certification is and making sure that accountability is placed correctly. So upon application the provider is going to submit a certification signed by an appropriate design professional and the provider attesting that the project will be compliant with all applicable rules, regulations and standards. And so, what that means is then from the time that the Department confirms a project is eligible for self-certification, until the provider notifies the Department that is ready for a pre-opening survey, the Department is not going to conduct any interim project reviews or approval. Again, maybe saying, well, but isn't that what self-certification is about? Again, as a practical matter that's not exactly how it had been implemented. The Department is going to make available to applicants and design professionals as part of this certification process checklists, and some of these checklists

particularly in areas of more complex projects will be, they'll be specific to the type of projects, and that's going to help insure that in that self-certification they're going through the – the applicant is going through the right steps to ensure that the project they are designing but the Department is not going to review until the very end is going to be compliant in minimizing the downstream issues that might result from that.

So after the construction, the provider is going to submit a certification, again, signed by the design professional and the provider attesting that the project is compliant, so, front and back, and once that happens, then the Department will proceed to the pre-opening survey. I think it's important and again, this is a principle that was still, that was instilled in the original PHHPC self-certification proposal and ensuing regulations that the provider is responsible for any corrective actions necessary to achieve regulatory compliance. And this is in the regulation already. So accountability is key to this process working, and in a sense what the discussions with the industry were is, look, as long as the industry is willing to take on greater accountability, then the Department should provide greater flexibility. I think importantly another very, two other important parts of the framework is one is the Department is going to conduct periodic audits of completed self-cert projects. It will take a random sample of completed

self-cert projects and go through, and essentially do a deep dive into them to make sure that there are compliance with all the regulatory requirements and standards have been met, confirming the accuracy of the self-certification, and also in doing so we'll identify any challenges with the self-certification process. And then we're going to use that exercise, that audit exercise to educate design professionals, a feedback look as well as the healthcare providers. And again, this is all part of what we hope to be a continual improvement process. And we're going to conduct, formalize this education process through semi-annual meetings, might include webinars, and I've been joking, I don't know if Udo is here today but I don't see him, but I've been joking with Udo Ammon Director of our Bureau of Architects and Engineering that I'm going to make his establish his own youtube channel and he can put up videos and walk people through this process.

So, with respect to self-certification which is where the group focused a lot of time over the past few months, that's where we are.

The next area, much more briefly, contingencies and conditions. And as you know, CON contingencies for project usually, they must be met before an applicant can begin construction, and then conditions are a requirement for operation. Examples of contingencies include those related to

insuring that the applicant has site control, that a project meets construction standards and a project is financially feasible. These are all elements that really have to be nailed down before any cement gets poured. But we've also been requiring as contingencies and some of you may have noticed this in the applications, elements such as operational plans, professional services agreements, management contracts, operating agreements, certificates of incorporation and bylaws and transferring affiliation agreements, these are things that we can work out parallel with construction and must, still have to be nailed down prior to the operating cert being issued. And again, just looking at this as a way of having things proceed a little less sequentially allowing projects with projects to get up and open more quickly. So, that's contingencies and conditions. Again, that's administrative. Both, what we can do on self-certification and some of our changes on contingencies and conditions are administrative things the Department can do.

The next element that will be certainly coming back to you because it would require regulation is that we're looking at increasing the current cost thresholds by review levels. So these are limited administrative and full. And we wouldn't change any existing exceptions in terms of, that would change the review level, like the additions of beds or certain types of equipment, but generally this was an area that was identified by

the industry as something we should look at, because the last time those thresholds were visited were – Charlie? 2010, and things have changed. And we're also looking as part of that process at doing a little bit more granular look at the financial strength of a particularly when it comes to certain types of what level of review there should be, distinguish a little bit more between the type of facility it is. Is it a large hospital? Is it a small/medium sized nursing home? Trying to move away from a one-size-fits-all approach on the thresholds. Again, requires regulation change so there'll be much more to discuss with you about that going forward.

So, that in somewhat brief I guess, is something that at least from a – we've been excited to be working on. I think it's a real example of the types of transformation and cultural change that we're all trying to push as we try to deal with a rapidly changing healthcare environment that we're doing in the Department. Very visible stuff and stuff like that that we're doing a little bit below the water level.

JEFF KRAUT: So, you know, given the speed of change, we need to have a regulatory framework that recognizes it and allows us I think to move forward. So I thank you for that. is there questions? Dr. Boufford.

JO BOUFFORD: I had another question. May not be for today, but perhaps not letting you come back and give a report the next time. I did miss the last council meeting, but you mentioned a subset of the things that were taken on by the planning committee around ambulatory care, and I'm very – we have not had a follow up on this issue of this sort of different structural forms of ambulatory care that were emerging in terms of the sort of mini-clinics and sort of truth in advertising and a lot of I think, really positive recommendations that have come out of Dr. Rugge's committee last time on ambulatory care, and I know some of them were not, were able to be addressed by the Department. Others were going to have to go through a legislative conversation, and I'd love to hear how that is working, because talking about an area that's moving fast, and it's something that I think we at the time were getting ahead of the curve. Now I think the longer these delays, and they may be understandable, but I think we need to know about them. We're really losing ground in this space.

DAN SHEPPARD: So, let me do this. I think that probably is a topic that warrants a deeper dive, and I will give a report. I was joking at the next meeting. But also, Dr. Rugge may address some, touch on some of this in his committee report just based on the activities that have happened since the last

meeting with respect to the efforts for modernizing our needs methodologies. I think I might've mentioned it – only other thing I'll tag on is I think I might've mentioned it in my last report. I know you weren't here last time, that I think one of the, with respect to efforts large and small, administrative and regulatory, this is on the administrative front, to do everything we can to push care into the community, we are finalizing a set of guidelines to ease up on – the regulator should never say ease up on – to exercise greater flexibility with respect to primary clinics in homeless shelters and looking at ways that we can while maintaining patient safety, not require such rigid fiscal environment requirements which would allow us to, in places like homeless shelters, put more care. We're also looking at extending that same model to rural clinics as well, and we'll be doing that sort of work. And again, it all sort of fits together over time. But I can definitely do a deeper dive on all this next time.

JO BOUFFORD: Well, no, I think those, I think that is in a sense lightening up on existing regulatory requirements. I'm talking about the opposite, which is a lot of the sort of explosion of various mechanism of delivering ambulatory care that the state really has no oversight over. And that would be part of, I think, Dr. Rugge's report that we knew was complex

and was a mixture of administrative requirements and legislative action and we have not really closed the circle on that. so I appreciate the activities because that was certainly the spirit of lightening up on CON that you've described, but it's the other part where there was no oversight. How we could hear about that would be great.

DAN SHEPPARD: Sure. I think that's worthy of …

JEFF KRAUT: So I have questions from Mr. Robinson, Dr. Berliner, and Dr. Brown. So I'll start with you.

PETER ROBINSON: Just very quickly, it actually follows up on Dr. Boufford's last comment, Mr. Sheppard, which is the work that was done by Dr. Rugge's committee on emergency services and ambulatory, freestanding ambulatory care centers and the like. Is that part, is that going to be part of the Department's legislative agenda this year? Because I do believe some of those things do require some action on the part of the legislature to implement. Is that correct?

DAN SHEPPARD: There are some. I mean, those are proposals I think you're referring to that have been advanced in the past,

and I think the Department is still developing it's legislative agenda.

HOWARD BERLINER: Dan, any update on when the capital money will be announced?

DAN SHEPPARD: No, no update at this time.

JEFF KRAUT: Go next door. They're giving out a little now. Dr. Brown.

LAWRENCE BROWN: I was wondering if your next time before the Council if you could share with us the progress on State with respect to telehealth?

DAN SHEPPARD: Absolutely.

JEFF KRAUT: Any other? Yes, Dr. Rugge, and then –

DAN SHEPPARD: I have one, I just, there was a piece of paper that was circulated to you I just wanted to, I was going to briefly touch on that. We can talk about it now. It really is anticipation of the LHHCSA applications and just anticipating a couple of things.

JEFF KRAUT: So you just want to introduce this…this report will be heretofore known as the Hines report.

DAN SHEPPARD: This is the Hines update. This is the Hines update. We will memorialize this.

So just a couple of things. I've been before this committee before addressing questions about the LHHCSA applications, licensure applications coming through the Department and how that goes through the pipeline with respect to approval and oversight. So, the last time, it was several months ago last time I addressed this, and at that time the data that we were looking at the net growth in the licensed homecare service agencies was not, was material but not significant I would say, and with respect to how we were seeing it impact at different stages of our approval process, pre-opening survey, as well as on the surveillance side. As logic would dictate, the number of approvals that have been going through having increased the – reading glasses back on here – having increased the number of facilities we're opening, we're starting to see some potential issues down the road with respect to that. So, just a couple of points on it. So, one is I'm updating you on information, so before we were looking at changes in our surveillance load and our licensing load that were not what I

would characterize material. We're starting to see indicators that there are going to be some material impacts to that, and so I think the good news, really, I think it's positive news that I want to share with you. One thing that hasn't changed is that no facility opens without having gone through a thorough pre-opening. So your approval is one part of a step, but it doesn't automatically mean that a LHHCSA opens it's doors a couple weeks later. They still have to go through a process. That process is starting to get elongated and that's something we need to address, but it is not a, but they don't open until the Department determines they are safe. The second issue is that we're starting, we're going to develop and we'll come back to you with some steps that we can take to make sure that as the growth of LHHCSAs is happening that we can make sure that we also have the capacity to survey them. And so that's, and so we'll come back to you with some specifics on that. But I think, on balance as we look at this issue, again, this fits into our northstar and a lot of what we do which is making sure that we're creating opportunities for care in the community, that we're committed to addressing any of our volume issues as we're doing it and we don't believe that any steps to slow the process down are required. We'll make every effort to address the volume increase on a real time basis as we go through and

we're working, Becky Gray and I we're working closely on what those options are and we'll be elevating them.

JEFF KRAUT: I'm just going to make a point. Maybe this is – I really think this is great and this is the importance of having data, but there's something fundamentally wrong when you take a look at a population base of a half million having 485 LHHCSAs and a population base of a 1.3 million having the same amount. So we know there is an issue here. it exposes that point.

DAN SHEPPARD: Yeah, I think what this chart that you have in front of you, which I'm sorry I didn't orient you to it, is really just responsive to a question that was asked last time which is can we just see on a county by county basis what's happening with LHHCSAs and it says a couple of things. One thing it says, and I think this is certainly one of our motivating factors why it's important that we continue to have an approval process for LHHCSAs is that you have a wide disparity between some counties tend to be urban or suburban counties where you have a growth in the number of licensed agencies, but not a lot of penetration in rural counties. I think that's something that we have to look at that jumps out from this chart.

JEFF KRAUT: Vicky.

VICKY HINES: So, comment and a suggestion. So first of all, thank you. I do appreciate that you've taken a serious look at this and I think this tells a big story and my math was quick, but it looks like we've added a total of 1500, just very 1500 of them, so that's a big number. And I think, I guess, and Jeff spoke to this a bit, but we proliferated an industry where we have, I think the most responsibility to make sure that we have patient safety and quality as our number one priority. And I know nobody disagrees with me on that. I think we just have, now we have to take a step back and look at whether or not what we've done is necessarily the right thing and I think everyone here knows as firm as I've been on my worry about this, I am perhaps the biggest fan of home and community-based services, so that is not my issue. My issue is really how we do it, and even if we believe that market forces will fix the supply and demand piece over time, which I do believe over time the question is there's a lot of harm that can be done in the time it takes for market forces to work. And so I worry not only about the surveillance question which is very real so I'm comforted by the fact that there is an opening review before we ever turn the lights on, but then once that happens of course there's ongoing.

We have real workforce issues, so in some of these places where we proliferated, we are just moving paraprofessionals who are in short supply from one agency to another and then we've increased cost. So we have administrative structures that manage all of that. So I guess my point in all of this is it's been now I think three or four years since we did the CHHA – pardon?

JEFF KRAUT: RFP.

VICKY HINES: Yeah. Four years maybe. I can't remember the year. You think it'd be burned in my brain.

DAN SHEPPARD: it was 2012.

VICKY HINES: OK. 2012 so three years. And I wonder if now is the time for us collectively perhaps in 2016 to just take an overall look, the industry has changed a lot in the last three years and I think we need to take a look at CHHAs and LHHCSAs together in the context of managed care and the context of overall need and perhaps that's a piece of what Dr. Rugge—

JEFF KRAUT: OK, let me just, you heard what Vicky said. I'm going to – just take some time to think about it because we do need to decide at the next, I think bring this back and have

that conversation based on. John, is it OK? I'm going to take the prerogative, I have to do some time management here so we have some issues. I'm going to suspend the reports right now and I'm going to open the Project Review and Establishment Committee. What I'm going to do is I'm going to ask for all the paplications where we have recusals to be come before us to vote because there are some of you who have indicated that you can't stay beyond a certain time, and I have to make sure I have a quorum to get those with low voting members approved and out and I'm going to run that first and then I'm going to, after we go through all the recusals I'm going to come back to the committee reports and then we'll open up again in the order the project review. So if you followed me, good power to you.

The first things, the first applications I'm going to call is where Mr. Robinson is in a conflict, so I could chair it and then he'll come back in and then he'll run the rest of them. The first one is a certificate of incorporation for Jones Memorial Hospital Foundation where a conflict has been declared by Ms. Hines and Mr. Robinson, both of whom who have left the room. May I have a – the committee made a motion for approval, do I have a second? The second Dr. Gutierrez. Any comment by the Department? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstention? The motion carries. Oh, I should've said, I've just called to order the Establishment and project review committee and we just voted. OK. The next application we're just help me here, Pittford Pain I think. What? Page four. The next one I'm going to call application 151008B, Pittsburgh Pain Center LLC Monroe County. Conflict and recusal by Mr. Robinson and Ms. Hines. This is to establish and construct a single specialty am-surge center to provide pain management services at 727 Linden Avenue in Pittsburgh. The Establishment and Project Review committees recommended continent approval at the September 24 meeting. however, at the October 8 Full Council meeting the Council voted to have the application considered at the next cycle. DOH recommends approval with conditions and contingencies, and expiration of the operating certificate five years from the date of issuance. The Establishment Committee recommended approval of condition and contingencies and expiration of the operating certificate five years from the date of issuance which was recommended at the 9/24 meeting of the Council. So, I have a motion from the Committee. I have a second Dr. Gutierrez. Mr. Abel.

CHARLIE ABEL: So, just to remind folks what the, I think the contentious issue was here, the unique issue, the Department

recommends approval. The HSA has recommended disapproval. The Department has been in contact with the HSA in the interim period as it was even before this project was originally presented. We both respect each other's positions. We both retain our positions. The Department continues to recommend approval and that the application is before you. Thank you.

JEFF KRAUT: Any questions or comments? Hearing none, I'll call for a vote. All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion – I'm sorry. You have one abstention. Opposed? The motion carries. Could we have Ms. Hines and Mr. Robinson return to the room please. The next application we're going to call will be up to him. I think – You want to start with the beginning of the sheet? You gonna go with just Dr. Kalkut or are you doing to do Adirondack? Alright. Well, let him decide. He better not have – OK. Everybody stays. Is Ms. Hines coming back in?

PETER ROBINSON: She's coming back in.

JEFF KRAUT: OK. Take it easy. Catch your breath. What did you run?

PETER ROBINSON: I was actually, everybody came out from the competition, everybody's over there right next door. It's great. By the way, sorry. But the Finger Lakes region, Rochester was one of the winners. I'm thrilled so that's why I got a big smile on my face but now back to the business at hand.

So, this is application 152093C, Adirondack Medical Center in Saranac Lake. This is to construct a new surgical site with six new ORs including one hybrid OR relocated an existing endoscopy suite and replace an existing MRI suite. The Department recommends approval with conditions and contingencies as did the committee, and I so move. Second, Dr. Gutierrez.

JEFF KRAUT: I have a motion, seconded by Dr. Gutierrez. Department of Health comments? Any questions from Council members? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? The motion carries.

PETER ROBINSON: Calling application 152035C, NYU Hospital Centers. Conflict and recusal by Dr. Kalkut who is leaving the room and Dr. Boufford expressed an interest. This

is an application to construct a hospital division located at 70 Atlantic Avenue in Brooklyn by relocating the current offcampus emergency department and adding two med-surg beds. Primary care other medical specialties and multispecialty ambulatory surgery services. The Department recommends approval with conditions and contingencies. As did the committee, and I so move. Dr. Gutierrez, second.

JEFF KRAUT: I have a motion made and seconded by Dr. Gutierrez.

JOHN RUGGE: Just a question.

JEFF KRAUT: Mr. Rugge. Dr. Rugge.

JOHN RUGGE: The application indicates this is 160,000 square foot addition, but the components add up to only 68,000. What happened to the other 91,000 square feet?

JEFF KRAUT: Charlie, do you understand the question?

You understand the question but I'm not sure if you – sorry, excuse me.

CHARLIE ABEL: I don't have a ready answer for you. I apologize.

JEFF KRAUT: It could be a typo, or it could be a material difference.

JOHN RUGGE: Only 91,000 square feet.

JEFF KRAUT: Let's assume we're approving a 91,000 square foot building. It's probably given the size of it. Any other questions? Hearing none, I'll call for a vote. All those in favor aye.

[Aye]

Opposed? Abstentions? The motion carries.

Oh, I'm sorry. Dr. Boufford has a state. OK.

PETER ROBINSON: Yes. Thank you. Application—

JEFF KRAUT: Is Dr. Kalkut still staying out?

PETER ROBINSON: He's staying out. Application 132127C, Four Seasons Nursing and Rehabilitation Center in Kings County.

A conflict and recusal by Dr. Kalkut. This is to expand an existing 20 bed ventilator dependent unit to 30 with a conversion of 10 RHCF beds. The Department recommended disapproval on the basis of need. The Council recommended approval, and that is the motion that I am making for approval.

JEFF KRAUT: So I have a motion from the committee for approval. I have a second by Dr. Gutierrez. Mr. Abel.

CHARLIE ABEL: Thank you. So, the Department continues to recommend disapproval on the basis of need for this application. We are guided by our regulation as is the applicant, the article 28 facilities and this council. We do not change our recommendation.

JEFF KRAUT: Any questions from the – Yes, Dr. Strange.

DR. STRANGE: Can we just where we stand on that?

JEFF KRAUT: You know, Dr. Strange hadn't attended – you hadn't been at project review to hear the conversation, so—

DR. STRANGE: Can we summarize?

JEFF KRAUT: I'll let you –

CHARLIE ABEL: Sure, I can summarize. There is a vent bed need methodology. And I'll try to present the applicant's points as well, try to be fair about that. There is a vent bed need methodology and this methodology shows that the vent bed need for the New York City planning region, it is New York City that we're looking at, is more than satisfied. The methodology and the regulation 709.17 is very specific with respect to what happens when there is a need versus not a need as produced by a number of factors that go into producing the number of vent beds resource that the need methodology would permit. We have been applying this regulation consistently. There have been a number of applicants that have expressed an interest in additional vent beds since we did a competitive review back in 2011 to review applications to meet a need that existed at that time and all but one of the facilities that were approved, a number of facilities were disapproved, have come online. So, in the interim period. Number of applicants have applied for additional vent beds in the interim and we've told those applicants that the need is met and we give them an opportunity to either pursue their application before the PHHPC with a disapproval recommendation or they can withdraw the application.

All other applicants have withdrawn their application with the department's position that if we see additional need in a region, New York City and Long Island we had competitive reviews back in 2011 and 2012, the Department would do a solicitation for additional applications. We would expect that that would be of a competitive nature, and we would be selecting the best applicants from those that have been submitted. We continue to see that there is no need. The methodology produces a gross number of vent beds for the New York City region. This application is for the New York City region, it's in Kings County, and the – so we have no ability per the regulations to approve an application at this time. The applicant has said that – oh an additional element is that as, in the time period directly after hurricane Sandy which disturbed a number of long term care facilities in the New York City region, the applicant was given temporary emergency approval by the Commissioner to operate 10 additional vent beds. The emergency obviously has subsided. All the vent bed resources that were negatively impacted by hurricane Sandy have come back online. The Commissioner withdrew that emergency approval, rescinded that emergency approval for the 10 vent beds last year about 16, 18 months ago now, but permitted the additional 10 vent beds to provide services to the patients that were receiving services at that time until a trick down to the actual 20 bed vent bed

certification that Four Seasons currently has. Applicant has requested certification of an additional 10 beds. Vent beds. The applicant has said I think two points that are important to consider; one the regulations speak to a need for revision within three years the regulations were enacted in 2005. The Department's response to that is that the five yaer – three year period was specific to a 95 percent occupancy threshold which in context will respond I think to another one of the applicant's concerns and that is that the Department did not follow it's own regulations with respect to considering local factors in it's determination with this application.

Now, the regulations are written in such a way that if there is no need, if the need number for vent beds given all of it's inputs shows that the existing resource is greater than the projected need which in this case it does, there is no ability to bring in local factors. You can only bring in local factors if there is a need for additional resources, but utilization is less than 95 percent, that 95 percent number I mentioned earlier. That is a, that –

JEFF KRAUT: Hold on. Because – We got into the weeds on some of that. That didn't help you. Did it help you a little?

DR. STRANGE: So the question is…

JEFF KRAUT: Did you want to know why the committee overturned –

DR. STRANGE: So the question is, is the utilization right now necessary in that area, in that geographic area that it would impose a healthcare disparity such that the need is such that we should be looking at this in another way? Otherwise what you're saying here is that there are enough vent beds and if we dilute this even more, we could, not only are we going to effect financially potentially the impact of this, but quality eventually gets affected when you dilute things such as this. so, if the State is saying, and we represent the State to the community that this is not something that's an absolute need right now, I'm not sure why we should be voting for this.

PETER ROBINSON: So the committee did take those factors into consideration. I think that the local issues did seem to be much more on our minds as we looked at the presentation by the applicant. We had a sense that demand was certainly there and the applicant's argument that in fact the drop in census was really driven by the requirement that they actually not admit new patients until they come down to the certified level of 20 that was in place prior to the emergency authorization, up it by

10 during the period just subsequent to Sandy. So, our view was that the application actually did have merit from a need standpoint, and that they made a very cogent case on the basis of quality.

DAN SHEPPARD: So, can I – So just, I think this has been a difficult issue for us as staff at the Department because the regs are so clear in our view of them, and we've done our best and we've done what we believe is necessary, but I think what we also respect is that this council can take a broader view, and you clearly have on several occasions. I think, under these circumstances, what seems best is vote as you will. This is a construction project. Your vote is ultimately the commissioner's decision and I think we will weight that very heavily the discussions here that have taken place over the past several meetings in making our recommendations to the Commissioner as to the final disposition of this. So I think this is, again, I'm trying to do this to wrap up an issue in the interest of everybody's time. This is a great example of why our regs need to be modernized. We've been clear, Charlie has been very articulate and forceful over the past several meetings as to all the challenges and God knows we've wrestled with this one, but I think we've done what we feel as a staff job is our job to recommend disapproval based on the regs. The committee

and we'll see what the full council does, and I think we'll move forward from there.

JEFF KRAUT: Mr. Fassler.

MICHAEL FASSLER: Quick question. I mean, the applicant sent data showing that the occupancy in Brooklyn was mostly in the 90s except for one place. Did the Committee agree with that data?

PETER ROBINSON: We did.

MICHAEL FASSLER: OK. Thank you.

JEFF KRAUT: OK. So, does that, you have a sense of what went on? OK. Any other questions? So if not I'll call for a vote. All those in favor say aye?

[Aye]

Opposed? Abstentions? One abstention. The motion carries.

PETER ROBINSON: This is application 152116E, Winifred Masterson Burke Rehabilitation Hospital in Westchester County. An interest by Mr. Fassler. And this is to establish Montefiore Health System Inc., as the active parent and co-operator of

Winifred Masterson Burke Rehabilitation Hospital. The Department and the Committee recommended approval with a condition and a contingency, and I so move.

JEFF KRAUT: Do I have a second? I have a second Dr. Gutierrez. Mr. Abel, any comments? Any questions from the Council about this. Hearing none I'll call for a vote. All those in favor aye.

[Aye]

Opposed? Abstentions? The motion carries.

I'll be in conflict on the next applications, and I'll turn the mic over to Mr. Robinson.

PETER ROBINSON: Thank you Mr. Kraut.

We'll note that Mr. Kraut is leaving the room. The first is a series of certificates mainly certificates of incorporation, and I'll just run through them quickly and ask for a motion as a batch. North Shore LIJ Stern Family Center for Rehabilitation, a name change; North Shore Long Island Jewish Health System Foundation, a name change; North Shore Long Island Jewish Health System Inc., a name change; North Shore Long Island Jewish Healthcare Inc., a name change. All conflicted, a conflict by Mr. Kraut. The Department and the Committee

recommended approval. May I have a motion, Dr. Gutierrez, a second, Dr. Kalkut.

DR. STRANGE: I'd like to declare an interest also on that.

PETER ROBINSON: Thank you. And an interest by Dr. Strange. Any questions? Call the question, all in favor?

[Aye]

Any Opposed? The motion carries.

Mr. Kraut remains out of the room for this next application as well. This is application 151227E, Surgi Care of Manhattan in New York County. This is a request for a two-year extension of the limited life for the CON number 071052. The Department recommended approval with an expiration date of the operating certificate two years from the Public Health and Health Planning Council recommendation letter with a condition and contingencies. The Committee recommended approval with an expiration date of the operating certificate one year from the Public Health And Health Planning Council recommendation letter with a condition and contingencies. And I'd like a motion for the – and this is a motion for the Council's one year extension.

That's Dr. Gutierrez, and a second by Dr. Kalkut. Thank you. Mr. Abel.

CHARLIE ABEL: I don't have any comments. I'm not sure if Counsel does.

PETER ROBINSON: Members of the Committee or the Council.

VICKY HINES: OK, so, I think especially since the conversation that we had this morning about the prior applicants, so we had a lengthy discussion for those of you who aren't on establishment about the fact that this was an applicant that over a period of five years served zero Medicaid patients, and they had set a very lot target I think of one percent originally. So, I did end up voting yes on the two-year extension and I've got to tell you I've had a crisis of conscious since I did that because in voting yes for a continued extension we are essentially saying that the five year limited life means nothing; that you can make a commitment, show zero progress, and that's OK, we'll let you do it again. And I think after this morning's conversation if we approve this continued extension we're saying the same thing to that applicant. So it's OK to say my new target is four percent, not to mix the

applications, but just to use it as an example, but I am very concerned about the fact that this is an applicant who recently because they're looking for a permanent certification recently has done all the things that they should've done five years ago or three years ago or two years ago to try to serve the Medicaid population and I just think it's a travesty that over five years they've served none. So, I'm going to vote no today.

PETER ROBINSON: Other questions or comments? Dr. Brown?

LAWRENCE BROWN: I guess I have a point of information. So, the motion on the floor is from the committee to have a one-year. And our colleague is now saying that, are you now voting against that motion? I see. So, if the motion on the floor fails, does that mean – what does that mean in terms of the applicant?

PETER ROBINSON: Well, we'll have to take another motion to determine what we do next. We first have to act on this motion, and depending on the outcome of that, we then have the opportunity to make a different recommendation, a different motion. So, we just have to call the question on that vote. Dr. Gutierrez.

ANGEL GUTIERREZ: The motion being one year. the difference in between the position taken by my colleague Ms. Hines and the motion can be measured by how draconian you want to be. A vote no would mean they don't get –

PETER ROBINSON: Well, then we would see where we go after that.

ANGEL GUTIERREZ: In one year, they have one year to correct and come back and show that they have actually acted on our concerns.

PETER ROBINSON: That's correct.

OK. Well, let's see where we stand. I'm going to call the question. All those – Dr. Boufford.

JO BOUFFORD: I just apropos of Ms. Hines comment I was interested in were there, in the original approval of five years, was there a target, an observation, an expectation and a contingency that was not met? Ok, I didn't hear that explicitly. Thank you.

PETER ROBINSON: I think that was actually what you, that was the point you were making, was it not?

JO BOUFFORD: I heard she was disappointed, but I didn't hear –

PETER ROBINSON: So, because we have to be really careful, I'm going to call the question. I may need to do a roll call just to make sure we have the count correct. So, all in favor of the application? One year. 11 is the count. That is not a quorum. So the motion does not pass. And I think at this point we have to open it up to another motion. Ms. Hines would you like to make a motion.

VICKY HINES: I assume that simply means that we would not approve any extension on their –

PETER ROBINSON: That could be the motion.

VICKY HINES: That would be my motion. That we disapprove their request.

PETER ROBINSON: That motion would in essence shut that down. Shut them down. Are you making a motion?

VICKY HINES: So, I'll make the motion that we disapprove their request for permanent life or an extension.

PETER ROBINSON: Do I have a second? Second, Dr. Berliner. Sorry. Questions.

LAWRENCE BROWN: Yes, I have a question for the Department. Abel, did the Department monitor this applicant and get feedback along the five years to share with them or receive information from them about where they were in their progress?

CHARLIE ABEL: The applicant in the course of our review we found that the applicant had submitted the annual reports in accordance with a condition of approval originally. The Department did not actively engage the applicant until the time of this application with respect to being able to speak with it about it's performance in meeting it's charity care and Medicaid goals.

LAWRENCE BROWN: Kind of a follow up with that please. Is this part of the usual practice of the Department? Because I'm just sort of curious for these five-year limited life do –

does the Department do anything more than just receive the reports from the limited life applicants?

CHARLIE ABEL: It becomes a matter of workload and where our resources most importantly directed, and in the course of the previous five years, resources needed to be directed to other things.

PETER ROBINSON: Dr. Gutierrez. And then Dr. Strange.

ANGEL GUTIERREZ: If I understand this correctly, by our vote of No, not moving forward, not giving further approval, the facility shuts down, correct? Correct?

CHARLIE ABEL: Well, I'll defer somewhat to our Counsel's office, representatives, but this approval originally was done to approve the establishment of an article 28 operator. The expiration for that approval is either about to come due or has perhaps already come due. It's been our position that as long as the applicant is working cooperatively with the Department on an extension application, if a expiration date for it's authorization to operate has come and gone, it may continue to operate. The notion or the possibility that an establishment

authorization terminates because of inaction by PHHPC, I don't recall that situation occurring in the past.

ANGEL GUTIERREZ: What would happen with the care that is currently being delivered to a number of patients?

GARY KALKUT: And what's the timeframe for the closure?

RICHARD ZAHNLEUTER: What you're discussing is completely unanticipated. So I don't think that there is a closure plan that would give you a timeframe. I think you have a situation here that has been made first instance situation just by the say the Committee handled it and by the way we're handling it now, so it's hard to predict. But I have a suggestion that might work for everyone's interest is if you want to table this for the next meeting, then perhaps Charlie and I can work out contingencies, just like we did with the earlier application this morning, and we can avoid crisis interruption and service, and we can also more coherently look at the situation and come up with a good solution in the next meeting in February.

PETER ROBINSON: Well, again, I was coming along the same lines here again, understanding there are other venues that could probably pick up the care, I get that. There are

insurance issues, there are issues of other staff that we're going to put on unemployment. You have many other issues that go way beyond the healthcare here and I would agree that this is probably the first time in my 12 years of seeing this that something like this has come before this committee, on both committees that I've sat on. I think it would be a crisis, and I think we should as a council at least give some time to some resolution, understanding that if not then we have to come back and consider this vote. But I think to just acutely interrupt care here right now, not only puts a burden on the patients, although I don't know that that's a huge burden, I think there's alternatives, but I think the staff, the community and everything else here is a major issue besides what we would have to do during this busy holiday season right now to shut this place down. I don't know that we're doing – I don't know that we're serving the public's best interest understanding that I get the Medicaid need methodology and I get all that, and I understand the $9 million at the end of the day, but I don't know that we're making the right vote to do it so abruptly.

PETER ROBINSON: Let's see, Dr. Kalkut, then I'm going to go to Dr. Berliner, then to you Dr. Gutierrez.

GARY KALKUT: I would agree with that, and I voted for the one year extension which is in fact, eight or nine months in order to collect the data, but this applicant was 0.0. There wasn't ambiguity about it. So, I think whether there's action or message sending or whatever, I think this does tie back to what the earlier discussion and what the position of this council will be about living up to expectations about Medicaid and it's expansion and what's promised on an application. I do think though the disruption is significant for today.

PETER ROBINSON: Dr. Berliner then Dr. Gutierrez, then Dr. Martin.

HOWARD BERLINER: Yeah, I don't see any reason why, --

PETER ROBINSON: Dr. Rugge. I gotta start looking right.

HOWARD BERLINER: I don't see any reason why there can't be a plan of closure to be handled over 30 days or 60 days or 90 days as would be the case with a hospital that was closing or some other article 28 that had lost it's license. I mean I don't, I think a vote not to renew the limited life could include that as a condition that the Department has some amount

of time to close the place down and to deal with the questions that Dr. Strange has raised about what to do with the staff and alerting the community and splitting up the profits, stuff like that.

PETER ROBINSON: Dr. Martin and then Dr. Rugge.

GLENN MARTIN: Yeah, it's essentially a procedural point to echo what Dr. Berliner said. I was supportive of the one year because I think they got into a situation where it wasn't necessarily the Department's finest hour, and it certainly wasn't their finest hour, and I thought it was perfectly reasonable to give them a matter of months to get their act together. If we do, however decide that we're shutting them down, I see no reason not to come back in February. If we turn it down, then I think as a contingency we could just make the motion that says that we'll give the State 90 days to work out an appropriate closure plan. Unfortunately we've had a lot of experience closing things down it seems to me over the last couple of years, and I have great faith in the Department figuring out a way to do that in a smooth way, especially since I recall this is an ambulatory surgery center where you're not having people chronically treated or whatever. They come in, they leave, it may take a week or two from start to finish,

maybe a little bit longer. It shouldn't take forever. So I would think that we would combine it in one action, even though it's not an action I'm favorable with at the moment.

PETER ROBINSON: Thank you. Dr. Rugge. And then Dr. Boufford.

JOHN RUGGE: In response to Dr. Strange's concerns, I think it's the responsibility of the operator to meet the terms laid down by this Council and not the responsibility of the Council to address the issues that belong to the operator. And if our contingencies have any meaning whatsoever, we should stay by them.

PETER ROBINSON: Dr. Boufford.

JO BOUFFORD: Sort of almost persuaded – I do agree with that in principle. I guess the question really, I mean, I always feel a little bit as you say that if you allow people to submit reports and nobody says anything, in a State like New York that's quite carefully regulated, you can just probably keep sending it in. However, I was going back to our counsel's suggestion which might be that there is a deferral until the next meeting pending the Development. It's actually of a

corrective action plan that satisfies the council. If it does not satisfy the council then we could vote either to close and move into a closing procedure or extend for a year. But it seems to me that there's got to be something that comes out of the provider more than just giving them a year to have something come out of them and perhaps a deferral until the next meeting would do that.

PETER ROBINSON: OK. Dr. Brown then Ms. Hines.

LAWRENCE BROWN: Hearing all the arguments and issues that have been raised, I must say that I'm leaning in the direction of closure with the contingency given, following counsel, but the contingency giving the opportunity for a closing plan. My concern about a corrective action plan, they've had five years. So I mean, giving them an opportunity to have a corrective action plan to continue to exist to me seems to be less persuasive and certainly not having the impact of having providers appreciate the guidance of this council. So I think the extension or the contingency should be based on extension of a time to close, as opposed to time to provide a corrective action plan.

PETER ROBINSON: Ms. Hines.

VICKY HINES: So we had a bit of a discussion with the applicant about their corrected – it was verbal, we didn't see anything in writing but the Department was very comfortable that they were now doing all the right things and I'll speak for myself but I think there was some sense that what the actions they are putting in place now five years later were the right actions. They were actively trying to contract with managed care companies, Medicaid managed care companies, working with social workers in the hospitals and at the time we comments that you could've done that five years ago. So I do think that they take the issue seriously now and my view is what message are we sending if we allow zero improvement or zero progress on a very real commitment and then say, well, that's OK, we're going to give you another year.

PETER ROBINSON: So, I'm going to call the question now. Dr. Gutierrez… yeah, there's a motion, no we have a motion. We did have a second motion from Ms. Hines and we had a second from Dr. Kalkut.

RICHARD ZAHNLEUTER: Mr. Robinson, excuse me, could I clarify because I really have to reason this through in my mind as we go through it. Maybe I'll reason through it out loud. We

have a motion to either grant or deny the application, and I think the motion is to deny the application.

[That's right]

So, that would be a yes or no. And I think a consequence then of a denial would be that it does not have an extended life.

[That's right]

And a consequence of that would be closure would have to occur and consequence of that would be a closure plan would have to be submitted, the Department would have to review it, and if acceptable, the Department would approve of it. So, in the interim between this vote and the time when the Department approves the closure plan, what would the status of this entity be? It would be operating, although on a level that anticipates ending.

PETER ROBINSON: I think this falls under the category of the Commissioner's emergency authority to – pardon me?

RICHARD ZAHNLEUTER: Client to lawyer in real time here, I vaguely remember, different but somewhat similar situation came up a year or so ago that under the state administrative

procedures act while there's a decision pending with the State, the licensure status doesn't change? I don't know if we can fit that in here, but that is true under (SAPA), but it requires … if there's an expiration under natural occurrences due to inaction, then it continues. But I don't think that's the motion that's on the table here, because you are denying the application for extended life if that's the way it goes. And so I don't think that what you're posing is the right scenario under SAPA for that extension.

PETER ROBINSON: So, council, let me make a suggestion here, let's have the vote on this and determine what direction the Council chooses to go it, and then if there is an additional action that the Council needs to take in order to allow for assuming a vote to not extend, then we can put that on the table to give the Department the authority to manage a transition.

[may I ask a question?]

DR. STRANGE: My only question would be if we took Dr. Brown's suggestion and incorporated it, and I'm only suggesting it, into your motion, whereby we vote to close with an appropriate closure plan so determined by the Department to come back to this committee in February so that we're all comfortable

with that, I mean, I think that's what I'm hearing. Dr. Berliner said the same thing. We give it 90 days, 120 days, whatever it takes, but at least put it into the motion then I would feel more comfortable with it at that point.

PETER ROBINSON: So…

JO BOUFFORD: It may be a useful question information, because I think Charlie wasn't clear when the operating date, has the five years past?

CHARLIE ABEL: Yes, it has. It's in our review. May of 2015, the authorization to operate had expired. The establishment authorization expired.

PETER ROBINSON: So, what the Department is indicating is that they're not actually sure they can resolve the questions of what the implications are for a vote in support of the motion that you made, and the request actually would be if we would defer until they have time to think through recognizing that the sentiment of the Council now is not to approve an extension, but nonetheless, the appropriate way to structure that, should that be the sentiment of the Council going forward. So, I think what we would request and thinking this would be the two of you made

the motion and the second, if you would withdraw your motion and your second, and then put on the table a motion to defer this decision perhaps even with a sentiment on the part of the Council that we are not inclined to extend the life of the application.

VICKY HINES: I guess the only thing I'm uncomfortable with is that I don't know that we have a quorum vote that we've heard from many of us that we would be inclined to deny, but I don't know that the Council is inclined to deny.

PETER ROBINSON: I understand. But that, if you incorporate that in the motion then at least it gives the Department a direction in which to work as opposed to just a plain deferral which would actually leave things in limbo completely I think. So, --

JOHN RUGGE: Mr. Robinson, does this imply a request to the Department for a closure plan that could be voted upon at the next meeting? That's the thrust of the recommendation.

PETER ROBINSON: That's the sentiment. Right.

RICHARD ZAHNLEUTER: Mr. Robinson, can I mention one other thing? Part of what I'm wrestling with is the provisions of SAPA which is the State Administrative Procedure Act are pretty complicated and I don't have time to actually look at them in detail and I think that there might be a provision that says that if a permit or license is not renewed then the entity has four months to continue that activity because a period of time in which the entity can pursue an article 78 court remedy. I just don't have time to research that adequately on the fly right now in this real time circumstance.

PETER ROBINSON: and if the actual application expired back in, the five years ended back in summer, we may have actually used up those four months.

RICHARD ZAHNLEUTER: That's a pertinent factual inquiry in addition to the legal inquiry and it would be useful if we didn't make a decision realtime right now that had these consequences.

PETER ROBINSON: Well, we're talking about a deferral, but I think that what I want to be clear on here is that there seems to be a strong sentiment on the part of the Council not to renew this application. Now, we, you're asking us not to take a

vote on that. But I think expressing that in some fashion in the motion may make some sense. Dr. Martin and Dr. Gutierrez.

GLENN MARTIN: So I guess it's a point of information. If we do nothing, or let's say we phrase it for approval and we vote it down, then we've expressed what we said and then you can do research to your heart's content which sounds like it's going to take a little bit of time to figure out what's got to be done, but we have essentially have said we're not going to approve it. End of discussion. And now the ball is back in your court to close them up, consistent with whichever appropriate parts of whatever appropriate law there is to do it. Is that correct.

RICHARD ZAHNLEUTER: Yes, that's correct, and I'd like to work with that.

GLENN MARTIN: So it'd be easier, so it sounds like it would be easier if we made a motion to approve it and then voted that down and that would then end it, we're done. Or was it easier to vote it – make the motion the other way? I'm not sure which one, gives you the leeway to basically say, we're done with it. They're shut. And then you do what you need to do to do that legally.

HOWARD BERLINER: I thought we accomplished that by voting the one year down.

PETER ROBINSON: Pardon me?

HOWARD BERLINER: We've accomplished that already, because we voted down the one year. We still have a motion.

GLENN MARTIN: So we can stop –

PETER ROBINSON: We did not affirm that vote, right? So, it didn't pass.

GLENN MARTIN: So if no one moves another motion are we done? Basically? And then you've got your four months, six months, three months, whatever you figure out it is to shut this up?

RICHARD ZAHNLEUTER: No, we wouldn't be done, because no action was taken on that vote. The application would be pending. It would be tantamount to a tabling.

GLENN MARTIN: Alright. So we have to take some sort of vote in your opinion.

RICHARD ZAHNLEUTER: I would request in February, but that's up to you.

GLENN MARTIN: But we could take a vote now, and again, I'm just trying to understand, if we take a vote now and the motion was, let's say, to approve, to disapprove and we voted majority to disapprove…

RICHARD ZAHNLEUTER: Then what would happen would be as a manner of law certain things would happen or not happen.

PETER ROBINSON: So, let me point out to everybody that we are at quorum. So if somebody descents then we are in limbo. So we really, if we can, need to come to some—

JOHN RUGGE: It seems to me that proposing a motion to ask the Department to present a closure plan allows us at the next meeting to either accept or reject that closure plan, and sends a clear signal to this institution and the community that we are serious about our contingencies.

[GLENN MARTIN: That makes no sense at all.]

RICHARD ZAHNLEUTER: I appreciate that suggestion, but the process is that the applicant has to submit a closure plan to the Department and then the Department has to review and approve.

JOHN RUGGE: Then suffice for us to request a closure plan from the applicant.

PETER ROBINSON: I think the issue here is that we actually have an application before us that we actually have to make some decision about. So we either table it, we disapprove it, we approve it. That's really where we gotta go on it. So, that's our option for right now.

HOWARD BERLINER: So what is the motion—

PETER ROBINSON: The motion on the table right now is disapproval from Ms. Hines, and actually Dr. Kalkut who seconded it – Dr. Gutierrez who seconded this one, yes –

ANGEL GUTIERREZ: No, I did not.

PETER ROBINSON: You did. Dr. Berliner. Thank you. So, What we're hearing from the Department is a request for a deferral of this application so that they can actually sort of structure this in a – give us a structure that would allow this to happen in an appropriate fashion. So this doesn't preclude our disapproving the continuation, but asking that we defer action on that until the next meeting, the next cycle.

JO BOUFFORD: I guess it's not clear to me if you, if as you say the Council votes down the application and there is a sequence of processes prescribed in law that will guide the next steps why we would need to wait for you to tell us that, if based on the data we have we believe it should not be given a one year extension, and then, if that's a definitive vote, then you do what you have to do based on the law. So they have their rights and other things. I'm not sure how a deferral works, versus a clear vote. That's what I'm questioning.

PETER ROBINSON: Mr. Sheppard.

RICHARD ZAHNLEUTER: What I was going to say in response was that I'm not sure because I haven't had the chance to face this before this moment and I haven't had the chance to do the legal research regarding SAPA whether or not a vote for disapproval

means that the entity has another four months to challenge this action in court or not, and then therefore whether it means it has to close or not. I just haven't had the chance to get –

DAN SHEPPARD: So, I think there are two things happening here. And again, as it was mentioned earlier, this hasn't happened before. So, in sort of real time we're trying to sort through this. There are legal issues that Mr. Zahnleuter mentioned, and then there are the programmatic issues that with respect to I think there was some questions about what happens to the patients, what the timeframes are, those are not questions in real time here we can answer for you. So I think what was being suggested was that moving this to the next meeting which we would agree that it would come to the next meeting, would give us an opportunity to answer definitively all of the questions, legally and programmatically that are coming up. It's not clear to me that if the Department, if the Council votes for disapproval I don't know that Mr. Zahnleuter can answer the legal questions as to what that would mean.

PETER ROBINSON: But if the motion for disapproval includes a with a timeline that is developed by the Council, the Department, that reflects the realities of concerns about

patient care and compliance with SAPA, would that actually give you the flexibility that you need to sort of work that through?

DAN SHEPPARD: I mean, the closure process is prescribed in statute and PHHPC's role is prescribed in statute and I don't believe that there is any connection between the two. I don't know that that helps.

PETER ROBINSON: OK.

LAWRENCE BROWN: It seems to me that, and I appreciate the guidance from counsel, but I agree with Dr. Boufford, I'm still not clear. It seems to me that a counsel is going to do what a counsel has to do. Whatever they're guided to do by statute or any other guidance. So I'm not sure why a decision by this council would hamper what you are required to do by statute or not.

PETER ROBINSON: And it does seem like the applicant has some rights in this process as well, which they can exercise and at their discretion. Is that right? OK. I think what we're going to do is I'm going to call the question, and this is just to remind everybody a motion for disapproval of the extension of limited life that was made by Ms. Hines and seconded by Dr.

Berliner. So I'm going to call the question. All in favor of the motion?

[Aye]

Any opposed? Two opposed. Three opposed. The motion does not carry. Another motion? Do I have a second to deferral to the next cycle? We have – well, it's in limbo. Otherwise it's in limbo second for that. Dr. Martin.

GLENN MARTIN: Can you please explain limbo in legal terms.

No, truthfully, we have not approved the project, correct? We have not approved continuation, we have taken a vote, we have not, decided not to vote it for one year, we haven't decided to renew it at all. I don't understand what limbo is. I just – other context. I don't understand what the limbo is now. We haven't approved the project, they expired four months ago, you got a lot of work to do. What am I missing?

PETER ROBINSON: The issue is there's no deadline then for dealing with that without –

GLENN MARTIN: There is. They expired three months ago. How am I wrong on that?

RICHARD ZAHNLEUTER: I can try it this way. First of all I think I have become a little confused by the word council and counsel, it's got two different meanings but it sounds the same. Maybe not followed everything correctly. But, I don't have to do anything. It's the applicant that will have to evaluate the consequences of what happens here. So it's not a legal task for me to accomplish. I'm just saying that it should be researched and a definitive answer should be put together to advise as to what the ramifications will be and I don't know what those ramifications are yet because it's a complicated area of SAPA that hasn't come up before. If with regard to the motion that Mr. Fassler was suggesting, I think the limbo would be that what existed yesterday would exist tomorrow. And then we would handle it February at the next meeting in a more definitive and informed way with legal advice.

GLENN MARTIN: So, let me ask, if I may. Let me ask it more precisely; at this moment, having turned down a request to extend for a year, having turned down having not passed to closure, where are we? If we do nothing more just what happens is all I'm asking.

RICHARD ZAHNLEUTER: The status quo that existed yesterday would perpetuate itself until the next action that would be taken, presumably at the February meeting.

GLENN MARTIN: So they're – they would be – so you're suggesting they would continue to operate essentially without a valid, without our approval, or the State's approval, CON, whatever it is?

RICHARD ZAHNLEUTER: If indeed their time expired already, which I don't know factually, but if indeed that happened, then they would continue to operate as a matter of law.

CHARLIE ABEL: I would add, they have an application before us that they've been working with the Department on perfecting. So, and our past practice has been as Mr. Zahnleuter indicates, they're permitted to operate in that period, if they were to, if they chose to withdraw the application, I think it gets a little more complicated. But I'm sure they wouldn't at this point.

PETER ROBINSON: So does it make a difference whether we have a motion to defer or not then?

RICHARD ZAHNLEUTER: Doesn't make a difference in terms of their operation yesterday as opposed to tomorrow.

PETER ROBINSON: That's your question, right, Dr. Martin?

GLENN MARTIN: Yeah. I'm trying to just figure out what we should be doing.

PETER ROBINSON: I think in essence whether we pass a motion to defer or not we're deferring at this point.

JO BOUFFORD: Forever? Or…

GLENN MARTIN: …one year you wanted to shut them down and the only question is how you shut them down safely and I have complete faith in the State following whatever rules there are to do that, and I think that's where we are right now, and I haven't heard anything that says it will change in February, other than just buying another two months so we've virtually given them a year anyway because now we're up to what, six months by then.

PETER ROBINSON: Dr. Brown.

LAWRENCE BROWN: I respect Mr. Fassler's motion that's on the floor. I've asked him if he would consider either withdrawing it or modifying it because I think there needs to be a strong statement by this council of their concern about the terrible lack of progress. Just capturing the minutes to me seems to be less than persuasive about the concern raised by this council. So I would think at the very least there needs to be a strong statement that the council has really very little confidence and really concern about the way this applicant has responded.

PETER ROBINSON: Well, first of all, that is now in the minutes, and I think you've said it very eloquently.

LAWRENCE BROWN: I think I'd like to see it as a motion. The minutes in terms of our conversation, but I think it is a motion and it is in fact the sentiment of the council by vote to me that's even more persuasive.

MICHAEL FASSLER: Can other people make amendments to the motion?

PETER ROBINSON: Well, I don't think we've gotten a second to your motion yet, so it actually is not – did somebody second? I apologize. But these seats are empty and I can't tell. So, excellent. So, Mr. Fassler. Do you have a proposal –

MICHAEL FASSLER: Again, I'm hearing the wording, I'm hearing different things. Dr. Rugge's suggesting a closure plan, Dr. Brown is expressing, just so we get the wording down.

PETER ROBINSON: Let's do one thing first. We've got a motion and a second to defer. Let's call the question on that. All in favor?
Opposed?
[Aye]
Is that everybody, because otherwise that motion does not have a sufficient vote either. Is there anybody that's opposed to the deferral? Yes. Four. That motion does not carry.

JOHN RUGGE: Can I try? I would move that the Council expresses it's serious concern about lack of any progress to date and is asking the Department to come back with a closure plan for consideration at the next meeting, in accordance with existing statute and regulation.

PETER ROBINSON: who is the second on that? Dr. Strange. Everybody… you want to repeat that Dr. Rugge?

JOHN RUGGE: I don't know that I can. This Council expresses it's serious concern about any progress in meeting the contingencies and therefore would ask the Department at the next meeting to present a closure plan for consideration by the Council.

PETER ROBINSON: and we have a second by Dr. Strange.

[That may already be described by law, at least we'll understand --]

PETER ROBINSON: I'm not sure. I think actually that we will end up having to vote on the application and we now do not have a sufficient number of people to vote in one direction or another on the basis of the votes that we've already taken. So I think we have actually just left this now.

JOHN RUGGE: Think we lost our quorum? If we don't have –

PETER ROBINSON: Well, in otherwords, we need 13 affirmative votes, and we have 14 people here, and I think Mr. Kraut is out of the room. So there's really 13. So unless we get –

JOHN RUGGE: But we may have – if everybody can agree to this, we've got a motion that can work.

PETER ROBINSON: Right, but again, remember a closure plan is not something the Department can request. It's got to come from the applicant. So for us to actually ask the Department for a closure plan –

JOHN RUGGE: So perhaps we should say then we're asking the Department to request a closure plan from the applicant for consideration.

PETER ROBINSON: I mean, in all honestly we don't have a quorum that's going to be able to act on this thing. It's going to come back on the next cycle I think and we're going to have to make a determination hopefully with a sufficient number of votes that we can get a majority in one direction or another.

JOHN RUGGE: Perhaps you could help us Mr. Robinson in finding a way to express the concern of this council in the form of the motion.

PETER ROBINSON: I think the concern of the council is fine. I think when we ask for an act – I think if you just keep the motion to an expression of real concern about the performance of the applicant and the fact that the council is quite disturbed by the fact that there's been no progress and at this point are not convinced that there is a plan going forward that's going to meet the sentiments of the Council.

JOHN RUGGE: How about this; then I would revise the motion to state that this council wishes to express it's serious concern about lack of any progress and it's waiting for further word from the Department as to how to proceed.

PETER ROBINSON: Dr. Berliner. Is that a second.

HOWARD BERLINER: No, it's not.

PETER ROBINSON: I need a second before we can go any further. Is there a second to Dr. Rugge's motion? Dr. Strange. Thank you. Now Dr. Berliner.

HOWARD BERLINER: So, I mean, we're really in a bind here and it's not going to get any better because approving places for five year lives and then as it turns out we actually can't close them. Which means that this whole exercise just seems like it's, like I mean, it's a waste of everyone's time except for the applicants who basically have unlimited life because I mean, whether it's four months, whether they go through a judicial process which may decide we acted you know, against whatever the rules are, I mean, I think we have to, I mean I think it's been clear sentiment of the committee that we want this place shut down because of the way that they've acted over five years. I don't see how putting this off for another two months or four months does anything except say, then they're going to have a closure plan and so we've not extended it. I mean, either we have the authority as a council to say we're taking away their life – I don't mean to speak as harshly as that, but that's the terminology we're using, we're taking away their ability to continue to operate, or else, why, let's just –

PETER ROBINSON: Maybe we differ on that a little bit in that if we had now 13 votes in favor of what you just said, I think then the Department would have to figure out how to act to closure. So I don't think it's beyond the scope of authority of

the Council to do that. We've had that vote, and we've not been able to generate 13 votes.

RICHARD ZAHNLEUTER: Mr. Robinson, may I make a suggestion? It might help Dr. Berliner. I'm thinking creatively and it may not be legal but I'm trying to be helpful. You have an application here from an applicant. Would it be feasible for you as a group to consider summoning the applicant at the next meeting? The application is pending. Instruct them that you want to hear from the applicant and you want to speak to the applicant.

PETER ROBINSON: Well, they have an opportunity to speak at the committee and we actually have had that conversation and we compromised at the one year level at the committee level, but sentiments have actually evolved since then, so I'm not sure that we're going to – I appreciate the creativity of the suggestion. Dr. Berliner.

HOWARD BERLINER: I'm wondering if you could pull the Council informally to see if the two of the three people who voted against it –

PETER ROBINSON: We need all – pardon me? Right. No, I mean a poll would be just where would you stand? Right? But you can't even –

HOWARD BERLINER: Would people be willing to change their vote from the past vote based on the most recent discussions? The vote to basically close it now.

DR. STRANGE: Again, I was the one that brought this up to begin with. I still have concern based on what our counsel is telling this Council that he had concerns, and so I'm not willing to change the vote. I'm willing to listen to what Dr. Brown said, listen to what Dr. Hines said, I absolutely respect and understand and agree with the closure. I don't want to bring this applicant back here. I want this place closed based on the fact they haven't met five years, but I'm hearing from our counsel who represents us and that we have a responsibility to that community, not to this applicant, that we do this appropriately. And yes, it may be legally written and it may be the process that occurs, but our counsel is telling us for whatever the reason, we need a little bit of time to make this not a crisis. Again, I think there's a practical piece to what is the reality of this whole situation which is going to be closed. So closed two months from now, four months from now,

it's not going to be open two years from now. That's what we're saying here. And all we're saying here I think what you're asking us is I need just a little time to just make sure that we figure this out right and that we don't hurt anybody in the process, whether it's the applicant, the patient, the doctors, anybody. And that's what I'm listening and hearing to and that's why I can't vote to close – I can vote to close it with the contingencies. I'm comfortable with that.

PETER ROBINSON: Dr. Gutierrez.

ANGEL GUTIERREZ: I was present at the Committee meeting where the applicant heard us complaining about their lack of compliance. They told us the things that they have done attempting to improve their numbers. If I recall correctly they had sent their physicians on to the clinics attempting to talk to the other physicians and attempting to get referrals. We made, at committee level, a decision at that point not to extend any more than just one year. The message that the Committee gave to the applicant at that time was a strong as we could possibly make it. Without being draconian. We're not going to give you two years. You get one year, which now means only eight months. We had spent a half hour showing that we don't know what we're doing. I'm sorry. I think that the message to

the applicant has been given. I have no doubt about it. However, my remarks effect the way you're voting, let it be.

PETER ROBINSON: Thank you. Dr. Martin.

GLENN MARTIN: it's a bit out of order, so shut me up if you wish, but I would just ask Dr. Strange directly, it sounded like you said you would vote to close it now with certain contingencies? Could you just say what those contingencies are? Maybe make a motion?

DR. STRANGE: My original thought was to take Ms. Hines motion, it's OK, sorry to demote you, --

PETER ROBINSON: Just so you know, before you go there, let me do this; I have a motion from Dr. Rugge and basically you –

DR. STRANGE: Which is basically the same thing as we were saying before honestly. I think it covers exactly what we were speaking about that started this whole conversation which is that we were sending the message that we would like a closure plan presented by the applicant that legally met everything that our attorney's are looking to research to make sure that we can

do this in a fair as easy process as can be because it's not going to be an easy process, and without being draconian about it, although that was already passed, and I get that, right, but we're here and we're talking about it. So we're looking to do what we want, do what the sentiment is, send the message, and not appear draconian about it. So I agree with the current motion on the table.

PETER ROBINSON: Right. Yeah. So let me just – that's right. THank you very much for that clarification. So, it turns out that your application as we discussed is out of order because of the fact that you asked the Department to generate a closure plan, is that not correct? Did I understand you correctly? And that the Department can't initiate a closure plan?

JOHN RUGGE: I modified it to ask the –

PETER ROBINSON: No, I think he's now going back to seconding –

Alright, so let me call that question because otherwise we have things sort of laying on the table without action. So I'm going to call the question on Dr. Rugge's motion. Does he need to make it again? Please do.

JOHN RUGGE: Move that this council expresses serious concern about failure to meet the contingencies and ask the applicant to provide us with a closure plan for consideration by the council.

PETER ROBINSON: And that was seconded by Dr. Strange. I'm going to call that question. All in favor?

[Aye]

Opposed? OK. Thank you. Alright. I think we're done. And what that means is that we've not been able to actually generate a quorum based vote on any of the motions that we put forward, so the application is neither denied or acted upon, it's actually in a sort of a limbo status I guess, and it is going to come back to the Council, I would expect, at the next cycle and in the meantime the operations are going to continue because we haven't actually acted definitively. Now, presumably we'll have more people here and an ability to generate a quorum on one of these motions at the next meeting of the Council. So that's kind of where we're going. I'll accept comments from Dr. Martin and then Dr. Boufford and then we're going to move on.

GLENN MARTIN: No, my comment was is that I think it would be helpful as soon as possible and not waiting until February that we got an appropriate legal memorandum from the Department either generated from the Department from counsel or however you guys work together. So we actually know – so we actually know what we're getting into when we meet again and not go through law school for the first half hour of our discussion. So I would ask that that get moved forward as quickly as possible so that we can discharge our duties appropriately.

PETER ROBINSON: Very wise. Very wise. Dr. Boufford.

JO BOUFFORD: I actually had a different question. I think Glenn's suggestion is a really good one. My question was what would come before us the next time? Their application for renewal? Because nothing else is going to – their preparing an application you said for extension? And so that would come before – I mean, I'm just trying to clarify, what would come before us whenever it comes? Because our counsel is saying nothing changes until something happens with us. And I'm wondering what triggers that something with us.

DAN SHEPPARD: This is, we've all covered a lot of ground here in the past half hour, but I think at the end of the day

what has happened is the council hasn't voted on – the council has not voted or has not been able to vote on an item. So, we'll move an application through next cycle and the council based on the information it has will make a decision.

PETER ROBINSON: Right. But I think the only other thing, and I think this gets to Dr. Martin's comment as well which is that we would expect that if obviously we extend the useful life by whatever we do then the Department has a process in place for doing that. But the Department should probably also be prepared for a vote of disapproval or non-extension.

DAN SHEPPARD: No doubt.

PETER ROBINSON: So that when we do act on it next time, it won't be caught up in a question of ….

DAN SHEPPARD: No doubt.

HOWARD BERLINER: If we had approved a one year extension of the limited life and that would go from May to May although we would have had to consider it again probably now, we're in February, what would the difference be? In otherwords, if we

voted to give it just one year more of life, what would happen when it came to the end of that term?

PETER ROBINSON: I think from practical standpoint, nothing. The only question is really then if they've actually performed and met the standards at the end of one year, which is what we've set as the conditions and contingencies associated with that, then our justification for disapproval would probably go away.

HOWARD BERLINER: But let's assume just for argument sake that that we still wanted to – we gave it a one year approval at the end of that year, the Department would say, recommend full approval, right, and we voted against that. would the place then close or would we be back exactly where we are right now?

PETER ROBINSON: I think …if in any instance where there's a decision not to approve a permanent life after a limited life, I think the Department has to figure out, and give us a strategy on how to handle that generically. But I do believe in this case if we continue this and give it a one year life and let it move forward, that you have actually said, if you do these things, we will give you permanent life. Could we go contrary to that? probably, but I'm not sure that from the

standpoint of sort of just ethics that it would be the right thing for us to do. Then we're not behaving consistently, right? Because that was the purpose of the extension of the limited life.

JO BOUFFORD: If I may, I think Glenn's point is an important one, is that if this hasn't happened and we don't know what the implications are, we need to know those because it may happen again.

RICHARD ZAHNLEUTER: I think that was the point of my request. I know that the facility's life expired May 18, 2015. And I know that pursuant to SAPA it continues until an action is taken. What I don't know is if you take an action now does it have another continued life of four months or not, and I'm reluctant to make that legal determination for you on the spot without being able to research it. So that's what I will do and I will do it forth with so you'll have it right away.

GLENN MARTIN: The only thing I'd say is that's an important point – I'm sorry, just for clarification, that's an important point, but there are other important points that I think we're still befuddled over about how this would close if they did and if this was taken away, you've asserted that they

have to come up with a closing plan, but what happens if they didn't cooperate and we had to do it anyway, and what time course we're talking about, I think a detailed thing from that side of the room and with your input would be very helpful. That's all I'm asking. And as expansive as possible would be –

HOWARD BERLINER: And I'm wondering if you could get that report to us before, as soon as possible, I don't know how long that might take, but if we could have an emergency meeting rather than having to wait for the Council meeting or emergency meeting of the…

PETER ROBINSON: The Council or the Committee?

This is now at the Council level. It's not at the Committee level.

HOWARD BERLINER: Of the Council. I'm good with that. To be considered.

PETER ROBINSON: Dr. Gutierrez.

ANGEL GUTIERREZ: The quorum being what it is, we cannot even take a bathroom break. I think we need to move on with the agenda.

PETER ROBINSON: I'm ready to do that. Thank you.

OK. We're done with that item, and in whatever we are. Home health – Mr. Kraut can return. He's gone. He's on the train. OK. Home health agency licensures. Actually, yes, I'll make the motion too. 2291L, Trusted Care At Home LLC, interest declared by Ms. Hines. DOH and the Committee recommend approvals with contingencies, and I so move.

Second.

JEFF KRAUT: Sorry. I forgot what I was supposed to do. I have a second, Dr. Gutierrez. Department, any questions from the Council? Hearing none I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? Motion carries. One abstention, Ms. Hines.

Let's just keep going.

PETER ROBINSON: 142216B, NHPE LLC, d/b/a New Hyde Park Endoscopy in Nassau County. Establish and construct an article 28 freestanding ambulatory surgery center in gastroenterology. I'm on – It's out of order.

JEFF KRAUT: We're going to go back in a second to the batches in a second. Go ahead. We're just taking the out of order once.

PETER ROBINSON: and this was on the special …

JEFF KRAUT: This was the special meeting.

PETER ROBINSON: And the Department recommended approval with contingencies as did the committee. I so move. Second.

JEFF KRAUT: I have a second, Dr. Gutierrez. We heard this this morning. Is there any questions of the Department or any other questions? Hearing none, I'll call for a vote. I'll go back after this. So, calling a vote on this application. All those in favor, aye.

[Aye]

Opposed? Abstentions? Motion carries.

Now, we're going to have to go back. What was the issue?

PETER ROBINSON: When Dr. Martin comes back.

JEFF KRAUT: We needed one more vote so we have to – Dr. Rugge is gone.

PETER ROBINSON: We're done. We can't pass anything. Let's take a five minute bathroom break. This is – let me just tell you so you can plan the afternoon, and I mean, the afternoon. We're going to come back. We're going to move all the applications in the batch. We are going to do Codes because we need a quorum. We have emergency adoption of these things. We must pass it. So, I need to have how many bodies? I need everybody back in the room in five minutes please. That really is it, because we'll have trouble. We must pass the codes stuff. We must get this batch through.

[break]

JEFF KRAUT: If everybody could please take their seats so we could just count to make sure we have a quorum. Is Mr. Robinson proximate? In the room? He just walked out? Maybe he just went to the bathroom, so let's give him a second.

What we'll do when Peter comes back in we'll move the batches. OK. And then we'll do codes, and then we'll go back

to the reports. And then everybody can do statutory requirements. So we'll just wait for Peter.

Could somebody just look in the hallway to make sure Peter is not chatting?

[We have 14, do we want to move to Codes?
No, I want Peter to finish the batch, then we'll move to Codes.]

Thank you. Just give him a second. I just, I think for the record if I start fragmenting the meetings, I could create a problem for us.

OK, in Mr. Robinson's absence until he walks in I'm going to call application 15127…Nevermind, he's here. I knew if I started you'd appear. You want to go back to the home health agency one? And then we'll skip ahead to the special surgery.

PETER ROBINSON: So we're going to reintroduce application 2291L, Trusted Care in Home, LLC. An interest declared by Ms. Hines. The Department recommends approval with contingency as did the committee and I so move.

JEFF KRAUT: I have a second, Dr. Gutierrez. There any comments from the Department or questions from the Council? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? Motion carries. One abstention. Yes.

PETER ROBINSON: We didn't do this one right? Calling application 151277B, Hospital for Special Surgery Ambulatory Surgery Center of Manhattan d/b/a HSSASC of Manhattan. To establish and construct a single specialty freestanding orthopedic ambulatory surgery center at 1233 second avenue in Manhattan. The application has an approval with conditions and contingencies and a limited life of five years from the date of issuance. The Committee did recommend approval with a modification to the Medicaid and charity care percentage from 3 percent aggregate for those two combined to four percent, and with that the Committee voted for approval, and I so move.

JEFF KRAUT: I have a second, Dr. Gutierrez. Question, Dr. Martin.

GLENN MARTIN: So we were going to hear what the contingency actually says to be able to judge whether or not something would happen if nothing happened.

JEFF KRAUT: I'm going to call, Mr. Abel.

CHARLIE ABEL: Thank you. So, we have a contingency and a condition that I think will meet the Council's needs. And this is agreeable to the applicant. So the contingency is, complementary, the contingency is a submission of a commitment acceptable to the Department that the facility shall achieve by the end of the third year of operation a combined total of at least four percent Medicaid and charity care utilization to be documented and reported annually for submission to and consideration by the Department and the PHHPC throughout the five year limited life period. The condition would be for the facility shall achieve by the end of the third year of operation a combined total of at least four percent Medicaid and charity care utilization to be documented and reported annually for submission to and consideration by the Department and the PHHPC throughout the five year limited life period.

JEFF KRAUT: Dr. Berliner:

HOWARD BERLINER: So what happens if it doesn't?

CHARLIE ABEL: I believe the contingency permits the Department and the applicant to work through the reasons why the applicant may fail to reach the four percent and engage in a

constructive manner to see if there are reasonable means to achieve the four year. Keep in mind, -- I'm sorry, four percent. Keep in mind the standard that was set at the ad-hoc committee was a sustained good faith effort. So we don't want to just hit the four percent on a given day or even a given year, but rather we want to see a sustained good faith effort, hence the third year review and the five year limited life period.

HOWARD BERLINER: Well, we've just seen that the five year limited life period doesn't actually mean five years nor is it limited. So, what happens if they don't? I mean, what's the authority that we have as a council –

PETER ROBINSON: So, I'll come back to the fact that I think we really do. I think what we highlighted with that lengthy discussion before was the fact that we just need some clarity in terms of process and understanding things from both a legal standpoint and also from an operational standpoint within the Department. So I certainly believe that with regular reporting coming into the Council regarding all of the limited life projects and which ones are on track and which ones aren't, Mr. Kraut said before, shedding a light on it certainly, but then actually anticipating where there may not be an extension

of limited life, how those are going to be handled. So I do really believe that we have a much better handle on this now and on the going forward basis, I'm comfortable that we'll be able to act as the Council has prerogative to act making judgments on whether these applicants are performing in accordance with their contingencies and conditions or not.

JEFF KRAUT: Howard, I, so I wasn't obviously a party to the previous conversation although by the length of time I deduced certain assumptions. I would suggest that this is going to be a topic that we're going to visit in a more in depth, in a venue that's more in depth than just project-specific and bring it to a policy and from what I understand we have to give the Department a little time to formulate and answer some of the issues that had been brought up by this process. And let's just give them the time, but let's put aside appropriate time to discuss this without, in a policy as opposed to a single applicant before us. That's the only thing I would request. Is that acceptable?

PETER ROBINSON: I think so, and I think what we may even call that is as much an educational session for the Council as anything. So, that would be helpful to all of us, I think, and to the Department, and to the public.

JEFF KRAUT: So, we'll notify when we're going to put that on the agenda. OK.

So, are there any other questions? We heard what Mr. Abel wrote. It was the applicant you said found that acceptable. Are there any other questions? Hearing none, I'll call for a vote. All those in favor, aye.

[Aye]

Opposed? Abstentions? Motion carries.

PETER ROBINSON: I'm going to batch three applications for dialysis services. 152094B, Seacrest Acquisition d/b/a Seacrest Dialysis Center in Kings County, to establish and construct a nine station end stage renal dialysis center at 3035 West 24th Street in Brooklyn. The application 152164B, Dialyze Direct New York, LLC in Kings County which is to establish and construct a hemodialysis training center, really a home dialysis service to be located at 4714 16th Avenue in Brooklyn with a note that the contingency number two has been removed. And application 151108B, MLAP, Acquisition One, LLC, d/b/a Long Beach Nursing and Rehabilitation Center in Nassau County, which is to establi – oh, that's not dialysis.

JEFF KRAUT: Well, you can still batch it. This is from the actions we took this morning.

PETER ROBINSON: That's correct. As the new operator of 150 bed residential healthcare facility at 375 East Bay Drive in Long Beach. Currently operating as Komanoff Center for Geriatric and Rehabilitation Medicine. All of these were recommended for approval by the Department with conditions and contingencies. The committee accepted those and recommends them and I make a motion for all three.

JEFF KRAUT: Second, by Dr. Gutierrez. Is there any questions? Comments by the Department or questions from the Council? Hearing none, I'll call for a vote. All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

Now you want to start, continue and we'll go through the big batches.

PETER ROBINSON: We'll go through the batches now. Applications for acute services; 151302C, Krauss Hospital in

Onondaga County, to relocate and expand the emergency department and relocate the urgent care services to the old emergency department space and 152083C, University Hospital in Suffolk County to certify South Hampton Hospital as a division of University Hospital. The Department recommends both with approvals and contingencies as did the committee and I so move.

JEFF KRAUT: I have a second, Dr. Berliner. Any comments by the Department or questions by the Council on these two applications? Hearing none, I'll call for a vote. All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

PETER ROBINSON: These are applications for acute care services and 152099E, Westfield Memorial Hospital in Chautauqua County. This is a request for indefinite life for CON 101136. Application 152029E, FedCare in New York County. To establish FedCare INc., as the new operator of the facility located at 344 West 51st Street in Manhattan. And 152075E, First MedCare Primary Care Center in Kings County, which is a transfer of 25 percent ownership to one new member from the one existing member. The

Department recommended approval with contingencies as did the Committee, and I so move.

JEFF KRAUT: I have a second, Dr. Gutierrez. Any comments or questions? All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

PETER ROBINSON: This next batch is for applications for dialysis services. 151070E. USRC Pelham LLC, d/b/a US Renal Care Pelham Parkway Dialysis in the Bronx. This is to establish USRC as the new operator of the facility at 1400 Pelham Parkway South in the Bronx. And this is a companion project to CON 151072. 151072, the companion project. USRC South Flushing LLC, d/b/a US Renal Care South Flushing Dialysis in Queens. To establish USRC as the new operator of the facility located at 7112 Park Avenue in Flushing. Which is currently operated as an extension clinic of the Pelham Parkway Dialysis Center. 152058B, Associates of Fulton County LLC, d/b/a Gloversville Dialysis Center in Fulton County. This is to establish and construct a 13 station dialysis facility in lease space at Nathan Littauer Hospital which is located at 99 East State Street in Gloversville. 15211E, DSI, Dutchess Dialysis Inc.

this is change in the indirect ownership at the Great Grandparent level of DSI, Dutchess Dialysis Inc., don't ask. 152172E, Harriman Partners LLC, d/b/a Premier Dialysis Center in Orange County. This establishes Harriman Partners LLC as the new operator of the 20 station chronic dialysis center at 33-1 Route 17M in Harriman that is currently operated as an extension clinic of the Good Samaritan Hospital of Suffern. The Department recommended approval with condition and contingencies as did the Committee, and I so move.

JEFF KRAUT: I have a second, Dr. Gutierrez. Any questions or comments? All those in favor, aye.

[Aye]

Opposed? Abstentions? Motion carries.

PETER ROBINSON: This next batch is for applications for residential healthcare facilities either for establishment and construction. 151046E, Diamond will operator LLC, d/b/a Diamond Hill Nursing and Rehabilitation Center. This is in Rensselaer County and it establishes Diamond Hill operator as the new operator of Diamond Hill Nursing and Rehabilitation Center which is 120 bed facility located at 100 New Turnpike Road in Troy. 151284E, Regis Care Center in the Bronx. This transfers 99

percent ownership of that organization to two new members. 152011E, Maximus 909 Operations LLC d/b/a Briody Healthcare Facility in Niagara County. And this establishes Maximus 909 Operations LLC as the new operator of the 82 bed Briody Healthcare Facility located at 909 Lincoln Avenue in Lockport. The Department recommends those with conditions and contingencies as does the Committee, and I so move.

JEFF KRAUT: Second, Dr. Gutierrez. Any comments or questions? All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

PETER ROBINSON: Next are home care licensures either new or changes in ownership.2638L, 152001E, 2235L, 2468L, 2558L, 2621L, 2644L, 151282E, and the Department recommends approval of these with a contingency as did the Committee.
And I so move.

JEFF KRAUT: Second, Ms. Hines.

VICKY HINES: Clarity. I think these are all changes of ownership and not new?

PETER ROBINSON: Two new and –

JEFF KRAUT: The first two are new with assisted living programs.

VICKY HINES: Oh, you batched them all.

JEFF KRAUT: And the other ones are just change in ownership of existing LHHCSAs. Any other questions or comments? All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

PETER ROBINSON: Certificates of incorporation. The Foundation of New York Presbyterian Lawrence Hospital for Fundraising. Metropolitan Jewish Health System Foundation which adds to it's corporate purpose. ECMC Lifeline foundation Inc., for fundraising. The Foundation for Hudson Valley Hospital Center for fundraising. A certificate of dissolution for Baptist Health Family Center Inc. Department recommends approval as does the Committee, and I so move.

JEFF KRAUT: I have a second, Dr. Gutierrez. Any other questions or comments? All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

PETER ROBINSON: Application 151309E, the Rye Ambulatory Surgery Center in Westchester County. This is request for two-year extension of the limited life of CON 082025. The Department recommended approval with a condition and contingency and so did the Committee with one member in opposition, and I so move.

JEFF KRAUT: I have a second, Dr. Gutierrez. Any questions or comments? All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

PETER ROBINSON: These are new LHHCSA applications. 2093L, 2337L, 2403L, 2404L, 2413L, 2419L, 2427L, 2429L, 2460L, 2466L, 2479L, 2497L, 2510L, and 2514L, 2527L, 2531L, 2545L, 2572L, 2582L, 2583L, 2586L, 2587L, The Department recommends

approval with a contingency. The Committee recommended approval with a contingency with one member abstaining, and I so move.

JEFF KRAUT: I have a second, Dr. Gutierrez. Is there any comments? Hearing none, I'll call for a vote. All those in favor, Aye.

[Aye]

Opposed? Abstentions? I have one abstention. Motion carries.

PETER ROBINSON: And that concludes the report from the Establishment and Project Review Committee.

JEFF KRAUT: Thank you very much. I'm going to ask Dr. Gutierrez to go into Codes right now, and Dr. Gutierrez, I know since we had the meeting this morning, I don't know how much staff, we're just going to try to get the critical things approved.

ANGEL GUTIERREZ: So at today's meeting of the Codes, Regulation, and Legislation –

[microphone]

I'm not loud enough?

[Not when it's turned off]

At today's meeting of the Codes, Regulations, and Legislation Committee, the Committee reviewed four proposals. For emergency adoption protection against Legionella this proposal will continue the emergency regulations related to cooling towers which recirculate and aerosolize water. When not properly monitored or maintained, disinfected, aerosols may contain Legionella bacteria. The emergency regulations establish requirements for the registration testing, cleaning, disinfection, maintenance, inspection certification, record keeping and reporting of results and actions in order to control the growth of Legionella bacteria. Without this action the emergency regulations which are set forth in part four of title 10 New York Codes, Rules and Regulations would expire on February 10, 2016. The Committee voted to recommend emergency adoption to the Full Council and I so move.

JEFF KRAUT: I have a second by Dr. Boufford. Any questions or discussion? Hearing none I'll call for a vote. All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

ANGEL GUTIERREZ: For adoption also, synthetic cannabinoids. This proposal will amend part nine of title 10 NYCRR to expand the life of prohibited synthetic cannabinoids. The proposed regulations are in response to a rash of hospitalizations related to new forms of synthetic cannabinoids whose chemical compositions are not explicitly included in the current regulation. The proposal will also update regulation for consistency with the federal schedule one of controlled substances naming the newly identified synthetic cannabinoids will better enable law enforcement to enforce the regulation and make it clear that the possession, manufacture, distribution or sale of this chemical compound is illegal. This proposal was previously brought before the council for emergency adoption. It is now presented for adoption. A notice of proposed rulemaking was published on August 26 and public comment period was closed on October 13. No comments were received. The Committee voted to recommend adoption to the Full Council, and I so move.

JEFF KRAUT: I have a second, Mr. Fassler. So, now after this this won't come back to us. We're adopting it for finalization, that true? OK? So is there any last comments from the Department which is not duplicative of what the presentation was done at the previous Council meeting? Any additional comments?

[No, thank you.]

OK. Any questions from Council members? All those in favor, Aye.

[Aye]

Opposed? Abstentions? Motion carries.

ANGEL GUTIERREZ: For information; the statewide health information network for New York, SHIN-NY, this proposal will add a new part 300 to title 10. Part 300 will give the Department regulatory oversight over SHIN-NY. This proposal will codify certain requirements that the Department has already developed and implemented in policy documents and policies that have already been incorporated into grant contracts among other provisions. Although the Department issued a similar notice of proposed rulemaking September 3, 2014, a number of significant

changes have been made by of health information exchange in the Office of Quality and Patient Safety. This was also only for information.

For discussion was children's camps. This proposal will amend subpart 7-2 of the State Sanitary Code with regard to children's camps. The proposed amendments are necessary to implement the law that established the New York State Justice Center for the Protection of People with Special Needs which specified children's campus for children with developmental disabilities as a type of facility within the oversight of the Justice Center and requires the Department to promulgate regulations pertaining to staff hiring and training and incident management at these camps. This proposal will also extend specified health and safety protection to all camps enrolling a child with developmental or other disabilities, not just to children's camps for children with developmental disabilities. Tim Shay from the Department provided details earlier regarding this health and safety protections including supervision levels obtaining care and treatment plans and accessibility and safety requirements. This is only for discussion.

JEFF KRAUT: OK. Is there any other comments from the Department or any questions from the Council members? So, when

does this come back for finalization? We've been talking about this, I don't know, two years?

ANGEL GUTIERREZ: I do not know for sure.

JEFF KRAUT: Anybody from the Department? I'm sorry. I know the corner is blocked, I can't see anybody.

TIM SHAY: We're trying to get it on the next agenda for the Council for permanent adoption. We're not sure we're going to be able to make that schedule. So, either be the next cycle or the cycle after that for permanent adoption.

JEFF KRAUT: OK. Thank you. That was information.

ANGEL GUTIERREZ: We have one last update. Amendments to part 58 and 34 of title 10 which cover laboratory test results reporting. Was approved at the October 8 Council meeting. the approved amendment permits laboratories to release patient test results directly to the patient upon patient request without the ordering provider's written consent. Consistent with updates to federal regulations. At the October 8 Codes Committee meeting several speakers requested that the Department remove language from the proposed regulation that

requires a clinical laboratory to direct patients inquiries regarding the meaning or interpretation of test results to the referring health services provider. This language prohibits clinical laboratory personnel including clinical laboratory pathologists from discussing with a patient the interpretation of test results. The council approved the proposal for adoption without modification of the October 8 meeting. However, upon recommendation of the Codes Committee ask that the Department return to the Committee during the next meeting with a timeline in process for how this request will be further considered. This is only informational.

JEFF KRAUT: Thank you. Does the Department want to comment on that or that was sufficient? Hearing – anybody has questions? Thank you.

ANGEL GUTIERREZ: I'm done with the report.

JEFF KRAUT: Thank you very much Dr. Gutierrez. And I'm going to now turn to Dr. Boufford to give the report on the Public Health Committee.

JO BOUFFORD: If I may I'm going to combine Sylvia and I are going to do our two reports together and we really wanted to

give you updates on the prevention agenda and the work of the public health committee on maternal mortality. So, Sylvia, didn't we have a little short slideshow? Yes.

SYLVIA PIRANI: Yeah, they're going to pull those up. So I'll just be really brief, especially because Ms. Dreslin talked a little bit about Prevention Agenda results. We are on track with implementation with the Prevention Agenda local plans, local communities are implementing a range of – you could go to the next slide please. Thank you. Implementing a range of evidence-based and not evidence-based interventions, so we're working on technical assistance on that. we're working with our communities to make sure they have the right partners at the table and we're continuing to focus on health disparities. We're also spending some time with our colleagues and other parts of healthcare reform to make sure these efforts are aligned as was discussed earlier this morning.

Ms. Dreslin talked about the progress to date on objectives, so I won't go through that. we have issued guidance from the Commissioner to local health departments and hospitals for the next three year cycle of planning which is aligned with the IRS requirements for hospitals to do community health assessments and do community benefit reporting. We're asking them to do it again together. This process is just getting

underway. There's a role for the PHIPs in this efforts as well. They're going to contribute to the development of these assessments and plans.

We have mapped the DSRIP activities related to the Prevention Agenda in domain four, and also are asking hospitals to – so we're asking for alignment there. We're asking hospitals also to align community benefit contributions and reporting so we see some evidence of investments in community activities that support the Prevention Agenda. We're reviewing the quarterly reports from DSRIP and asking questions about activities related to the Prevention Agenda and we're participating in efforts related to the SIM grant and the SIM plant to incorporate Prevention Agenda goals and to those activities.

Jo, do you have –

JO BOUFFORD: Let me just make a couple comments about this presentation and maybe ask Sylvia to elaborate a bit on something. The lessons learned issue I think the question, one of the bullets, there are two issues on that first slide. One has to do with the issue of health disparities. It was, it has been a concern an ongoing concern. We've had a special working group in the issue of health disparities in communities. Most have identified a health disparity that they're working on, but

are needing really technical assistance in support in terms of taking actions going forward. The State Office of Minority Health is preparing an equity report and it has been somewhat delayed, but I'm advised by the Deputy Commissioner that they will be trying to pull out county-level information to make it available to the Prevention Agenda collaborations in the shorter term while we're waiting for the final report, which is, I think, going to be really helpful to people. This was really identifying those communities in the State that have higher than a 40 percent representation of minorities, of people of color by and large, I think that's the definition – Hispanic, African American. And so that's been a bit of a rate limiting step but we're going to move ahead with that now. The other issue that Sylvia raised in the last bullet was this question of the alignment. There was a survey after the first year and we may have presented this but I want to reemphasize it again, really asking hospitals to advise on which of the prevention agenda items they were identifying they were going to work on in DSRIP domain four which is the non-required but recommended, the reporting is required. Accountability is not required. As well as what they're working on in the Prevention Agenda, and the results were interesting because about 50 percent of the hospitals said they were consistent. About 25 percent didn't know, and about 25 percent they weren't. And so part of this

alignment that Sylvia talked about is it's more than a trivial issue because the reality is that four, the domain four DSRIP for the Prevention Agenda and arguable now for the reporting of community benefits, schedule H which the Commissioner asks – these are public documents – the Commissioner is asking hospitals to send it in. There are subcategories of the community benefit requirements, community health improvement and community building which are relatively small compared to the others, but in 2013 in New York State represented $230 million. And the goal here is if you could begin to align the hospital commitments in the DSRIP section, in the schedule H and in the Prevention Agenda there could be real dollars over time aligned with priorities set by hospitals and local health departments in partnership with community stakeholders. So, this is something we're watching. There is an analysis going on funded by the Robert Wood Johnson Foundation of the State, the data for the State, the last couple of years, and so we should be able to provide good information both quantitative but also understand qualitatively what the nature of the investments are and I think the important thing is bringing it to the attention of the leadership of the hospitals because very often the community relations individuals or departments have been doing the Prevention Agenda and community relations related work but not necessarily aligning it with the broader investments of the

hospital, and especially now with the DSRIP expectations. So I just wanted to pull out that point, because it's something that is important to watch.

And then, Sylvia, I didn't know if you wanted to mention, I know the Deputy Commissioner did talk a little bit about the things that aren't going, that are going well, aren't going well. I'd asked Sylvia earlier if she could just tell us maybe some of the top two or three things that seem to be people are really out performing and then maybe two or three things she did mention obesity but a couple of others.

SYLVIA PIRANI: … in the community around tobacco policy and housing, smoke-free housing and placement of tobacco products and communities in some counties are really making some strides. So that's one of the areas we are making progress. Obesity continues to be a challenge. Doesn't mean we're not seeing some improvements, because we are, but it's, we're seeing some improvements certainly in the younger children in part because we changed some of the WIC package, food package, what's available through WIC, but with the older population it continues to be a challenge.

JO BOUFFORD: …the last thing we just indicated, which resources are now posted in an easily accessible way by county

so people can now go in and really see what's going on and know who to contact and trying to encourage with the ad-hoc leadership group to get businesses mobilized, to get faith-based organizations and insurers mobilized to join these local coalitions in terms of moving forward. Yeoman's work has been done by Sylvia and her colleagues getting those resources in a very user-friendly format.

Maternal mortality, just a quick update, if you recall this was one of THE one item that the public health committee picked to try to move the needle over time. We've been having series, I think, of very informative meetings and discussions, really over the last two years on this issue. We just wanted to give you a quick update because we hope to have more at one of our early spring meetings. We have had three meetings of the Public Health Committee with various groups and constituencies and the first one was really reviewing State data and just to remind everyone, I think New York State is 47th out of 50 in maternal mortality, with huge health disparities. I think it's 3-to-1 African-American deaths, at the state level, 7-to-1 in the city. I think it's a little bit worse in the city. Now even though everybody is improving, the gap is still being sustained. And so we have a lot of ground to cover here in part with the conversations in our earlier meeting we identified that while a lot is being done in the acute hospital setting by hospital

agencies, by hospital associations, by the state. There was relatively little going on in the pre-hospital space and so we decided to focus there and have had a couple of very good meetings. One with a set of ambulatory care providers who are really trying and testing different ways, especially to prevent unplanned pregnancy, which is the major risk factor that one can act on, by making sure, trying to see what our methods for every time a woman of reproductive age really touches the health care system, asking them a very simple question, which is: do you plan to get pregnant in the next year? And if the answer is no, then trying to move as quickly as possible to get them into counseling or interim contraception while they come back for a regular appointment. This has been shown to be quite effective in the literature and is something… so we have been looking very systematically at this issue of assessment and early prevention of unplanned pregnancies across the board. So, we have a number of recommendations, observations from the primary care providers and recommendations. And similarly, a very productive meeting and I think ongoing conversations with some colleagues who are still here—the patient safety and quality group, the health homes group, and the SIM-SHIP group to see how these same concerns could be embedded in the health care reform elements that are obviously at various stages of development and in practice and people have been incredibly responsive. We have

again, identified, we believe, opportunities in each of these different buckets and some work has been done to purse action in these areas; others it's still pending. And we are developing a report based on the meetings we have had and the opportunities that have been identified and some that have been addressed and we hope to provide that to the Council shortly and we think it will be a good document with good backup attached to it with the evidence base for the concern with this issue and will help us move it forward. The second slide reflects something that I think, again, is a great example of how convening by the Council can catalyze action in an area. We now have the combined effort of the New York State Health Department, New York City Department of Health and Mental Hygiene, HANYS, and Greater New York, along with the New York State American College of Obstetricians and Gynecologist are working together to tackle maternal mortality issues. They each have mapped all of the various activities they are doing on the inpatient side, on the pre-hospital side, in a very granular details. We have also mapped the areas that we have been attending to in terms of issues of regulation and public conversation. And an initial joint meeting was held a couple of… I think in the latter part of November, which was really, I think reflected the fact that all of these parties have been deeply committed to making progress of this issue, but really have not had the vehicle to

align their work together have now committed to doing that. That meeting has led to a set of opportunity areas for immediate action and there's a follow-up meeting scheduled in January and this will be part of an ongoing set of conversations with them which we'll be monitoring. So we're imagining that in March some time we'll have a good report for you on where we are with all these activities and be able to sort of set up hopefully a bit of a dashboard that we can track on the maternal mortality issue going forward. So, last slide. Sylvia, back over to you and then.

SYLVIA PIRANI: Yeah, just really quickly. To get some funding to support a full-day Prevention Agenda session, so we'll have data from the year-two survey that we're collecting now from local health departments and hospitals and use that to build some skill-building sessions on how to use and also since Robert Wood Johnson County Health Rankings is paying for this, how to use that data to take action in our communities.

JO BOUFFORD: And we'll try to look at some of the areas where local partnerships are having difficulty, like the sort of implementation evaluation questions in some instances, the disparities question, and to get, you know, experts to that

meeting. It's a great opportunity, which we have not had prior to that to convene these groups and have them learn from each other. So thank you.

JEFF KRAUT: Thank you. That's a lot of work. And, you know, the issue is the alignment. Really, it was two years ago and that's… Any questions or comments from any of the committee members? Council members? OK. We'll hear… Thank you very much. And thank you for the update. We'll hear from Dr. Rugge, followed by Mr. Roohan, and Dr. Gestin.

JOHN RUGGE: I will try to be succinct. On November 17 the Planning Committee had a leisurely afternoon meeting although not as leisurely as this meeting to consider bed-need methodologies in the long-term care setting. It was an extended conversation that I think has five takeaways or perhaps five and a half. First was a recognition that the bed-need methodology may need to serve a different purpose or would serve a different purpose now than the time it began THE CON process. No longer is there the same concern for capping Medicaid costs, since we have a Medicaid cap and since there's been a decline in demand for skilled-nursing beds. But at the same time it was observed that the bed-need methodology may be promoting stability within the

sector, averting well-capitalized proprietary organizations from expanding their own bed capacity and jeopardizing the viability of existing not-for-profit facilities in that same community. Number two, looking forward repeating the observation of Yogi Berra, it's difficult to make predictions, especially about the future. And there's no clear sense of where the need is likely to go due to two countervailing forces: one, it was pointed out in very strong terms that we need to only be at the brink of the demographic explosion in terms of the number of elderly and the frail and the infirm that may need those beds; and at the same time, there is increasing sensibility and desire to stay in the home setting, an increase in the number of community-based services, and also new technologies that allow people to stay in a home that was not previously the case. Number three, the recognition that in a value-based payment world, things have a way of changing. For example, even since the committee meeting, the new mandates by CMS for the bundling of payments for total joint replacements may dramatically change the dynamic for the provision of rehab services in the skilled-nursing setting, with hospitals looking to avert placements of patients in those centers to reduce the cost of care. By the way, my 3.5 observation, as well. A recognition that financial viability for these long-term care settings totally depends on payer mix. And it's really impossible to sustain a nursing home with Medicaid

patients only and yet in some communities it is largely Medicaid that creates the demand, creating yet new pressures. And pointing out, point number four, and that is there is tremendous diversity within the State of New York in terms of level of need, kinds of resources available other than nursing home beds, and, of course, payer mix. All this led number five to Kathleen Carver-Cheney suggesting that perhaps the best we may be able to do is continue the existing need methodology and that this was particularly attractive to anybody in the room as a dynamic forward VIEWING public policy. Raising the possibility, which is not then that it is to whether given the regional diversity, given the level of uncertainty, there could be a continuation of the current methodology with a provision, region-by-region, for adaptation. And so that we might experiment with, if you will, a regional variation based upon proposals from somewhere, perhaps the PHIP programs, or the Population Health Improvement Programs, except this might look to some stakeholders as a reversion back from HSAs and raise a whole series of concerns that remain to be addressed. No doubt there will be need for further deliberations, but these need to be proceeding very quickly because the need methodology is needed by the end of 2016. And UH needs some nine months to implement whatever new policies are promulgated in part by PHHPC. We have our work still cut out for us. Thank you.

JEFF KRAUT: Thank you. Are there questions for Dr. Rugge? And John, I know it's, you know, a lot of work and, you know, the problems, there's so many moving parts, and such rapid change that it's hard to know where the ball, you know, is going. Dr. Boufford.

JO BOUFFORD: Yeah. Just to, and I don't know if this was discussed in the context of the meetings, but I think many of our colleagues that are in institutional-based, especially non-profit institutions, are really… this issue of connecting the movement of, if you will, funding money into the community-based setting in this explosion that we have seen and been talking about here, if those connections are being made in reality—cause their perception is there has been enormous movement out of an institutional-base without a sort of smooth landing path at any level for them to engage in these—these are especially facilities that have a large percentage of Medicaid populations, serving the underserved. And it's sort of kind of cold turkey in some ways and not to say they don't deny that there may be a need for fewer beds, but the feeling that there needs to be a look at both of these things going on at the same time,

especially if you are talking about a regional adaptation, I think it's not just looking at institutions in isolation.

JOHN RUGGE: We are really looking at new kinds of organizations. Organizations taking care of people sometimes in a bedded form, but also in community settings and blending these services inside one corporation or another to provide a continuum of care on a flexible basis. The medical village proposals within DSRIP are a suggestion of where the future may lie.

JEFF KRAUT: Any other comments? Thank so much, John, for the update. Now I'll turn to Pat Roohan.

PAT ROOHAN: Thank you. I was asked to give a brief update on the SHIN-NY, State Health Information of New York—system, which is a network of networks that connects the RHIOS—the regional health information organizations—which we are now calling—not to confuse you with all the acronyms—"qualified entities,' in ultimately connecting all the electronic medical records across the state. Today I would like to address two topics—progress on building the SHIN-NY, and number two, working

with providers on adoption. So progress. In May, all eight qualified entities achieved certification that they can provide a basic set of services that include patient record lookup. And patient record lookup gives the clinician the ability to have electronic medical record data for all of the patient's data across the system, be accessed by that individual's provider's EHR. So, for example, when you are at your primary care physician's visit, he or she can see that you recently had a visit with a cardiologist and were prescribed Lipitor. Other services include an alert system that notifies a provider that a patient has been admitted to the ER, admitted to the inpatient, as well as discharge from inpatient. The alert system is a very valuable tool for the preferred provider systems, the PPSs. It's part of DSRIP. Improving transition of care is essential in DSRIP and specific metrics on efficiency, including the reductions of potential avoidable hospitalizations and preventable readmissions will measure success or failure of the PPSs in the state as a whole. Another core service is called the "patient clinical viewer." And the patient clinical viewer allows information available on EHR to be available to providers that do not have an EHR. So an example could be the state-run mental health clinics in a state where EHR adoption is very low. These clinics could use this patient clinical viewer to see what medication a person is on, what other chronic conditions they

have, despite not having an EHR in place. In October the SHIN-NY completed connections to be a true statewide system—what we call the statewide patient record lookup is now available for all QEs. So in English, this means you can obtain information across QEs instead of within the QEs. So, again, giving an example, a patient from Albany could have cancer surgery in New York City. That patient's primary care doctor in Albany can see information on cancer care surgery New York City embedded within his or her EHR. Care costs RHIOs is relatively small across upstate, where most care is local, with the exceptions like the one I just gave. But downstate there are four QEs that we know that there's significant patient flow from Long Island to New York City, the Hudson Valley into the Bronx, and the Hudson Valley to Manhattan. The statewide patient record lookup is essential for success downstate because of this migration. One real number example in New York City, 40 percent of the patients in one RHIO called the New York Care Information Gateway, formerly Inter-borough, have data in another RHIO as well, HEALTH EXIT at a rate of 40 percent. So this overlap in patients make it essential to be able to connect across the RHIOs. In building capacity for the statewide patient record lookup, the QEs in the New York e-health collaboratives, NYSC, as they are called, create master patient indices. These indices are incredibly important to link Pat Roohan to Pat Roohan and individual

patients across the system. These systems use sophisticated algorithms to try to figure out how to match people together. We currently have over 32 million unique patients statewide in the system. Proposed regulations are in the public process as we heard earlier this morning at the codes committee; Jim Kirkwood has presented this, as you heard earlier. Public comment is due later this month. Secondly, I want to talk about adoption. So, this system only works if providers have an electronic system. So the beginning of this how do we incentivize providers to have an electronic medical record, cause many providers still don't have an electronic medical record today. Secondly, is what we call health information exchange. This is the connection of the electronic medical record to the SHIN-NY. Many large systems in New York are in the process of connecting to the SHIN-NY. Hospital adoption is high, around 90 percent, but physician adoption needs to be increased, particularly in New York City. Many physicians are actually connected to a health information exchange; however, those are typically within a large hospital or health care system. DOH, NYSC, and the QE staff have been working very closely with these large systems to connect the large systems in the City of New York particularly, directly into the SHIN-NY. Staff from our department, Jim and others, NYSC, the QEs, have been working very closely with the PPSs on adoption. The SHIN-NY is a vehicle for electronic exchange of

medical information for DSRIP, and some of that DSRIP investment has to be dedicated to providing connection to the SHIN-NY as well as adoption of EHRs. Biweekly meetings are held with the PPSs to ensure that they use the SHIN-NY and use it appropriately and also to determine if there are issues that we need to address. That's a very brief update on the SHIN-NY. I am here for questions if you have any.

JEFF KRAUT: Questions for Mr. Roohan? So I have one. You just talked about the adoption and the importance of adoption. How would you think as a policy conversation here, we just approved a half a dozen new entities and what if we required, if you are newly established in New York—we've just invested I don't know how many millions, hundreds of millions of dollars in developing this—you will have a requirement as a condition of being approved as a new article 28 provider, you must be connected to the system?

PET ROOHAN: So, in the proposed regulations is that article 28s have to connect within one year, hospitals in one year, all 28s in two years; however, we would be certainly encouraged if this committee pushed that even faster on new entities.

JEFF KRAUT: Yes, Dr. Martin.

GLENN MARTIN: So, connected is one thing, sharing is another, as you may know. As people around the room may know, there is still significant legal difficulties with minor consent, despite what the regulations say and what policy says, as well as significant difficulties with sharing substance abuse because of the consent issues that the Feds have told us will be resolved at some point, maybe whenever. In fact, our policies recommend, I believe, with the PART D providers, and in certain cases of the minors, that they don't connect and share data with the SHIN-NY. So I think that as much as I am all for trying to adopt this and encourage it as quickly as possible among the large facilities, those nuances shouldn't be lost in whatever we do. And it's just I am on the board of the New York Care Information Gateway and I should announcement that as a potential of conflict, or interest, at least.

JEFF KRAUT: But you wouldn't have a problem with an am-surg center trying to serve Medicaid and charity care patients being connected?

GLENN MARTING: Whether or not they actually do or meet their goals or not, I still think that being connected would be a good thing.

Preferably if they are not drug abusing and over the age of 18 when they do it. Or at least are getting care for their drug abuse there.

JEFF KRAUT: OK. You know, there might be something the Department might want to look at as it attaches conditions and contingencies and come back and with some of the issues Dr. Martin raised.

PAT ROOHAN: Thank you.

JEFF KRAUT: Thank you.

I am gonna now turn to Dr. Gestin and Dr. Gestin I apologize for making you the last, but frankly very important. If everybody remembers, we had been given an update on office-based surgery and what had happened with respect to certain quantitative information we got and it kind of raised some

questions for us and instead of trying to figure it out in this venue, we turned it back to kind of a special ad hoc committee who originally developed the office-based surgery and now we're asking Dr. Gestin to give us the results of those conversations.

DR. GESTIN: Thank you, very much, Mr. Chairman. And thank you to the council members who have hung in there in a long day. I appreciate you being here. I have the pleasure to report out the work of the committee that's worked really over the past ten to twelve months or so following that meeting that you described in which questions were raised about some of the data that was presented at a previous meeting around adverse events in office-based surgery. So, I recognize the hour; I am going to try to be, you know, comprehensive, but also be mindful of this long day. I really want to highlight sort of what we did, what we found, and what we're doing going forward. And in a nutshell that's really what I am going to be presenting today. So the presentation previously was in the summer to this committee. As a result of that, as you mentioned, Mr. Chairman, we convened an ad hoc OBS subcommittee of the individuals that you see there on the slide. Really, to help us amplify what was ongoing activity in terms of looking at the data over a four-year time period from 2010 to 2012 [sic] to assist us and create some sunlight around our analyses that we had done and invite

analyses that they think should be done to help us try to look at potential patterns in what we were seeing in terms of adverse events, and I'll be talking a bit about that. Our focus clearly was on deaths, but we did look at other adverse events, as well. Our charge is really a charge for the committee, a charge for us, I think generally is to try to identify factors that contribute to adverse events and opportunities for us to act and to create safer and higher quality environments for patients that are having procedures done in these settings. I just want to clarify that in an ongoing and continuing fashion, the Department is involved in two specific activities related to this. One is the careful review of each of the adverse events that are reported to us to evaluate what if any actions need to be taken based on those. And those actions can range from additional record requests, which we have about 75 percent of the time we do, to gather more information to help us understand what was going on. They can include QI recommendations specifically to the practice or the practitioner. It may at times include reference to colleagues within the Department of Health, such as the Health Care Associated Infections Program, for potential investigation referral. Sometimes it leads to referrals to the accreditation organizations themselves, either for further action or for further survey or fact finding. And then while not frequent, sometimes there are referrals that

happen to OPMC, if we find things that are of that nature, that require that level of investigation for physicians or for non-physicians to state Education Department. So, those activities go on in an ongoing fashion, as well as an ongoing fashion trying to mine the data for those opportunities for improvement, as I mentioned. And historically, I won't recount them, but there have been other committee activities, investigations, and information shared with office-based surgery practices around safety related to avoiding HOSIFLONIC FLEXION injuries, for example, in the case of colonoscopies. Previous review of a set of patients I'll talk about briefly—ESRD patients and vascular procedures. So, our membership that you see up there took from the existing standing advisory committee that we have and included a range of practitioners in relevant fields. We also added Dr. Kalkut and also Peter Robison from Memorial Sloan Kettering who is involved in interventional radiology. I also want to take the opportunity to recognize that staff, not only the staff sitting next to me, Nancy AGAR, who has been part of the program, as you know, for years, but also Phil DEMURA and Dr. Greg Young who were also very helpful both in the activities over these past months and in an ongoing fashion, helping us understand the data and trying to make sense of it. So, the subcommittee activities, what we did was initially with the group clarified and reviewed what the legislative and regulatory

history is of office-based surgery. Again, this is the private practice of medicine that has a degree of oversight related to adverse events, but a different degree of oversight than, as you know, applied to article 28s. We reviewed and discussed the analysis of the adverse event that we had; again, with a focus on the worst adverse event, which is death. And then we discussed various kinds of quality and safety issues with a number of different interested stakeholders, I think after the last meeting a year ago, we had a lot of folks who contacted us who were anxious to clarify or expand on or to help us better understand what exists or what should exist or what the professional society recommendations or activities might have been or even helped with or had questions about data that was presented. So as you will see in a subsequent slide, we talked to, in a formal way with a set of questions that the entire subcommittee could query, a number of different organizations that have some interest, some expertise, and some insights relative to safety in office-based settings. We particularly focused on things that probably make intuitive sense—issues around standard of care in office-based settings, perspectives and roles that they might have… perspectives they may have about the roles that different organizations may have for patient safety in addition to government or the practitioners themselves. We are anxious to try to understand what if any

other reporting on adverse events were available or any other analyses that might be able to help us contextualize the information that we have and then particularly wanted to hear more about quality assurance or quality improvement, either requirements or activities that were going on either at the accreditation organization level or at the professional society level. And I won't belabor this, I'll go through all the details, but this gives you an idea, sort of the breadth of the folks that we talked to. Again, anyone who approached us, we're certainly interested. We reached out to a number of different societies and professional organizations that we felt would have interest in the issue and also be helpful to us. And then we had specific conversations with the accreditation organizations, as well. So, I think one of the things that perhaps didn't get a chance to really describe fully at the last time around—although we may have talked about it in some of the interim reporting over the past year that I or others have presented on this topic—the data limitations. So, again, I think it's important to understand that we think, and frankly all the folks that we spoke to at the accreditation organization, the professional organizations believe it—whatever data we have, there's likely a significant underreporting of adverse events. I will talk a little bit about that on some later slides, about approachs to deal with that. So we're looking at these numerator events. We

have about 550 or so that were reported each year. That number has remained steady while the number of accredited practices has increased. And again, depending on your lens, you could view that as good news or bad news. You know, again, the positive view of that is that despite the fact that there's more practices and presumably more procedures, the number of events being reported is the same. On the other hand, we don't know how much that may represent underreporting. The other issue that confronts us is the data that we get, including when we request additional records, can have us simply missing data that makes interpretation challenging. We do follow up on all the information or the reports that we get. If there's missing information that we think is critical and some of that information may be explored either by the accreditation organization or by OPMC in those cases. But even in some cases this relies on or spins on whether or not what's been documented during the course of a procedure, what frequency, vitals, and so on are being recorded, or whether or not there's a record of who was in the room and who left at what point and so on and so forth. The third point is that essentially unknown to us is the issue of denominator or procedures. So we're looking at numerators without denominators. We're not able to look at what's the rate of these which helps us to be clearly understand whether taking into consideration the number of times or the

numbers of procedures being done whether what we're seeing is abhorrent or different or unusual. We, again, I'll talk about how the new legislation that we have will help us, I think, going forward to be able to get access to that data as well as new things like the all-payer data warehouse, which I think will help us in addition. We can, at best, at this point estimate the number of procedures in office-based surgery settings and the data that I am going to show you is going to be over four years and we believe that the back of the envelope calculations suggest that the number of procedures being done are in the millions that we're looking at, just as a way to try and create some context. The last issue is the lack of comparators. Again, it's safe or adverse events compared to what? Other states? National averages? Other settings? Those are some of the challenges that we have and despite us asking a number of organizations about comparator data, we're challenged in not seeing what other states or national efforts that collect the same events in the same way in this setting. So, we do have a number of challenges, but it's really lack of comparators. In addition, we have, I think, an important challenge is when we look at the data and analyzed it, a lot of our analysis had to rely on looking at all of adverse events, comparing deaths to non-deaths, for example, and trying to discern where there are significant differences and characteristics between the two, but

the data that we really need is being able to look at those characteristics when there were not an adverse event in order for us to be able to determine whether some of those factors really are significant or not. And again, as I mentioned, we don't have an ongoing reporting system when things go well for these events. We may get a denominator, but that doesn't mean that we're going to get going forward all the detailed information that allows us to look at, for example, whether a specific anesthetic or specific level of, ASA level is clearly related to adverse events when adjusting for other factors and so on. So, despite those data limitations, I think they are important to be aware of, but we do not, we never do let those get in the way of us making use of the information we have and this slide points out that there are some strengths to the data, as well. We do, unlike some other settings and some other organizations, have a fairly clear definitions of the adverse events and I've done a lot of work to try to make sure that the description of those events is clear, have FAQs, and so on, and update them as new adverse events are added, as they have been in the recent legislation. Also, as I mentioned earlier, each event is reviewed by staff, initially nurse and physician as needed, investigated as appropriate, with referrals that I mentioned. So, again, each adverse event is reviewed and we have a database in which we have been able to enter various

characteristics of the adverse events that allowed us over the course of this past number of months to manipulate the data, try to answer various questions, what-if questions about suggestions or hunches about things that may or may not have been related to adverse events. And so that remains a strength of the data that we have. So, the data analysis, I'll get into this in a second of the adverse events. Again, we're looking at these years, 2010 to 2013. I will tell you that our analysis of events in 2014 and so far in 2015 are essentially of a similar nature in distribution and not otherwise substantially different. These years' data allows us to, you know, comprehensively look at data that we've already been through the cycle of asking for additional information. Just as a refresher, the adverse events that we're talking about, that are reportable, are patient death within 30 days. So the—we'll go through this in some subsequent slides. Just to remind the Council that reportable deaths could be day 29, day 30. These are not all deaths that happen at the date of the procedure. And there are obviously some challenges in terms of practices being able to be aware of or know about events that happened in some temporal relationship that is not, you know, proximate to the procedure. The other reportable events are an unplanned transfer to a hospital, an unscheduled hospital admission that lasts greater than 24 hours within 72 hours of the procedure. Again, some of the challenge of

underreporting clearly may be related to practices knowing when someone is admitted on day 2 or day 3. Any serious or life-threatening event—think some of the never events like "wrong site surgery" and "retained foreign body." And then any suspected transmission of blood-borne pathogens. Now, some of that there's some new adverse events; we'll get to those in later slides, but these are the adverse events that were in play during this period of time. So we looked at the analysis. We had a total over these four years of about 2,200 cases and the kinds of things that we looked at were things to again try to pick apart and evaluate the event types, procedures. Looked at patient demographics and clinical conditions. Looked at anesthesia. We had that information. Causes of death and tried to determine and look at and keep in mind the relationship of death to the procedure. This slide sort of takes you down the tree, starting at the top with the 2,200 events. And, again, the first segment looks at the deaths, admissions, transfer, all the reportable events. This is done, you should know, in a hierarchical fashion, that is, there may be, it is possible for in specific individuals to qualify, if you will, for more than one adverse event, but we take, we have categorized these in terms of percentage with sort of a hierarchy with death sort of trumping the other adverse events. And as you can see, about 12 percent or 261 are reported events were deaths. When we do the

analysis that I described previously that we've been doing since the adverse event reporting scheme began, one of the first questions in looking at the data is: Was this related or not related to the office-based surgery procedure? Again, this involves, as I described, looking at the data, clinical judgment; if there are questions, more than one reviewer. And as you can see, our analysis of the relationship, about 33 of those or about 13 percent are determined clearly to be related to office-based surgery. About 76 or the majority of them unrelated. And then there is this, you know, small but important category of unable to determine, which may be a data issue, may be lack of clarity in terms of the information that we have, or maybe multiple issue that are going on that do not lead us to a clear determination that it was related to the procedure. I'll talk a little bit more about our approach in thinking about those categories and having external reviews to look at inter-rater reliability on some of those judgments. As you can see in the last section of this, when we look at, well who are the individuals or how many individuals over this four-year period of time had a death on the day of the procedure, you are looking at a number that is about 15; about 45 percent of the related deaths. And then when we look a little bit further and closer in information that we may have presented previously, a significant portion—almost half of the related deaths—involved patients with

end-stage renal disease. Most of them having vascular procedures specifically around THROMBECTOMY and angioplasty related to access. So some of our summary observations of the data—and again this is high summation after many hours and many pages and many analyses, so recognize that, you know, there's a lot of other amylases that went into this—but when we look at the reports of the GI and vascular procedures account for about 75 percent of the report; that's not terribly surprising thinking about the kinds of procedures that are going on in the office-based surgery settings. Certainly colonoscopies for EGD for GI being very commonly done in that setting. Other reported deaths in most frequently associated with vascular procedures that were performed to facilitate a hemodialysis access in patients with end-stage renal disease and most of those deaths, as I showed on the slide previously, determined to be unrelated specifically to the OBS encounter. We spent a lot of time digging into that and trying to understand that, particularly taking into consideration what we know of as, you know, the age considerations and the multiple co-morbidities of patients that we understand to be sort of the high percentage of mortality in patients with end-stage renal disease with or without any kind of procedure being done in an office. The primary complications and causes of death, both related and non-related, are not

surprisingly cardiopulmonary, cardiac arrest for example, and infection related with sepsis being the most common IDIOLOGY.

Kim.

[inaudible]

JEFF KRAUT: Kim, use the mic please.

[KIM]: If 73 percent of office-based surgery procedures are resulting in or that large a number resulting in admissions…

DR. GESTIN: No, no, not 73 percent. These are the adverse event reports that are presented to the Department over four years and 73 percent of the adverse event reports—again, one of the categories. Those are the categories of adverse events.

[KIM]: But even your N is a large number there. Does that suggest that they shouldn't have been office-based

procedures to begin with? I am thinking about it in the context of we're asking hospitals to reduce their admissions.

DR. GESTIN: I think that's a fair question. You might want to hold that until we get to the end. And raise it and the committee can decide, you know, what they think about that. That's certainly one conclusion. Is there unplanned admissions to the hospital? Again, not knowing the denominator of these and not having a comparator, the question that I would raise in return would be how does this compare to other settings. And how does this compare to other settings, you mentioned readmissions from hospitals. What's that rate, 17 percent or so over 30 days and so on. I mean, this is unplanned admission in a relatively short period of time, but again one of the challenges we have is trying to contextualize this and compare it to other settings, but I think a reasonable exploration is to try to understand not only that adverse event, but others in other settings because I think that the question is exactly what you described. Is, you know, is patient selection relative to the procedure and the setting being done appropriately or not. Is that fair? So, the summary from our stakeholders, again, this was more of a qualitative conversation. We talked with accreditation organizations and I think this was not complete news to us that accreditation organizations are different; they have similar but

not identical standards related to quality and safety and reporting, although, at this time only one of them is really trying to collect information on adverse events, I would say, in a standardized fashion. And they are very much at the beginnings of that. We were initially sort of hopeful that one of them might have a treasure trove of data that we could mine that would really help us either with context or information that would really point in one direction, but, you know, for better or for worse, our data really was the data source that we had to work with. All of them require some sort of collection. Some of them, for example, allow the practice themselves to report to them adverse events, the adverse events that they may choose to work on in the context of quality improvement. We, in terms of looking at the overall numbers, we have identified, and again, this is not new, that of the numbers of events reported directly by the practices to the accreditation organizations, they are significantly less than those that we get directly from the practices. So, again, there's not much of a sense that somehow there are events that are going someplace that we're not seeing. In terms of the specialty societies, they do a lot of things. I think that they do some important work relative to standard setting and guidelines and practice advisories and physician statements, although not many of them have a specific focus on OBS. Clearly the ones that have office-based surgery in their

name do, but many of them talk more generally about various settings. We did come across some notable differences and the strength or the quality of the statements that relate to training and qualifications of staff or issues around inter-procedure roles or around the use specifically of end-stage TITLE CO2 or capnography for patients that have moderate sedation and I will get to that a little bit when it comes to next steps and recommendations. So, at a very high level, the conclusions after going through and mining the data and having a lot of very rich discussion internally in the group was that we didn't see in the cases that we have a definitive pattern of contributing factors for the 33 related deaths that we saw over the four years. That's not to say that there were not issues related to—of concern of safety or opportunities—that we talked about and made some recommendations around and that's what we'll be talking about, what I'll be talking about in a second. So, again, I want to focus and emphasize that some of the recommendations that we have going forward are those that the group believed, based on experience, expertise, on these discussions and on the literature, there was an opportunity to make improvements, but I would not say or make believe that all of these recommendations are areas where the data specifically if you do this, these things would not have, these adverse events would not have happened. We believe that there's, you

know, a reasonable relationship in terms of improving safety with some of these recommendations, but, again, we did not find a single factor or issue that said "ah ha, this is it. And if we could only fix this." And I think that's probably maybe an intuitive conclusion. So we did look at, we did have a lot of discussion about the issue of pre-procedure patient assessment and evaluation, including ASA scores and the accuracy or the documentation of ASA scores in patients, particularly in patients with high-risk co-morbidities and patients with end-stage renal disease and so on. And so getting to your question earlier about setting and so on, I think one of the things that we did talk about, particularly with patients with the ESRD and vascular access is, you know, the urgency often for patients that are under-dialyzed to be able to get them access and, you know, in an expedient way, obviously in the end-stage setting there are certain advantages to being able to do this in office-based settings versus admitting someone to the hospital, waiting for them to get on the schedule, and so on. So, we did have some of those conversations about sort of the pre-procedure evaluation relative to the patient, as well as the setting. We did have conversations about the staffing and the division duties and responsibility. Again, I think a lot of clear consensus about the importance of having specific delegation of patient monitoring and not having sort of mixed roles such that

somebody who is charged with monitoring the patient during the procedure and afterwards also has additional responsibilities that distract from that important function. Pretty much generic to I think all health care safety and quality issues—communication and transitions in care, as well as the issue, which I alluded to earlier, about documentation and the important role of that documentation in helping not only for medical legal reasons, but also to help in both the practice and for us to be able to identify and understand what was done or what was not done. So, I am going to move into sort of where we're going next. Some of the recommendations and next steps include looking at enhanced data from the practices, again, that are authorized by the recent budget, again with the support and recommendation going forward from this Council, and passed by the legislature which enables us to do a few new things—collect data, not only on adverse events, but collect some basic information from the practice that will help us be able to contextualize the adverse events, that includes but is not limited to looking at the numbers of procedures, eventually the procedure types, and separate and apart, even from the legislation was moving all this data collection to web-based reporting, which we hope will help deal with some of the burden or some of the underreporting and XXX which we can get access and analyze this information. So, it's also a work in progress.

It's building the capacity to be able to collect this data from the practices on a regular basis. We have also planned to discuss with the three accreditation organizations specifically recommendations from the American Society of Anesthesiology the ASA, their standards related to the use of capnography for patients with moderate sedation and above. And this issue about assignment of dedicated staff to monitor patients. Again, while not specifically related to the data on those 33 patients over four years, this rose to the top in terms of some issues that our subcommittee agreed on were things to move forward. And then, as always, education of practitioners regarding some of these topics and some of the questions that were identified by the subcommittee were felt to be sort of an ongoing responsibility as we move forward. And now I am getting into a look at mine here because the print is now small enough. So our other recommendations are we will be re-engaging the full OBS advisory committee; we've reviewed and looked at whose on and how much membership we have. They specifically represent OBS practitioners and the range of OBS practitioners that we have identified. But both in the literature, but also importantly from our adverse event data, we want to make sure that we have that adequate representation, so we've made some recommendations and some nominations to fill out the OBS Advisory Committee. We are in the process of implementing some of the legislative

changes, requirements that includes, as I mentioned earlier, reporting two additional types of adverse events. One, I would say is more of a technical fix—that is including observation stays with unplanned admissions. Just to clarify that within three days. And also we're looking at ED visits within three days, which, again, we recognize that there will be issues related to practices being able to identity these, at least the procedural practice, but as my colleague Pat talked about with the advent of record exchange and qualified entities, as well as the reporting requirements on the hospitals and so on, and the history in which they identify these cases to us, we're hopeful that we'll be able to identify those. The APD, the all-payer data warehouse may enable us to look at this as well. The reporting time was very narrow for practices. I think they had a day, 24 hours, to report. We have extended that to three days so practices have more time to submit. We've also been able to, again, evaluate the additional data to interpret adverse events. We have a new requirement that allows us to have stronger agreements with the accreditation organizations and the practices that specifically make requirements around quality improvement and quality assurance activities. And then while we have had in our agreement with the accreditation organizations that on our request they would carry out surveys or complaint investigations, they have sometimes been hampered by their own

contracts, which may limit the amount of information that would be shared with the Department. And so this legislation makes a change and clarifies and codifies our right to both ask for the surveys and those complaint investigations as they come up and also to report back findings to us. Some of the additional analyses, as I mentioned earlier, looking at the related/unrelated and so on, we thought that it made sense to look at the issue of interrelated reliability in looking at these. So we have contracted over these past months with IPRO to have appropriate specialists review 2014 cases. They are our determinations, the Department's determinations are BLINDED to them. We are asking them to look at and make judgments about the issue of related or unrelated as well as issues related to sort of preventability of what it is that they find. Again, related is important, but additionally important is being able to identify things that we think are both individually preventable, but importantly from a system point of view, things that might be preventable going forward. So, they are doing those reviews sort of along side of us if you will in 2014 and 2015. I am not sure what the duration will be, but we're anxious, we're just completing their review, I think, of 2014, so we'll be looking at inter-rater reliability and see if we can strengthen our own review process and make some of those judgments and so on more explicit and clear. We also think that there's a real

opportunity to try to identify the issues about underreporting of adverse events. Some of them really lend themselves to the use of administrative data, such as the data that we have with Medicaid, to be able to look for, for example, admissions to the hospital that may have not been reported in a particular time period. And so we're starting to explore that. It would suggest that the developing all-payer database will allow us to do something similar for those that are not in Medicaid, as well. So, I think that's the last slide and I am happy to entertain questions and comments.

JEFF KRAUT: Thank you. Comments? The Council before? Look, I can only tell you how, you know, here it is. We… this is the first time really we created a new policy, we instituted it, we set our procedures, and then we took a look to see what the impact was and what we did we noticed the number of adverse events and reported deaths and it said to us, OK, well what does that mean. And here we have a, I don't think anybody would argue, a very thorough process by which we took a look at that data in a very in-depth way, but recognize now that we really have limitations on the data to answer. You know, did we inadvertently create a policy that contributed to this or are these events might have occurred without regard to the policy or what were the factors and we did answer at least the question,

you know, was it up to… was it a group of providers that created the adverse events or characteristics of patients which contributed. And I think what you heard here is the limitation of the data, but not withstanding that, I think the methodology by which you kind of went through that fishbone chart, you know, of quality, I think that's exactly what we wanted to have. But when we saw those numbers, you did exactly what we needed to do. Dr. Gutierrez.

ANGEL GUTIERREZ: To what extent does the review authority element, that this body provides every time we give somebody permission to open an ambulatory care, ambulatory surgery center?

JEFF KRAUT: Well, this is not article 28, isn't it.

ANGEL GUTIERREZ: Right. I understand.

JEFF KRAUT: We haven't been nominated for that.

ANGEL GUTIERREZ: Within the scope of what we do, to what extent can we contribute to your data collection by establishing that if this particular organization is coming back in a year or two or five to re-accredit, that they need to meet certain standards in terms of reporting adverse events?

DR. GESTIN: So my colleagues, and correct me if I am wrong, but currently article 28 ambulatory surgery centers have requirements to report NOT ORTS events to the Department. The Department has those events. They are not identical to the events that were in the legislation for office-based surgery. For better or for worse, there is some overlap, but some things that are unique. And so it's certainly within—the information is available. Very often the challenge will be as well trying to provide some context about, excuse me, what that data means in understanding the number of procedures that are done, having some sort of comparator will be important. I don't know if my colleagues who oversee that part of the health care delivery system have that sort of data available in which they, you know, look at specifically the denominator data. But I think the suggestion that you are making, not putting words in your mouth, is that having this information available regardless of the setting, whether it's a hospital or an ambulatory surgery center or an office, is an important way of trying to judge and

evaluate what's going on. And clearly the reporting or taking the opportunity to emphasize the reporting requirements which, I think, is a really is a key thing as well, when the opportunity arises with a new request.

JEFF KRAUT: You know, I think as you reconstitute the OBS committee, I think you really need to have somebody on there that's a claims data or analytics. And I suspect the denominator data is gonna be found in the national private insurance claims database and in New York State we have FAIR who has access to that I think they have a historic basis to go back to 2002; they have all of the claims data. And I suspect we could task them with getting out that, they can match some of the adverse events and the providers to the FAIR database, is my guess. But, you know, you do need somebody who plays with the health care analytics, because the answer is in the claims database, because it's not article 28.

DR. GESTIN: So, I think, I mean I could answer… we could find out the answer to the question. I think the answer in terms of FAIR health having access to data that would help us to do these analyses, I don't think that they do, but it's an interesting point that we could explore. You know, again,

without tooting my colleague Pat's horn, he and the staff and Phil and so on, we actually have a lot of experience doing analytics on claims data to date. It's a lot of it has been focused on public program, encountering claims data, but it's a growing analytic capacity with the exchange plan data, with Child Health Plus data, and so on over time. We welcome…

JEFF KRAUT: Do you have the claim… Do you have 100 percent of the State's, you know, claims data? We have Medicaid. You don't have Medicare? You only have commercial.

DR. GESTIN: Not yet. That's what the APD is to have that information from commercial plans. We, with the advent of the exchange plans, we're starting to get claims data from the exchange plans. We have had Child Health Plus data. we've had Medicaid plans, Medicaid fee-for-service, and so on. But you are right. Missing, to date, is the bulk of commercial claims data, as well as Medicare.

JEFF KRAUT: Any update on APD? Alright. Another time. Why don't we… we spent enough time here and I don't want to get… thank you so much. Is this any… I know we don't have everybody

here, but Gary did serve on this, Gary Kalkut, so any other questions or any concerns and we… Dr. Gutierrez. I am sorry.

ANGEL GUTIERREZ: Just encouragement to continue the work, because I believe that there may come a point events or circumstances that would allow us to make deeper inroads into this thing.

JEFF KRAUT: And I didn't mean by my comment to think that the Department didn't have this capability. I see some of it behind you and I know I am intimately aware of what their capabilities are.

DR. GESTIN: We'll take help from anyone that has expertise in this area.

JEFF KRAUT: You don't need their help, you just want their data. OK, and then you can go ahead and play with it. But thank you. Alright, if there's no other items that you'd like to bring up today, I'd like to now… I'd like a motion to adjourn the meeting of the Public Health Council and the next committee

day is going to be on January 28th in New York City and the full Council meeting will convene on February 11th in New York City. I have a motion to adjourn.

So moved.

JEFF KRAUT: So moved. Mrs. Carver Cheney. Thank you very much.

Prevention of Maternal Mortality in New York State:

Proceedings of the New York State Public Health and Health Planning Council's Public Health Committee Meeting Series and Recommendations for Action

February 2016

Members of the Public Health Committee

of the New York State Public Health and Health Planning Council

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Prevention of Maternal Mortality in New York State:
Public Health Committee Meeting Series and Recommendations for Action
January 2016

I. Background and Introduction:

The *Prevention Agenda 2013-18* is New York State's health improvement plan developed by the New York State Public Health and Health Planning Council (PHHPC) at the request of the New York State Department of Health (NYSDOH), in partnership with more than 140 organizations across the state. The *Prevention Agenda* is the blueprint for state and local action to improve the health of New Yorkers in five priority areas and to reduce health disparities for racial, ethnic, disability, socioeconomic and other groups.

In addition to its oversight role for the *Prevention Agenda*, the Public Health Committee, under the leadership of chairperson Dr. Jo Ivey Boufford, identified Maternal Mortality as a specific health issue from the *Prevention Agenda* for special attention in an effort to "move the needle" on that condition in the State.

II. The Problem:

In 2012 and 2013, the Committee requested a series of presentations from Dr. Marilyn Kacica, Medical Director of the Department's Division of Family Health, to provide an overview of maternal mortality data in New York State including a comparison to global and national rates, trends over time and disparities, and to learn more about current work to assess and address maternal mortality in the state. Key data highlights presented included:

- The United States ranks behind 40 nations in maternal death, and within the U.S. New York ranks 47 out of 50 states.
- NYS Maternal mortality rates peaked at 29.2 per 100,000 live births in 2008 and have decreased to 17.9 per 100,000 live births in 2013.
- There are significant racial and geographical disparities in NYS:
    - The Black to White mortality ratio peaked in 2006 at 6.3 to 1, decreased to 4.9 in 2009 and continued to decrease to 3.3 to 1 in 2013. However, in 2013, the rate in New York City alone was 5.7, much higher compared to the rest of the State (1.9).
- There were 132 maternal deaths for the three year period, 2011-2013.
    - 47 were non-Hispanic White women,
    - 57 were non-Hispanic Black women, and
    - 28 were Hispanic women.

III. Opportunities for Change:

Based on the information and discussions at these initial meetings, described in detail in the appendices to this report, and the ongoing work of several key organizations (including NYSDOH, the New York City Department of Health and Mental Hygiene, the Healthcare Association of New York State, the Greater New York Hospital Association, and the NYS chapter of the American Congress of Obstetricians and Gynecologists (ACOG) on inpatient hospital management, the Committee initially decided to focus on the "pre-hospital" antecedents of maternal mortality with special attention to prevention. In subsequent meetings, the group examined opportunities in New York State's health care reform initiatives and better alignment for existing efforts across stakeholders. These are discussed in the following pages.

A. Pre-Hospital Opportunities in Clinical Practice

The Committee identified three specific cross-systems strategies from the *Prevention Agenda* for its attention:

- Integrate preconception and interconception care into routine outpatient care for all women of reproductive age.
- Assess and address pregnancy planning and prevention of unintended pregnancy among women in general and especially those with serious chronic conditions and risk factors
- Institute systems and protocols for early identification and management of high-risk pregnancies.

The committee convened a series of special meetings with invited discussants to further explore these strategies and identify recommended action steps and use its convening authority to bring attention to this important issue.

In March 2014, the Public Health Committee convened a special meeting focused on the strategy of **integrating preconception and interconception care into routine outpatient care for all women of reproductive age** as a universal/ population-based prevention approach. Staff from the NYSDOH Division of Family Health gave a brief presentation on national and state work on preconception health and health care, including recommendations from the CDC-led Select Panel on Preconception Care and the subsequent action plan of the National Initiative on Preconception Health and Health Care to guide the implementation of the CDC panel's recommendations.

The Committee then welcomed three clinician panelists, invited to reflect on this approach from a "real world" practice perspective. Each panelist addressed a set of three questions:

1) How do providers who care for women of reproductive age currently incorporate preconception health care in routine outpatient practice?
2) What challenges or barriers exist to making this approach part of routine care?
3) What would support further integration of these practices in routine care?

Panelists described several innovative approaches they are using in their respective practices, especially emphasizing how to take advantage of "every" contact that women of reproductive age make with the health care system:

- At the Mid-Hudson Family Medicine clinic in Kingston, Residency Director Dr. Ephraim Back estimates that more than 70% of women patients have made some contact with his practice in the past year, for themselves or their family members. He is leading a project, as part of a collaborative network of 16 Family Medicine residency programs, which incorporates evidence-based interconception care (focusing on four specific elements of care) for women during their baby's well child visits for the first two years of life.
- At the Institute for Family Health Harlem Family Medicine site, Dr. Lucia McLendon's practice incorporates assessment of desire for pregnancy, with tailored same-day contraceptive services, into all visits with women of reproductive age.
- At Montefiore Medical Center/ Albert Einstein College of Medicine Department of Maternal Fetal Medicine, Dr. Ashlesha Dayal, a high-risk Obstetrician and Director of Labor & Delivery, developed a comprehensive program to target enhanced preconception/ interconception care to women at high risk for preterm delivery or other poor pregnancy outcomes. This program includes training for both primary care and specialty providers on screening and referral for high risk patients, as well as training for community health workers to expand preconception health education and outreach to the community.

Panelists also identified a number of challenges and barriers to routine integration of preconception and interconception care. Common themes included:

- women not seeking routine well care for themselves;
- inadequate time within a visit:
- provider knowledge/ comfort level, especially for pediatricians during children's health care visits;
- lack of additional reimbursement for counseling;
- lack of health insurance (including waiting periods for benefits to begin after enrollment; post-partum gaps in coverage); and,
- increasing prevalence and complexity of chronic disease among women of reproductive age.

Panelists and committee members discussed a number of opportunities for advancing attention to risk factors for maternal mortality in this area, including:

- capitalizing on "missed opportunities", including well child visits and all acute care visits, to ask women basic questions to assess their desire for pregnancy, and, if appropriate, initiate contraception in real time as part of routine care;
- enhanced reimbursement for clinicians;
- expanded use of available guidelines and toolkits for clinicians to support integration of key preconception screening within routine visits;
- incorporating protocols and referral linkages to facilitate more in-depth reproductive health counseling for women for whom medical risks are identified;
- developing more population oriented approaches to educating young people through linkages with schools, community based organizations and trained community health workers, reaching into communities; and,
- policy changes to address gaps in health insurance coverage and reduce or eliminate co-pays for preventive care.

B. Pre-hospital Opportunities to Prevent Maternal Mortality in NYS Health Care Reform

The Committee identified the opportunity to leverage larger health systems reform efforts to ensure that preconception and interconception care are addressed for women of reproductive age. Key opportunities include: Medicaid Health Home; Affordable Care Act (ACA) and New York State of Health (state's health insurance exchange); Delivery System Reform Incentive Payment (DSRIP); and, Advanced Primary Care (APC) /State Health Innovation Plan (SHIP).

For the September 2014 meeting, NYS Department of Health staff leading three key health care reform initiatives were invited to share information about their work and to participate in a discussion of potential opportunities to incorporate one or more of the three selected key Maternal Mortality prevention strategies within those initiatives.

1. Dr. Foster Gesten, Medical Director for the NYSDOH Office of Quality & Patient Safety, presented an overview of the state's work to support **risk-based prenatal & postpartum care for women enrolled in the state's Medicaid program**.

- In collaboration with NYSDOH Division of Family Health and the Island Peer Review Organization (IPRO), Medicaid Prenatal Care standards were updated and unified in 2009-10. Since then, a series of analyses have been conducted including a 2011 baseline evaluation, and a statewide practice self-evaluation/reporting tool was launched in 2013.

Current work is focused on key opportunities for improvement activities, which were identified based on evaluation findings. While data indicate many potential areas for improvement efforts, several key elements of care have been identified for focused improvement including: assessment, treatment, and referral for depression and domestic violence; influenza vaccination, ; obesity and gestational weight gain, ; tobacco use screening and counseling, and prevention of recurrent preterm births focusing on use of 17-OH progesterone. Highlights of the follow-up discussion on potential areas of action included:

- The potential for adding assessment of future pregnancy plans and pregnancy prevention to the quality improvement plan. It was noted that this is currently embedded within the self-assessment reviews as an element of prenatal care standards.
- The extent to which reimbursement for counseling by non-clinicians might help improve preventive practices.
- A recommendation to add family planning providers as key partners for improvement activities.
- The value of Electronic Health Records (EHRs) that include algorithms and prompts to improve documentation of guideline-concordant care without the burden of additional documentation.
- The need to better assess the impact of loss of insurance coverage for women who lose their Medicaid eligibility postpartum.
- Potential strategies for promoting the use of 17-OH progesterone for women with prior preterm births.
- The potential for use of incentives to increase adherence to postpartum visits.

2. Hope Plavin, from the NYSDOH Office of Quality & Patient Safety, presented an overview of the **State Health Innovation Plan (SHIP)/ State Innovation Model (SIM);** the state's application for federal funding was pending at the time of this meeting. The overarching goals of SHIP/SIM are to improve health, improve care and utilize health care resources more effectively. Funding requested in the state's recent SHIP grant application would support regionally-based primary care practice transformation, a transition to value-based primary care payment models, and performance improvement and capacity expansion in primary care including community-clinical linkages and an enhanced focus on prevention. Next steps include the establishment of workgroups and creation of a health policy agenda for 2015 and beyond, pending feedback on the state's submitted application.

3. Lana Earle, Deputy Director for the Division of Program Development and Management in the NYSDOH Office of Health Insurance Programs, presented an overview of the Medicaid (MA) **Health Home** care management program and led a discussion on its potential for improving health outcomes among women of reproductive age.

- Health Home (HH) is an optional Medicaid State Plan benefit authorized under ACA to provide comprehensive, integrated care management and coordination for Medicaid enrollees with chronic conditions which was implemented in NYS beginning January 2012. It is targeted to the highest-need/highest-cost MA members who have two or more chronic conditions or one single qualifying condition of HIV/AIDS or Serious Mental Illness and who meet "appropriateness" criteria for an intensive level of care management. HH is closely aligned with the state's Delivery System Reform Incentive Program (DSRIP).
- Over the January 2012 – August 2104 period, 55% of the HH members enrolled in NYS were women, and 35% were women aged 11-50 years. Approximately 9.5% of women enrolled in HH had a live birth during that period. Informal discussions with HH lead organizations suggest that they are incorporating a variety of approaches to address the needs of women of reproductive age within their comprehensive care plans, including the use of preventive and

specialty health care, assessment of pregnancy plans and linkage to family planning services, and linkage to prenatal services for women who become pregnant.

Highlights of follow-up discussion on potential areas of action included:

- The value of providing training for HH care managers on maternal risk factors and family planning, including simple assessment questions and interventions that could be readily incorporated with care management interactions. It was noted that there is an established system in place for providing such training and this can be pursued in collaboration with NYSDOH public health and external subject matter experts.
- The extent to which a previous adverse pregnancy outcome could be considered a "chronic condition" for purposes of establishing HH eligibility. This would not be consistent with CMS defined criteria.
- Interest in learning more about the ~10% of women who gave birth while enrolled in Health Home.
- How to better connect clinical providers with the resources that are available for their high risk patients, including HH as well as managed care plan high risk OB case managers and community home visiting services.
- The role of HH in supporting women identified with serious mental illness, including depression, during pregnancy or after delivery.

At the conclusion of the meeting, Committee members identified several follow-up requests (*follow up information noted)*, including:

- Obtaining information on gaps in eligibility and enrollment in health insurance that may be impeding coverage for family planning and/or adequate perinatal care

Based on further inquiry with the New York State of Health and Medicaid, the specific scenario described could not be validated, as coverage for Medicaid begins immediately as of the date of application, while coverage for commercial plans begins between 2-6 weeks from the date of application. With the launching of the New York State of Health, many previous gaps in coverage are improving. Furthermore, effective January 1, 2016 in New York State, pregnancy is classified as a qualifying event triggering a special enrollment period for women using New York State of Health to access coverage. This allows pregnant women, who are not Medicaid eligible, to enroll in commercial health plans outside of the open enrollment period.

- Looking more closely at the subset of Health Home enrollees who have given birth to assess maternal risk factors and connection to services. Data on outcomes for women using health homes, including data on women with disabilities, and the costs of providing these services could be useful in the development of training for managers of health homes on women's health.

An updated analysis of Health Home data demonstrated that among women ages 11-50 years enrolled in Health Homes from the launch of the initiative in January, 2012 through May, 2015,

about 4,900 gave birth. Staff in Division of Family Health are requesting additional data to get more information on these women and their diagnoses and the cost of their care.

- Pursuing training of Health Home care managers on maternal health and family planning topics/tools

Staff from the Division of Family Health and the Office of Health Insurance Programs will work together to develop a training for care managers on reproductive life planning and care management of high risk pregnant women in Health Homes in 2016.

C. Recent Updates and Next Steps

At the July 2015 Public Health Committee meeting, Dr. Rachel de Long, Director of the Division of Family Health, updated the Committee on work that is underway to use health care reform opportunities to support improvements in women's health. The discussion focused on ways to integrate pregnancy planning and, if pregnancy is not desired, tailored contraceptive counseling into routine care for women of reproductive age.

Dr. de Long explained that the goals for the emerging APC model within the state's SHIP provide an opportunity to talk about advancing higher quality, better integrated and coordinated primary care for women, including the concepts of pregnancy intention and planning and prevention. There are several aspects of the SHIP/APC work that could support the goal for improved health for women.

- Ensuring that women's health is included in the development of standards for primary care transformation, including standards for patient-centered care, population health and care management.
- Making sure that the practice transformation infrastructure that will be supported with the grant includes technical support to strengthen the quality of primary care services delivered to women.
- Including women's health in the quality measures being selected to define and drive areas of care that need attention. *Dr. deLong noted that the current draft set of measures does not include measures specifically linked to women's health, with the exception of one measure on chlamydia screening. There is no quality measure that assesses the percent of women of reproductive age for whom pregnancy intention has been assessed and tailored contraceptive counseling provided. However, the current set of proposed measures does include several measures addressing areas of chronic disease such as controlling high blood pressure, weight management and counseling, and management of diabetes that are relevant to the goal of reducing maternal mortality.*

Dr. de Long noted that staff from the Division of Family Health are engaging in discussion with NYSDOH colleagues, including participation in the DSRIP, SHIP/SIM workgroups, to promote

continued attention to the importance of addressing women's health through these elements. A key challenge identified in the process is that while there is general agreement about the fundamental importance of reproductive health as part of comprehensive patient-centered care, including recommendations from ACOG and the American Academy of Family Physicians, the US Preventive Services Task Force (USPSTF), which is charged to assess the evidence for approval of reimbursement decisions under the ACA, has not reviewed or issued recommendations specific to assessment of pregnancy intention or contraceptive counseling. As a consequence, there is no rigorous nationally established evidence-based standard or nationally endorsed quality measure comparable to standards and measures for other specific practices, such as tobacco assessment and counseling.

Discussion focused on the fact that New York State should not miss the opportunity to use initiatives to advance primary care to strengthen care for women to be a leader in this area by adding to the research base to demonstrate that these practices can be effective and addressing this gap with the USPSTF.

Next Steps

Office of Public Health staff will continue to engage in planning and implementation groups to support the integration of women's health needs and practices within DSRIP, SHIP/APC and Health Home, while also continuing to lead public health surveillance activities to review cases of maternal death and mobilize prevention activities to address relevant factors identified as well as address the disparities noted.

As a further outgrowth of the Committee's role in drawing attention to this issue, the NYSDOH has convened a group of partner organizations that include the Healthcare Association of New York State (HANYS), the Greater New York Hospital Association (GNYHA), American Congress of Obstetricians and Gynecologists (ACOG) District II, the New York Academy of Medicine (NYAM),the New York City Department of Health and Mental Hygiene (NYCDOHMH) and clinician experts to improve information-sharing and coordination of strategies to address maternal mortality. These partners met in November 2015 to review shared goals and current initiatives, identify gaps and initiate steps to launch a more strategic and coordinated approach to this important problem. At the November meeting and a follow-up conference call in December 2015, participants voiced a shared commitment to formalizing a working partnership and pursuing joint initiatives to raise awareness and improve both community prevention and clinical strategies to support maternal health. A second in-person meeting, held January 13, 2016, began the formalization of the partnership and focused on an initial collaborative project on preconception/interconception health which will be further developed. The Public Health Committee will be kept informed about progress of this promising new partnership.

Appendix

Defining the Problem of Maternal Mortality: September 2012 – January 2013

In September 2012 the Committee invited Dr. Marilyn Kacica, Medical Director for the Department of Health Division of Family Health, to present on the issue of maternal mortality in New York. Key highlights of data presented include:

- The United States ranks behind 40 nations in maternal death rates, despite spending more on care per birth than any other nation.
- New York ranks 47th out of the 50 states for maternal mortality rates. In 2005-07, New York's maternal mortality rate was 14.7 per 100,000 live births, compared to 11.1 deaths per 100,000 live births (2005-2007 national data) nationally.
- There are notable geographic differences in maternal mortality rates within the state: 30 deaths per 100,000 live births for New York City, compared to 18.9 deaths per 100,000 live births for rest of state (2010 data).
- There are striking racial disparities in maternal mortality rates within the state: 15 deaths per 100,000 live births for White women, 58.2 deaths per 100,000 live births for Black women and 15.3 per 100,000 live births for women of other races.

Dr. Kacica also discussed steps the Department is taking to address the issue of maternal mortality, using the three priority action steps defined by the New York Academy of Medicine in its report on maternal mortality:

1) ***Improve reporting, case review and data system*** – the state's case ascertainment and review process has transitioned to a comprehensive statewide reporting process that identifies cases through multiple data systems including New York Patient Occurrence Reporting and Tracking System (NYPORTS), birth certificates, death certificates and hospital discharge data. Once cases are identified, charts are requested and reviewed using a comprehensive review tool and abstraction form. Aggregate results are presented to a state-convened Maternal Mortality Expert Review committee for discussion.

2) ***Prevention and risk reduction before and during pregnancy*** – several key prevention and clinical quality improvement initiatives to reduce preterm deliveries and Cesarean section rates and increase the quality of prenatal care services, including: New York State Perinatal Quality Collaborative (NYSPQC), Medicaid policy changes including adoption of statewide prenatal care standards and reimbursement for non-medically indicated elective deliveries, and a pilot project (pursuant to Medicaid Redesign Team recommendations) to utilize health information technology to assess risks and coordinate service delivery for pregnant women.

3) ***Hospital based screening and intervention*** – the role of the state's Regional Perinatal Centers was highlighted, along with several initiatives to develop and disseminate clinical practice guidelines in partnership with other professional organizations.

In January 2013, Dr. Kacica was again invited to join the committee for a follow-up presentation and discussion. Additional data were presented to highlight demographic and medical risk factors for maternal mortality identified through New York's data analysis to date. She also highlighted strategies to address maternal mortality from the state's Prevention Agenda for different Health Impact Pyramid levels and sectors.

Refining a Prevention Focus: November 2013 – January 2014

In November 2013, the Committee was joined by staff from the Department of Health Division of Family Health, who presented information on related issues of maternal mortality, preconception health and unintended pregnancy. The purpose of the discussion was for Committee members to gain a better understanding of these issues and to link past discussions of maternal mortality to the Prevention Agenda as a framework for helping the committee identify specific issues on which it might take action.

Dr. Rachel de Long, Director of the Division of Family Health, and Kristine Mesler, Director of the Bureau of Maternal and Child Health within the Division, gave a presentation to help frame these discussions. Dr. de Long recapped key data from previous meetings that highlight the significant burden and dramatic racial and ethnic disparities in maternal mortality nationally and in New York State, based upon which maternal mortality was selected as one of the goals for the Prevention Agenda. She noted that data from the ongoing review of maternal deaths in NYS illustrate the significant contribution of pre-existing chronic health problems and risk factors, both medical and psycho-social, while also noting that national studies suggest that racial disparities in maternal death rates are not fully explained by differences in these underlying conditions. This highlights the need to focus on multiple and interrelated factors including preconception and interconception health status of women, as well as improving the quality and equity of health care provided to women during pregnancy and delivery and across the life course. Within the framework of the Prevention Agenda, she related the goal of reducing maternal mortality to other intersecting goals and priorities including prevention of unintended pregnancy, prevention and management of chronic disease, promoting preconception and interconception health and health care, and addressing mental health and substance abuse.

Ms. Mesler then presented information about unintended pregnancy nationally and in New York State. The most recently available data indicate that over 50% of pregnancies, and over 25% of live births, in NYS are unintended. Like other population health measures, there are notable racial, ethnic and economic disparities in these rates. Published literature demonstrates associations between unintended pregnancy and other risk factors or adverse birth outcomes including delayed or inadequate prenatal care, use of tobacco and alcohol during pregnancy, preterm birth and lower rates of breastfeeding. Focus groups conducted across the state with adolescent and young adult men and women identified several relevant factors including "reactive" (rather than preventive)

approaches to use of health care, the role of media in influencing health behaviors, significant unfavorable misconceptions about the effectiveness and reliability of contraceptive methods and the positive influence of stable relationships and employment on planning pregnancies. Finally, she reviewed major public health initiatives and investments to prevent unintended pregnancy, including:

- clinical family planning services supported through grants and Medicaid reimbursement;
- community-based adolescent pregnancy prevention programs that incorporate evidence-based sexual health education and social/environmental supports to help teens build life skills and transition to adulthood;
- community health collaboratives to support preconception, pregnant and interconception women and infants through community health worker services as well as organizational and community-level systems-building activities.

Finally, Dr. de Long returned to the Prevention Agenda to identify relevant strategies that have the potential to link the actionable issues identified, including maternal mortality, prevention of unintended pregnancy and health promotion across the reproductive life course. Six strategies from the Prevention Agenda were identified as potential approaches the Committee could help advance (listed roughly in order from most comprehensive/universal to more targeted):

1. Address the cross-cutting social determinants of health, including housing, education, racism, poverty and violence.
2. Provide comprehensive, evidence-based health education, including sexual health education for youth in all schools.
3. Promote norms of wellness through effective social marketing across the lifespan,
4. Integrate preconception and interconception care into routine primary and specialty health care for women of reproductive age,
5. Implement strategies to support pregnancy planning and family planning to reduce unintended pregnancy among women with chronic conditions or other specific known risk factors.
6. Focus on women who have experienced an adverse pregnancy outcome—e.g., preterm birth, low birth weight - to ensure that they are engaged in interconception care.

Following these presentations, the Committee considered the issues and identified several opportunities for further discussion or action. Dr. Boufford emphasized the overarching goal of bringing further and more sustained attention to the issue of maternal mortality, and identifying actionable issues to focus that attention. Additional specific suggestions from the Committee included:

- Putting a team around those people who are at highest risks, using models from chronic illness, community care coordination. Work being done under Medicare to reduce utilization and costs and improve outcome, i.e. the Triple Aim, should be pursued with the maternal population.

- As a specific approach to care coordination for high-risk individuals, we should look at how the Medicaid Health Home program addresses preconception and pregnancy-related care. Women on Medicaid with two or more chronic medical conditions should be enrolled in health home, and we need to make sure that good prenatal care, family planning and effective contraception is part of an expected outcome and expected service delivery in the health-home program. The committee could engage the Health Home team in a discussion about this issue.
- Working in the primary care setting with doctors to have them ask the simple question of "do you want to be pregnant in the next year, - which provokes either "are you using contraception to prevent pregnancy" or "how can we get you healthy" - to focus on use of preventive health services and health promotion behaviors, and make sure that women get prenatal care early when they do become pregnant.

At its January 2014 meeting, the Committee revisited and built further upon the November discussion. Previously-defined interests were further articulated within a life-course continuum approach to addressing maternal mortality by addressing: prevention of unintended pregnancy and planning of desired pregnancies; promoting women's health prior to pregnancy (preconception) and between pregnancies (interconception), include wellness/preventive health as well as management of risk factors and chronic disease; and, ensuring optimal care during pregnancy, with special attention to identification and management of high-risk pregnancies. The set of six Prevention Agenda strategies identified at the previous meeting was further refined to focus on three strategies as focal points for further committee attention:

1. Integrate preconception and interconception care into routine primary and specialty care for women of reproductive age, to include:
   - Screening and follow up for risk factors
   - Management of chronic medical conditions
   - Use of contraception to plan pregnancies
2. Assess and address pregnancy planning, including use of highly effective contraception, among women with severe chronic conditions or who have experienced a previous adverse pregnancy outcome.
3. Implement comprehensive and coordinated systems and protocols for early identification and management of high-risk pregnancies.

The Committee confirmed its interest in convening a series of conversations with key partners and stakeholders to further inform these issues. Specific initiatives and individuals were identified as potential invitees for these discussions. Dr. Boufford and Dr. de Long committed to arranging the first of these conversations and invited Committee members to contribute additional comments in the interim.

Members of the Public Health Committee

Summary of Express Terms

The following summarizes the proposed regulations pertaining to children with disabilities attending a children's camp.

Pursuant to the proposed amendments, the following requirements, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camp enrolling campers with a disability, beginning October 1, 2016:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment, camps must provide at least 1:2 supervision;
- Staff that have direct care responsibilities of campers with disabilities must receive training relevant to the specific needs of the campers in their charge;
- Camps must obtain and implement, as appropriate, care and treatment plans for campers with disabilities that have such plans as well as obtain other available information relevant to the care and specific needs of a camper with disabilities including pre-existing medical conditions, allergies, modified diets, and activity restrictions;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that may result in an increased risk for an emergency in the water;
- For campers with developmental disabilities, camps must provide one counselor for every five campers during swimming activities;

- Camps must obtain parent/guardian's written permission to allow campers with developmentally disabilities to participate in swimming activities;
- Camps must develop procedures and training for handling seizures or aspiration of water by campers with developmental disabilities that may occur during swimming activities;
- All lavatories and showers used by campers with physical disabilities must be equipped with specialized features and grab bars;
- Lavatories and showers used by campers with a disability, who are unable to moderate water temperature safely, shall have a water temperature not greater than 110 degrees Fahrenheit;
- Buildings housing non-ambulatory campers shall have ramps to facilitate access.
- Non-ambulatory campers may not have housing above ground level; and
- Exterior paths must be constructed and maintained, as appropriate for the camp population served, to provide for safe travel during inclement weather.

The amendments also define a "Camp for Children with Developmental Disabilities." Such camps would be immediately required to adhere to the following additional requirements, pursuant to the legislation that established the Justice Center, in addition to immediately complying with the provisions above:

- Reportable incident is defined to include abuse, neglect and other significant incidents specified in section 488 of Social Services Law. Camp staff must report all reportable

incidents to the Justice Center Vulnerable Persons' Central Registry and the permit-issuing official;

- A definition of a personal representative was added to be consistent with section 488 of Social Services Law;
- Prior to hiring camp staff, camps must verify that candidates are not on the Justice Center's staff exclusion list or on the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment;
- All camp staff must obtain mandated reporter training and review and acknowledge an understanding of the Justice Center's code of conduct;
- Camps must ensure that immediate protections are in place following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, any potential witnesses, and each camper's personnel representative (as appropriate) that the camper may be interviewed as part an abuse or neglect investigation;
- Camps must cooperate fully with reportable incident investigations and provide/disclose all necessary information and access to conduct investigations;
- Reportable incident investigations procedures are established;
- Camps must promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability;

- Unless a waiver is granted, camps must convene a Facility Incident Review Committee to review the camp's responses to a reportable incident including making recommendations for improvement, reviewing incident trends, and making recommendations to reduce reportable incidents;
- Camps must implement any corrective actions identified as the result of a reportable incident investigation.

Note that, for organizational reasons, these amendments repeal section 7-2.25 in its entirety, and replace it with a new section 7-2.25. Although reorganized, some provisions have been left substantially unchanged, including certain provisions relating to camp directors and health directors.

Pursuant to the authority vested in the New York State Department of Health by Public Health Law Section 225, Subpart 7-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective immediately upon publication in the New York State Register, to read as follows:

Subdivision (b)(2)(ix) of section 7-2.1 is amended to read as follows:

(ix) implementation of the medical requirements of the camp safety plan not under the supervision of a camp health director; at [camps for the developmentally disabled] Camps for Children with Developmental Disabilities, as defined in section 7-2.2(d-1) of this Subpart, medication is not under the supervision of licensed or certified personnel;

Subdivision (d-1) of section 7-2.2 is added to read as follows:

(d-1) Camp for Children with Developmental Disabilities shall mean a children's camp with 20% or more enrollment of campers with a developmental disability as defined by subdivision (d) of this section.

Subdivision (c) of section 7-2.9 is amended to read as follows:

(c) Showers with water under pressure heated to between [90 and 100] 110 and 120 degrees Fahrenheit, and one shower head for each 20 occupants or less, shall be provided.

Subdivisions (a) and (b) of section 7-2.24 are amended to read as follows:

(a) Variance. [-] In order to allow time to comply with certain provisions of this Subpart, an operator may submit a written request to the permit-issuing official for a variance from a specific provision(s) when the health and safety of the children attending the camp and the public will not be prejudiced by the variance, and where there are practical difficulties or unnecessary hardships in immediate compliance with the provision. An operator must meet all terms of an approved variance(s) including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the permit-issuing official specifies. For any variance request relating to the requirements of section 7-2.25(b) of this Subpart, the permit-issuing official shall consult with and obtain approval from the State Department of Health, prior to granting or denying the variance.

(b) Waiver. [-] In order to accept alternative arrangements that do not meet certain provisions of this Subpart but do protect the safety and health of the campers and the public, an operator may submit a written request to the permit-issuing official for a waiver from a specific provision of this Subpart. Such request shall indicate justification that circumstances exist that are beyond the control of the operator, compliance with the provision would present unnecessary hardship and that the public and camper health and safety will not be endangered by granting such a waiver. The permit-issuing official shall consult with a representative of the State Department of Health prior to granting or denying a waiver request. An operator must meet all terms of an approved waiver(s), including the condition that it will remain in effect indefinitely unless revoked by the permit-issuing official or the facility changes operators. For any waiver request relating to the

requirements of section 7-2.25(b) of this Subpart, the permit-issuing official shall consult with and obtain approval from the State Department of Health, prior to granting or denying the variance.

Section 7-2.25 (Additional requirements for camper with camper enrollments of 20 percent or more developmentally disabled campers) is repealed and replaced to read as follows:

7-2.25 Additional requirements for camps enrolling campers with disabilities.

(a) Effective October 1, 2016, the following requirements shall apply to all camps enrolling a child with a physical or developmental disability, except that any Camp for Children with Developmental Disabilities as defined in section 7-2.2 of this Subpart shall comply with this section upon the effective date of this Subpart:

(1) Personnel and Supervision.

(i) The ratio of counselors to campers who use a wheelchair, adaptive equipment or bracing to achieve ambulation, but who do not possess, for whatever reason, the ability to fit, secure or independently manipulate such devices satisfactorily to achieve ambulation, shall be 1:2.

(ii) Camp staff providing direct care of a camper with a disability shall be trained on the specific needs of the campers in their charge.

(2) Medical Requirements.

(i) A camp operator shall obtain existing individual treatment, care, and behavioral plans for campers with a disability. Camp staff shall implement adequate procedures to protect the health and safety of a camper based on the plan provided and, when necessary, in consultation with an individual's parent, guardian and/or clinical team.

(ii) The confidential medical history for a camper with a disability shall, in addition to the requirements of section 7-2.8(c)(1) of this Subpart, include:

(a) Any restrictions, allergies, medications, special dietary needs, and other pre-existing medical, physical or psychological conditions and illnesses.

(b) The camper's physician's name, address and telephone number.

(iii) Modified diets and other special needs related to a camper's disability shall be identified for each camper prior to arrival at camp, planned for, provided for in accordance with supplied directions, and reviewed by the designated camp health director.

(3) Recreational Safety.

(i) The minimum counselor-to-camper ratio during swimming pool and bathing beach activities shall be one counselor for each camper who is non-ambulatory or has a disability identified by the camper's parents, guardian, physician or residential care

provider that may result in an increased risk of an emergency in the water, such as uncontrolled epilepsy.

(ii) The minimum counselor-to-camper ratio during swimming pool and bathing beach activities shall be one staff member for every five (5) campers with a developmental disability not designated in subparagraph (i) of this paragraph.

(iii) No camper with a developmental disability can participate in swimming activities unless a written permission statement signed by the camper's parent, guardian or residential care provider is on file at the camp.

(iv) The camp safety plan approved under section 7-2.5(n) of this Subpart shall contain a procedure to address the handling of seizures and aspiration of water for campers with developmental disabilities. All bathing beach and swimming pool staff shall be trained to implement the procedure prior to the date the camp begins operation. In-service training using this procedure shall be conducted and documented every two weeks after the commencement of the camp's operation or as otherwise approved by the permit-issuing official in the camp's safety plan.

(4) Toilets, privies, lavatories, showers. All lavatories and showers used by a camper with a physical disability shall be equipped with specialized fixtures, grab bars or other controls appropriate for the camper's disability. Lavatories and showers used by campers with physical, intellectual or developmental disabilities, who are unable to moderate

water temperature safely, shall have a water temperature not greater than 110 degrees Fahrenheit.

(5) Sleeping Quarters.

(i) Buildings housing campers who are non-ambulatory or use a wheelchair shall have ramps constructed in accordance with the Uniform Code to facilitate access and egress.

(ii) Non-ambulatory campers shall not have their sleeping accommodations above the ground floor.

(6) Location; grounds. Exterior paths of travel shall be free of encumbrances and provide an appropriate surface for movement during inclement weather as appropriate for the camp population being served.

(b) Children's Camps for Children with Developmental Disabilities. In addition to the requirements listed in subdivision (a), the following requirements shall apply to all Children's Camps for Children with Developmental Disabilities, as defined as defined in section 7-2.2 of this Subpart:

(1) Definitions. The following definitions apply to this subdivision:

(i) *Camp staff* shall mean a director, operator, employee or volunteer of a children's camp; or a consultant, employee or volunteer of a corporation,

partnership, organization or government entity which provides good or services to a children's camp pursuant to contract or other arrangement that permits such person to have regular or substantial contact with individuals who are cared for by the children's camp.

(ii) *Department* shall mean the New York State Department of Health.

(iii) *Justice Center* shall mean the Justice Center for the Protection of People with Special Needs, as established pursuant to section 551 of the Executive Law.

(iv) *Reportable incidents* shall include the following:

(*a*) *Abuse and Neglect* shall mean those actions by camp staff that satisfies the definitions of "physical abuse", "sexual abuse", "psychological abuse", "deliberate use of restraints", "use of aversive conditioning", "obstruction of reports of reportable incidents", "unlawful use or administration of controlled substance" and "neglect" all as defined in section 488 of Social Services Law.

(*b*) *Significant Incident* shall mean an incident, other than an incident of abuse or neglect as defined by subparagraph (*a*) of this section that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a camper with a developmental disability. A significant incident shall include but not limited to: (1) conduct between campers with developmental disabilities that would constitute abuse, as defined in this

Section, if it had been conducted by a camp staff member; or (2) conduct by a camp staff member which is inconsistent with the individual treatment plan for a camper with a developmental disability, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies, and impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a camper with a developmental disability. Such conduct shall include but is not limited to: actions incorporated within the definitions of "unauthorized seclusion," "unauthorized use of time-out," "administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued by a licensed, qualified health care practitioner, and which has an adverse effect," and "inappropriate use of restraints," as defined in section 488 of the Social Services Law.

(v) Personal Representative shall mean a camper's parent, guardian, or person authorized under state, tribal, military or other applicable law to act on behalf of a camper with a developmental disability in making health care decisions.

(2) Personnel and Supervision.

(i) The camp director, who may also be the camp operator, shall possess a Bachelor's Degree from an accredited program in the field of physical education, recreation, education, social work, psychology, rehabilitation or related human services fields and shall present evidence of specialized training or one year of

experience in treating or working with individuals with a developmental disability.

(ii) A camp director does not have to meet the minimum requirements of paragraph (i) of this subdivision if:

(a) the individual was a camp director for a camp for children with developmental disabilities during each of the three camping seasons preceding the 1986 camping season;

(b) conditions at the camp did not threaten the health or safety of campers during that person's tenure as camp director; and

(c) the individual otherwise meets the minimum qualifications for a camp director, as set forth in section 7-2.5 of this Subpart.

(iii) The camp director shall not be on the Justice Center Staff Exclusion List (SEL) consistent with paragraph 6 of subdivision b of this section.

(iv) The camp director shall develop a written staff training program appropriate to the specific needs of the campers with developmental disabilities enrolled in the camp.

(v) There shall be at least one counselor in addition to the driver in any vehicle transporting campers with developmental disabilities or as provided in the camp safety plan approved under section 7-2.5(n) of this Subpart.

(3) Medical Requirements. The camp health director shall be a physician, physician's assistant, registered nurse or licensed practical nurse and shall be on-site for the period the camp is in operation.

(4) Reporting. In addition to reporting incidents as required by Part 5 of this Title and by sections 7-2.8(d), 7-2.5(n)(3) and 7-2.6(f)(4) of this Subpart, all camp staff shall immediately report any reportable incident, as defined in section 7-2.25(b)(1)(iv) of this Subpart, involving a camper with a developmental disability, to the permit-issuing official and to the Justice Center's Vulnerable Person's Central Register (VPCR). Such report shall be provided in a form and manner as required by the Department and Justice Center.

(5) Immediate Protections and Notifications.

(i) Immediately upon notification of abuse, neglect or significant incident as defined by section 7-2.25(b)(1)(iv), the camp operator or designee shall ensure appropriate actions are taken to address the immediate physical and psychological needs of the camper(s), implement protections to ensure the safety and mitigate further risk to campers, and document such actions and implementations.

(ii) The camp director or designee shall notify a camper with a developmental disability and the camper’s personal representative that the camper is an alleged victim or potential witness of an incident of abuse or neglect. Alleged victims

shall be notified within 24 hours and potential witnesses shall be notified within 48 hours of the permit-issuing official reporting, to the camp director or designee, that an incident of abuse or neglect has been accepted by the Justice Center for investigation. There shall be no notification of a personal representative if the alleged victim or potential witness objects to such notification or if providing such notification would compromise the investigation, violate relevant confidentiality laws, be contrary to court order, or otherwise contrary to the best interests of the alleged victim or the potential witness.

(iii) Camp staff shall document in writing that notice was given or that a diligent effort to make such notification was made for each camper.

(6) Camp Staff Screening, Training, and Code of Conduct.

(i) Prior to hiring anyone who will or may have direct contact with campers, or approving credentials for any camp staff, the operator shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's Staff Exclusion List (SEL) established pursuant to section 495 of the Social Services Law. If such person is not on the Justice Center's Staff Exclusion List (SEL), the operator shall also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment as required by section 424-a of the Social Services Law. Such screening is in addition to the requirement that the operator similarly verify that a

prospective camp staff is not on the sexual abuse registry, as required by section 7-2.5(l) of this Subpart.

(ii) A camp operator shall ensure that camp staff receive training regarding mandated reporting and their obligations as mandated reporters as defined by Article 11 of Social Services Law. A camp operator shall ensure that the telephone number for the Justice Center's VPCR hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to mandated reporters and campers.

(iii) The camp operator shall ensure that all camp staff are provided with a copy of the code of conduct established by the Justice Center pursuant to section 554 of Executive Law. Such code of conduct shall be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct shall be acknowledged and the recipient shall further acknowledge that he or she has read and understands such code of conduct.

(7) Disclosure of Information.

(i) Except to the extent otherwise prohibited by law, the camp operator shall be obliged to share information relevant to the investigation of any incident subject to the reporting requirements of this Subpart with the permit-issuing official, the Department, and the Justice Center. The permit-issuing official, the Department

and the Justice Center shall, when required by law, or when so directed by the Department or the Justice Center and except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents subject to the reporting requirements of section 7-2.25 (b)(4) of this Subpart.

(ii) Except as otherwise prohibited by law, the operator of a camp not otherwise subject to Article Six of the Public Officers Law shall make records available for public inspection and copying to the extent required by subdivision six of section 490 of the Social Services Law.

(8) Incident Management.

(i) The camp operator shall cooperate fully with the investigation of reportable incidents involving campers with developmental disabilities and shall provide all necessary information and access to conduct the investigation. The camp operator shall promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability. The camp operator shall provide information, whether obtained pursuant to the investigation or otherwise, to the Justice Center and permit-issuing official upon request, in the form and manner requested. Such information shall be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in this subdivision.

(ii) Unless delegated by the Justice Center to the Department, an allegation of abuse or neglect as defined in section 7-2.25(b)(1)(iv)(*a*) of this Subpart, shall be investigated by the Justice Center. With regard to an alleged significant incident, as defined in section 7-2.25(b)(1)(iv)(*b*) of this Subpart, the permit-issuing official shall initiate a prompt investigation of the allegation, unless the Justice Center agrees that it will undertake such investigation. An investigation conducted by the permit-issuing official shall commence no later than five business days after notification of such an incident. Additional time for completion of the investigation may be allowed, subject to the approval of the department, upon a showing of good cause for such extension. At a minimum, the investigation of any reportable incident shall comply with the following:

(a) Investigations shall include a review of medical records and reports, witness interviews and statements, expert assessments, and the collection of physical evidence, observations and information from care providers and any other information that is relevant to the incident. Interviews should be conducted by qualified, objective individuals in a private area which does not allow those not participating in the interview to overhear. Interviews must be conducted of each party or witness individually, not in the presence of other parties or witnesses or under circumstances in which other parties or witnesses may perceive any aspect of the interview. The person alleging the incident, or who is the subject of the incident, must be offered the opportunity to give

his/her version of the event. At least one of the persons conducting the interview must have an understanding of, and be able to accommodate, the unique needs or capabilities of the person being interviewed. The procedures required by this clause may be altered if, and only to the extent necessary to, comply with an applicable collective bargaining agreement.

(b) All evidence must be adequately protected and preserved.

(c) Any information, including but not limited to documents and other materials, obtained during or resulting from any investigation shall be kept confidential, except as otherwise permissible under law or regulation, including but not limited to Article 11 of the Social Services Law.

(d) Upon completion of the investigation, a written report shall be prepared which shall include all relevant findings and information obtained in the investigation and details of steps taken to investigate the incident. The results of the investigation shall be promptly reported to the department, if the investigation was not performed by the department.

(e) If any remedial action is necessary, the permit-issuing official shall establish a plan in writing with the camp operator. The plan shall indicate the camp operator's agreement to the remediation and identify a follow-up date

and person responsible for monitoring the remedial action. The plan shall be provided, and any measures taken in response to such plan shall be reported to the department.

(f) The investigation and written report shall be completed and provided to the department within 45 days of when the incident was first reported to the Justice Center.

(iii) At the conclusion of an investigation of an alleged reportable incident, the camp operator shall:

(a) Assess the need for corrective actions;

(b) Report corrective actions plans to the permit-issuing official within 45 days of the conclusion of an investigation from the Justice Center or permit-issuing official; and

(c) Implement corrective actions identified by the camp, or required by the permit issuing official or the Justice Center. Corrective action plans shall be implemented as soon as possible but within ninety (90) days of the completion of an investigation unless the camp has closed for the season. If closed for the season, corrective action plans shall be implemented when the camp reopens.

(iv) Incident Review Committee.

(a) The camp shall maintain a facility incident review committee, in accordance with 14 NYCRR Part 704. The incident review committee shall be composed of members of the governing body of the children's camp and other persons identified by the camp operator, including some members of the following: camp administrative staff, direct support staff, licensed health care practitioners, service recipients, the permit-issuing official or designee and representatives of family, consumer and other advocacy organizations, but not the camp director. The camp operator shall convene a facility incident review committee to review the timeliness, thoroughness and appropriateness of the camp's responses to reportable incidents; recommend additional opportunities for improvement to the camp operator, if appropriate; review incident trends and patterns concerning reportable incidents; and make recommendations to the camp operator to assist in reducing reportable incidents. The facility incident review committee shall meet each year in which there is a reportable incident. When the incident review committee is responsible for approving or developing corrective action plans, the committee shall meet within 45 days of the conclusion of an investigation, unless an extension for such plans has been granted by the Justice Center.

(b) Pursuant to paragraph (f) of subdivision one of section 490 of the Social Services Law and 14 NYCRR Part 704, a camp operator may seek an exemption from the requirement to establish and maintain an incident review committee. In order to obtain an exemption, the camp operator shall file an application with the permit-issuing official and provide sufficient documentation and information to demonstrate that compliance would present undue hardship, that granting an exemption would not create an undue risk of harm to campers' health and safety and specify an alternative process to ensure appropriate review and evaluation of reportable incidents. The permit-issuing official shall consult with the Department and shall not grant or deny an application for an exemption unless it first obtains department approval for the proposed decision. An operator shall meet all terms of an approved exemption(s). An exemption shall remain in effect until revoked by the permit-issuing official. A camp operator shall immediately notify the permit-issuing official when conditions, upon which the incident review committee exemption was granted, have changed.

(9) In addition to the requirements specified by subdivisions (d) and (g) of the section 7-2.4 of this Subpart, a permit may be denied, revoked, or suspended if the children's camp fails to comply with regulations, policies, or other requirements of the Justice Center. In considering

whether to issue a permit to a children's camp, the permit-issuing official shall consider the children's camp's past and current compliance with the regulations, policies, or other requirements of the Justice Center.

Summary of Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL authorizes the PHHPC to prescribe standards and establish regulations for children's camps. PHL sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting Chapter 501 of the Laws of 2012, the Legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center). This legislation amended Article 11 of Social Service Law to include children's camps for children with developmental disabilities, and it required the Department of Health to promulgate regulations pertaining to incident management.

Needs and Benefits:

The following requirements, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camper with a disability, as of October 1, 2016:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment,

camps must provide at least 1:2 supervision;

- Staff providing direct care of campers with disabilities must be trained on the needs of the campers in their charge;
- Camps must obtain health information and existing care/treatment plans and implement adequate procedures to protect the safety and health of camper with disabilities;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that might result in unusual emergencies in the water. For campers with developmental disabilities, camps must provide one counselor for every five campers and obtain parent/guardian's written permission to allow for swimming participation;
- Non-ambulatory campers cannot have housing above ground level.
- Provisions for adaptive equipment, ramps and accessible design are included for lavatories, showers, and buildings. A maximum water temperature is established lavatories and showers.

To implement Article 11, the Department of Health proposes these amendments to 10 NYCRR Subpart 7-2, relating to "Children's Camp for Children with Developmental Disabilities". The amendments define a Children's Camp for the Developmentally Disabled as a children's camp with camper enrollments of 20 percent or more campers with a developmental disability. In addition to immediately complying with the requirements above, the amended regulations would immediately require these camps to comply with the following:

- Reportable incidents are defined and required to be reported by camp staff to the Justice Center and permit-issuing official;
- Camps must implement immediate protections following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, potential witnesses, and each camper's personnel representative that the camper may be interviewed as part of an abuse or neglect investigation;
- Camps must verify staff are not on the Justice Center's Staff Exclusion List (SEL) prior to hiring. After this verification, the operator must consult the Office of Children and Family Services (OFCS) State Central Registry of Child Abuse and Maltreatment (SCR);
- Camp staff must receive mandated reporter training and acknowledge an understanding of the Justice Center's code of conduct;
- Camps need to cooperate with investigations, including providing access and disclosing necessary information;
- Camps must convene a Facility Incident Review Committee to review the camp's response to a reportable incident and make recommendations to reduce reportable incidents.

Compliance Costs:

Cost to Regulated Parties:

Costs to Camps for Children with Developmental Disabilities:

Costs to regulated parties are difficult to estimate due to variation in staff salaries and time needed to investigate incidents. Reporting incidents should take less than half an hour; assisting with investigations will range from several hours to two staff days. The Department estimates that the total staff costs range from $120 to $1600 for each investigation. Expenses should be minimal statewide as less than 55 Camps for Children with Developmental Disabilities operate each year, with an average of six camps reporting a total of 18 incidents per year.

There will be minimal expense for determining if potential employees are on the SEL and SCR. An entry level staff person earning the minimum wage of $8.75/hour should be able to compile the information for 100 employees within six to eight hours. OCFS requires a $25.00 screening fee for new or prospective employees and no fee for volunteers.

Camps will be required to: disclose certain information to the Justice Center and to the permit issuing official charged with investigating reportable incidents; ensure immediate protections are in place for victims; and notify the victims and any witnesses that they may be interviewed as part of an investigation. Costs associated with these activities include staff time for locating information, contacting camper's parent/guardians and expenses for copying materials. The typical cost should be under $100 per incident.

Costs associated with mandated reporting training are minimal as training materials will be provided to the camps and will take about one hour to review during routine staff training. The telephone number for the Justice Center reporting hotline must be conspicuously posted for campers and staff. Costs associated with posting is limited to making and posting copies in appropriate locations.

Camp operators must provide each camp staff member or volunteer with the code of conduct established by the Justice Center. The code must be provided at the time of initial employment and annually thereafter. The employee must acknowledge they received, read, and understand the code. The cost of providing the code, and obtaining and filing the required employee acknowledgment should be minimal. Staff should need less than 30 minutes to review the code.

Camps will be required to establish and maintain a facility incident review committee to review the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries and the amount of time needed for the committee to meet. An incident review committee will be required to meet to fulfill its duties if any reportable incidents occur. Because most camps only operate during the summer season, it is expected that the incident review committee will meet no more than once a year. The cost is estimated to be $450.00 dollars per meeting. The regulations provide

opportunity for a camp to seek an exemption, which may be granted based on the duration of the camp season and other factors.

Camps are now required to obtain a medical examination of any camper physically injured during a reportable incident. Because a medical examination is an expected standard of care in response to such injuries, there will be no additional cost.

Costs to camps enrolling campers with a disability:

Certain regulations, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camp that enrolls one or more campers with a disability. The cost to affected parties is difficult to estimate due to variation in salaries and the unknown number of campers with a disability attending camps.

Camps will be required to provide at least: 1:2 supervision for campers who cannot independently manipulate a wheelchair or other adaptive equipment; 1:1 supervision during swimming for each camper who is non-ambulatory or has a disability that may result in an increased risk of an emergency in the water; and 1:5 supervision for campers with a developmental disability during swimming. Entry level staff person earning the minimum wage of $8.75/hour should be able to comply with the supervision requirements. The expense for camps will vary depending on the number of campers with these disabilities and the length of time the campers are in attendance.

Camps will be required to obtain and follow existing care/treatment plans and other available information relevant to the care of a camper with disabilities, such as pre-existing medical conditions, allergies, modified diets, and activity restrictions. Staff providing direct care of these campers must be trained on the specific needs of each camper. Costs to obtain existing health and care information are expect to be minimal, since camps currently collect health information. Costs to provide staff training will vary based on needs of individual campers, but are expected to be a minimal as they currently provide staff training in other areas.

Camps will need to obtain parent or guardian's written permission to allow campers with developmental disabilities to participate in swimming activities. The cost of obtaining permission slips should be minimal, as it is limited to copying, distributing, and filing with other materials from parents/guardians.

Cost to State and Local Government:

State agencies and local governments operating camps will have the same costs described in the section entitled "Cost to Regulated Parties."

The regulation imposes requirements on local health departments (LHDs) for receiving incident reports, investigating incidents, and oversight of corrective actions. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. The cost to investigate an incident, including report

completion, is estimated to range from $400 to $1600.

Cost to the Department of Health:

There will be costs associated with printing and distributing the amended Code. There will be minimal costs for printing and distributing training materials, as most information will be distributed electronically. LHDs will likely include copies of training materials in routine correspondence to camps.

Local Government Mandates:

Camps operated by local governments must comply with the requirements imposed on camps operated by other entities, as described in the section entitled "Cost to Regulated Parties." Local governments serving as permit issuing officials will face additional reporting and investigation requirements, as described in the section entitled "Cost to State and Local Government." The proposed amendments otherwise do not impose new responsibilities on local governments.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of incident report forms to the LHD and Justice Center. Camps will be required to provide records necessary for LHD investigation of incidents, and to retain documentation regarding whether prospective employees were found on the SEL or SCR. Camps enrolling campers with a disability will be required to obtain health care related documents/information and permission

slips for swimming and document in-service training for aquatic staff.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation.

Alternatives Considered:

The amendments to the code that relate to Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered for these requirements.

The Department considered not imposing additional requirements on camps that enroll less than 20% of campers with a disability; however, this option was rejected because the requirements are viewed as necessary to protect campers with disabilities attending camp.

The Department also considered imposing all of the requirements for Camps for Children with Development Disabilities on all children's camps with one or more qualifying campers; however, this option was rejected due to the burdensome costs associated with implementing the requirements. The State Camp Safety Advisory Council also expressed concern that applying the regulations to all camps enrolling a child with a developmental disability could be burdensome and have unintended consequences. The Department received correspondences from two State Senators, who expressed concern that expanding the regulations to all children's camps would have unintended financial consequences that could impact access.

Public comments were delivered by municipal organizations, children's camps and camp organizations, all of which argued in favor of keeping the 20 percent threshold. The Justice Center conveyed agreement with the Department's application of the additional requirements to camps serving a population of 20 percent or more children with developmental disabilities.

Federal Standards:

No current federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments will be effective upon publication of the Notice of Adoption in the State Register. For Camps for Children with Developmental Disabilities, compliance with all requirements will be immediately required. For camps serving a population of less than 20 percent of children with developmental disabilities, the requirements pertaining to such camps will be effective October 1, 2016.

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Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL authorizes the PHHPC to prescribe standards and establish regulations for children's camps sets forth sanitary and safety requirements for children's camps. PHL sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting Chapter 501 of the Laws of 2012, the Legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation amended Article 11 of Social Service Law to include children's camps for children with developmental disabilities, and it required the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State.

Needs and Benefits:

In order to better protect and provide for the needs of campers with disabilities that attend

children's camps with less than 20 percent of the population having a developmental disability, the following requirements now apply to any camp that enrolls a camper with a disability:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment, camps must provide at least 1:2 supervision;
- Staff that have direct care responsibilities of campers with disabilities must receive training relevant to the specific needs of the campers in their charge;
- Camps must obtain and implement, as appropriate, care and treatment plans for campers with a disability that have such plans as well as obtain other available information relevant to the care and specific needs of a camper with disabilities including pre-existing medical conditions, allergies, modified diets, and activity restrictions;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that may result in an increased risk for an emergency in the water;
- For campers with developmental disabilities, camps must provide one counselor for every five campers during swimming activities;
- Camps must obtain parent/guardian's written permission to allow campers with developmentally disabilities to participate in swimming activities;
- Camps must develop procedures and training for handling seizures or aspiration of water by campers with developmental disabilities that may occur during swimming activities;
- All lavatories and showers used by campers with a physical disability must be equipped with specialized features and grab bars;

- Lavatories and showers used by campers with disabilities, who are unable to moderate water temperature safely, shall have a water temperature not greater than 110 degrees Fahrenheit.

- Buildings housing non-ambulatory campers shall have ramps to facilitate access.
- Non-ambulatory campers may not have housing above ground level; and
- Exterior paths must be constructed and maintained, as appropriate for the camp population served, to provide for safe travel during inclement weather.

The Justice Center legislation amended Article 11 of Social Services Law to include overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities that must comply with the Justice Center requirements. This included mandating regulations regarding incident management procedures and other requirements consistent with Justice Center guidelines and standards.

To implement Article 11 of Social Services Law, the Department of Health defined "Children's Camp for Children with Developmental Disabilities" in Subpart 7-2 of the State Sanitary Code. The amendment defines a Children's Camp for Children with Developmental Disabilities as a children's camp with enrollment of 20 percent or more campers with a developmental disability. The amendments further require these camps to comply with staff screening, staff training and incident management procedures mandated by the Justice Center legislation. The Department's proposal includes the following:

- Reportable incident is defined to include abuse, neglect and other significant incidents

specified in section 488 of Social Services Law. Camp staff must report all reportable incidents to the Justice Center Vulnerable Persons' Central Registry and the permit-issuing official;

- A definition of a personal representative was added to be consistent with section 488 of Social Services Law;
- Prior to hiring camp staff, camps must verify that candidates are not on the Justice Center's staff exclusion list or on the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment;
- All camp staff must obtain mandated reporter training and review and acknowledge an understanding of the Justice Center's code of conduct;
- Camps must ensure that immediate protections are in place following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, any potential witnesses, and each camper's personnel representative (as appropriate) that the camper may be interviewed as part an abuse or neglect investigation;
- Camps must cooperate fully with reportable incident investigations and provide/disclose all necessary information and access to conduct investigations;
- Camps must promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability;
- Unless a waiver is granted, camps must convene a Facility Incident Review Committee to review the camp's responses to a reportable incident including making recommendations

for improvement, reviewing incident trends, and making recommendations to reduce reportable incidents;

- Camps must implement any corrective actions identified as the result of a reportable incident investigation.

Additionally, unrelated to requirements for camps with children with disabilities, the requirement for shower water temperature at children's camps is made consistent with Part 1226 (Property Maintenance Code) of 19 NYCRR Chapter XXXIII.

Compliance Costs:

Cost to Regulated Parties:

Costs to Camps for Children with Developmental Disabilities:

The amendments impose additional requirements on children's camp operators for reporting and cooperating with Department of Health and Justice Center investigations at Camps for Children with Developmental Disabilities. The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of $30.00 an hour, total staff cost would range from $120 to $1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 45 and 55 Camps for Children with Developmental Disabilities operate each year, with a three-year average of six camps reporting 18 incidents per year. Accordingly, any individual camp will be very unlikely to

experience costs related to reporting or investigation.

Each Camp for Children with Developmental Disabilities will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of "custodian" under section 488 of the Social Services Law (collectively "employees"), are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of $8.75/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each Camp for Children with Developmental Disabilities will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. An entry level staff person earning the minimum wage of $8.75/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a $25.00 screening fee for new or prospective employees. There is no charge for volunteers.

For each reportable incident, Camps for Children with Developmental Disabilities will be

required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. They will also be required to ensure immediate protections are in place for the victim and notify the victim and any witnesses that they may interviewed as part of the investigation. Costs associated with this include staff time for locating information, contacting camper's parent/guardians and expenses for copying materials. Using a high estimate of staff salary of $30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, the typical cost should be under $100.

Camps for Children with Developmental Disabilities must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps for Children with Developmental Disabilities must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The operator of a Camp for Children with Developmental Disabilities must also provide each camp staff member, and others who may have contact with campers, with a copy of a code

of conduct established by the Justice Center pursuant to section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment, should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps for Children with Developmental Disabilities will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. An incident review committee will be required to meet to fulfill its duties if any reportable incidents occur. Because most camps only operate during the summer season, it is expected that the incident review committee will meet no more than once a year. Assuming the camp will have several staff members participate on the committee, an average salary of $50.00 an hour and a three hour meeting, the cost is estimated to be $450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors.

Camps for Children with Developmental Disabilities are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been required for such injuries; therefore, this will not be an increased cost.

Costs to camps enrolling campers with a disability:

Certain regulations which previously only pertained to camps with 20 percent or more campers with a developmental disability will now apply to camps that enroll one or more campers with a disability. The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the unknown and varying number of campers with a disability attending camps.

Camps will be required to provide at least one staff for ever two campers who cannot independently manipulate a wheelchair or other adaptive equipment. Camps will also be required to provide one on one supervision during swimming for each camper who is non-ambulatory or has a disability identified by the camper's parent, guardian, physician or residential care provider that may result in an increased risk of an emergency in the water. One camp staff person will be required for each five campers swimming with a developmental disability. Entry level staff person earning the minimum wage of $8.75/hour should be able to meet the minimum counselor qualification to provide supervision. The expense for camps will vary depending on the number of campers with these types of disabilities and the length of time the campers are in attendance.

Camps will be required to obtain and follow care and treatment plans for campers when they exist, and obtain other available information relevant to the care and specific needs of a camper with disabilities such as information on pre-existing medical conditions, allergies, modified diets, and activity restrictions. Staff providing direct care of these campers will be required to receive any relevant training to provide for the safe care of such campers. The cost to obtain existing health and care information is expected to be minimal, since camps currently collect health information. The cost to provide staff training will vary based on the needs of individual campers, but is expected to be a minimal additional cost to camp operators, as they are currently required to provide staff training in other areas.

Camps will need to obtain parent's or guardian's written permission to allow campers with developmentally disabilities to participate in swimming activities. The cost of obtaining permission slips should be minimal, as it would be limited to copying, distributing, and filing with other materials sent to and received from parents or guardians.

Cost to State and Local Government:

State agencies and local governments that operate Camps for Children with Developmental Disabilities and camps enrolling campers with a disability will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that municipalities operate nine summer day camps that meet the definition of a Camp for Children with Developmental Disabilities.

The regulation includes additional requirements on local health departments for receiving incident reports, investigations of reportable incidents, oversight of corrective actions and providing a copy of the resulting report to the Department. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typical estimate of $50 an hour for health department staff conducting these tasks, an investigation lasting between one and four staff days, and an eight hour day, the cost to investigate an incident will range from $400 to $1600. Since the inception of the Justice Center, an average of 18 incidents per year have been reported within an average of six different local health departments.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately $1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal, as most information will be distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Camps for Children with Developmental Disabilities and camps enrolling campers with a disability operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the "Cost to Regulated Parties" section of this

Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the "Cost to State and Local Government" section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for Children with Developmental Disabilities will be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR. Camps enrolling campers with a disability will be required to obtain health care related documents/information and permission slips for swimming. Camps will also be required to document in-service training for aquatic staff that oversee swimming pertaining to seizures and aspiration of water.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation for children's camps.

Alternatives Considered:

The amendments relating to Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered for these requirements.

The Department considered not imposing additional requirements on camps that have less than 20 percent of the children enrolled with a developmental disability; however, this option was rejected because the additional requirements are viewed as necessary to protect campers with disabilities attending camp.

The Department also considered applying all of the requirements for Camps for Children with Developmental Disabilities to all children's camps with one or more qualifying campers; however, this option was rejected due to the costs associated with implementing the requirements. The New York State Camp Safety Advisory Council expressed concern that applying the regulations to all camps with a child with a developmental disability could be burdensome and have unintended consequences such as a camp not admitting a child into the program. The Department also received correspondences from two State Senators, who indicated that expanding the emergency regulations to all children's camps, in addition to those that meet the 20 percent threshold, would have unintended financial consequences that could impact access.

Similarly, public comments were delivered by municipal organizations, children's camps and camp organizations, all of which argued in favor of keeping the 20 percent threshold for Camps for Children with Developmental Disabilities. Finally, the Justice Center conveyed

agreement with the Department's application of the additional requirements to camps serving a population of 20 percent or more children with developmental disabilities.

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective upon publication of the Notice of Adoption in the State Register. For Camps for Children with Developmental Disabilities, compliance with all requirements will be immediately required. For camps serving a population of less than 20 percent of children with developmental disabilities, the requirements pertaining to such camps will be effective October 1, 2016.

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Regulatory Flexibility Analysis

for Small Business and Local Government

Types and Estimated Number of Small Businesses and Local Governments:

There are approximately 2,510 regulated children's camps (533 overnight and 1977 summer day camps) operating in New York State. Any such camp that enrolls a camper with a disability will be affected by the proposed rule. Municipalities (towns, villages, cities and school districts) operate approximately 295 summer day camps and no overnight camp. Most of the remaining camps are believed to be small businesses.

Of the estimated 49 Children's Camps for Children with Development Disabilities (21 overnight camps and 28 summer day camps) that will be affected by the proposed rule, approximately nine summer day camps and none of the overnight camps are operated by municipalities (towns, villages, and cities). Most of the remaining Children's Camps for Children with Development Disabilities are believed to be small businesses.

Regulated children's camps representing small business include those owned or operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (e.g., Girl/Boy Scouts of America, Cooperative Extension, YMCA) and others. The proposed amendments would affect these camps if they enroll children with disabilities. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties", "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps for Children with Developmental Disabilities are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident; however, a medical examination has always been expected for such injuries, so this is not a new required service.

Compliance Costs:

Cost to Regulated Parties:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Cost to Small Businesses and State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the "Cost to Regulated Parties" and "Paperwork" section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact:

The amendments for Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered.

Amendments for camps that have less than 20 percent of the campers with developmental disabilities are believed to be what is minimally necessary to protect this vulnerable population. Requirements for camps serving a population of less than 20 percent of children with developmental disabilities will be effective October 1, 2016. This will allow camps to adequately prepare for and implement these requirements.

Small Business and Local Government Participation:

The regulations were discussed at several State Camp Safety Advisory Council meetings which are open to the public and attended by camp operators, local health department staff and other local government officials. However, due to the need to have regulations in place by the 2016 camping season with adequate time for camps to prepare for the new requirements, no formal outreach was conducted.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are approximately 2,510 regulated children's camps (533 overnight and 1,977 summer day camps) operating in New York State. Any of these camps that enrolls a camper with a disability will be affected by the proposed rule. There are an estimated 412 day camps and 402 overnight camps operating in the 44 counties that have population less than 200,000. There are an additional 395 day camps and 97 overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Of the approximate 814 camps operating in the 44 counties that have populations less than 200,000, there are 9 summer day and 13 overnight Camps for Children with Development Disabilities. There are an additional 5 day camps and 4 overnight camps in the 9 counties identified as having townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps operators in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps for the Children with Development Disabilities are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident; however a medical examination has always been expected for such injuries, so this is not an additional service.

Compliance Costs:

Cost to Regulated Parties:

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing

staff that already have similar job responsibilities. There are no requirements that involve capital improvements beyond requirements already imposed by the Americans with Disabilities Act.

Minimizing Adverse Economic Impact on Rural Area:

The amendments for Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered. No impacts are expected to be unique to rural areas.

Amendments for camps that have less than 20 percent of the campers with developmental disabilities are necessary to protect this vulnerable population. The Department has sought to strike a balance between protecting this vulnerable population and ensuring that costs are feasible. Amendments for camps that have less than 20 percent of the campers with developmental disabilities are believed to be what is minimally necessary to protect this vulnerable population.

Requirements for camps serving a population of less than 20 percent of children with developmental disabilities will be effective October 1, 2016. This will allow camps to adequately prepare for and implement these requirements.

Rural Area Participation:

The regulations were discussed at several State Camp Safety Advisory Council meetings which are open to the public and attended by camp operators from rural areas However, due to the need to have regulations in place by the 2016 camping season with adequate time for camps to prepare for the new requirements, no formal outreach was conducted.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no adverse impact on the number of jobs and employment opportunities at children's camps, because it does not result in a decrease in current staffing level requirements.

SUMMARY OF EXPRESS TERMS

Public Health Law § 206(18-a)(d) gives 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).

This regulation makes clear that, consistent with 42 USC § 17938, Qualified entities (QEs) may, without patient authorization, make patient information available among SHIN-NY participants or other entities otherwise serving the patient so long as the QEs enter into and adhere to participation agreements that comply with federal requirements under HIPAA and 42 CFR Part 2 for business associates and qualified service organizations. This regulation specifies consent requirements to access patient information made available through the QEs. This regulation incorporates legal requirements related to disclosure of patient information without consent, as well as laws that specifically authorize disclosure of patient information for health care purposes, including public health and health oversight purposes, without the type of written, signed authorization that contains all of the elements that would be required for a health care provider to get permission to disclose patient information to a third party for purposes other than health care.

In order to participate in the SHIN-NY, regional health information organizations will need to be certified as QEs by the Department and satisfy certification requirements on an ongoing basis under the procedures established by this regulation.

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), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712 of the Public Health Law, a new Part 300 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 300

Statewide Health Information Network for New York (SHIN-NY)

Sec.

§ 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 make possible the electronic exchange of clinical information among qualified entities and qualified entity 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.

(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 participant" means any health care provider, health plan, governmental agency or other type of entity or person that has executed a participation agreement with a qualified entity, pursuant to which it has agreed to participate in the SHIN-NY.

(d) "Health care provider" means a health care provider as defined in paragraph (b) of subdivision one of section 18 of the Public Health Law entitled "Access to patient information."

(e) "Statewide collaboration process" means an open, transparent process within which multiple SHIN-NY stakeholders contribute to recommendations for SHIN-NY policy guidance.

(f) "SHIN-NY policy guidance" means the set of policies and procedures, including technical standards and SHIN-NY services and products that are approved by the New York State Department of Health.

(g) "Patient information" means health information that is created or received by a qualified entity 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.

(h) “Minor consent patient information” means patient information relating to health care of a patient under 18 years of age for which the patient provided his or her own consent as permitted by law, without a parent’s or guardian’s permission.

(i) “Health oversight agency” means an agency or authority of the United States, or New York State, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

(j) “Public health authority” means an agency or authority of the United States, the New York State Department of Health, a New York county health department or the New York City Department of Health and Mental Hygiene, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

(k) “Written authorization” means a signed consent that complies with the requirements for written authorizations in this Part. A written authorization may be an electronic record with an electronic signature, as provided by State Technology Law Article 3 (Electronic Signatures and Records Act).

(l) “Law” means a federal, state or local constitution, statute, regulation, rule, common law, or other governmental action having the force and effect of law, including the

charter, administrative code and rules of the city of New York. Required by law means a mandate contained in law that compels a person or entity to make a use or disclosure of patient information and that is enforceable in a court of law.

§ 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 participants.

(c) Administer the statewide collaboration process and facilitate the development, regular review and update of SHIN-NY policy guidance.

(d) Perform regular audits, either directly or through contract, of qualified entity functions and activities as necessary to ensure the quality, security and confidentiality of data in the SHIN-NY.

(e) Provide technical services, either directly or through contract, to ensure the quality, security and confidentiality of data in the SHIN-NY.

(f) Assess qualified entity participation in the SHIN-NY and, if necessary, suspend a qualified entity's access to or use of the SHIN-NY, when it reasonably determines that the qualified entity 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) Publish reports on health care provider participation and usage, system performance, data quality, the qualified entity certification process, and SHIN-NY security.

(h) Take such other actions as may be needed to promote development of the SHIN-NY.

§ 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 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 service requirements;

(4) organizational characteristics of qualified entities; and

(5) qualified entity certification.

§ 300.4 Qualified entities.

(a) Each qualified entity shall:

(1) Maintain and operate a network of qualified entity participants seeking to securely exchange patient information.

(2) Connect to the statewide infrastructure to allow qualified entity participants to exchange information with qualified entity participants of other qualified entities.

(3) Submit to regular audits of qualified entity functions and activities by the New York State Department of Health as necessary to ensure the quality, security, and confidentiality of data in the SHIN-NY.

(4) Ensure that data from qualified entity participants is only made available through the SHIN-NY in accordance with applicable law.

(5) Enter into agreements with qualified entity 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 participant that supplies patient information and is a health care provider, and must be a qualified service organization of any qualified entity 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 participants, list the names of such qualified entity participants on its website, and make such information available at the request of patients.

(7) 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) 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) Implement policies and procedures to provide patients with information identifying qualified entity 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 law regarding minor consent patient information;

(2) to allow patients to deny access to specific qualified entity 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 core services to qualified entity participants:

(1) Allow qualified entity participants to search existing patient records on the network.

(2) Make available to qualified entity 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) Provide identity management services to authorize and authenticate users in a manner that ensures secure access.

(7) Support public health reporting to public health authorities.

(8) Deliver diagnostic results and reports to health care providers.

(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:

(1) The qualified entity is capable of supporting and advancing the use of health information technology in the public interest and has a board of directors and officers with such character, experience, competence and standing as to give reasonable assurance of its abilities in this respect.

(2) The qualified entity has the capability and infrastructure to operationalize the requirements in this section.

(3) The qualified entity has technical infrastructure, privacy and security policies and processes in place to: manage patient consent for access to health information; support the authorization and authentication of users who access the system; audit system use; and implement remedies for breaches of patient information.

(e) The New York State Department of Health shall periodically require qualified entities to demonstrate continued compliance with the certification standards required pursuant to subdivision (d) of this section through a process of audit and re-certification by the New York State Department of Health or a certification body designated by the New York State Department of Health.

(f) The New York State Department of Health may, as it deems appropriate, audit qualified entities to ensure ongoing compliance with criteria and standards.

§ 300.5 Sharing of Patient Information.

(a) General standard. Qualified entity participants may only exchange patient information as authorized by law and consistent with their participation agreements with qualified entity participants. Under subdivision six of section 18 of the Public Health Law, individuals who work for a qualified entity are deemed personnel under contract with a health care provider that is a qualified entity participant. As such, a qualified entity participant may disclose to such a qualified entity necessary patient information without a written authorization from the patient of the qualified entity participant. Qualified entity 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 subdivision (b)(2) or (c) of this section, a qualified entity shall only allow access to patient information by qualified entity 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.

(i) Patient information may not be disclosed to persons who, or entities that, become qualified entity 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 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 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.

(2) A minor's parent or legal guardian may authorize the disclosure of the minor's patient information, other than minor consent patient information.

(3) Minor consent patient information.

(i) In general, a minor's minor consent patient information may be disclosed to a qualified entity participant if the minor's parent or legal guardian has provided authorization for that qualified entity 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 participant disclose minor consent patient information to the minor's parent or guardian without the minor's authorization.

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

(i) treatment of such patient for sexually transmitted disease or the performance of an abortion as provided in section 17 of the Public Health Law;

(ii) the diagnosis, treatment or prescription for a sexually transmitted disease as provided in section 2305 of the Public Health Law;

(iii) medical, dental, health and hospital services relating to prenatal care as provided in section 2504(3) of the Public Health Law;

(iv) an HIV test as provided in section 2781 of the Public Health Law;

(v) mental health services as provided in section 33.21 of the Mental Hygiene Law;

(vi) alcohol and substance abuse treatment as provided in section 22.11 of the Mental Hygiene Law;

(vii) any patient who is the parent of a child or has married as provided in section 2504 of the Public Health Law or an otherwise legally emancipated minor;

(viii) treatment that a minor has a Constitutional right to receive without a parent's or guardian's permission as determined by courts of competent jurisdiction;

(ix) Treatment for a minor who is a victim of sexual assault as provided in section 2805-i of the Public Health Law;

(x) Emergency care as provided in section 2504(4) of the Public Health Law.

(c) Access without written authorization. A qualified entity shall, where permitted by law, allow access to patient information without written authorization when:

(1) Prior consent has already been obtained for the disclosure as required by subdivision 23 of section 6530 of the Education Law, and no provision of law requires any additional written authorization.

(2) Disclosure to the individual entity accessing the patient information is:

(i) required by law; or

(ii) authorized by law:

(*a*) to a public health authority for public health activities;

(*b*) to a health oversight agency for health oversight activities; or

(c) to a federally designated organ procurement organization for purposes of facilitating organ, eye or tissue donation and transplantation.

(3) The health care provider treating the patient, a person acting at the direction of such health care provider, or other professional emergency personnel has documented that an emergency condition exists and the patient is in immediate need of medical attention, and an attempt to secure consent would result in delay of treatment which would increase the risk to the patient's life or health.

§ 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 care facilities as defined in paragraph (c) of subdivision one of section eighteen 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 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 participants authorized by law to access such patient information. Bi-directional access means that a qualified entity participant has the technical capacity to upload its patient information to the qualified entity so that it is accessible to other qualified entity participants authorized to access the patient information and that the qualified entity participant has the technical capacity to access the patient information of other qualified entity participants from the qualified entity when authorized to do so.

(b) The New York State Department of Health may waive the requirements of subdivision (a) 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.

SUMMARY OF THE REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law Section 206(18-a)(d) authorizes the Commissioner of Health to make rules and regulations to promote the development of a self-sufficient Statewide Health Information Network for NY (SHIN-NY) to enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records (EHRs), personal health records (PHRs) and public health information systems while protecting patient privacy and ensuring data security. The Department of Health is exercising this authority in conjunction with its authority under Public Health Law Articles 28, 36, 40, 44 and 47 to regulate health care facilities as defined in Public Health Law section 18.

Purpose of Regulation:

This regulation will establish requirements for qualified entities and qualified entity participants in the SHIN-NY to allow them to securely exchange information across the state.

- Qualified Entities (QEs) (including RHIOs), through participation agreements with providers and patient consent, would implement a minimum set of core services. The QEs must also comply with federal and State laws, including laws regarding the confidentiality of alcohol and drug abuse treatment records under 42 CFR Part 2, confidential HIV-related information under PHL Article 27-F and mental health records under Mental Hygiene Law Article 33.
- The regulations would allow for the exchange of health information about minors

of any age in a way that complies with current state and federal laws and regulations related to minor consented services.

- The department would create a certification process for QEs/RHIOs that ensures standard criteria are met for providing services to its members and that the number of QEs is sufficient to provide access to health information exchange services statewide.

Benefits of Regulation:

The regulation is intended to support the triple aim of improving the patient care experience (including quality and cost), improving the health of populations, and reducing the per capita cost of health care through the broad adoption of health information exchange by:

- increasing patient record availability to health care providers across the state;
- establishing the core set of health information exchange (HIE) services that provide clinical and administrative value to the healthcare system and are available to all providers and all patients in New York State; and
- reducing barriers for EHR integration with HIE services.

State and Local Cost:

To date, the development of the SHIN-NY and expansion of EHR adoption has been funded through a combination of federal and state funds distributed through grant programs, as well as private contributions from participating health plans, providers and other stakeholders. Currently, over 170 hospitals and over 8200 primary care providers

qualify for "meaningful use" incentives under Medicaid and Medicare. In addition, through HEAL NY funding, it is expected that over 7800 primary and specialty care providers were supported to have adopted EHRs and be connected to the SHIN-NY by the end of 2013. Over 80% of hospitals and over 75% of Federally Qualified Health Centers (FQHCs) in New York State participate in RHIOs.

Investment in the operation of the SHIN-NY will also generate a substantial return through the elimination of wasted expenditures and promoting better quality health care at a lower cost. Three studies conducted in Rochester by the Health Information Technology Evaluation Collaborative (HITEC), an academic research consortium under contract with the State Department of Health to perform evaluation activities for the HEAL NY Program, identified improved quality and reduction in duplicative testing and in readmission rates for a two year study period for events in 2009-2010. Use of the Rochester RHIO by five Emergency Departments (EDs) resulted in 6 averted admissions per 100 patients who came to the ED, resulting in $9 million projected savings annually across the adult community. Extrapolating the cost savings across the state would result in an annual savings of $52 million. During the same study period, image exchange use through the Rochester RHIO within 90 days following an initial imaging procedure reduced the probability of repeat imaging by 35%. Finally, use of the Rochester RHIO after hospital discharge resulted in a 55% reduction in readmission within 30 days. These highly significant findings with important financial implications further demonstrate the value of the SHIN-NY.

An 18-month study in the Buffalo region looked at the number of multiple CT scans ordered for the same body part, for the same patient, over a six-month period.

During the period, 2,763 CT scans were deemed to be potentially unnecessary, duplicative tests. 90% of the potentially duplicative tests were ordered by physicians who never or infrequently access the local health information exchange. By local calculations, that amounts to a potential additional cost of $1.3 million over a six-month period for one test in one region of the state.

Costs to Regulated Entities:

The proposed regulation will require that health care facilities connect to the SHIN-NY.

Average interface costs for hospitals are $75,000 while interface costs for physician practices vary but generally average $5000 – 10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Some RHIOs have established this functionality for their participants, and therefore, there are reduced associated interface costs for their participants, which include physician practices. In some regions of the State, health plans have absorbed the interface costs for their network providers because they see the value of having their physicians connected to the SHIN-NY. Only health care providers, regulated by the Department of Health, using certified EHR technology need to comply with these requirements. Currently, adoption of certified EHR technology for health care facilities outside of hospitals and FQHCs is low because they are not eligible to receive meaningful use incentive payments.

Local Government Mandates:

The State Enterprise Health Information Exchange as part of the SHIN-NY is designed to streamline how providers interact with the many public health information systems that currently exist, to decrease reporting burdens, promote bidirectional information exchange, and advance public health priorities. Health care facilities operated by local governments will be required to comply with these regulations in the same manner as other health care facilities. Should local health departments need to make expenditures to comply with the regulatory requirements, they have opportunities to request funding through Article 6 Local Assistance Grant Program, and possibly other sources. Additionally, local agencies could seek a waiver to connect to their RHIO if funding is not available.

Paperwork:

Entities that wish to become QEs will need to submit an application for review by DOH to determine if the criteria outlined in the regulation have been met as well as meeting other criteria as may be required under the QE certification process.

Duplication:

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

Alternatives:

The Department established a statewide collaboration process to establish a governance and policy framework to allow health information sharing among disparate

providers to improve quality, improve efficiency and reduce costs of health care on a statewide basis while ensuring the patient privacy and ensuring data security of patient information.

While other states have different models for health information exchange, and NY considered the approaches and models used in other states through its statewide collaborative process, based on the size, complexity and diversity of New York and the resources that were available, the State Department of Health determined that this model was the best approach to allow for statewide health information exchange.

Federal Standards:

This rule aligns with current federal laws and regulations governing the adoption of interoperable exchange of health information and meaningful use requirements under the HITECH provisions of ARRA, as well as federal standards regarding the exchange of certain alcohol and drug abuse patient records under 42 CFR Part 2.

Compliance Schedule:

Since RHIOs or QEs are largely operational in NYS and the majority of hospitals and federally qualified health centers are already participants, and the number of physicians practices participating continues to grow and the infrastructure for the SHIN-NY is already in development, the estimated time period needed for regulated persons or entities to achieve compliance with the rule is practicable.

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REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law § 206(18-a)(d) authorizes the Commissioner to make such rules and regulations as may be necessary to implement federal policies and disburse funds as required by the American Recovery and Reinvestment Act of 2009 and to promote the development of a self-sufficient Statewide Health Information Network for New York (SHIN-NY) 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. Such rules and regulations shall include, but not be limited to requirements for organizations covered by 42 USC 17938 or any other organizations that exchange health information through the SHIN-NY.

Meaning of "implement federal policies"

The federal government, through the Office of the National Coordinator for Health Information Technology (ONC) within the Department of Health and Human Services (HHS), has been promoting and subsidizing the adoption of health IT for many years. According to the ONC-Coordinated Federal Health IT Strategic Plan: 2008-2012 (June 3, 2008), upon publication of Executive Order 13335 on April 27, 2004, President George W. Bush set a target for the majority of Americans to have access to electronic health records (EHRs) by 2014. Under EO 13335 (3 CFR 13335), ONC is charged with directing "the nationwide implementation of interoperable health information technology

in both the public and private health care sectors that will reduce medical errors, improve quality, and produce greater value for health care expenditures."

Meaning of "disburse funds as required by the American Recovery and Reinvestment Act of 2009"

The American Recovery and Reinvestment Act (ARRA) of 2009 (P.L. 111-5) includes within it the Health Information Technology for Economic and Clinical Health (HITECH) Act (HITECH is ARRA Division A, Title XIII-Health Information Technology and ARRA Division B, Title IV-Medicare and Medicaid Health Information Technology).

Under HITECH, HHS has provided and is continuing to provide billions of dollars for:

- Medicare and Medicaid incentive payments to health care providers that adopt "meaningful use" of certified electronic health record (EHR) technology. 42 USC §§ 299b-31, 299b-33, 1395w-4, 1395w-23, 1395ww, 1396b; 42 CFR Part 495.
- Grants to states to promote health IT. New York State received a federal grant to prepare and submit to the federal government a statewide health IT plan to develop health information exchange across health care systems and to move New York State toward the meaningful use of certified EHR technology. 42 USC § 300jj-33. These regulations implement that plan.
- The creation and funding of health IT Regional Extension Centers (RECs) to assist health care providers in the selection, acquisition, implementation and meaningful use of certified EHR technology to improve health care quality and

outcomes. Two RECs in New York have received federal grants. 42 USC § 300jj-32.

Meaning of "the development of a self-sufficient statewide health information network for New York (SHIN-NY)"

On the State level, New York is creating a Statewide Health Information Network for New York (SHIN-NY). Under the Health Care Efficiency and Affordability Law for New Yorkers (HEAL NY) Capital Grant Program (PHL § 2818) Phases 1, 5, 10, 17 and 22, New York promoted broad adoption of EHRs and other health IT tools and is subsidizing the operations of Regional Health Information Organizations (RHIOs) that facilitate health information exchange between disparate providers and health systems. The creation of the SHIN-NY and the expenditure of federal and State funds for health IT is being coordinated by DOH's Office of Quality and Patient Safety (OQPS). The Legislature established the OQPS Bureau of Health Information Exchange (referred to in the law as "the office of Health e-Links New York") "to enhance the adoption of an interoperable regional health information exchange and technology infrastructure that will improve quality, reduce the cost of health care, ensure patient privacy and security, enhance public health reporting including bioterrorism surveillance and facilitate health care research in the state of New York" (L. 2006, ch. 57, Part G, § 1), and the Legislature has since then appropriated money in the Chapter 54 budget appropriation laws to fund the office of Health e-Links (or "health e-link"). In the 2014-2015 budget, the Legislature appropriated $55 million for the SHIN-NY (L. 2014, ch. 54), and in the 2015-2016 budget, the Legislature appropriated $45 million for the SHIN-NY.

Meaning of "organizations covered by 42 USC 17938"

Federal regulations implementing the privacy and security provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 are in 45 CFR Parts 160 and 164, and HITECH made a number of amendments to those federal regulations. One such amendment is a section of HITECH codified in 42 USC § 17938 ("Business associate contracts required for certain entities"). Under 42 USC § 17938: "Each organization, with respect to a [HIPAA-]covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title [enacted Feb. 17, 2009]."

Prior to the enactment of HITECH, on December 15, 2008, ONC had already published a guidance document called "The HIPAA Privacy Rule and Electronic Health Information Exchange in a Networked Environment." That guidance made clear the federal government's view that under HIPAA, RHIO participants may disclose health information to RHIOs without any authorization from patients provided that the RHIOs

enter into appropriate "business associate" agreements with the RHIO participants. http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/; http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/introduction.pdf; 45 CFR § 164.502(e). 42 USC § 17938 codified this guidance into law.

In 2010, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) likewise issued guidance (which was supplemented on December 8, 2011) explaining that under 42 CFR Part 2, RHIO participants may disclose alcohol and substance abuse patient records to RHIOs without patient consent provided that the RHIOs enter into appropriate Qualified Service Organization agreements with the RHIO participants. http://www.samhsa.gov/sites/default/files/faqs-applying-confidentiality-regulations-to-hie.pdf; December 8, 2011, FAQs (available upon request); 2 CFR § 2.12(c)(4).

This regulation implements federal policies, including the federal policies effected by the HITECH provisions of ARRA to enable widespread interoperability among disparate health information systems, while protecting patient privacy and ensuring data security. These regulations include the requirements for organizations such as RHIOs, which under 42 USC § 17938 make it possible, without patient authorization, to exchange patient information among disparate health care providers so long as those organizations comply with federal requirements for business associates and qualified service organizations.

Public Health Law Sections 201, 206(1), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712 authorize the Commissioner to make such rules and regulations as may be necessary to effectuate the provisions and purposes of Public

Health Law Articles 28, 36, 40, 44 and 47 and provide additional authority for the Commissioner to create and make use of the SHIN-NY.

Legislative Objectives:

This regulation will establish formal requirements for operation of the SHIN-NY in order to advance health information technology adoption and use statewide for the public good. The Department would regulate people and entities in New York that exchange health information using the SHIN-NY, including Regional Health Information Organizations (RHIOs) and other such health IT entities.

Needs and Benefits:

This regulation facilitates the operation of a statewide interoperable health information infrastructure that will provide clinicians and consumers with access to health information in a timely, secure, efficient, and effective way.

Benefits of consistent policy implementation:

As the use of health information technology expands, the regulation will formalize a common policy framework across the entire health care system to maximize the use and benefits of the SHIN-NY. The SHIN-NY enables delivery of appropriate care at the appropriate time in a coordinated, patient-centered manner. RHIOs and QEs facilitate access to the SHIN-NY through participation agreements and technical services to connect health care providers to the network. A certification process has been established by the State Department of Health for QE designation. In order to qualify to

become a QE, a set of minimum criteria must be met. Consistent implementation of statewide policies through the regulatory process leads to a common approach to education and training of providers and consumers and can lead to reduction in costs and creation of efficiencies across the state. The regulation will further promote adoption, usage and sustainability of health information exchange organizations and the SHIN-NY by:

- Increasing patient record availability on a statewide basis
- Establishing the core set of HIE services that provide clinical and administrative value to the healthcare system
- Reducing barriers for EHR integration with HIE services
- Increasing participation of all stakeholders including payers
- Creating opportunities for emerging health care payment, delivery and access reforms through new models of care such as health homes, patient centered medical homes and Accountable Care Organizations, among others.

In addition, HITECH established a program for incentive payments to Medicaid providers who demonstrate "meaningful use" of certified EHR technology with the ultimate goal of promoting health care quality and care coordination through state health information exchange (HIE) activities. Providers that achieve NCQA Patient Centered Medical Home designation qualify for meaningful use incentive payments. This regulation will expand access to and use of the SHIN-NY to additional segments of the broader health care system (e.g., mental health, alcohol and substance abuse and social services agencies) to improve health, improve health care and reduce costs. The

Department of Health needs clear regulatory authority to apply these policies more broadly.

State and Local Cost:

To date, the development of the SHIN-NY and expansion of EHR adoption has been funded through a combination of federal and state funds distributed through grant programs, as well as private contributions from participating health plans, providers and other stakeholders. Currently, over 170 hospitals and over 8200 primary care providers qualify for "meaningful use" incentives under Medicaid and Medicare. In addition, through HEAL NY funding, it is expected that over 7800 primary and specialty care providers were supported to have adopted EHRs and be connected to the SHIN-NY by the end of 2013. Over 80% of hospitals and over 75% of Federally Qualified Health Centers (FQHCs) in New York State participate in RHIOs.

Investment in the operation of the SHIN-NY will generate a substantial return through the elimination of wasted expenditures and promoting better quality health care at a lower cost. Three studies conducted in Rochester by the Health Information Technology Evaluation Collaborative (HITEC), an academic research consortium under contract with the State Department of Health to perform evaluation activities for the HEAL NY Program, identified improved quality and reduction in duplicative testing and in readmission rates for a two year study period for events in 2009-2010. Use of the Rochester RHIO by five Emergency Departments (EDs) resulted in 6 averted admissions per 100 patients who came to the ED, resulting in $9 million projected savings annually across the adult community. Extrapolating the cost savings across the state would result

in an annual savings of $52 million. During the same study period, image exchange use through the Rochester RHIO within 90 days following an initial imaging procedure reduced the probability of repeat imaging by 35%. Finally, use of the Rochester RHIO after hospital discharge resulted in a 55% reduction in readmission within 30 days. These highly significant findings with important financial implications further demonstrate the value of the SHIN-NY.

An 18-month study in the Buffalo region looked at the number of multiple CT scans ordered for the same body part, for the same patient, over a six-month period. During the period, 2,763 CT scans were deemed to be potentially unnecessary, duplicative tests. 90% of the potentially duplicative tests were ordered by physicians who never or infrequently access the local health information exchange. By local calculations, that amounts to a potential additional cost of $1.3 million over a six-month period for one test in one region of the state.

Across the country, states have used similar studies to project the value of statewide HIE. Based on estimates of 85% provider and patient participation in its statewide HIE, Rhode Island forecasted an annual savings of $95 per person.[1] In a similar study of fully operational statewide HIE in Maine that factored in the total operational costs, researchers projected significant, but more modest net savings of $35 per person per year.[2]

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[1] Boston Consulting Group. *Rhode Island Quality Institute Business case for Health Information Exchange*. December 5, 2009.
[2] Center for Health Policy and Research. *The Impact of Electronic Health Information Exchange (HIE) Services in Maine: Avoidable Service and Productivity Savings Estimates Related to HealthInfoNet Services*. November 2008.

In addition to savings associated with reduction in unnecessary and duplicative testing, readmissions, and adverse drug events, participation in the SHIN-NY will also generate savings by minimizing the number of interfaces health care organizations need to access data. Currently, physician practices, hospitals, laboratories, public health agencies, and others must create and maintain costly and complex interfaces with every organization they wish to exchange data. In this point-to-point data exchange environment, a typical hospital with 10 interfaces can spend as much as $200,000 in one-time development fees, and $40,000 per year in maintenance fees.[3] The SHIN-NY and its QEs, serving as utilities and consolidating services and interfaces, have been and will continue to reduce the per unit connectivity cost for all participants.

The proposed regulation will require that health care facilities defined in PHL Section 18 that utilize certified EHRs, connect to the SHIN-NY through a QE and allow private and secure bi-directional access to patient information by other QE participants authorized by law to access such patient information.

Costs for facilities operated by State and local governments will be equivalent to costs for other regulated facilities.

Costs to Regulated Entities:

The proposed regulation will require that health care facilities defined in PHL Section 18 that utilize certified EHRs, including urgent care centers, connect to the

[3] Delaware Health Information Network. *Final Report: Delaware Health Information Network Evaluation Analysis*. August 2011.

SHIN-NY through a QE and allow private and secure bi-directional access to patient information by other QE participants authorized by law to access such patient information.

Average interface costs for hospitals are $75,000 while interface costs for physician practices vary but generally average $5000 – $10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Some RHIOs have established this functionality for their participants, thereby reducing associated interface costs for their participants, which include physician practices. In some regions of the State, health plans have absorbed the interface costs for their network providers because they see the value of having their physicians connected to the SHIN-NY. Only health care providers using certified EHR technology need to comply with these requirements. Currently, adoption of certified EHR technology for health care facilities outside of hospitals and FQHCs is low because they are not eligible to receive meaningful use incentive payments.

This requirement, to connect a certified EHR to the SHIN-NY, may be waived for health care facilities that meet criteria established by the commissioner, such as economic hardship, technological limitations that are not reasonably in the control of the provider or other exceptional circumstances demonstrated by the provider to the department.

The Department will develop a fair process for health care providers to demonstrate that they meet waiver criteria and for the Department to give such providers a waiver or extension of time to connect to the SHIN-NY.

The regulation is being put forth as a "public good" model. That is, a certain set of baseline services, both technical and administrative, will be made available to all providers within New York State, at no charge. The basic technical services will include: patient record look-up; provider and public health clinical viewer; secure messaging; consent management; notifications and alerts; identity management and security; public health reporting integration; and results delivery.

Local Government Mandates:

Health facilities operated by local governments will be required to comply with these regulations in the same manner as other facilities. Should local health departments need to make expenditures to comply with the regulatory requirements, they have opportunities to request funding through the Public Health Law Article 6 Local Assistance Grant Program, and possibly other sources.

Only health care providers using certified EHR technology need to comply with these requirements. This requirement, to connect a certified EHR to the SHIN-NY, may be waived for health care facilities that meet certain criteria, such as economic hardship, technological limitations that are not reasonably in the control of the provider or other exceptional circumstances demonstrated by the provider to the department.

Paperwork:

Entities that wish to become QEs will need to submit an application for review by DOH to determine if the criteria outlined in the regulation have been met as well as meeting other criteria as may be required under the QE certification process.

Any entity seeking certification as a QE, regardless the entity's organizational structure, origin or type, will be subject to the full certification process. This certification process incorporates criteria that fall into four broad categories including: organizational characteristics; operational requirements; policies and procedures; and technical requirements. QEs would be subject to recertification and would also be subject to ongoing monitoring and enforcement activities between full certifications. This will ensure that patient information is made available to all providers participating in a patient's care in a secure and confidential manner.

Duplication:

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

Alternatives:

The Department used the statewide collaborative process to solicit comments from a variety of stakeholders to develop recommendations on regulations and its policy guidance. A series of summits and input opportunities were incorporated into the development process. In January of 2013 a summit of stakeholders, which included RHIO Executive Directors, Members of RHIO Board of Directors, the Board of Directors of the New York eHealth Collaborative, representatives for NYS DOH, NYC DOHMH and other stakeholders was conducted. The goal of the session was to establish the roles and responsibilities of Qualified Entities. Subsequent to the summit, a series of workgroups were launched to further define requirements and responsibilities.

While other states have different models for health information exchange, and NY considered the approaches and models used in other states through its statewide collaborative process, based on the size, complexity and diversity of New York and the resources that were available, the State Department of Health determined that the current model was the best approach. The State Department of Health has convened and considered the recommendations of the workgroup established by Public Health Law § 206(18-a)(b), including the workgroup's interim report under § 206(18-a)(b)(iii). To date, the State Department of Health has acted in a manner that is consistent with the recommendations of the workgroup; however, in the event that the Department acts in a manner inconsistent with the recommendations of the workgroup, it shall provide the reasons therefor, as required by § 206(18-a)(d).

Federal Standards:

This rule aligns with current federal laws and regulations governing the adoption of interoperable exchange of health information and meaningful use requirements under the HITECH provisions of ARRA including the Electronic Health Record Incentive program. This rule also aligns with the SAMHSA federal standards regarding the exchange of certain alcohol and drug abuse patient records under 42 CFR Part 2.

Compliance Schedule:

Two years from the effective date of this regulation (or one year for general hospitals), health care facilities utilizing certified electronic health record technology under HITECH must become qualified entity participants in order to connect to the

SHIN-NY through a qualified entity. Since RHIOs or QEs are largely operational in NYS and the majority of hospitals and federally qualified health centers are already participants, and the number of physician practices participating continues to grow and the infrastructure for the SHIN-NY is already in development, the estimated time period needed for regulated persons or entities to achieve compliance with the rule is two years (one year for general hospitals) from the time the rule becomes effective. Two years from the time the rule becomes effective (one year for general hospitals), health care facilities utilizing certified health record technology under HITECH must allow private and secure bi-directional access to patient information by other QE Participants authorized by law to access such patient information.

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

The proposed rule will not have a substantial adverse impact on small businesses or local governments. Small businesses such as physician practices, that are not regulated by the Department, that adopt certified electronic record technology in order to qualify for meaningful use incentives, would not be required to exchange patient health information among disparate providers to facilitate care coordination and appropriate follow up. Although this exchange is encouraged, it is strictly optional for these practitioners in private practice.

Local health departments that operate health facilities including Article 28 facilities, including outpatient departments of hospitals, diagnostic and treatment centers, free-standing ambulatory surgery centers and nursing homes, as well as home care services agencies, hospices and health maintenance organizations would be required to connect to the SHIN-NY would be impacted by the regulation if those facilities use certified electronic health record technology. Average interface costs for hospitals are $75,000 while interface costs for physician practices vary but generally average $5000 – $10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Costs of connecting the SHIN-NY could be offset by funds from the meaningful use incentive program. A connection to the SHIN-NY satisfies one requirement of the meaningful use incentive program and will allow providers at these facilities to access Medicaid or Medicare Meaningful Use incentive payments. The meaningful use incentive program allows all individual eligible

professionals who meet meaningful use requirements to apply for incentive payments of up $43,720 over a five year period. The Department of Health, with the New York eHealth Collaborative, has implemented an additional incentive program, with support from the Centers for Medicare and Medicaid Services (CMS), to allow meaningful use providers to receive an additional incentive payment of up to $30,000 to help defray the cost of connecting to the SHIN-NY. It is anticipated that the incentive program will continue with additional funding from CMS. Additionally, any facility that is required to connect to the SHIN-NY under this regulation may request that this requirement be waived for its facilities based on economic or technical constraints.

Accessing the SHIN-NY to perform required local health department surveillance and case investigation activities has actually been documented to result in increased efficiency and decreased costs for the local health department. Through the statewide collaboration process, local governments have the opportunity to participate in SHIN-NY policy development including providing input on draft regulations. The SHIN-NY policy committee includes representatives from the local public health agencies.

Ensuring that clinical data are available in safe, secure way supports the goals of increasing the quality of care, increasing population health and reducing healthcare costs. Hospitals that connect to the SHIN-NY have been show to decrease the number of tests and imaging studies thus reducing costs.

Cure Period:

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

RURAL AREA FLEXIBILITY ANALYSIS

The proposed rule will not have a direct adverse impact on rural areas. Operation of the SHIN-NY and expanded use of certified EHR technology should improve health care, increase efficiency, reduce duplicative testing and reduce overall costs for underserved populations in the state, including rural areas.

JOB IMPACT STATEMENT

The proposed rule should not have any adverse impact on jobs and employment opportunities, but may increase the number of health IT jobs available in the state. The development and operation of the SHIN-NY will most likely result in opportunities for the development of new applications of health IT tools and services and may result in new health IT jobs in New York State. It has been estimated that the SHIN-NY, and related initiatives that use the data from the SHIN-NY has the potential to create 1,500 health technology jobs across New York State over the next five years.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 225(4), 2304, 2311 and 2312 of the Public Health Law, Part 23 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 23.1 is amended as follows:

23.1 List of sexually [transmissible] transmitted diseases.

The following are groups of sexually [transmissible] transmitted diseases (STDs) and shall constitute the definition of sexually [transmissible] transmitted diseases for the purpose of this Part and Section 2311 of the Public Health Law:

Group A

[Treatment] Facilities referred to in section 23.2 of this [p]Part must provide diagnosis and treatment [free of charge] as provided in section 23.2(c) of this Part for the following STDs:

Chlamydia trachomatis infection

Gonorrhea

Syphilis

Non-gonococcal Urethritis (NGU)

Non-gonococcal (mucopurulent) Cervicitis

Trichomoniasis

Lymphogranuloma Venereum

Chancroid

Granuloma Inguinale

Group B

[Treatment facilities] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(d) of this Part for the following STDs:

[Ano-genital warts]

Human Papilloma Virus (HPV)

Genital Herpes Simplex

Group C

[Treatment facilities] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(e) of this Part for the following STD:

Pelvic Inflammatory Disease (PID) Gonococcal/Non-gonococcal

Group D

[Treatment facilities] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(f) of this Part for the following STDs:

Yeast (Candida) Vaginitis

Bacterial Vaginosis

Pediculosis Pubis

Scabies

Section 23.2 is amended as follows:

Section 23.2 [Treatment facilities] Facilities.

Each health district shall provide adequate facilities either directly or through contract for the diagnosis and treatment of persons living within its jurisdiction who are infected or are suspected of being infected with STD as specified in section 23.1 of this Part.

(a) Such persons shall be examined and shall have appropriate laboratory specimens taken and laboratory tests performed for those diseases designated in this Part as STDs for which such person exhibits symptoms or is otherwise suspected of being infected.

(b) The examinations and laboratory tests shall be conducted in accordance with accepted medical procedures as described in the most recent evidence-based STD [clinical guidelines and laboratory] guidelines distributed by the New York State Department of Health.

(c) Any persons diagnosed as having any of the STDs in Group A in section 23.1 of this Part shall be treated directly in the facility with appropriate medication in accordance with accepted medical procedures as described in the most recent [treatment] evidence-based STD guidelines distributed by the department.

(d) Any persons diagnosed as having any of the STDs in Group B in section 23.1 of this Part must be provided treatment either directly in the [treatment] facility referred to in this section or through a written or electronic prescription or referral. [If treatment is provided directly, it must be provided free of charge.]

(e) Any person diagnosed as having the STD in Group C in section 23.1 of this Part may be managed by immediate referral or if outpatient treatment is appropriate as indicated by evidence-based STD guidelines, the person may be treated directly in the facility. [If outpatient treatment is appropriate as indicated by accepted clinical guidelines and is provided directly in the treatment facility referred to in this section, it must be provided free of charge.]

(f) Any person diagnosed as having any of the STDs in Group D in section 23.1 of this Part may be provided treatment directly within the [treatment] facility referred to in this section or through a written or electronic prescription. [If treatment is provided directly, it must be provided free of charge.]

(g) Health districts shall seek third party reimbursement for these services to the greatest extent practicable; provided, however, that no board of health, local health officer, or other municipal health officer shall request or require that such coverage or indemnification be utilized as a condition of providing diagnosis or treatment services. Health care providers that are permitted by the patient to utilize such coverage or indemnification may disclose information to third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services.

Section 23.3 is amended as follows:

23.3 Cases treated by other providers.

(a) Every physician, physician assistant, licensed midwife or nurse practitioner providing (as authorized by their scope of practice) gynecological, obstetrical, genito-urological,

contraceptive, sterilization, or termination of pregnancy services or treatment, shall offer to administer to every patient treated by such physician, physician assistant, licensed midwife or nurse practitioner, appropriate examinations or tests for STD as defined in this Part.

(b) The administrative officer or other person in charge of a clinic or other facility providing gynecological, obstetrical, genito-urological, contraceptive, sterilization or termination of pregnancy services or treatment shall require staff of such clinic or facility to offer to administer to every resident of the State of New York coming to such clinic or facility for such services or treatment, appropriate examinations or tests [or] for the detection of sexually [transmissible] transmitted diseases.

A new section 23.4 is added as follows:

23.4 Minors.

When a health care provider diagnoses, treats or prescribes for a minor, without the consent or knowledge of a parent or guardian as permitted by section 2305 of the Public Health Law, neither medical nor billing records shall be released or in any manner be made available to the parent or guardian of such minor without the minor patient's permission. In addition to being authorized in accordance with section 2305 of the Public Health Law to diagnose, treat or prescribe for a person under the age of eighteen years without the consent or knowledge of the parent or guardian of such person where the individual is infected with a sexually transmitted disease, or has been exposed to infection with a sexually transmitted disease, health care practitioners may (as authorized

by their scope of practice) render medical care related to other sexually transmitted diseases without the consent or knowledge of the parent or guardian.

Paragraph (2) of subdivision (c) of section 23.5 is amended as follows:

(2) not be provided for any partner or partners, when the patient with chlamydia trachomatis infection seen by the health care practitioner is found to be concurrently infected with gonorrhea [or], syphilis or HIV.

Regulatory Impact Statement

Statutory Authority:

To be consistent with and in conjunction with amendments contained in the 2013-14 enacted State budget which became effective on April 1, 2013 (L. 2013, ch. 56, Part E, §§ 32-41), modifications are needed to relevant sections of 10 NYCRR Part 23 (Sexually Transmissible Diseases). Under sections 225(4), 2311 and 2312 of the Public Health Law, the Commissioner of Health and the Public Health and Health Planning Council have the authority to amend the State Sanitary Code (10 NYCRR Parts 1-24), list the sexually transmitted diseases for which Public Health Law Article 23 is applicable and promulgate rules and regulations concerning expedited partner therapy for chlamydia.

Legislative Objectives:

Laws of 2013, Chapter 56 amended PHL section 2304 to clarify that counties may provide STD diagnosis and treatment not only directly but also "through contract." The Legislature removed the requirement that services must be provided "free" and, further, required municipalities to seek third party coverage (generally Medicaid) reimbursement for such services where appropriate. As amended, PHL section 2304 states that counties must "to the greatest extent possible" seek indemnification from insurance for STD services but shall not "request or require that such coverage or indemnification be utilized as a condition of providing" STD services. This provision allows the counties to bill a third party (usually Medicaid) for the Article 23-required STD services. Counties must seek third party coverage or indemnification if the patient provides evidence of insurance

coverage, but patients can always receive diagnosis and treatment as specified in Part 23 of the health regulations even if they do not provide such evidence.

Laws of 1972, Chapter 244 amended PHL section 2305 to clarify that STD treatment is to be provided not only for an STD "case" but also for any person "exposed to" any STD.

Needs and Benefits:

Changing the word "transmissible" to "transmitted" throughout will conform the regulation to the Public Health Law, as amended, and is consistent with current terminology. Allowing local health departments to provide services through contract, as opposed to only direct provision of these services, gives counties greater flexibility without reducing the level or quality of services provided. Allowing for third party reimbursement will reduce the costs for counties and for the State.

The provisions regarding minors will increase the number of minors who receive treatment for STDs and will prevent the spread of STDs. These provisions will also decrease the number of children who get cancer. National guidelines for adolescent clinical preventive care include immunizations as a key preventive service with a strong evidence basis for effectiveness and safety. Human Papilloma Virus (HPV) represents the first vaccine-preventable sexually transmitted disease with vaccination protecting adolescents from future morbidity and mortality, including from cancer, associated with HPV infection. Section 23.4 permits health care providers to prescribe and administer

HPV vaccine to sexually active minors during confidential sexual and reproductive health care visits without consent or knowledge of the parent or guardian.

HPV is the most common sexually transmitted virus accounting for 79 million infections nationally and 14 million new infections each year. Up to 70 percent of sexually active persons will acquire genital HPV infection at some point in their lives. On an annual basis, young people ages 15-24 who make up 25 percent of the sexually active population, account for 49 percent of new infections.

HPV vaccination prevents 70 percent of cervical cancers, other anogenital and oropharyngeal cancers and over 86 percent of non-cancerous anogenital warts caused by HPV infection. Since HPV vaccine introduction, vaccine-type HPV prevalence has decreased 56 percent among a nationally representative sample of 14-19 year olds in the vaccine era (2007-2010) compared with the pre-vaccine era. A separate study documented a 35 percent decrease in anogenital warts among females younger than 21. Post-licensure monitoring of the HPV vaccine shows that the vaccine continues to be safe and recent data indicates that one dose of vaccine provides 82 percent effectiveness against vaccine type infection.

Finally, contraindication for expedited partner therapy for chlamydia is noted for people who are co-infected with HIV in order to ensure that expedited partner therapy is only provided in appropriate cases consistent with current clinical guidelines.

Costs:

The amendments are intended to ease the cost to local health departments. For those local health departments that do implement a billing system, some may experience associated costs with implementation of the system, however it is anticipated that the ability to bill for rendered services will off-set any up front expense. It is estimated that any county that elects to implement an electronic billing system will incur an estimated cost of $5,000 - $10,000. Costs will vary depending on type of EMR (if used), staffing and whether or not LHDs can leverage existing billing systems for other public health programs. It is noted within the Regulation that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Local Government Mandates:

Each board of health and local health officer shall ensure that diagnosis and treatment services are available and, to the greatest extent practicable, seek third party coverage or indemnification for such services; provided, however, that no board of health, local health officer, or other municipal officer or entity shall request or require that such coverage or indemnification be utilized as a condition of providing diagnosis or treatments services.

Paperwork:

This rule imposes no new reporting requirements. In order to manage billing operations, forms and paperwork may be necessary for individual local health departments to implement billing systems and contracts with vendors, if any.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

The regulations were developed with considerable input from the community, provider groups, and regulated parties, particularly local governments. Input was elicited from the New York State Association of County Health Officials on repeated occasions through in-person meetings as well as telephone conference calls. Existing practices of local health departments that support billing are acceptable. This includes local health departments contracting with local providers and utilizing the contractor's billing infrastructure. Further, the Regulation states that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

The amendments will be effective upon publication of a Notice of Adoption in the New York State Register. The Department has continued to assist affected entities in compliance efforts.

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Regulatory Flexibility Analysis

for Small Businesses and Local Governments

Effect of Rule:

Modifications to 10 NYCRR Part 23 will impact the existing sixty two local governments. This includes fifty-seven local governments outside of New York City, and the New York City Department of Health and Mental Hygiene.

Compliance Requirements:

State and local public health programs have experienced reductions in discretionary funding for services. Billing public and commercial third party payers may offer LHD STD clinics additional revenue to support direct service delivery and offset budget gaps. However, Public Health Law section 2304 requires LHDs to seek reimbursement "to the greatest extent practicable." LHDs will need to evaluate the costs associated with the development, implementation and maintenance of billing infrastructure and determine if such costs will be offset by the revenue generated. Billing guidance issued by the New York State Department of Health can be found at http://www.health.ny.gov/diseases/communicable/std/docs/billing_guidance.pdf.

Professional Services:

Local governments may seek professional services to develop billing systems if such systems do not exist.

Compliance Costs:

Anticipated capital costs include those associated with the implementation of billing systems and contracts with vendors, if any, to implement and manage billing operations. These costs are anticipated be offset by the revenue generated through reimbursement by third party payers for the clinical services provided. It is estimated that any county that elects to implement an electronic billing system is looking at an estimated cost of $5,000 - $10,000. Costs will vary depending on type of EMR (if used), staffing and whether or not LHDs can leverage existing billing systems for other public health programs. At this time that the great majority of local health departments have some form of a billing system. More than half of local health departments currently contract to a local provider and report utilizing the contractor's billing infrastructure. The 2014 Article 6 State Aid Application included a question to local health departments regarding efforts being made to collect payments from third party payers such a Medicaid and private insurers. Thirty-nine or 68% of LHDs responded "Yes."

Additionally, it is noted within the Regulation that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Economic and Technological Feasibility:

The New York State Department of Health provides technical assistance to impacted providers regarding economic and technological feasibility. The provision of technical

assistance provides the NYSDOH with the necessary evidence to seek and respond to identified economic issues and technological barriers to compliance with the Law.

Minimizing Adverse Impact:

These amendments are intended to ease the cost to local health departments. However, the administrative burden of implementing billing systems should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Small Business and Local Government Participation:

Local government had the opportunity to participate in the rule making process through (a) a series of workgroup meetings, (b) participation in regional meeting updates with New York State Association of County Health Officials, and (c) individual local government technical assistance provided by electronic mail, phone and in person as requested.

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Laws of 2013, Chapter 56 amended PHL section 2304 impacts local health departments including those located within rural and urban counties. The proposed regulations provides clarification for the provision of treatment and billing for rendered services.

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

This rule imposes no mandates upon entities in rural areas outside those entities noted within the law. Clarification is made for all counties may provide STD diagnosis and treatment not only directly but also "through contract." The Legislature removed the requirement that services must be provided "free" and, further, required municipalities to seek third party coverage (generally Medicaid) reimbursement for such services where appropriate. As amended, PHL section 2304 states that counties must "to the greatest extent possible" seek indemnification from insurance for STD services but shall not "request or require that such coverage or indemnification be utilized as a condition of providing" STD services. This provision allows the counties to bill a third party (usually Medicaid) for the Article 23-required STD services. Counties must seek third party coverage or indemnification if the patient provides evidence of insurance coverage, but patients can always receive diagnosis and treatment as specified in Part 23 of the health regulations even if they do not provide such evidence. Laws of 1972, Chapter 244

amended PHL section 2305 to clarify that STD treatment is to be provided not only for an STD "case" but also for any person "exposed to" any STD.

Costs:

The amendments are intended to ease the cost to local health departments. For those local health departments that do implement a billing system, some may experience associated costs with implementation of the system; however, it is anticipated that the ability to bill for rendered services will off-set any up front expense. It is estimated that any county that elects to implement an electronic billing system will incur an estimated cost of $5,000 - $10,000. Costs will vary depending on type of EMR (if used), staffing and whether or not LHDs can leverage existing billing systems for other public health programs. It is noted within the Regulation that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Minimizing Adverse Impact:

These amendments are intended to ease the cost to local health departments. However, the administrative burden of implementing billing systems should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Rural Area Participation:

Rural area participation was available through (a) a series of workgroup meetings, (b) participation in regional meeting updates with New York State Association of County Health Officials, and (c) individual local government technical assistance provided by electronic mail, phone and in person as requested.

Statement in Lieu of

Job Impact Statement

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2800 and 2803 of the Public Health Law, Part 405 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 in the New York State Register, to read as follows:

A new section 405.33 is added as follows:

405.33 Mammography services

(a) *Applicability.* This section shall apply to any general hospital or extension clinic that is certified as a mammography facility pursuant to the Mammography Quality Standards Act (MQSA).

(b) *Extended service hours.* Any general hospital or extension clinic certified as a mammography facility pursuant to the MQSA shall provide extended hours, i.e. in the early mornings, evenings, or on weekends, for mammography services. Specifically, such services shall be provided on at least two days each week, for at least two consecutive hours each day offered, for a total of at least four hours each week, including but not limited to the following times:

(1) Monday through Friday, between the hours of 7:00 a.m. and 9:00 a.m.;

(2) Monday through Friday, between the hours of 5:00 p.m. and 7:00 p.m.; or

(3) Saturday or Sunday, between the hours of 9:00 a.m. and 5 p.m.

(c) *Waiver.*

(1) A facility may submit an application for a waiver from the requirements of this section, in whole or in part, if it can demonstrate, to the Department's satisfaction, that the facility:

(i) does not have sufficient staff to provide extended hours for mammography services in accordance with this section, and that it is making diligent efforts to obtain staffing such that it can provide extended hours;

(ii) is in the process of discontinuing mammography services, as part of a consolidation or similar change; or

(iii) is subject to such other hardships as the Department deems appropriate.

(2) The Department may deny, grant or extend a waiver for 90 days, or more if the Department determines appropriate, in its sole discretion.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law ("PHL") Section 2800 provides that "hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state . . ., the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital related services . . ."

PHL Section 2803 authorizes the Public Health and Health Planning Council ("PHHPC") to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State, by promoting the availability of high quality health services at a reasonable cost.

Needs and Benefits:

In 2014, nearly 22% of women in New York State (NYS) aged 50-74 reported not receiving mammograms at least every other year. Breast cancer is the most commonly diagnosed cancer and the second leading cause of cancer death among women in New York State. Each year, approximately 15,000 women in New York State are newly diagnosed with

breast cancer, and approximately 2,640 die from the disease. Some subpopulations who are less likely to have been screened include women without health insurance (61.7% screened) and women without a regular health care provider (63.0% screened). Screening for breast cancer can increase the likelihood of identifying cancer at an early stage, when treatment is most successful. Once screened, follow-up diagnostic testing is critical to ensuring women receive necessary, potentially life-saving treatment.

Women may not get screened because they are afraid that mammography may be painful, they do not know what screening guidelines are, they do not know where to go for screening, they may have transportation barriers, or they may think screening is unaffordable. When women need follow-up testing and treatment, they can be overwhelmed. They may need help with accessing services, navigating complex health systems, and managing treatment decisions. The Community Preventive Services Task Force, an independent panel of experts appointed by the Centers for Disease Control and Prevention (CDC), has recommended reducing structural barriers as an intervention to improve breast cancer screening. Reducing structural barriers includes modifying hours of service to meet client needs.

There are approximately 600 certified mammography facilities in New York State: 210 are hospital-based (152 hospital locations, plus 58 hospital extension clinic sites); 18 free-standing diagnostic and treatment center; and 372 other non-hospital based mammography facilities. A survey of 36 contractors in the Cancer Services Program, which provides cancer screening for the uninsured, found that the majority (95%) had at least one mammography provider (either hospital or nonhospital based) that offered extended hours. A recent review of

160 of 210 hospital-based mammography facilities in NYS found that 70% offer one or a combination of alternative hours of services (early morning, evening, or weekend), and 30% do not.

Costs:

Costs to the State Government:

The proposed rule does not impose any new costs on state government.

Costs to Local Government:

The proposed rule does not impose any new costs on local governments, with the exception of four general hospitals that are operated by local governments. The cost to local governments that operate general hospitals are the same as the costs to private regulated parties, as described below.

Costs to Private Regulated Parties:

Both the Affordable Care Act and the NYS Insurance Law require insurers to cover mammography. Facilities already obtain third-party payment for mammograms through Medicaid and other insurers, thereby reducing the cost to regulated parties. Further, these proposed rules are not expected to impose any additional costs on those hospitals and diagnostic and treatment centers that are already in compliance, and the 70% of hospital-based facilities that already offer some form of extended hours.

The primary cost for those facilities that will be required to extend or change their hours for mammography services, assuming they are not already offering such hours, is the cost of ensuring staff, such as technicians, radiologists, and intake and support staff, are available to

satisfy the extended hour requirement. The Department expects that most hospitals and hospital extension clinics that currently offer extended hours can modify the work hours of existing staff or use flex time to avoid incurring additional staff costs. Those facilities that need to modify their appointment hours to comply with these regulations may be able to use similar scheduling strategies to avoid incurring any new costs.

Costs to the Regulatory Agency:

The proposed rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

The four general hospitals that are operated by local governments will be required to comply with this regulations, as discussed above.

Paperwork:

The proposed rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

There were no significant alternatives to be considered during the regulatory process. The serious risk that breast cancer presents justifies requiring extended hours for mammography services.

Federal Standards

The proposed rule does not exceed any minimum standards of the federal government for the same or similar subject area. Although the Mammography Quality Standards Act (MQSA) governs certain aspects of mammography services, it does not govern the hours at which such services must be available.

Compliance Schedule:

The proposal will go into effect upon publication of the Notice of Adoption in the New York *State Register*.

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REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed rule will apply to the 152 hospitals and 58 hospital extension clinics providing mammography services in New York State. Of these, there are four hospitals run by a local government (county) and one hospital that qualifies as a small business. Facilities that are small businesses or operated by local governments will not be affected differently from other facilities.

Compliance Requirements:

Compliance requirements are applicable to the one hospital considered a small business as well as the four hospitals operated by local governments. Compliance requires providing extended hours for mammography services.

Professional Services:

As noted in the Regulatory Impact Statement, this regulation will require additional staffing or staffing adjustment to ensure that mammography services are available at the required hours.

Compliance Costs:

Compliance costs for small businesses and local governments would be the same as those described in the Regulatory Impact Statement.

Economic and Technological Feasibility:

It is economically and technologically feasible for facilities that are small businesses or operated by local governments to comply with this amended rule.

Minimizing Adverse Impact:

Approximately 70% of hospital-based mammography facilities already offer some form of extended services. By adopting a regulatory standard for which this is already a significant level of compliance, the Department has minimized the impact on regulated facilities. Additionally, the regulation includes a waiver provision for those facilities that can demonstrate hardship.

Small Business and Local Government Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments.

Cure Period:

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

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to the 152 hospitals and 58 hospital extension clinics providing mammography services in New York State. The Department identified 57 hospitals and 13 hospital extension clinics providing mammography facilities located and in rural areas of the State, defined as counties with less than a population of 200,000. A review of the hospital mammography services determined that 67% already offer some form of extended hours. Since this percentage is similar to the statewide percentage of approximately 70% of facilities already offering some form extended hours, this proposed rule is not expected to have a disproportionate impact on rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

This regulation will require additional staffing or staffing adjustment to ensure that extended mammography services are available.

Costs:

Compliance costs for entities in rural areas would be the same as those described in the Regulatory Impact Statement.

Minimizing Adverse Impact:

Approximately 67% of facilities in rural areas are already offering some form of extended hours. By adopting a regulatory standard for which this is already a significant level of

compliance, the Department has minimized the impact on facilities. Additionally, the regulation includes a time limited waiver provision for those facilities that can demonstrate hardship.

Rural Area Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including those from rural areas.

JOB IMPACT STATEMENT

No Job Impact Statement is included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs and employment opportunities. The basis for this conclusion is that requiring extended hours for mammography services does not reduce employment opportunities, and may create employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 3612(5) and 3612(7)(a) of the Public Health Law, sections 763.7 and 766.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Sections 763.7(a)(3)(i) and (ii) are amended as follows:

763.7 Clinical records.

(a) The agency shall maintain a confidential clinical record for each patient admitted to care or accepted for service to include:

* * *

(3) medical orders and nursing diagnoses to include all diagnoses, medications, treatments, prognoses, and need for palliative care. Such orders shall be:

(i) signed by the authorized practitioner within [30 days] 12 months after admission to the agency, or prior to billing, whichever is sooner;

(ii) signed by the authorized practitioner within [30 days] 12 months after issuance of any change in medical orders or prior to billing, whichever is sooner, to include all written and oral changes and changes made by telephone by such practitioner; and

(iii) renewed by the authorized practitioner as frequently as indicated by the patient's condition but at least every 60 days;

Sections 766.4(d)(1) and (2) are amended as follows:

Section 766.4 Medical Orders

* * *

(d) Medical orders shall reference all diagnoses, medications, treatments, prognoses, need for palliative care, and other pertinent patient information relevant to the agency plan of care; and

(1) shall be authenticated by an authorized practitioner within [thirty (30) days] 12 months after admission to the agency; and

(2) when changes in the patient's medical orders are indicated, orders, including telephone orders, shall be authenticated by the authorized practitioner within [thirty (30) days] 12 months.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 3612(5) of the Public Health Law authorizes the adoption and amendment of regulations for certified home health agencies pursuant to Article 36 of the Public Health Law (Certified Home Health Agencies, Long Term Home Health Care Programs and AIDS Home Care Programs). Section 3612(7) (a) of the Public Health Law authorizes the adoption and amendment of regulations for licensed home care services agencies pursuant to Article 36.

Legislative Objective:

Article 36 of the Public Health Law was intended to promote the quality of home care services provided to residents of New York State and to ensure their adequate availability as a viable alternative to institutional care. The proposed regulation furthers this objective by aligning state regulations with federal rules governing payment for home health episodes, thereby making home care rules and regulations clear and consistent to both home health providers and physicians ordering home health care services for their patients.

Needs and Benefits:

The proposed rule making achieves consistency with the federal rules governing home health episode payment for certified home health agencies, long term home health care programs and AIDS home care programs. There are no corresponding federal rules and regulations for licensed home care services agencies.

Home care providers have identified difficulties in obtaining signed physician orders under the current timeframe of thirty (30) days, which adversely impacts their ability to

bill and receive payment for services that were delivered based on verbal orders. The increased reliance on the use of hospitalists, whose relationship with patients tend to be transient in nature, and the use of hospital based clinics for medical care, contribute to the difficulty in obtaining signed physician orders within the current timeframes. Typically, the initial and subsequent follow-up physician orders are in the form of verbal orders. Obtaining the required signed orders from the physician who prescribed the care is challenging and time consuming. The current 30-day timeframe, coupled with payment rules, adversely impacts the ability of the home care agencies to bill and obtain reimbursement for services.

The inability to obtain signed physician orders in the 30 day period was identified as a main concern of the Home and Community Based Care Workgroup (Workgroup). In 2013, the Legislature created the Workgroup by enacting PHL Section 3614, as a response to changes in the delivery of, and reimbursement for, home health care services through New York State's Medicaid Redesign initiatives. The Workgroup, composed of eleven members representing providers, managed care plans and consumers, examined and made recommendations on issues which included but were not limited to state and federal regulatory requirements and related policy guidelines (including the applicability of the federal conditions of participation); efficient home and community based care delivery, including telehealth and hospice services; and alignment of functions between managed care entities and home and community based providers. The Workgroup, consistent with input from the provider associations, determined that a longer period to obtain signed physician orders would decrease the number of denied claims for payment from governmental payers. Additional input from Medicaid payment policy makers also

indicated that extending the allowable time to obtain signed physician orders would alleviate the adverse impact related to claims submissions and payment exception rules.

Costs to Regulated Parties:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of this amendment.

Duplication:

Proposed rules will be consistent with federal rules for home health agencies certified to participate in the Medicare and Medicaid programs. There are no known conflicts with federal rules; consistency should facilitate provider compliance and improve effectiveness of surveillance processes.

Alternatives:

The Department could choose to retain existing standards. During its discussions with providers, provider associations and the Workgroup, the Department evaluated timeframes ranging from sixty (60) days to two years. After careful analysis, it was determined that 12 months is optimal because it provides consistency with payment rules for governmental payers.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the amendments. As the amendments are consistent with federal standards that were already in effect, and any state requirements exceeding federal rules are already in effect, regulated parties should already be in compliance, and should readily be able to comply as of the effective date of these regulations.

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

No regulatory flexibility analysis for small businesses and local governments is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on small businesses or local governments, and it does not impose additional reporting, record keeping or other compliance requirements on small business home care agencies or local government home care agencies. The proposed amendment seeks to extend the timeframe agencies have to obtain signed physician orders.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose additional reporting, record keeping or other compliance requirements on facilities in rural areas. The proposed amendment seeks to extend the timeframe agencies have to obtain signed physician orders.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201 a (2)(a) of the State Administrative Procedure Act. The proposed regulations are intended to be consistent with current federal rules for certified home health agencies and as consistent as feasible with proposed certified home health agency state regulations for licensed home care services agencies. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152240-C
Southside Hospital

Program: **Hospital**
Purpose: **Construction**

County: **Suffolk**
Acknowledged: **October 29, 2015**

Executive Summary

Description

Southside Hospital, a 321-bed, not-for-profit, acute care hospital located at 301 East Main St., Bay Shore (Suffolk County), requests approval to renovate space to create a new 17-bed pre-op and recovery suite with an outpatient intake area and expand the existing cardiac catheterization lab. The applicant will renovate 6,920 square feet on the third floor of the Gulden Building to create the new 17-bed pre-op and recovery suite. The project will also renovate 5,880 square feet in the Brackett Building to expand the cardiac catheterization lab service. The end-result of the Brackett Building renovation will be a three-room cardiac catheterization suite and a new standalone two-room EP suite.

Southside Hospital is a member of The North Shore-Long Island Jewish Health System, Inc. (NS-LIJHS), an integrated healthcare delivery network serving the residents of the greater New York Metropolitan Area. NS-LIJHS is the ultimate sole corporate member of the entities within the System.

OPCHSM Recommendation

Contingent Approval

Need Summary

This new configuration will allow for optimal patient flow and efficiency, as well as enhance the Hospital's ability to handle emergency patients.

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

Total project cost of $21,485,915 will be met via equity of $2,148,391 and a DASNY loan of $19,337,324 at an interest rate of 6.50% for 30 years. The operating budget is as follows:

Revenues:	$24,438,900
Expenses:	18,979,800
Excess of Revenues over Expenses:	$5,459,100

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 Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-02, for review and approval. [DAS]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. This project is approved to be initially funded with North Shore- Long Island Jewish Hospital (NS-LIJHS) equity with the prospect that the project will be 90% percent financed as part of a future NS-LIJHS group tax exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% percent interest rate and a 30-year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
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. Construction must start on or before April 1, 2016 and construction must be completed by April 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

February 11, 2016

Need Analysis

Project Description

Southside Hospital (SSH) is a 321-bed tertiary hospital, located at 301 East Main St Bay Shore, NY 11706 Suffolk County. The main service area is the southwest region of Suffolk County. In 2011, Southside Hospital successfully implemented the first new cardiac surgery program on Long Island in more than 30 years.

Southside Hospital seeks approval to add 17-bed pre-op and recovery suite with an outpatient intake area and expand the capacity of its existing cardiac catheterization/EPS program by renovating the current pre-op and recovery suite space in the Bracket Building to create a two-room electrophysiology suite that will be adjacent to, but programmatically distinct from, the existing cardiac catheterization/EPS suite. The existing suite, comprised of 2 cardiac catheterization labs and 1 EPS room, will be converted into a 3-lab catheterization suite. The end-result of the proposed renovation will be a 3-room cardiac catheterization suite and a new standalone 2-room EPS suite. The proposed expansion space in the Gulden Building is currently a pediatric nursing unit that is being relocated under a separate CON.

Background

Table 1: Southside Beds	
Coma Recovery	5
Coronary Care	10
Intensive Care	16
Maternity	29
Medical / Surgical	194
Neonatal Continuing Care	5
Neonatal Intermediate Care	6
Pediatric	16
Physical Medicine and Rehabilitation	24
Traumatic Brian Injury	16
Total	**321**

Source: HFIS

Table 2: Hospital Occupancy through 2014 Southside Hospital									
	Discharges					**Occupancy**			
Bed Category	**Current Beds**	**2011**	**2012**	**2013**	**2014**	**2011**	**2012**	**2013**	**2014**
Med/Surg	265	13,107	13,279	13,411	13,615	70.5%	73.4%	76.4%	78.4%
Pediatric	16	404	388	382	285	13.2%	13.0%	13.1%	9.6%
Obstetric	29	2,600	2,674	2,788	2,821	68.0%	69.2%	71.4%	72.6%
General Psychiatric	0	650	744	744	529	0.0%	0.0%	0.0%	0.0%
Chemical Dependence	0	95	96	125	101	0.0%	0.0%	0.0%	0.0%
High-Risk Neonates	11	143	155	138	163	30.9%	28.2%	28.4%	28.3%
Total	**321**	**16,999**	**17,336**	**17,588**	**17,514**	**70.7%**	**73.6%**	**76.8%**	**78.9%**

Source: SPARCS

Conclusion

This new configuration will allow for optimal patient flow and efficiency, as well as enhance the Hospital's ability to handle emergency patients.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Southside Hospital (SSH), a 321-bed tertiary hospital, located at 301 East Main Street in Bay Shore, NY (Suffolk County), seeks approval to renovate the third floor of its Gulden Building to create a new 17-bed pre-op and recovery suite with an outpatient intake area. The hospital also seeks approval to expand the capacity of its existing cardiac catheterization/electrophysiology program by renovating space in the Bracket Building to create a two-room electrophysiology suite. The end-result of the proposed renovation will be a 3-room cardiac catheterization suite and a new standalone 2-room EPS suite. This new configuration will allow for optimal patient flow and efficiency, as well as enhance the Hospital's ability to handle emergency patients.

Southside Hospital is a member of The North Shore-Long Island Jewish Health System, Inc., an integrated healthcare delivery network serving the residents of the greater New York Metropolitan Area. North Shore-Long Island Jewish Health System, Inc. (NS-LIJHS) is the ultimate sole corporate member of the entities within the Health System.

Staffing will increase by 10.0 FTEs in the first year after completion and remain at that level through the third year of operation.

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment is estimated at $21,485,915 broken down as follows:

Renovation and Demolition	$9,600,000
Asbestos Abatement or Removal	150,000
Design Contingency	768,000
Construction Contingency	864,000
Planning Consultant Fees	192,000
Architect/Engineering Fees	768,000
Construction Manager Fees	384,000
Other Fees (Consultant)	268,000
Moveable Equipment	7,051,295
Telecommunications	275,000
Financing Costs	1,026,105
CON Fee	2,000
Additional Processing Fee	117,515
Total Project Cost	$21,485,915

Project costs are based on a construction start date of April 1, 2016, and a 12-month construction period.

The applicant's financing plan appears as follows:

Equity	$2,148,591
DASNY Loan (6.5% interest, 30-year term)	19,337,324

The Hospital plans to initially fund total project cost with NS-LIJHS equity. During construction, the project will be financed with interim financing through a bank line of credit. Citibank has submitted a letter of interest. This approach allows NS-LIJHS to incur the interest expense only on actual funds drawn down from the interim financing. The project will be financed as part of a future NS-LIJHS tax-exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% interest rate and a 30-year term. The Department will have the opportunity to review the final financing proposal in advance and work with the facility staff to ensure that it meets approval standards.

Operating Budget

The applicant has submitted a first and third year incremental budget, in 2015 dollars, summarized below:

	Year One	Year Three
Total Revenues	$23,535,300	$24,438,900
Expenses:		
Operating	$15,951,300	$16,555,800
Capital	2,952,600	2,917,900
Total Expenses	$18,903,900	$19,473,700
Excess of Revenues over Expenses	$4,631,400	$4,965,200
Utilization:		
Discharges	472	479
Visits	555	597

Inpatient utilization by payor source for years one and three is anticipated as follows:

	Year One	Year Three
Medicaid Managed Care	11.01%	11.06%
Medicare Fee For Service	39.19%	39.24%
Medicare Managed Care	18.64%	18.58%
Commercial Managed Care	29.44%	29.44%
Private Pay	1.72%	1.68%
Total	100.00 %	100.00 %

Outpatient utilization by payor source for years one and three is anticipated as follows:

	Year One	Year Three
Medicaid Managed Care	10.99%	11.06%
Medicare Fee For Service	39.28%	39.20%
Medicare Managed Care	18.56%	18.59%
Commercial Managed Care	29.55%	29.48%
Private Pay	1.62%	1.67%
Total	100.00 %	100.00 %

Expense and utilization assumptions are based on the historical experience of the hospital.

Capability and Feasibility

Project costs of $21,485,915 will be provided through $2,148,391 of accumulated funds and a $19,337,324 DASNY Bond Financing at stated terms. BFA Attachment A is the 2013 and 2014 certified financial statements of North Shore Long Island Jewish Health System, Inc., which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of $4,631,000 and $4,965,200 during the first and third years, respectively. Revenues reflect current reimbursement methodologies. The budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital positon and an average positive net asset position from 2013 through 2014. Also, the entity achieved an average operating revenues over expenses of $85,735,000 from 2013 through 2014.

Conclusion

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary-2013 and 2014 certified financial statements of The North Shore-Long Island Jewish Health System, Inc.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152202-E
St Peter's Health Partners

Program: **Hospital**
Purpose: **Establishment**

County: **Albany**
Acknowledged: **October 8, 2015**

Executive Summary

Description

St. Peter's Health Partners (SPHP) requests approval for Hawthorne Ridge, Inc., an independent senior living community with enriched housing/assisted living located at 30 Community Way, East Greenbush (Rensselaer County), to join the St. Peter's Hospital of the City of Albany Obligated Group. Hawthorne Ridge, Inc. is an affiliate of Eddy Senior Living and a division of SPHP, a not-for-profit health care system. While Hawthorn Ridge is not a health care facility itself its entry into the obligated group containing Article 28 facilities must be approved in order to gain authorization necessary to cross-collateralize participants' debt. Under CON #122271, SPHP was established as the active parent and co-operator of all licensed health care facilities operated by St. Peters Health Care Services, Northeast Health, and Seton Health Systems, Inc., and was authorized with each of the SPHP Article 28 hospitals and the Capital Region Geriatric Center, Inc. to join the St. Peter's Hospital of City of Albany Obligated Group. BFA Attachment A shows the Organizational Chart of St. Peters Health Partners.

On January 1, 2008, in furtherance of financing debt St. Peter's Hospital (SPH) entered into a Master Trust Indenture (MTI) as sole member of the St. Peter's Hospital of the City of Albany Obligated Group. As agent and attorney-in-fact for the Obligated Group, SPH is authorized to execute Supplemental Indentures to admit new entities to the Obligated Group. Public Health and Health Planning Council approval has subsequently authorized Supplemental Indentures to add the following members: St. Peter's Health Partners, Memorial Hospital (Albany), Samaritan Hospital of Troy, Seton Health System, Inc., Sunnyview Hospital and Rehabilitation Center, and Capital Region Geriatric Center, Inc.

There is no new financing or refinancing proposed through this application.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation for this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application and no budgets.

As a result of being admitted to the Obligated Group, Hawthorne Ridge, Inc. will be jointly and severally liable for payment of all obligations under the MTI, and will be required to pledge their gross revenues to secure Obligations. The Obligated Group currently has no outstanding debt.

Our review determined that both the proposed new member and the Obligated Group are currently in strong financial positions. As of June 30, 2015, Hawthorne Ridge Inc. has

maintained positive working capital, net assets and had net income from operations of $622,000. St. Peter's Health Partners has also maintained positive working capital, net assets and had net income from operations of $31,809,000 as of June 30, 2015. As of September 2014, Moody's rated St. Peter's Hospital with an A3 rating and Standard and Poor's rated St. Peter's Hospital with an A+ rating as of April 2014. The stable outlook mirrors the stable outlook on Catholic Health East Trinity with the opinion that St. Peter's Health Partners shows continuing leverage on market strength.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval is contingent upon:

1. Submission of a photocopy of the amended bylaws of Hawthorne Ridge, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's updated and amended management agreement, by and between Hawthorne Ridge, Inc., acceptable to the Department. [CSL]
3. Submission of an updated and amended Administrative Services Agreement between St. Peter's Health Partners and St. Peter's Health Partners Affiliates, acceptable to the Department. [CSL]
4. Submission of an updated and amended Business Associate Agreement between St. Peter's Health Partners and St. Peter's Health Partner Affiliates, acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended bylaws of St. Peters Health Partners, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Prior to executing a Supplemental Master Trust Indenture (MTI), the applicant must submit the draft Supplemental MTI agreement to the Department for review and approval. [BFA]

Council Action Date

February 11, 2016

Program Analysis

Project Proposal

St. Peter's Health Partners, an Article 28 network, seeks approval for Hawthorne Ridge, Inc., an independent senior living community with enriched housing/assisted living located at 30 Community Way, in East Greenbush (Rensselaer County), to enter into the St. Peter's Hospital of the City of Albany Obligated Group. Hawthorne Ridge, Inc. is an affiliate of Eddy Senior Living and a Division of St. Peter's Health Partners (SPHP), a not-for-profit health care system. While Hawthorne is not a health care facility itself, SPHP is established as the active parent and co-operator of 12 Article 28 facilities, and is therefore an "established Article 28 network" as defined by section 401.1(j) of 10 NYCRR.

LTC (Eddy), Inc. is a not-for-profit Corporate Law Member of Hawthorne Ridge, Inc. St. Peter's Health Partners is a not-for-profit Corporate Law member of Northeast Health, which is a not-for-profit Corporate Law member of LTC (Eddy), Inc. In effect, St. Peter's Health Partners is the corporate great-grandparent of Hawthorne Ridge, Inc.

Character and Competence

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for Board Members of St. Peter's Health Partners 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,

Within the ten year look-back period, Dr. Thorn disclosed she has one open malpractice case and Dr. Slavin disclosed one open and one settled malpractice case.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

The Board Members disclosed that four St. Peter's Health Partners affiliates (as well as other Capital Region hospitals) were named as defendants in a 2006 Class Action alleging antitrust violations relating to nurse wages. Those lawsuits were settled in 2009-2011.

On August 16, 2010, a Stipulation and Order and a $2,000 fine was issued to Our Lady of Mercy Life Center for issues related to Quality of Care discovered during a survey of June 1, 2009.

On August 17, 2010, Eddy Visiting Nurse Association settled a Department enforcement action relating to care planning by payment of a $3,500 fine.

St. Peter's Hospital (SPH) was one of hundreds of hospitals investigated in a nationwide U.S. Department of Justice investigation of claims for implantable cardioverter defibrillator (ICD) procedures. SPH settled that matter in August 2015

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Financial Analysis

There are no project costs associated with this application and no budgets. As a result of being part of the Obligate Group, each member is jointly and severally liable for payments of all obligations under the MTI, and pledges their gross revenues to serve the obligations. The purpose of our analysis was to determine the impact of this proposed new Obligated Group member on other Obligated Group members licensed as Article 28 providers including: St. Peter's Hospital (Albany), St. Peter's Health Partners, Memorial Hospital (Albany), Samaritan Hospital (Troy), Seton Health System, Inc., Sunnyview Hospital and Rehabilitation Center, and Capital Region Geriatric Center, Inc.

Our review consisted of evaluating the financial performance of the proposed new member as well as the Obligated Group itself. Our review determined that both the new member and the Obligated Group are currently in strong financial positions. Hawthorne Ridge, Inc.'s financial statements indicate that the facility has maintained positive working capital, net assets and a net profit from operations of $622,000 as of June 30, 2015. St. Peter's Health Partners has maintained positive working capital, net assets and a net profit from operations of $31,809,000 for the same period. As of September 2014, Moody's rated St. Peter's Hospital with an A3 rating and Standard and Poor's has rated St. Peter's Hospital with an A+ rating as of April 2014. The stable outlook mirrors the stable outlook on Catholic Health East Trinity with the opinion that St. Peter's Health Partners shows continuing leverage on market strength.

Capability and Feasibility

There are no project costs and no budgets associated with this application. As of September 2014, Moody's rated St. Peter's Hospital with an A3 rating and as of April 2014, Standard and Poor's rated St. Peter's Hospital with an A+ rating. The stable outlook mirrors the stable outlook on Catholic Health East Trinity with the opinion that St. Peter's Health Partners shows continuing leverage on market strength.

BFA Attachment C, the 2015 financial summary of Hawthorne Ridge Inc., indicates that the facility has maintained positive working capital, net assets and had a net income from operations of $622,000 for the period ending June 30, 2015.

BFA Attachment B is the 2014-2015 Financial Summary for St. Peter's Health Partners, which indicates that the entity has maintained positive working capital, net assets and had a net income from operations of $31,809,000 for the year ending June 30, 2015.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart- St. Peter's Health Partners
BFA Attachment B	Financial Summary for St. Peter's Health Partners, 2014-2015
BFA Attachment C	Financial Summary for Hawthorne Ridge Inc., 2015

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 11th day of February, 2016 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 Hawthorne Ridge, Inc. as a member of the St. Peter's Hospital of the city of Albany obligated group, 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:
152202 E	St. Peter's Health Partners

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the amended bylaws of Hawthorne Ridge, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's updated and amended management agreement, by and between Hawthorne Ridge, Inc., acceptable to the Department. [CSL]
3. Submission of an updated and amended Administrative Services Agreement between St. Peter's Health Partners and St. Peter's Health Partners Affiliates, acceptable to the Department. [CSL]
4. Submission of an updated and amended Business Associate Agreement between St. Peter's Health Partners and St. Peter's Health Partner Affiliates, acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended bylaws of St. Peters Health Partners, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Prior to executing a Supplemental Master Trust Indenture (MTI), the applicant must submit the draft Supplemental MTI agreement to the Department for review and approval. [BFA]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 151338-B
Doral Dialysis, LLC d/b/a Doral Dialysis Center

Program: **Diagnostic and Treatment Center** ***County:*** **Kings**
Purpose: **Establishment and Construction** ***Acknowledged:*** **July 3, 2015**

Executive Summary

Description
Doral Dialysis, LLC d/b/a Doral Dialysis Center (the Center), an existing New York limited liability company, requests approval to establish and construct a 24-station Article 28 end-stage renal dialysis (ESRD) center. The Center will provide chronic renal dialysis services primarily to the residents of Central Brooklyn, which is comprised of the neighborhoods of Bedford-Stuyvesant, Crown Heights, Prospect Heights and Brownsville. The Center will be located in 8,000 square feet of leased space (lower level/first floor) at 1797 Pitkin Avenue, Brooklyn (Kings County). Doral Realty Holdings, LLC, whose members are David Lipschitz and Rachel Lipschitz, owns the currently vacant building. The realty company will finance the construction cost and assign the value of the leasehold improvements to Doral Dialysis, LLC via the Additional Rent clause of the lease agreement to cover debt service and other annual operating charges related to the Center.

The proposed members of Doral Dialysis, LLC and their ownership interests are David Lipschitz at 85% and Morton Kleiner, MD at 15%. Dr. Kleiner, a Board Certified Nephrologist, will serve as the Center's Medical Director.

OPCHSM Recommendation
Contingent Approval

Need Summary
Currently, there is a need for 189 stations in Kings County to treat the residents needing dialysis services in the area. The addition of twenty-four net-new stations will increase service availability to residents in Kings County.

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

Financial Summary
Total project costs of $2,640,932 will be met with proposed members' equity of $264,093 and a loan for $2,376,839 for a 20-year term at a fixed interest rate to be established as of the date the Debenture is sold. The applicant currently estimates the fixed rate to be 5.5%. A letter of approval from New York Business Development Corporation to Doral Realty Holdings, LLC for a loan under the U.S. Small Business Administration 504 Loan Program has been provided.

Budget:

	Year Three
Revenues	$6,383,661
Expenses	4,879,219
Net Income	$1,504,442

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. A copy of the check must be uploaded into NYSE-CON upon mailing. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Consultative Agreement, acceptable to the Department. [HSP]
5. Submission of an executed loan commitment, acceptable to the Department of Health. (BFA)
6. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
7. Submission of an executed consulting agreement, acceptable to the Department of Health. (BFA)
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. (AER)
9. Submission of a photocopy of an executed and completed facility lease agreement between Doral Realty Holdings, LLC and Doral Dialysis, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed articles of organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed consulting services agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. (AER)
7. The applicant shall complete construction by August 15, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. (AER)

Council Action Date

February 11, 2016

Need Analysis

Project Description

Doral Dialysis, LLC d/b/a Doral Dialysis Center seeks approval to certify a new 24-station dialysis diagnostic and treatment center located at 1797 Pitkin Avenue, Brooklyn, 11212, in Kings County.

Analysis

The primary service area for the proposed facility is Kings County, which had a population estimate of 2,621,793 for 2014. The percentage of the population aged 65 and over was 12.0 %. The nonwhite population percentage was 50.5 %. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Kings County and New York State are listed below.

	Kings County	State Average
Ages 65 and Over	12.0%	14.4%
Nonwhite	50.5%	29.1%

Source: U.S. Census 2015

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 644 free standing chronic dialysis stations operating in Kings County and 244 in pipeline for a total of 888 stations.
- Based upon DOH methodology, the 644 existing free standing stations in Kings County could treat a total of 2,898 patients annually. Including the additional pipeline stations, the county could treat a total of 3,996 patients annually.

Projected Need

		Actual		Projected	
Kings County Need projected 5 years out from most current IPRO data available for **Patients Treated in County**		**2014**	**2015**	**2019**	
		Total Patients Treated in County	**Total County Residents in Treatment**	**Total Patients Treated in County[1]**	**Total County Residents in Treatment[1]**
		4,318	4,846	5,006	5,455
Free-Standing Dialysis Stations		**2014**	**2015**	**2019**	
A	Stations Required to Treat[2]	960	1,077	1,113	1,213
B	Existing Stations	644	644	644	644
C	Stations In Pipeline	244	244	244	244
D	Stations Requested this CON	24	24	24	24
E	w/Approval of This CON (B+C+D)	912	912	912	912
F	Unmet Need With Approval (A-E)	48	165	201	301

[1] Based upon an estimated 3% accrued annual increase
[2] Based upon DOH methodology (total patients/4.5)

The data in the first row, "Stations Required to Treat," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2015.

Conclusion

Kings County serves a population of 2,621,793 with a total of 888 stations, including pipeline stations. There continues to be a need for dialysis stations in Kings County. Approval of these twenty-four stations will help improve access to dialysis services in the area.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Doral Dialysis, LLC d/b/a Doral Dialysis Center seeks approval to establish and construct a new 24-station chronic renal dialysis center to be located at 1797 Pitkin Avenue in Brooklyn (Kings County).

Proposed Operator	Doral Dialysis, LLC
Doing Business As	Doral Dialysis Center
Site Address	1797 Pitkin Avenue in Brooklyn (Kings County)
Stations	24
Hours of Operation	Upon full operation, the Center will operate at least 12 hours per day, six days per week, with additional hours added as needed based on demand.
Staffing (1st Year / 3rd Year)	14.5 FTEs / 32.1 FTEs
Medical Director(s)	Morton Kleiner, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Brooklyn Hospital Center 4.7 mi / 20 minutes

Character and Competence

The members of Doral Dialysis, LLC are:

Name	Percentage
David Lipschitz	85%
Morton Kleiner, MD	15%

Mr. Lipschitz has over 20 years of experience in the health care field. He spent 17 years in the long-term care field that culminated with a position as the Administrator of a 380-bed nursing home, and, in August 2012, he established a home care agency which has provided service for over 2,000 patients to date.

The proposed Medical Director, Morton Kleiner, MD, is a New York State licensed physician with over 40 years of experience. He is a board-certified Internist with sub certification in Nephrology with a long and established career serving the renal population. Dr. Kleiner has worked in a variety of positions, to include serving as Medical Director for several dialysis programs.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Consulting and Administrative Services Agreement

The applicant submitted a draft consulting and administrative services agreement, the terms of which are summarized below:

Consultant:	KMK Consultants, LLC
Facility:	Doral Dialysis, LLC
Services Provided:	Assist the Operator in developing annual budgets; assist with preparation of financial and management reports; develop staffing schedules; maintain policy & procedure manual; assist in vendor contract negotiations; assist in recruiting clinical service providers; assist with development/implementation of utilization review and quality assurance activities; advise on Management Information System requirements; prepare and submit bills for patient services; provide advice on planning activities and new business development; develop and implement information systems and protocols; develop and implement medical records and information systems; provide regulatory compliance advice; and provide in-service training for staff.
Term:	3-year term with option to renew for 2-years.
Fee:	$120,000 per year ($10,000 per month)

Although KMK Consultants, LLC will be performing the above services, the Facility Operator retains ultimate control in all of the final decisions associated with the services.

Lease Rental Agreement

The applicant submitted a draft lease rental agreement for the site they will occupy, as summarized below:

Premises:	8,000 square feet at 1797 Pitkin Avenue, Brooklyn NY
Landlord:	Doral Realty LLC
Lessee:	Doral Dialysis, LLC
Term:	7 years
Rental:	$304,000 annual base rent ($38.00 per sq. ft.)
Additional Rent:	Annual debt service for capital improvements related to the Center's establishment
Other Additional Rent Provisions:	Center's Percentage of Annual Operating Charges based on sq. ft. including: gas, electricity, water, sewer, insurance premiums, building personnel costs, repairs and maintenance, administration fees, and taxes.

The lease is a non-arm's length agreement. The applicant submitted an affidavit attesting that there is a relationship between landlord and tenant in that the entities have common ownership. Letters from two NYS licensed realtors who compared multiple comparable sites has been provided attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of fixed and movable equipment, is estimated at $2,640,932, broken down as follows:

Renovation & Demolition	$1,490,086
Design Contingency	123,406
Construction Contingency	123,406
Architect/Engineering Fees	119,207
Other Fees	75,000
Movable Equipment	579,453
Financing Costs	75,317
Interim Interest Expense	38,622
Application Fee	2,000
Processing Fee	14,435
Total Project Cost	$2,640,932

Project costs are based on a construction start date of April 15, 2016, and a six-month construction period.

The applicant's financing plan is as follows:

Equity (from proposed members)	$264,093
Loan (Fixed interest estimated at 5.5%, 20-year term)	$2,376,839
Total	$2,640,932

The New York Business Development Corporation has provided a letter of approval for a loan to Doral Realty Holdings, LLC under the U.S. Small Business Administration 504 Loan Program at the stated terms. Doral Dialysis, LLC will pay for the capital improvements related to establishing the ESRD Center through additional rent charges to cover debt service.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for Years One and Three of operations, as summarized below:

	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Revenues:				
Medicare	$280.02	$1,677,312	$285.63	$5,133,078
Medicaid	$289.62	$216,927	$289.75	$650,782
Commercial	$324.91	$243,360	$325.06	$730,080
Bad Debt		($42,752)		($130,279)
Total Revenues		$2,094,847		$6,383,661
Expenses:				
Operating		$1,771,333		$4,155,481
Capital		$723,536		$723,738
Total Expenses		$2,494,869		$4,879,219
Net Income		($400,022)		$1,504,442
Utilization (Treatments)		7,488		22,463
Percent Occupancy		25.0%		75.0%
Cost Per Treatment		$333.18		$217.21

The first year loss is due to start-up as the Center will only be open three days per week until patient census grows. Once fully operational, the Center will be operate six days per week. The applicant stated that any initial operating losses will be covered by the members.

Utilization broken down by payor source for years one and three is as follows:

	Year One		Year Three	
	Treatments	%	Treatments	%
Medicare	5,990	80%	17,971	80%
Medicaid	749	10%	2,246	10%
Commercial	749	10%	2,246	10%
Total	7,488	100%	22,463	100%

Breakeven utilization is projected at 8,918 treatments for year one (30%) and 17,170 treatments for year three (57%).

Expense and utilization projections are based on the experience of KMK Consultants, LLC, which manages six NYS ESRD centers, and the proposed members of Doral Dialysis, LLC, who have other health care service and administration experience.

Capability and Feasibility

Project costs of $2,624,497 will be met with members' equity of $264,093 and a loan for $2,376,839 from New York Business Development Corporation at a fixed interest rate, estimated at 5.5%, with a 20-year term.

Working capital requirements are estimated at $813,203 based on two months of year three expenses. The proposed members will provide the full amount in equity.

BFA Attachment A is the net worth statement of the members of Doral Dialysis, LLC, which shows sufficient liquid resources to cover all equity requirements for this CON. BFA Attachment B is the pro forma balance sheet of Doral Dialysis Center as of the first day, which indicates the operations will begin with positive members' equity of $1,077,296.

The submitted budget projects a net profit (loss) of ($400,002) and $1,504,442 during the first and third years, respectively. Medicare and Medicaid reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The Year One loss is due to the Center not being fully operational and is expected for the first year. The proposed members will provide additional funding, if necessary, to cover any operating losses. The budget appears reasonable.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Proposed Members' Net Worth Statement - Doral Dialysis, LLC
BFA Attachment B	Pro-Forma Balance Sheet of Doral Dialysis, 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 11th day of February, 2016 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 24-station chronic renal dialysis diagnostic and treatment center to be located at 1797 Pitkin 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:
151338 B	Doral Dialysis, LLC d/b/a Doral Dialysis 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. A copy of the check must be uploaded into NYSE-CON upon mailing. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Consultative Agreement, acceptable to the Department. [HSP]
5. Submission of an executed loan commitment, acceptable to the Department of Health. (BFA)
6. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
7. Submission of an executed consulting agreement, acceptable to the Department of Health. (BFA)
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. (AER)
9. Submission of a photocopy of an executed and completed facility lease agreement between Doral Realty Holdings, LLC and Doral Dialysis, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed articles of organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed consulting services agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. (AER)

7. The applicant shall complete construction by August 15, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. (AER)

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152110-B
Hempstead Park Operating, LLC
d/b/a Hempstead Park Dialysis Center

Program: **Diagnostic and Treatment Center** ***County:*** **Nassau**
Purpose: **Establishment and Construction** ***Acknowledged:*** **August 28, 2015**

Executive Summary

Description

Hempstead Park Operating, LLC d/b/a Hempstead Dialysis Center (Hempstead), a New York limited liability company, requests approval to establish and construct a 12-station Article 28 end-stage renal dialysis (ESRD) center. The facility will occupy approximately 4,880 square feet of designated space on the first floor of Hempstead Park Nursing Home, a 251-bed Article 28 residential health care facility located at 800 Front Street, Hempstead (Nassau County).

The sole member of Hempstead Park Operating, LLC is Michael Melnicke, who also has 90% ownership interest in Sunshine Care Corp. d/b/a Hempstead Park Nursing Home. Morton Kleiner, MD, a Board Certified Nephrologist, will serve as Medical Director.

Sunshine Care Corp. (Sunshine) will enter into a License Agreement with Hempstead Park Operating, LLC, whereby Sunshine will license the ground floor space to Hempstead.

OPCHSM Recommendation

Contingent Approval

Need Summary

There is an unmet need of 15 stations based on patients treated in Nassau County. Approval of this project would reduce the unmet need to three stations. Demand for dialysis services in Nassau County is driven in part by residents of neighboring counties. Both Queens and Suffolk counties are underserved by dialysis services, with a net deficit of 158 stations. Furthermore, the percentage of the Nassau County population which is 65 and over is 16.4%, 1.7% higher than the Statewide percentage of 14.7%. This percentage is projected to increase to 17.3% in 2020. The 65 and over demographic uses dialysis services at a much higher rate than the general population.

Program Summary

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

Financial Summary

Project cost of $2,482,066 will be met with $248,207 in members' equity and a bank loan for $2,233,859 at 6% interest for a ten-year term and ten-year amortization period. Sterling National Bank has provided a letter of interest. The operating budget is as follows:

	Year One	Year Three
Revenues	$1,170,340	$3,511,018
Expenses	$1,579,495	$2,927,085
Net Income	($409,155)	$583,933

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 License Agreement, acceptable to the Department of Health. [BFA]
3. Submission of the current executed lease agreement between Sunshine Care Corp. and the property owner, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
5. Submission of an executed operations loan commitment, acceptable to the Department. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an executed Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
9. Submission of the executed restated Articles of Organization of Hempstead Park Operating LLC., acceptable to the Department. (CSL)
10. Submission of a photocopy of the Certificate of Incorporation and By-laws of Sunshine Care Corp., acceptable to the Department. (CSL)
11. Submission of a photocopy of the Medical Directors Agreement between Hempstead Operating LLC and Dr. Morton Kleiner, acceptable to the Department. (CSL)
12. Submission of a photocopy of the fully executed copy of the consulting agreement between Hempstead Operating LLC and Geripro Dialysis Consultants LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of a specimen sample of Hempstead Park Operating LLC membership certificates, acceptable to the Department. (CSL)

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Construction must start on or before April 1, 2016 and construction must be completed by October 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

February 11, 2016

Need Analysis

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 331 free standing chronic dialysis stations operating in Nassau County and 73 in pipeline for a total of 404 stations.
- Based upon DOH methodology, the 331 existing free standing stations in Nassau County could treat a total of 1,489 patients annually. Including the additional pipeline stations, the county could treat a total of 1,818 patients annually.

Projected Need

		Actual		Projected	
Nassau County Residents Need projected 5 years out from most current IPRO data available for **Patients Treated in County**		**2014**	**2015**	**2019**	
		Total Patients Treated in County	**Total County Residents in Treatment**	**Total Patients Treated in County[1]**	**Total County Residents in Treatment[1]**
		1,882	1,642	2,182	1,849
Free-Standing Dialysis Stations		**2014**	**2015**	**2019**	
A	Stations Required to Treat[2]	419	365	485	411
B	Existing Stations	331	331	331	331
C	Stations In Pipeline	73	73	73	73
D	Stations Requested this CON	12	12	12	12
E	w/Approval of This CON (B+C+D)	416	416	416	416
F	Unmet Need With Approval (A-E)	3	-51	69	-5

[1] Based upon an estimated 3% accrued annual increase

[2] Based upon DOH methodology (total patients/4.5)

The data in Row A, "Stations Required to Treat," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS) and does not include Hospital based stations. "Unmet Need" is derived by subtracting needed stations from existing stations. Patient and resident data are from IPRO ESRD network.

Estimates for need are provided for 2019 because it is expected that this facility will be fully utilized by that time. A three percent annual increase in demand is appropriate for these calculations based on the aging population of the county and the overall population growth rate.

Analysis

The primary service area for the proposed facility is Nassau County, which had a population estimate of 1,358,627 for 2014, a 1.4% increase since 2010. The percentage of the population aged 65 and over was 16.4%. The nonwhite population percentage was 23.3%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Nassau County and New York State are listed below.

	Nassau County	State Average
Ages 65 and Over:	16.4%	14.7%
Nonwhite:	25.9%	29.6%

Source: U.S. Census 2015

The chart of projected need indicates there is no need for additional dialysis stations for Nassau County residents. However, when neighboring counties show unmet need, dialysis need calculations are based on the number of patients treated in the county. This is the case for Nassau County, as both Suffolk and Queens Counties have significant unmet need for dialysis stations. Queens County treated 3,777 residents with 525 existing stations and 210 pipeline stations for a total of 735 approved stations in 2014. This calculates to an unmet need of 105 stations. Likewise, Suffolk County treated 1,771 residents with 276 existing stations and 65 pipeline stations, for a total of 311 approved stations. This calculates to an unmet need of 53 stations. With residents of neighboring counties underserved by 158 stations, approval for addtional dialysis stations in Nassau County is warranted.

Additional factors included the fact that the population of the county is relatively elderly, and the percentage of residents of the county who are 65 years and older is expected to increase. According to projections from the Cornell Project on Applied Demographics, the percent of persons aged 65 and older will increase from 16.1% in 2015 to 17.3% in 2020, and will be as high as 20.1% in 2035. The Census estimate for the current percentage of persons over 65 is even higher, at 16.4%. This demographic uses End Stage Renal Dialysis services at a higher rate than the general population. Furthermore, the diabetes-related inpatient PQIs for Hempstead, the community in which the proposed facility will be located, are significantly higher than both the state and county average. Patients with diabetes are at a much higher risk of requiring chronic dialysis services. A summary is provided below.

Table 2: Prevention Quality – All Diabetes Composite

Area	Rate Per 100,000				
	2009	**2010**	**2011**	**2012**	**2013**
Hempstead	441.65	463.21	485.76	575.74	430.54
Nassau County	206.51	199.88	206.57	182.60	190.53
Statewide	201.19	195.03	200.09	199.21	191.45

Source: Health Data NY

Conclusion

Nassau County serves a population of 1,358,627 with a total of 404 approved dialysis stations, including those in pipeline. While this is sufficient capacity to treat the residents of the County, both neighboring counties have underserved populations that utilize dialysis services in Nassau County. The addition of these 12 dialysis stations will ensure access for patients in surrounding counties, and provide for future demand caused by an aging resident population.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Hempstead Park Operating, LLC d/b/a Hempstead Park Dialysis Center seeks approval to establish and construct a twelve station end stage renal dialysis center to be located in a designated space on the first floor of Hempstead Park Nursing Home, located at 800 Front Street, Hempstead, (Nassau County).

Proposed Operator	Hempstead Park Operating, LLC
Doing Business As	Hempstead Park Dialysis Center
Site Address	800 Front Street, Hempstead, NY 11550 (Nassau County)
Approved Services	Chronic Renal Dialysis (12 Stations)
Shifts/Hours/Schedule	Will operate at least 12 hours per day, 6 days per week, with additional hours as indicated by demand.
Staffing (1st Year / 3rd Year)	10.0 FTEs / 20.3 FTEs
Medical Director(s)	Morton Kleiner, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Franklin General Hospital 5.76 miles / 10 minutes

Character and Competence

The sole member of the LLC is Michael Melnicke.

Mr. Melnicke is an experienced health care administrator. He has been a licensed Nursing Home Administrator for the past 35 years and a nursing home owner for over 25 years. He is the Department-appointed receiver of three nursing homes (Park Nursing Home, Rockaway Care Center and Canton Park).

Disclosure information was similarly submitted and reviewed for the proposed Medical Director, Morton Kleiner, MD. He is board-certified in Internal Medicine and Nephrology and has more than 40 years of experience in the care and treatment of dialysis patients.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Mr. Melnicke holds majority membership interest in the following nursing homes which have been subject to enforcement action:

- *The Department issued a Stipulation and Order (S&O) and $6,000 fine on June 8, 2009 to Park Nursing Home for surveillance findings on May 14, 2008 related to Quality of Care, Physician and Pharmacy Services.*
- *The Department issued a Stipulation and Order and $2,000 fine on April 18, 2007 to Regency Extended Care Center for surveillance findings on November 17, 2005 related to Quality of Care.*
- *The Department issued a Stipulation and Order and $8,000 fine on December 16, 2011 to Hempstead Park Nursing Home for multiple deficiencies found during survey on September 28, 2010. Specific violations were related to Mistreatment/Neglect Policies and Procedures, Investigating/Reporting Allegations, Medically Related Social Services, and Administration. A*

second S&O was issued to the facility on January 6, 2012 with a $10,000 fine for issues related to Quality of Care.

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations, movable equipment, and fees is estimated at $2,482,066, broken down as follows:

Renovation & Demolition	$1,306,250
Design Contingency	$130,625
Construction Contingency	$130,625
Fixed Equipment	$224,675
Architect/Engineering Fees	$122,474
Other Fees	$75,000
Moveable Equipment	$366,377
Financing Costs	$70,681
Interim Interest Expense	$39,793
Application Fee	$2,000
Additional Fee	$13,566
Total Project Cost with Fees	$2,482,066

Project costs are based on a construction start date of April 1, 2016, with a six-month construction period.

Financing for this project will be as follows:

Members' Equity	$248,207
Bank loan (6% interest, 10-year term, 10-year amortization)	$2,233,859
Total	$2,482,066

Sterling National Bank has provided a letter of interest for the loan financing.

License Agreement

The applicant has submitted a draft License Agreement for the site to be occupied, summarized below:

Premises:	Approximately 4,880 square feet for the operation of an Article 28 ESRD center on the 1st floor of the premises located at 800 Front Street, Hempstead, NY
Licensor:	Sunshine Care Corp.
Licensee:	Hempstead Park Operating, LLC
Term:	10 years, the licensed space will be available 7 days per week from 12:00 AM to 11:59 PM and is subject and subordinate to Sunshine Care Corp.'s lease for the Premises (the lease expiration date is not presently known).
Licensee's Obligations:	License Fee payable in advance on the first day of each month; must provide a certificate of insurance demonstrating coverage for worker's compensation and disability coverage for its employees; hold harmless and indemnify licensor against all injury loss, claims, or damages connected to conducting its business.

Additional Provisions:	Space shall be used only for conduct of an End-Stage Renal Disease Center; the agreement may not be transferred or conveyed without written consent of licensor; license is subordinate to the licensor's lease and all other mortgages, liens and other encumbrances
License Fee:	$73,200 per annum ($6,100/month, $15.00/sq. ft.), increasing 3% per year

The proposed license agreement is a non-arm's length transaction. The applicant has submitted an affidavit attesting that there is a relation between the managers/members of Hempstead Park Operating, LLC and Sunshine Care Corp. d/b/a Hempstead Park Nursing Home in that the entities have a pre-existing business relationship in other nursing home transactions and common ownership interests. The license agreement is subject and subordinate to the lease agreement between Sunshine Care Corp. and the real property owner. For site control, approval is contingent upon submission of the executed lease agreement for Department review.

Consulting Agreement

The applicant has submitted a draft consulting agreement for administrative and management services, which is summarized below:

Consultant:	Geripro Dialysis Consultants, LLC
Facility:	Hempstead Park Operating, LLC d/b/a Hempstead Park Dialysis Center
Serviced Provided:	Development of revenue and expense assumptions; certificate of need application assistance; assistance establishing corporate entity for dialysis center; prepare and coordinate responses to requests from regulatory agencies; attendance at Public Health Council meetings and hearings; recommendations regarding architects, water treatment, space and functional needs for the facility; coordination and site visits with contractors; development of site safety plans; assistance with Medicare intermediary enrollment and recruiting, interviewing, hiring and developing staff; coordinating billing and collections; revision of manuals and creation of clinical log forms; quality assurance, patient charts and financial audits; ongoing updates of Quality Assurance Performance Improvement Program and attendance at meetings; budgeting and staff education.
Term:	Five Years with option to renew for two years
Fee:	$10,000 per month

While Geripro Dialysis Consultants, LLC will provide the services referenced above, the Facility retains ultimate control and authority in all of the final decisions associated with the services. The applicant does not have ownership interest in the consulting entity, however acknowledges a pre-existing business relationship with the consultant entity and familial relationship with the sole member thereof, Miles Davis.

Operating Budget

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

	Per Visit	Year One	Per Visit	Year Three
Revenues				
Commercial	$375.40	$140,400	$375.07	$421,200
Medicare	$315.02	$943,488	$314.99	$2,830,464
Medicaid	$295.02	$110,336	$294.75	$331,007
Bad Debt		($23,884)		($71,653)
Total Revenue		$1,170,340		$3,511,018
Expenses				
Operating	$310.57	$1,162,448	$223.93	$2,515,144
Capital	$111.42	$417,047	$36.68	$411,941
Total Expense	$421.99	$1,579,495	$260.61	$2,927,085
Net Income		($409,155)		$583,933
Total Visits		3,743		11,232

Utilization by payor is projected as follows:

	Year One		Year Three	
Payor	Visits	%	Visits	%
Commercial	374	10%	1,123	10%
Medicare	2,995	80%	8,986	80%
Medicaid	374	10%	1,123	10%
Total	3,743	100%	11,232	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on reimbursement rate data developed in consultation with the above referenced consultants based on historical data from similar dialysis providers located in nursing homes and freestanding centers of similar size.
- Expense assumptions are based on the operator's experience, in consultation with the contracted consultants.
- The applicant projected utilization using one shift per day for the first calendar year due to anticipated ramp-up. The utilization assumptions are based on other nursing home based dialysis projects the applicant has undertaken.

The budget appears reasonable.

Capability and Feasibility

The total project cost for the facility construction and equipment is $2,482,066. Hempstead Park Operating, LLC will meet the project cost with $248,207 in member's equity and a self-amortizing bank loan for $2,233,859 at 6% interest for a ten-year term. BFA Attachment A, the Net Worth Summary for the proposed member of Hempstead Park Operating, LLC, reveals sufficient liquid resources for the equity contribution. Sterling National Bank has provided a letter of interest at the stated terms.

Working capital requirements are estimated at $487,848, based upon two months of Year Three expenses. The working capital requirement will be met with a $243,947 loan at 5% interest for a three-year term, and $243,947 in member's equity. Sterling National Bank provided a letter of interest at the stated terms. In recognition of projected losses in Year One, Michael Melnicke has submitted an affidavit to provide needed working capital resources in the event that operations result in a negative working capital position.

BFA Attachment B is a Pro Forma Balance Sheet for Hempstead Dialysis Center, which shows that the operations will start with $492,153 in member equity.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Net Worth Summary, Hempstead Park Operating, LLC
BFA Attachment B Pro Forma Balance Sheet, Hempstead Dialysis 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 11th day of February, 2016 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 12-station end stage renal dialysis center to be located at 800 Front Street, Hempstead within the Hempstead Park Nursing Home, 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:
152110 B	Hempstead Park Operating, LLC d/b/a Hempstead Park Dialysis 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 License Agreement, acceptable to the Department of Health. [BFA]
3. Submission of the current executed lease agreement between Sunshine Care Corp. and the property owner, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
5. Submission of an executed operations loan commitment, acceptable to the Department. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an executed Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
9. Submission of the executed restated Articles of Organization of Hempstead Park Operating LLC., acceptable to the Department. (CSL)
10. Submission of a photocopy of the Certificate of Incorporation and By-laws of Sunshine Care Corp., acceptable to the Department. (CSL)
11. Submission of a photocopy of the Medical Directors Agreement between Hempstead Operating LLC and Dr. Morton Kleiner, acceptable to the Department. (CSL)
12. Submission of a photocopy of the fully executed copy of the consulting agreement between Hempstead Operating LLC and Geripro Dialysis Consultants LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of a specimen sample of Hempstead Park Operating LLC membership certificates, acceptable to the Department. (CSL)

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

6. Construction must start on or before April 1, 2016 and construction must be completed by October 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 142144-E
Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing & Rehabilitation

Program: **Residential Health Care Facility** ***County:*** **Bronx**
Purpose: **Establishment** ***Acknowledged:*** **October 8, 2014**

Executive Summary

Description

Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (Hudson Pointe), a New York limited liability company, requests approval to be established as the new operator of Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, a 167-bed, proprietary residential health care facility (RHCF) located at 3220 Henry Hudson Parkway, Bronx (Bronx County). As part of this application, the certified bed capacity will be reduced by eight beds, bringing the total certified bed count to 159. There will be no change in services provided.

On August 21, 2014, Riverdale Center for Nursing and Rehabilitation, LLC, the current operator of the skilled nursing facility, entered into an Asset Purchase Agreement with Hudson Pointe Acquisition, LLC for the sale and acquisition of the operating interests of the RHCF, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. Concurrently, RCNR Realty, LLC, the current real property owner, entered into a Contract of Sale with RCNR Realty Acquisition, LLC for the sale and acquisition of the real property interest of the nursing facility. There is a relationship between Hudson Pointe Acquisition, LLC and RCNR Realty Acquisition, LLC in that the entities have several members in common. The applicant will lease the premises from RCNR Realty Acquisition, LLC.

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

Current Operator Riverdale Center for Nursing and Rehabilitation, LLC	
Members	%
Susan Ostreicher	99%
Susan Ostreicher, LLC	1%

Proposed Operator Hudson Pointe Acquisition, LLC	
Members	%
Leopold Friedman	50%
Sheya Landa	25%
Gabrielle Philipson	25%

BFA Attachment C presents the Current and Proposed Owners of the real property.

OPCHSM Recommendation

Contingent Approval

Need Summary

Approval will maintain an existing resource while contributing to right-sizing the long term care system in the New York City planning region.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

Hudson Pointe Acquisition, LLC will acquire the RHCF operating assets for $1,000,000, funded by $200,000 in members' equity and a loan for $800,000 at 6% interest for a 30-year term. RCNR Realty Acquisition, LLC, will acquire the real property for $19,875,000, funded by $3,975,000 in members' equity and a loan for $15,900,000 at 6% interest rate for a 30-year term.

There are no project costs associated with this application. The operating budget is as follows:

Revenues	$18,988,465
Expenses	18,878,233
Gain	$110,232

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission and programmatic review of plans showing the 8 beds to be decertified and the nursing units to be affected. [LTC]
9. Submission of a photocopy the applicant's fully executed operating agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed lease agreement and purchase agreement for real property, acceptable to the Department. [CSL]
12. Submission of a photocopy of the purchase and sales agreement between RCNR Realty, LLC and RCNR Reality Acquisition, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

Project Description

Hudson Pointe Acquisition, LLC, doing business as Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, seeks approval to become the established operator of Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (Hudson Pointe), a 167-bed Article 28 residential health care facility (RHCF), located 3220 Henry Hudson Parkway, Bronx, 10463, in Bronx County. Upon approval, the certified bed capacity will be reduced by eight, to 159 RHCF beds.

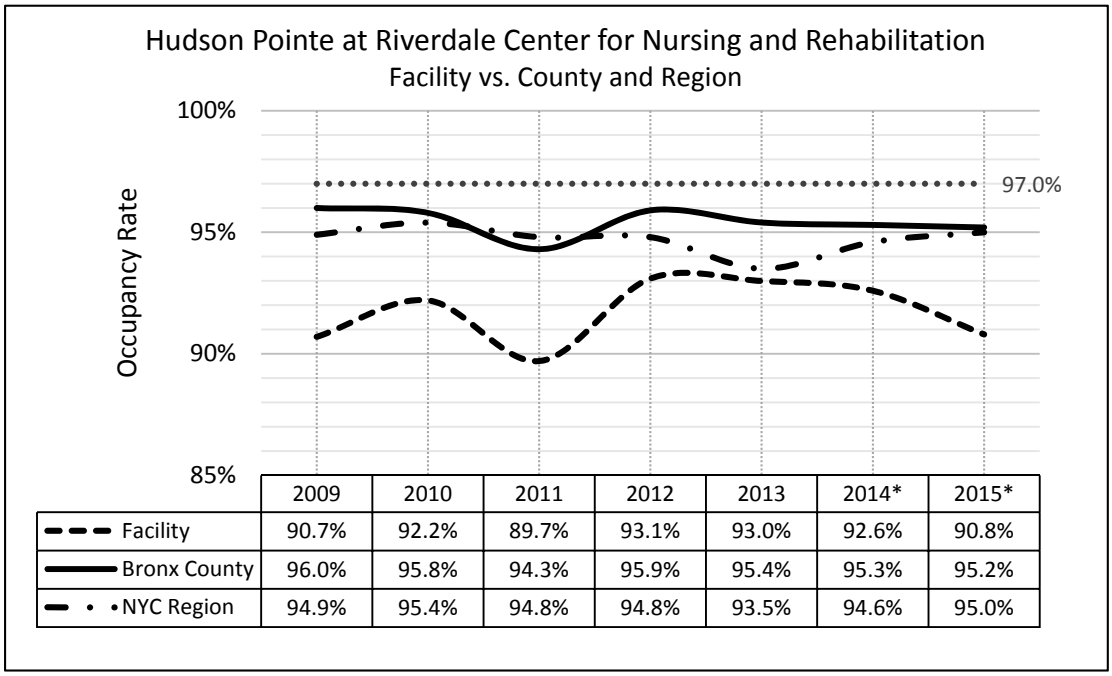
Analysis

There is currently a need for 8,824 beds in the New York City Region as indicated in the following table:

RHCF Need – Nassau-Suffolk Region

2016 Projected Need	51,071
Current Beds	42,151
Beds Under Construction	96
Total Resources	42,247
Unmet Need	8,824

The overall occupancy for the New York City Region was 93.5% for 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014*	2015*
Facility	90.7%	92.2%	89.7%	93.1%	93.0%	92.6%	90.8%
Bronx County	96.0%	95.8%	94.3%	95.9%	95.4%	95.3%	95.2%
NYC Region	94.9%	95.4%	94.8%	94.8%	93.5%	94.6%	95.0%

*unaudited; based on weekly census

Hudson Pointe's occupancy was 89.7% in 2011, 93.1% in 2012, and 93.0% in 2013. Current occupancy, as of October 28, 2015 was 92.8%, with 12 vacant beds. According to the applicant, the facility experienced low occupancy as a result of being an existing small facility relative to other facilities in the planning area, combined with an increase in short term rehabilitative stays requiring a need for flexibility for the pairing of roommates.

The applicant intends to increase occupancy in the following ways:

- Decertify 8 beds;
- Keep in line with the Department's goals of providing long-term care in the most integrated setting as possible through:
  - Implementation of Institutional Special Needs Plan (I-SNP) services;
  - Development of new and enhancement of existing care programs, including its Wound Care Program and Short-Term Rehabilitation Services; and
  - Partnerships with hospitals, managed care plans and other long-term providers;
- Transform the care model to ensure residents served by the facility are those truly in need of level of care being provided at the RHCF; and
- Collaborate with the local area hospitals to ensure prompt discharge of hospital patients appropriate for RHCF care and implement state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost saving to the Department.

Access

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

Hudson Pointe's Medicaid admissions of 27.8% in 2012 and 26.1% in 2013 did not exceed the Bronx County 75% rates of 37.5% in 2012 and 29.8% in 2013. Therefore, as a contingency to the approval, the applicant will be required address the shortfall.

Conclusion

Approval is being recommended to preserve an existing resource for the residents of Bronx County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	Same
Address	3220 Henry Hudson Parkway Bronx, NY 10463	Same
RHCF Capacity	167	159
ADHC Program Capacity	N/A	Same
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary
Operator	Riverdale Center for Nursing and Rehabilitation, LLC	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation Members: *Leopold Friedman 50.0% Sheya Landa 25.0% *Gabrielle Philipson 25.0% *Managing members

Character and Competence

Facilities Reviewed

Nursing Homes

Brooklyn Gardens Nursing & Rehab	09/2014 to present
Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
Hendon Gardens Nursing and Rehabilitation Center	11/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	02/2015 to present

Licensed Home Care Services Agency (LHCSA)

Ultimate Care, Inc.	02/2010 to present

Individual Background Review

Leopold Friedman is the Chief Executive Officer, since 2006, of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman discloses the following ownership interests:

Peninsula Center for Extended Care & Rehabilitation (rec/op)	01/2013 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present
The Citadel Rehabilitation and Nursing Center	02/2015 to present

Mr. Friedman has pending ownership in the following facilities, which have been approved by PHHPC but have not transferred title as of this writing:

151108	Long Beach Nursing and Rehabilitation Center
151308	Brooklyn Gardens Dialysis Center (D&TC)
141210	Cassena Care Dialysis at Peninsula (D&TC)

Sheya Landa is a student and a licensed emergency medical technician in good standing. Mr. Landa discloses the following health care facility interest:

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present

Gabrielle Philipson is a student. Ms. Philipson reports the following health facility interests.

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
The Citadel Rehab and Nursing Center at Kingsbridge	08/2015 to present

Character and Competence Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Brooklyn Gardens Nursing & Rehab, Cypress Garden Center for Nursing and Rehabilitation, DeWitt Rehabilitation and Nursing Center, Hendon Gardens Nursing and Rehabilitation Center, Peninsula Center for Extended Care and Rehabilitation, and the Citadel Rehab and Nursing Center at Kingsbridge for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for Ultimate Care, Inc., for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program are proposed in this application. This application proposes a reduction of eight RHCF beds. The applicant must provide plans showing the specific rooms to be decertified as a contingency to this project.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. Sentosa Healthcare, LLC, whose members are directly related to the principles of this application, has common ownership with the real estate entity which will purchase the property. These members have also submitted affidavits stating that they will provide equity to the proposed operator, Hudson Pointe Acquisition, LLC. However the applicants have responded that there will be no consulting and administrative services agreements with Sentosa or any other entity contemplated for the facility after the transfer of ownership.

The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the RHCF operating interests, which will become effectuated upon PHHPC approval. The terms are summarized below:

Date:	August 21, 2014
Seller:	Riverdale Center for Nursing and Rehabilitation, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation
Purchaser:	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation
Assets Transferred:	All rights, title and interest in the business assets lien free. The assets include: tangible assets used in the business; seller's deposits; permitted records; all insurance claims and rights in connection with purchased assets; agreements to provide services equipment and real estate leases; intellectual property not included in excluded assets; books and records relating to operation of the business; seller's Medicare and Medicaid provider numbers; resident funds held in trust; goodwill and going concern value and any rights to refunds, settlements and retroactive adjustments any time in connection with the Medicare and Medicaid provider numbers.
Excluded Assets:	Cash and cash equivalents; pre-closing accounts receivables; refunds and settlements prior to closing, any websites and e-mail addresses; records not applicable to the operations; refunds; right to receive or expectancy of seller any charitable gift, grant, bequest or legacy.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	$1,000,000
Payment:	$75,000 escrow deposit (paid at the time of signing) $925,000 due at closing.

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

Equity - Hudson Pointe Acquisition, LLC Members	$200,000
Loan - 30 years, 6%	$800,000
Total	$1,000,000

Greystone Funding Corporation has provided a letter of interest at the stated terms.

BFA Attachment A is the net worth summaries for the proposed members of Hudson Pointe Acquisition, LLC, which reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Bent Philipson has provided a statement guaranteeing Gabrielle Philipson's equity contributions. As additional support, proposed realty members Bent Philipson (on behalf of Philipson Family Limited Liability Company) and Benjamin Landa have provided affidavits stating they are willing to contribute equity to the operating entity, to the extent required, in the event there is a need for these resources in support of this CON.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. There are no outstanding Medicaid Assessment liabilities as of November 24, 2015.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed purchase and sale agreement related to the acquisition of the RHCF's real property. The closing will become effectuated upon PHHPC approval of this CON. The terms of the realty agreement are summarized below:

Date:	August 21, 2014
Seller Realty:	RCNR Realty, LLC
Purchaser Realty:	RCNR Realty Acquisition, LLC
Asset Transferred Realty:	All rights, title and interest in the real property including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 3220 Henry Hudson Parkway, Bronx, New York 10463 and further identified as Parcel I (Block 5790 Lot 1) and Parcel II (Block 5790 Lot 5).
Purchase Price:	$19,875,000
Payment of Purchase Price:	$ 1,490,625 escrow deposit (paid at the time of signing) $ 496,875 additional deposit $17,887,500 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - RCNR Realty Acquisitions, LLC Members	$3,975,000
Loan - 30 years, 6%	$15,900,000
Total	$19,875,000

Greystone Funding Corporation has provided a letter of interest at the stated terms.

BFA Attachment B is the net worth summaries of the proposed members of RCNR Realty Acquisition, LLC, which reveals sufficient resources to meet the equity requirements. However, liquid resources may not be available in proportion to ownership interests. Proposed realty members Bent Philipson (on behalf of Philipson Family LLC) and Benjamin Landa have provided affidavits stating their willingness to contribute resources disproportionate to their membership interest in the realty entity.

Lease Agreement

A draft lease has been submitted to lease the real property. The terms are summarized below:

Premises:	167-bed RHCF located at 3220 Henry Hudson Parkway, Bronx
Owner/Landlord:	RCNR Realty Acquisition LLC
Lessee:	Hudson Pointe Acquisition LLC
Term:	30 years
Rent:	Annual rent equal to the sum of the Lessor's debt service on the real property mortgage (assessed at $1,143,942 for year one) plus $1,500,000. Year one rent = $2,643,942 (or $220,328.50 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between the landlord and the tenant in that the entities have several members in common.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year of operations subsequent to the change in ownership, as summarized below:

	Per Diem	Current Year (167 Beds)	Per Diem	Year One (159 Beds)
Revenues:				
Medicaid-FFS	$260.27	$11,622,259	$272.18	$10,318,753
Medicaid-MC		0	$272.20	1,540,112
Medicare-FFS	$493.22	2,430,090	$649.96	2,942,375
Medicare-MC	$192.86	357,175	$649.82	1,103,390
Commercial	$418.22	1,401,461	$475.03	2,687,746
Private Pay	$319.55	335,523	$349.90	396,089
Total Revenues		$16,146,508		$18,988,465
Expenses:				
Operating	$299.38	$16,715,814	280.08	$15,848,278
Capital	18.28	1,020,868	53.55	3,029,955
Total Expenses	$317.66	$17,736,682	333.63	$18,878,233
Net Income		(1,590,174)		$110,232
Patient Days		55,834		56,584
Occupancy		91.6%		97.5%

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

- The current year reflects the facility's 2014 RHCF-4 cost report information.
- Based on 167-beds, average utilization from 2011-2014 was 91.92%. Comparing historical occupancy using the proposed 159-beds, the 2011-2014 average utilization would be 96.55%. As of December 16, 2015, occupancy was 93.4% per the Division of Nursing Homes and ICF/IID Surveillance report.
- Medicaid revenues are projected based on the facility's current 2015 Medicaid FFS rate.
- Medicare revenues are based on the average daily rate experienced by the facility during 2015.
- Private pay and commercial rates are projected based on similar facilities in the same geographical area.
- Expenses are projected to increase by $1,141,551 in the first year, primarily due to a $1,923,942 rent increase partially offset by a $1,060,000 reduction in management and related fees.
- Utilization by payor source is as follows:

	Current	Year One	Year Three
Medicaid-FFS	80%	67%	53%
Medicaid-MC	0%	10%	20%
Medicare-FFS	9%	8%	6%
Medicare-MC	3%	3%	8%
Commercial	6%	10%	11%
Private	2%	2%	2%

- Breakeven utilization is projected at 96.9% and 92.2% for the first and third years, respectively.

Capability and Feasibility

Hudson Pointe Acquisition, LLC will acquire the RHCF operating interests for $1,000,000, funded by $200,000 in members' equity plus an $800,000 loan at the above stated terms. Concurrently, RCNR Realty Acquisitions, LLC will purchase the real property for $19,875,000, funded by $3,975,000 in members' equity and a $15,900,000 loan at the above stated terms. Greystone Funding Corporation has provided letters of interest for both the operations and the real property loans. There are no project costs associated with this application.

The working capital requirement is estimated at $3,146,372 based on two months of first year expenses. Funding will be as follows: $1,573,186 from the members' equity with the remaining $1,573,186 satisfied through a five-year loan at 6% interest rate. Greystone Funding Corporation has provided a letter of interest. Review of BFA Attachments A and B, proposed members' net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As stated previously, liquid resources may not be available in proportion to the proposed ownership interest in the operating and realty entities. Bent Philipson has provided a statement guaranteeing Gabrielle Philipson's equity contributions in the operating entity. Proposed realty members Bent Philipson (on behalf of Philipson Family Limited Liability Company) and Benjamin Landa have provided affidavits stating they are willing to contribute resources to the operating entity to the extent required, as well as any needed equity to the realty entity disproportionate to their membership interest in RCNR Realty Acquisition, LLC.

The submitted budget projects net income of $110,232 and $1,408,549 in the first year and third years, respectively. Revenues are expected to increase by approximately $2,841,957 concurrent with a 1.3% increase in overall utilization along with maintaining the current Medicare rate and bringing the commercial and private pay rates closer to the regional averages. As previously stated, expenses are projected to increase by $1,141,551 in year one. The budget was determined taking into consideration the proposed new owners' experience in operating similar-sized facilities. BFA Attachment D is Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation's pro forma balance sheet, which shows the entity will start with $1,773,186 in equity. Equity includes $800,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill was eliminated, then the total net assets would become a positive $973,186. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment E, financial summary of Riverdale Center for Nursing and Rehabilitation, indicates that the facility has maintained positive working capital, negative equity position and generated an average annual operating loss of $43,576 for the 2013-2014 period shown, and a net operating loss of $387,783 as of August 31, 2015. BFA Attachment G, financial summary of the proposed members' affiliated RHCFs, shows the facilities have maintained positive net income, positive working capital and positive net assets. Peninsula Nursing and Rehabilitation Center's working capital position turned positive in 2015 on $1,785,655 operating net income.

Conclusion

Based on the preceding, the applicant has demonstrated the capability to precede in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Hudson Pointe Acquisition, LLC members' net worth summaries
BFA Attachment B	RCNR Realty Acquisition, LLC members' net worth summaries
BFA Attachment C	Current and Proposed Ownership of Real Property
BFA Attachment D	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation pro forma balance sheet
BFA Attachment E	Financial Summary, Riverdale Center for Nursing and Rehabilitation, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation.
BFA Attachment F	2014 Certified Financial Statement for Riverdale Center for Nursing and Rehabilitation, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation.
BFA Attachment G	Proposed members' ownership interest and Financial Summaries of Affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 Hudson Pointe Acquisition as the new operator of Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, a 167 bed RHCF located at 3220 Henry Hudson Parkway, Bronx, and decertify 8 residential health care facility beds, 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:
142144 E	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing & Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission and programmatic review of plans showing the 8 beds to be decertified and the nursing units to be affected. [LTC]
9. Submission of a photocopy the applicant's fully executed operating agreement, acceptable to the Department. [CSL]

10. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed lease agreement and purchase agreement for real property, acceptable to the Department. [CSL]
12. Submission of a photocopy of the purchase and sales agreement between RCNR Realty, LLC and RCNR Reality Acquisition, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 142146-E
Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation

Program: **RHCF** ***County:*** **Nassau**
Purpose: **Establishment** ***Acknowledged:*** **October 8, 2014**

Executive Summary

Description

Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation (Cold Spring), a New York limited liability company, requests approval to be established as the new operator of Cold Spring Hills Center for Nursing and Rehabilitation, a 606-bed, proprietary, Article 28 residential health care facility (RHCF) located at 378 Syosset-Woodbury Road, Woodbury (Nassau County). The facility has 582 RHCF beds and 24 certified Ventilator Dependent beds. The facility also operates an on-site, 50-slot adult day health care program. As part of this application, the certified bed capacity will be reduced by 18 RHCFs beds, bringing the total certified bed count to 588. Simultaneously, a separate realty entity, Cold Spring Realty Acquisition, LLC, will acquire the facility's real property. There will be no change in services provided.

On August 21, 2014, UPR Care Corporation, the current operator, entered into an Asset Purchase Agreement with Cold Spring Acquisition, LLC for the sale and acquisition of the operating interests of the RHCF, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. Concurrently, Cold Spring Hills Realty, Co., the current real property owner, entered into a Contract of Sale with Cold Spring Realty Acquisition, LLC for the sale and acquisition of the real property interest. There is a relationship between Cold Spring Acquisition, LLC and Cold Spring Realty Acquisition, LLC in that the entities have several members in common. The applicant will lease the premises from Cold Spring Realty Acquisition, LLC.

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

Current Operator UPR Care Corporation	
Members:	%
Susan Ostreicher	33.51%
Kenneth Zitter	11.50%
20 members (% from .50% to 6%)	54.99%

Proposed Operator Cold Spring Acquisition, LLC	
Members:	%
Joel Leifer (Manager)	25.0%
Avi Philipson (Manager)	25.0%
Esther Farkovits	25.0%
Rochel David	12.5%
Leah (Leaya) Friedman	12.5%

With the exception of Joel Leifer, the applicant members have ownership interest in various New York State RHCFs. BFA Attachment G provides the ownership interest and financial summaries of the proposed members' affiliated RHCFs.

OPCHSM Recommendation

Contingent Approval

Need Summary

The decertification of 18 beds supports the Department's goal of right-sizing the Long Term Care System.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations.

Financial Summary

Cold Spring Acquisition, LLC will acquire the RHCF operating assets for $8,000,000, funded by $1,600,000 in members' equity and a loan for $6,400,000 at 6% interest for a 30-year term. Cold Spring Realty Acquisition, LLC, will acquire the real property for $67,750,000, funded by $13,550,000 in members' equity and a loan for $54,200,000 at 6% interest rate for a 30-year term. There are no project costs associated with this application. The operating budget is as follows:

Revenues:	$88,471,754
Expenses:	86,871,624
Gain:	$1,600,130

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission and programmatic review of plans showing the 18 beds to be decertified and the nursing units to be affected. [LTC]
5. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment, acceptable to the Department. (BFA)
7. Submission of an executed real property loan commitment, acceptable to the Department. (BFA)
8. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
9. Submission of the signed and dated Certificate of Amendment of the Articles of Organization of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]
10. Submission of an executed Operating Agreement of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]
11. Submission of a signed Certificate of Assumed Name of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of UPR Care Corp., acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's Asset Purchase Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

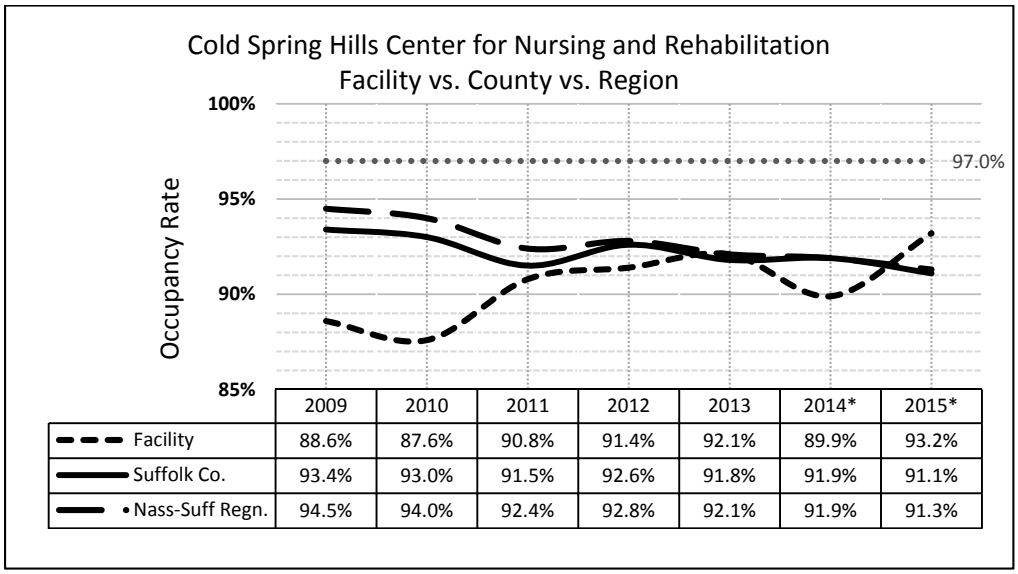
Analysis

There is currently a need for 1,724 beds in the Nassau-Suffolk Region as indicated in the following table:

RHCF Need – Nassau-Suffolk Region

2016 Projected Need	16,962
Current Beds	15,352
Beds Under Construction	-455
Total Resources	14,897
Unmet Need	2,065

The overall occupancy for Nassau County was 91.8% for 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014*	2015*
Facility	88.6%	87.6%	90.8%	91.4%	92.1%	89.9%	93.2%
Suffolk Co.	93.4%	93.0%	91.5%	92.6%	91.8%	91.9%	91.1%
• Nass-Suff Regn.	94.5%	94.0%	92.4%	92.8%	92.1%	91.9%	91.3%

*unaudited; facility reported data

Current occupancy, as of November 11, 2015, was 91.6%, with 51 vacant RHCF beds. According to the applicant, the facility experienced low occupancy as a result of an increase in short term rehabilitative stays and the need for flexibility in pairing roommates.

The applicant intends to increase occupancy in the following ways:

- Decertify 18 beds;
- Keeping in line with the Department's goals of providing long-term care in the most integrated setting as possible through:
  - Implementation of Institutional Special Needs Plan (I-SNP) services;
  - Development of new and enhancement of existing care programs, including its Wound Care Program and Short-Term Rehabilitation Services; and
  - Partnership with hospitals, managed care plans and other long-term providers;
- Transform the care model to ensure residents served by the facility are truly in need of the level of care being provided at the RHCF; and
- Collaborate with the local area hospitals to ensure prompt discharge of hospital patients appropriate for RHCF care and implement state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost savings to the Department.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Cold Spring's Medicaid admissions of 12.9% in 2012 and 10.6% in 2013 did not exceed the Nassau County 75% rates of 14.0% in 2012 and 7.3% in 2013 and will be required to satisfy the contingencies as noted below.

Conclusion

Approval is being recommended to preserve resources for the residents of Nassau County, while moving towards right-sizing the Long Term Care System in the region.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Cold Spring Hills Center for Nursing and Rehabilitation	Cold Spring Hills Center for Nursing and Rehabilitation
Address	378 Syosset-Woodbury Road Woodbury, NY 11797	Same
RHCF Capacity	606	588
ADHC Program Capacity	50	Same
Type of Operator	Business Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	UPR Care Corporation	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation Members: * Joel Leifer 25.0% Esther Farkovitz 25.0% * Avi Philipson 25.0% Rochelle David 12.5% Leah (Leaya) Friedman 12.5% * Managing Member

Character and Competence Review

Facilities Reviewed

Nursing Homes:

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	04/2005 to present
Park Avenue Extended Care Facility	04/2005 to present
South Shore Rehab and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	02/2015 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
Throgs Neck Extended Care Facility	04/2005 to present
Townhouse Center for Rehabilitation & Nursing	04/2005 to present
White Plains Center for Nursing	07/2011 to present

Individual Background Review

Joel Leifer lists his current employment as Administrative Director for Atrium Center for Rehabilitation since 2010, and Staten Island Care Center since 2002. Mr. Leifer discloses no ownership interests in health facilities.

Esther Farkovits is currently unemployed. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovits lives overseas. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadell Rehab and Nursing Center at Kingsbridge	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing	07/2011 to present

Avi Philipson discloses that he is currently a student in Jerusalem, Israel and discloses no employment history. Mr. Philipson discloses the following health care facility ownership interest.

Seagate Rehabilitation and Health Care Center	12/2014 to present

Rochel David is employed in human resources at Confidence Management Systems, a housekeeping services company, located in Linden, New Jersey. Ms. David discloses the following health care facility ownership interest.

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
Little Neck Care Center	04/2014 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present

Leah (Leaya) Friedman is employed in human resources at Confidence Management Systems, a housekeeping services company, located in Linden, New Jersey. Ms. Friedman discloses the following health care facility ownership interest.

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
Little Neck Care Center	04/2014 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present

Character and Competence Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Cypress Garden Center for Nursing and Rehabilitation, Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation & Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Nursing Center, Seagate Rehabilitation and Nursing Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Seagate Rehabilitation and Health Care Center, Throgs Neck Extended Care Facility. Townhouse Center for Rehabilitation and Nursing, White Plains Center for Nursing for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined $6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined $2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

Project Review

No changes in the program are proposed in this application. This application proposes a reduction of eighteen RHCF beds. The applicant has not provided plans showing the specific rooms to be decertified which results in the addition of a contingency to this project.

Cold Spring Hills CHHA and LTHHCP are not included in the proposed sale of Cold Spring Hills Nursing Home. At present, UPR Care Corporation operates both the Cold Spring Hillls CHHA and LTHHCP. The offices for both of these home care agencies are located inside the nursing home.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations.

Sentosa Healthcare, LLC, whose members are directly related to the principles of this application, has common ownership with the real estate entity which will purchase the property. These members have also submitted affidavits stating that they will provide equity to the proposed operator, Cold Springs Acquisition, LLC. However the applicants have responded that there will be no consulting and administrative services agreements with Sentosa or any other entity contemplated for the facility after the transfer of ownership.

The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the RHCF operating interest, which will become effectuated upon PHHPC approval. The terms are summarized below:

Date:	August 21, 2014
Seller:	UPR Care Corp. d/b/a Cold Spring Hills Center for Nursing and Rehabilitation
Purchaser:	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation
Assets Transferred:	All rights, title and interest in the business assets lien free. The assets include: tangible assets used in the business, permitted records, applicable warranties, contracts and agreements including managed care and third party reimbursement contracts, intellectual property rights and trademarks, books and records relating to business operations, assignable licenses and permits including Medicare and Medicaid provider numbers, resident trust funds, and goodwill and going concern value.
Excluded Assets:	Cash and cash equivalents, pre-closing accounts receivables; refunds and settlements prior to closing, any websites and e-mail addresses; records not applicable to the operations; refunds; charitable gift, grant, bequest or legacy.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	$8,000,000
Payment:	$600,000 escrow deposit (paid at the time of signing) $7,400,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - Cold Spring Acquisition, LLC Members	$1,600,000
Loan - 30 years, 6%	6,400,000
Total	$8,000,000

Greystone Funding Corporation has provided a letter of interest at the stated terms.

BFA Attachment A is the net worth summaries for the proposed members of Cold Spring Acquisition, LLC, which reveals sufficient resources to meet the equity requirements. Liquid resources may not be available in proportion to the proposed ownership interest. Bent Philipson has provided a statement guaranteeing Avi Philipson's equity contributions. As additional support, proposed realty members Bent Philipson (on behalf of Philipson Family Limited Liability Company) and Benjamin Landa have provided affidavits stating they are willing to contribute equity to the operating entity, to the extent required, in the event there is a need for these resources in support of this CON.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. There are no outstanding Medicaid Assessment liabilities as of November 24, 2015.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed agreement to purchase the RHCF's real property. The terms are summarized below:

Date:	August 21, 2014
Seller Realty:	Cold Spring Hills Realty, Co., LLC
Purchaser Realty:	Cold Spring Realty Acquisition, LLC
Asset Transferred Realty:	All rights, title and interest in the real property including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 378 Syosset-Woodbury Road, Woodbury, New York 10463 and further identified as Section: 14 Block: 0 lot: 741.
Purchase Price:	$67,750,000
Payment of Purchase Price:	$ 5,081,250 escrow deposit (paid at the time of signing) $62,668,750 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - Cold Spring Realty Acquisition, LLC Members	$13,550,000
Loan - 30 years, 6%	54,200,000
Total	$67,750,000

Greystone Funding Corporation has provided a letter of interest at the stated terms.

BFA Attachments C and B are the membership interests and net worth summaries of the proposed members of Cold Spring Realty Acquisitions, LLC, respectively. Review of the net worth summaries reveals sufficient resources to meet the equity requirements. However, liquid resources may not be available in proportion to ownership interest. Proposed realty members Bent Philipson (on behalf of Philipson Family LLC) and Benjamin Landa have provided affidavits stating their willingness to contribute resources disproportionate to their membership interest in the realty entity.

Lease Agreement

A draft lease has been submitted to lease the real property. The terms are summarized below:

Premises:	606-bed RHCF located at 378 Syosset-Woodbury Road, Woodbury,
Owner/Landlord:	Cold Spring Realty Acquisition, LLC
Lessee:	Cold Spring Acquisition, LLC
Term:	30 years
Rent:	Annual rent equal to the sum of the Lessor's debt service on the real property mortgage (assessed at $3,899,477 for year one) plus $4,000,000. Year one rent = $7,899,477r or $658,290 per month
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted and affidavit attesting that there is a relationship between the landlord and the tenant in that the entities have several members in common.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year of operations subsequent to the change in ownership, as summarized below:

	Current Year (2014)			Year One		
	Pt. Days	Per Diem	Total	Pt. Days	Per Diem	Total
Revenues (RHCF Bed)			(582 Beds)			(564 Beds)
Medicaid-FFS	143,803	$300	$43,099,885	129,795	$315	$40,885,340
Medicaid-MC	0	0	0	13,978	$315	4,403,037
Medicare-FFS	22,574	$636	14,349,929	19,968	$675	13,478,684
Medicare-MC	8,760	$477	4,180,277	7,388	$675	4,987,113
Private Pay	6,004	$618	3,707,356	6,390	$625	3,993,684
Insurance/Other	9,938	$403	4,008,392	22,165	$400	8,865,977
Sub-Total RHCF	191,079		$69,345,839	199,684		$76,613,835
Revenues (Vent Bed)			(24 Beds)			(24 Beds)
Medicaid-FFS	7,570	$741	$5,607,514	6,570	$761	$4,999,204
Medicaid-MC	0		0	920	$761	699,889
Medicare-FFS	395	$874	345,176	350	$901	315,328
Medicare-MC	0		0	175	$901	157,664
Private Pay	61	$914	55,763	131	$903	118,248
Other	733	$762	558,684	613	$900	551,826
Sub-Total Ventilator	8,759		$6,567,137	8,759		$6,842,159
ADHC Program	Visits	Per Visit	Total	Visits	Per Visit	Total
Medicaid	24,099	$181	$4,369,314	27,387	$181	$4,965,602
Private/Other	243	$181	44,134	277	$181	50,158
Sub-Total ADHCP	24,342		$4,413,448	27,664		$5,015,760
Total Revenues			$80,326,424			$88,471,754
Expenses:						
Operating		$364	$81,580,597		$318	$74,545,826
Capital		$30	6,785,775		$52	12,325,798
Total Expenses:		$394	$88,366,372		$370	$86,871,624
Net Income (Loss)			($8,039,948)			$1,600,130
	Utilization	%		Utilization	%	
RHFC	191,079	89.95%		199,684	97.00%	
Vent	8,759	99.99%		8,759	99.99%	
ADCHP	24,342	83.59%		27,664	95.00%	

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

- The current year reflects the facility's 2014 RHCF-4 cost report information.
- Based on 582 RHCF beds, average utilization from 2011-2014 was 90.9%. Comparing historical occupancy using the proposed 564 beds, the 2011-2014 average utilization would be 93.87%.
- Based on 24 ventilator beds, average utilization from 2011-2014 was 97.15%.
- Medicaid revenues for the RHCF and ventilator units are based on the facility's current 2015 Medicaid FFS and MC rates.
- Medicare revenues for the RHCF and ventilator units are based on the average daily rate experienced by the facility during 2015.
- Private pay and commercial rates for the RHCF and ventilator units are based on historical and 2015 experience.

- Expenses are projected to decrease by $1,494,748 in the first year, primarily due to $5,983,717 reduction in consulting and management fees and other direct expenses relating to the bed reduction, which was offset by a $4,944,942 rent increase.
- Utilization by payor source is anticipated as follows:

	RHCF		Ventilator		ADHCP	
	Current	Year One	Current	Year One	Current	Year One
Medicaid	75.27%	72.0%	86.42%	85.5%	99%	99%
Medicare	16.39%	13.7%	4.51%	6.0%		
Private	3.14%	3.2%	.70%	1.5%		
All Other	5.20%	11.1%	8.37%	7.0%	1%	1%

- Breakeven utilization is projected at 90.3% and 89.6% for the first and third years, respectively.

Capability and Feasibility

Cold Spring Acquisition, LLC will acquire the RHCF operating assets for $8,000,000, funded by $1,600,000 in members' equity plus $6,400,000 loan at the above stated terms. Concurrently, Cold Spring Realty Acquisition, LLC, will purchase the real property for $67,750,000, funded by $13,550,000 in members' equity and a $54,200,000 loan at the above stated terms. There are no project costs associated with this application.

The working capital requirement is estimated as $14,478,604 based on two months of first year expenses. Funding will be as follows: $7,239,302 from the members' equity with the remaining $7,239,302 satisfied through a five-year loan at 6% interest rate. Greystone Funding Corporation has provided a letter of interest. Review of BFA Attachments A and B, proposed members' net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As stated previously, liquid resources may not be available in proportion to the proposed ownership interest in the operating and realty entities. Bent Philipson has provided a statement guaranteeing Avi Philipson's equity contributions in the operating entity. Proposed realty members Bent Philipson (on behalf of Philipson Family Limited Liability Company) and Benjamin Landa have provided affidavits stating they are willing to contribute resources to the operating entity to the extent required, as well as any needed equity to the realty entity disproportionate to their membership interest in RCNR Realty Acquisition, LLC.

The submitted budget projects net income of $1,600,130 and $6,660,694 in the first year and third years, respectively. Revenues are expected to increase in the first year by approximately $8,145,330 concurrent with a 4.7% increase in overall utilization along with maintaining the 2015 reimbursement rates. As previously stated, expenses are projected to decrease by $1,494,748 in Year One. The budget was determined taking into consideration the proposed new owners' experience in operating various RHCF facilities. BFA Attachment D is Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation pro forma balance sheet, which shows the entity will start with $8,839,302 in equity. Equity includes $6,923,180 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. Eliminating goodwill, the total net assets are a positive $1,916,122. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachments E and F are the financial summary and the 2014 certified financial statements for UPR Care Corp. d/b/a Cold Spring Hills Center for Nursing and Rehabilitation, respectively, which indicate the facility has an average negative working capital position, which improved in 2015 to a negative $3,178,348. The facility maintained an average positive equity position of $33,250,595 and generated an average annual operating profit of $1,647,643 for the period shown (2013 through August 31, 2015).

BFA Attachments G, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Current 2015 is showing Operating Net Income.
- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 Operating Net Income.

A financial summary for Highland View Care Center is not included as membership was only recently established.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Cold Spring Acquisition, LLC members' net worth summaries
BFA Attachment B	Cold Spring Realty Acquisition, LLC members' net worth summaries
BFA Attachment C	Proposed Ownership of Real Property
BFA Attachment D	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation pro forma balance sheet
BFA Attachment E	Financial Summary, UPR Care Corp. d/b/a Cold Spring Hills Center for Nursing and Rehabilitation,
BFA Attachment F	2014 Certified Financial Statement for UPR Care Corp. d/b/a Cold Spring Hills Center for Nursing and Rehabilitation
BFA Attachment G	Proposed members' ownership interest and Financial Summaries of Affiliated Nursing Homes
LTC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation as the new operator of Cold Spring Hills Center for Nursing and Rehabilitation, a 606-bed RHCF, Located at 378 Syosset-Woodbury Road, Woodbury and decertify 18 RHCF beds, 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:
142146 E	Cold Spring Acquisition, LLC d/b/a/ Cold Spring Hills Center for Nursing & Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission and programmatic review of plans showing the 18 beds to be decertified and the nursing units to be affected. [LTC]
5. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment, acceptable to the Department. (BFA)
7. Submission of an executed real property loan commitment, acceptable to the Department. (BFA)
8. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
9. Submission of the signed and dated Certificate of Amendment of the Articles of Organization of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]

10. Submission of an executed Operating Agreement of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]
11. Submission of a signed Certificate of Assumed Name of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of UPR Care Corp., acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's Asset Purchase Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 151089-E
Port Chester Operating, LLC d/b/a
Port Chester Nursing & Rehab Centre

Program: **Residential Health Care Facility** ***County:*** **Westchester**
Purpose: **Establishment** ***Acknowledged:*** **March 9, 2015**

Executive Summary

Description

Port Chester Operating, LLC d/b/a Port Chester Nursing & Rehab Centre, a New York limited liability company, requests approval to be established as the new operator of Port Chester Nursing & Rehab Centre, a 160-bed Article 28 residential health care facility (RHCF) located at 1000 High Street, Port Chester (Westchester County), New York. There will be no change in services provided.

On November 25, 2014, RWB Corporation, the current operator of the skilled nursing facility, entered into an Asset Purchase Agreement with Port Chester Operating, LLC for the sale and acquisition of the operating interests of the RHCF, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. Concurrently, PIP Realty, LLC, the current real property owner, entered into a Real Estate Purchase Agreement with Port Chester Realty LLC for the sale and acquisition of the real property interest of the nursing facility. There is a relationship between Port Chester Operating, LLC and Port Chester Realty LLC in that the entities have common members. The applicant will lease the facility from Port Chester Realty LLC.

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

Current Operator RWB Corporation	
Members	%
Wayne Benach	97.45%
Michele Benach	2.55%

Proposed Operator Port Chester Operating, LLC d/b/a Port Chester Nursing & Rehab Centre	
Members	%
Devorah Friedman (Manager)	44.0%
Sharon Einhorn (Manager)	44.0%
Yossie Zucker	2.0%
Steven Sax	2.0%
Akiva Rudner	2.0%
Eli Schwartz	5.0%
Solomon Reichberg	1.0%

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Port Chester Nursing & Rehab Centre's occupancy was 95.1% in 2011, 94.9% in 2012, 97.6% in 2013 and 92.5% in 2014. Current occupancy as of December 9, 2015, is 96.9%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

Port Chester Operating LLC will acquire the RHCF operations for $6,400,000. The acquisition price will be met with $1,280,000 in members' equity and a $5,120,000 loan at 5% interest for a ten-year term and 20-year amortization period. Port Chester Realty LLC will purchase the real property for $16,000,000. The acquisition price will be met with $800,000 in members' equity, a promissory note for $2,400,000 at 8% interest for a four-year term and 15-year amortization period, and a $12,800,000 loan at 5% interest for a ten-year term and 20-year amortization period.

There are no project costs associated with this proposal. The operating budget is as follows:

	Year One
Revenues	$17,842,030
Expenses	$17,624,162
Gain/(Loss)	$217,870

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed loan commitment for the purchase of the operations of the RHCF, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
9. Submission of a signed and dated Restated Articles of Organization of Port Chester Operating LLC, acceptable to the Department. [CSL]
10. Submission of an executed amendment to the Operating Agreement of Port Chester Operating LLC, acceptable to the Department. [CSL]
11. Submission of a signed Certificate of Assumed Name of Port Chester Operating LLC, acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of R.W.B. Corporation, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

Project Description

Port Chester Operating, LLC, doing business as Port Chester Nursing & Rehab Centre, seeks approval to become the established operator of Port Chester Nursing & Rehab Centre, an existing 160-bed Article 28 residential health care facility (RHCF), located at 1000 High Street, Port Chester, 10573 in Westchester County.

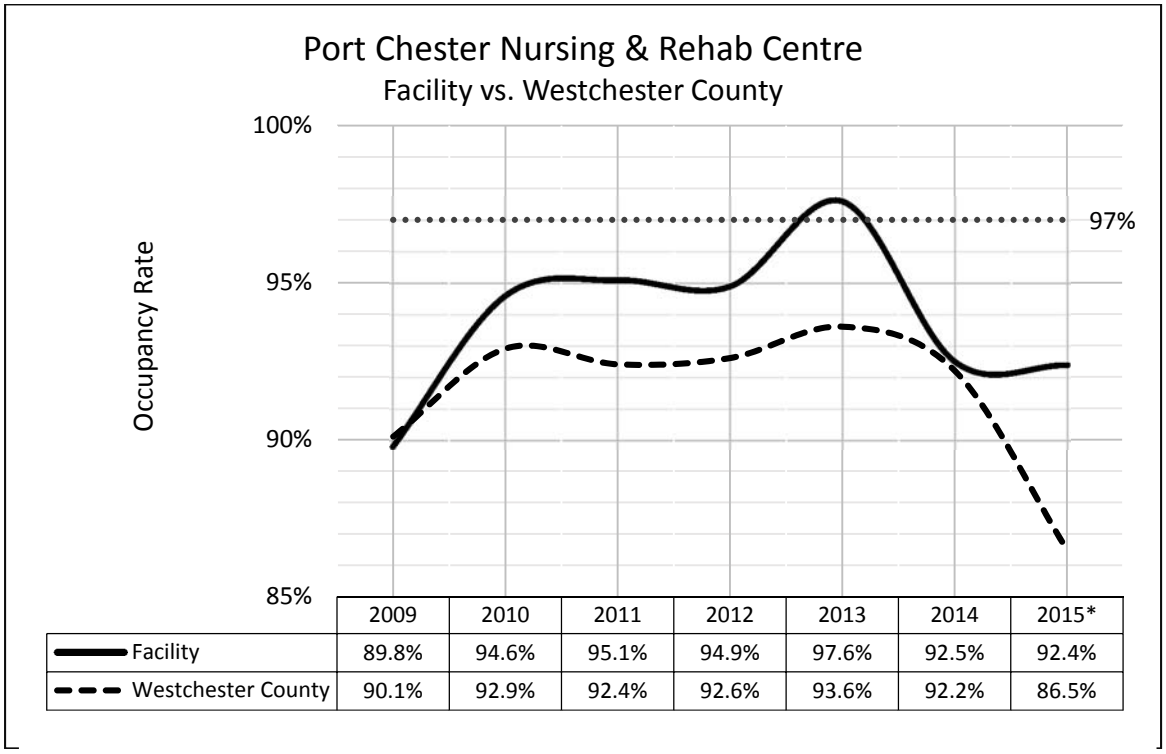
Analysis

There is currently a need for 192 beds in Westchester County as indicated in the following table:

RHCF Need – Westchester County

2016 Projected Need	6,716
Current Beds	6,372
Beds Under Construction	152
Total Resources	6,524
Unmet Need	192

The overall occupancy for Westchester County is 93.6% for 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014	2015*
Facility	89.8%	94.6%	95.1%	94.9%	97.6%	92.5%	92.4%
Westchester County	90.1%	92.9%	92.4%	92.6%	93.6%	92.2%	86.5%

*Facility occupancy is calculated from audited occupancy reports and resident days billed for the 1/1/15 – 12/13/15 period; Westchester County occupancy is calculated from unaudited, facility reported data.

Occupancy at the facility increased since 2009 and reached the Department's planning optimum in 2013. According to the applicant, the facility experienced a decline in occupancy in 2014 - 2015 due to over 25% of the patient population consisting of sub-acute rehab patients and the need to show flexibility to meet the unpredictable needs of that patient population. Current occupancy as of December 9, 2015, is 96.9%. Current CMI is 1.28 for all residents in the facility and 1.24 for the Medicaid-only residents.

There are three RHCFs in Westchester County within a five mile radius of Port Chester. Of these facilities, Port Chester is the primary provider of RHCF services to the Medicaid population as indicated in the following table:

Surrounding Facilities	Distance/Time	2013 Medicaid Admissions
Port Chester	*0.0*	51.2%
The Osborn	2.6 mi/5 mins	0.0%
King Street Home Inc.	2.9 mi/8 mins	0.0%
The New Jewish Home, Sarah Neuman	5.9 mi/9 mins	11.0%

According to the applicant, Port Chester is the only NYS RHCF to which Greenwich Hospital (5 miles/18 minutes away in Connecticut) is able to send their NYS Medicaid patients.

King Street Home Inc., an RHCF located 2.9 miles/8 minutes away from Port Chester, mainly provides services to a sub-acute rehab population and therefore has lower levels of occupancy, with 2015 year to date utilization of 59.0%. Excluding King Street Home, occupancy of RHCFs within a five mile radius of Port Chester is currently 96.2%, as shown in the following table:

Surrounding Facilities	Distance/Time	RHCF Beds	2013	2014	2015	Most Recent	Date
Port Chester	*0.0*	*160*	*97.6%*	*92.5%*	*92.4%*	*96.9%*	*12/9/15*
The Osborn	2.6 mi/5 mins	84	94.9%	92.7%	96.6%	97.6%	12/9/15
The New Jewish Home, Sarah Neuman	5.9 mi/9 mins	300	98.4%	97.7%	97.5%	95.7%	12/16/15
Total		**544**	**97.6%**	**95.4%**	**95.9%**	**96.2%**	

The proposed operators intend to use their past experience to increase and maintain occupancy by:

- Developing partnerships with local hospitals to implement programs to reduce avoidable hospitalizations due to heart disease, diabetes and asthma;
- Meeting with local physicians to identify and address the needs of the community, including orthopedic sub-acute short term rehab; and
- Creating an internal team of Medicare, HMO and Medicaid reimbursement experts that will work with the Montefiore Hudson Valley Collaborative PPS.

Access

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

Port Chester Nursing & Rehab Centre's Medicaid admissions of 43.0% and 51.2% in 2012 and 2013, respectively, exceeded Westchester County's 75% rates of 21.1% and 21.5% in 2012 and 2013, respectively.

Conclusion

Approval of this application will result in maintaining a resource for the Medicaid population in the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Port Chester Nursing & Rehab Centre	Port Chester Nursing & Rehab Centre
Address	1000 High Street Port Chester, NY. 10573	Same
RHCF Capacity	160	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	RWB Corporation	Port Chester Operating LLC Members: *Devorah Friedman 44.0% *Sharon Einhorn 44.0% Eli Schwartz 5.0% Yossie Zucker 2.0% Akiva Rudner 2.0% Steven Sax 2.0% Solomon Reichberg 1.0% *Managing Member

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
Crown Center for Nursing and Rehabilitation	01/2015 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

Individual Background Review

Devorah Friedman holds a New York State speech language pathologist license and is considered to be in good standing. She is currently employed as the owner/operator of Bellhaven Center for Rehabilitation and Nursing. Ms. Friedman discloses the following ownership interests in health facilities:

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present

Cortlandt Healthcare	03/2014 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

Sharon Einhorn discloses no employment history over the last 10 years. Ms. Einhorn discloses the following ownership interests in health facilities:

Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

Eliezer Schwartz is a sales executive at Qualmed Supplies, a janitorial supply company in Linden, New Jersey. Previously he was a sales representative for Superior Laundry, a commercial laundry service located in Brooklyn, New York. Mr. Schwartz discloses the following heatlh facility ownership interest:

Cortlandt Healthcare	03/2014 to present

Yossie Zucker is a New York State certified public accountant with license currently inactive. Mr. Zucker is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker discloses the following ownership interests in health facilities:

Ramapo Manor Center for Rehabilitation and Nursing	07/2012 to present
St. James Rehabilitation and Healthcare Center	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
Crown Center for Nursing and Rehabilitation	01/2015 to present

Akiva Rudner holds a New York State nursing home administrator's license and is considered to be in good standing. He currently serves as Chief Operating Officer at CareRite LLC, a nursing home consulting service. Mr. Rudner discloses the following ownership interests in health facilities:

St. James Rehabilitation & Healthcare Center	08/2012 to present
Crown Center for Nursing and Rehabilitation	01/2015 to present

Steven Sax has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Previously, Mr. Sax was the assistant administrator to the Sans Souci Rehabilitation and Nursing Center in Yonkers, New York. Steven Sax discloses the following ownership interest in health facilities:

St. James Rehabilitation and Healthcare Center	08/2012 to present
Cortlandt Healthcare	03/2014 to present

Solomon Reichberg is the Director of Marketing at Five Star Staffing Services, Inc., a health care staffing company located in Brooklyn, New York. Previously, he was a sales representative at Approved Storage and Waste Hauling, Inc., a medical waste hauler based out of Mount Vernon, New York. Mr. Reichberg discloses no ownership interest in health facilities.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Sans Souci Nursing Home for the period reveals that the facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Dumont Center for Rehabilitation and Nursing Care for the period reveals that the facility was fined $18,000 pursuant to a Stipulation and Order for surveillance findings on April 13, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Resident Rights: Advance Directives, 415.5(g) Qulaity of Life: Social Service, 415.12 Quality of Care: Highest Practical Potential, 415.26 Administration: 490 Administration, and 415.15(a) Admonistration: Medical Director.

- A federal CMP of $45,070 was issued for the Immediate Jeopardy on 4/13/15 and is pending appeal.

A review of operations for Dumont Center for Rehabilitation and Nursing Care for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing, Ramapo Manor Center for Rehabilitation & Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, The Riverside, Cortlandt Healthcare, Crown Center for Nursing and Rehabilitation, and The Phoenix Rehabilitation and Nursing Center reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON application. The terms of the agreement are summarized below:

Date:	November 25, 2014
Seller:	RWB Corporation
Purchaser:	Port Chester Operating LLC
Assets Transferred:	The business and operation of the facility; inventory and supplies; assignable contracts; resident assets and funds held in trust; name “Port Chester Nursing & Rehabilitation”; security deposits and prepayments held by seller; menus, policies and procedures manual and computer software; telephone numbers; financial books and records; resident/patient records; employee and payroll records; goodwill; Medicare and Medicaid provider agreements; licenses and permits held owned; leasehold improvements, furniture, fixtures, equipment, real estate taxes and retroactive rate increases and all other assets relating to the facility, if not excluded.
Excluded Assets:	All cash deposits, cash equivalents, marketable securities and accrued interest and dividends thereon, other than resident prepayments and security deposits; personal items; and accounts receivable relating to services rendered prior to the Closing Date.

Assumed Liabilities:	Employee Benefits, subject to adjustment
Purchase Price:	$6,400,000
Payment of Purchase Price:	$320,000 paid/held in escrow; and $6,080,000 due at closing.

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

Equity (Port Chester Operating, LLC Members)	$1,280,000
Loan (5% interest, 10-year term, 20-year amortization)	$5,120,000
Total	$6,400,000

Hudson Valley Bank has provided a letter of interest at the stated terms.

BFA Attachment A is a summary of the net worth of the applicant members of Port Chester Operating, LLC, which indicates sufficient resources to meet the equity requirement overall. Liquid resources may not be available in proportion to the members' proposed ownership interest. Devorah Friedman and Sharon Einhorn have each provided an affidavit stating that they are willing to contribute resources disproportionate to their membership interest in the operating entity to fund the equity requirement. Affidavits were submitted by all applicant members attesting to fund the balloon payment on the operating loan if acceptable refinancing is not available when the loan becomes due.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no current outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed agreement to acquire the real property. The agreement will become effectuated upon PHHPC approval of this CON application. The terms of the agreement are summarized below:

Date:	November 25, 2014
Seller/Realty:	PIP Realty, LLC
Purchaser Realty:	Port Chester Realty LLC
Realty:	1000 High Street, Port Chester, New York 10573
Purchase Price:	$16,000,000
Payment of Purchase Price:	$800,000 paid/held in escrow; $12,800,000 due at closing; $2,400,000 promissory note delivered and executed at closing.

The purchase price for the RHCF realty is proposed to be satisfied as follows:

Equity (Port Chester Realty LLC Members)	$800,000
Promissory Note (8% interest, 4-year term,15-year amortization)	$2,400,000
Loan (5% interest, 10-year term, 20-year amortization)	$12,800,000
Total	$16,000,000

Hudson Valley Bank has provided a letter of interest for the loan financing at the stated terms. Affidavits were submitted by all proposed realty members attesting to fund the balloon payment on the realty loan if acceptable refinancing is not available when the loan becomes due. Also, affidavits were submitted by proposed realty members Neil Einhorn and Mark Friedman attesting to fund the balloon payment on the promissory note if acceptable refinancing terms are not available when the promissory note becomes due.

Lease Agreement

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

Premises:	160-bed RHCF located at 1000 High Street, Port Chester, New York 10573
Owner/Landlord:	Port Chester Realty LLC
Lessee:	Port Chester Operating LLC
Term:	35 years
Rent:	$1,800,000 per annum ($150,000 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted and affidavit attesting that there is a relationship between the landlord and the operating entity.

Operating Budget

The applicant has submitted the current year (2014) and their operating budget for the first and third years after the change in ownership, in 2016 dollars, summarized as follows:

	Current Year (2014)		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues:						
Commercial	$415.91	$1,036,438	$373.93	$1,820,662	$373.97	$2,151,052
Medicare	$746.51	$4,540,281	$675.02	$5,805,889	$700.04	$7,650,692
Medicaid	$217.64	$9,213,495	$217.69	$8,929,734	$217.69	$8,139,560
Private Pay	$421.31	$1,306,076	$469.08	$1,285,745	$469.07	$1,618,760
Total Revenues		$16,096,290		$17,842,030		$19,560,064
Expenses:						
Operating	$291.89	$15,764,588	$265.49	$15,194,100	$266.38	$15,322,792
Capital	$15.64	$844,443	$42.46	$2,430,062	$41.67	$2,396,853
Total Expenses	$307.53	$16,609,031	$307.95	$17,624,162	$308.04	$17,719,645
Net Income		($512,741)		$217,870		$1,840,419
RHCF Patient Days		54,008		57,231		57,523
Utilization		92.48%		98.00%		98.50%

The projected budget appears reasonable based on the following:

- The current year reflects the facility's actual 2014 RHCF-4 cost report and payor information.
- Revenues reflect current rates of payment by payor. The Medicaid rates are based on the facility's current Medicaid pricing rate. Medicare, Private Pay and Commercial rates are based on the current operator's rates of payment for the respective payors.
- Expense assumptions are based on current operations, with increased capital cost to incorporate the lease payments and debt service on the purchase price.
- The applicant indicated occupancy averaged 96.2%, including reserved beds for hospitalizations, during the month of September 2015, and was at 100% as of September 30, 2015.
- Utilization by payer source for the first year and third year is projected as follows:

	Year One	Year Three
Medicare	15.03%	19.00%
Medicaid	71.67%	65.00%
Private Pay / Other	13.30%	16.00%

- The applicant projects private pay utilization will remain stable.
- Over the course of 2014, commercial utilizations grew from 0.19% to 7.58% of patient days, while Medicaid fee-for-service utilizations dropped from 75.25% to 66.27% of patient days. The applicant expects these trends to continue.
- Growth in Medicare utilization was projected based on historical and ongoing trends.
- Breakeven utilization is projected at 96.80% in year one (56,533 patient days) and 89.23% in the year three (52,112 patient days).

Capability and Feasibility

There are no project costs associated with this application. Port Chester Operating LLC has agreed to acquire the RHCF's operations for $6,400,000. The acquisition price will be met with members' equity of $1,280,000 and a bank loan of $5,120,000 at the above stated terms. Hudson Valley Bank has provided a letter of interest. Port Chester Realty LLC, the applicant's landlord, is purchasing the real property for $16,000,000. The acquisition price will be met with $800,000 in members' equity, $2,400,000 from a promissory note, and a $12,800,000 loan at the above stated terms.

The working capital requirement is estimated at $2,937,360 based on two months of first year expenses. The applicant will provide $1,468,680 in members' equity and will finance the remaining $1,468,680 via a working capital loan at 6% for a three-year term. Hudson Valley Bank has provided a letter of interest. Review of the operating members net worth statements (BFA Attachment A) shows there are sufficient assets overall to meet the equity requirement, but liquid resources may not be available in proportion to the members proposed ownership interest. Yossie Zucker, Devorah Friedman and Steven Sax have provided affidavits stating they will contribute personal resources disproportionate to their ownership interest. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of $2,748,680. Assets include $4,797,489 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, the total members' equity would become a negative $2,048,809.

The submitted budget projects a net profit of $217,870 and $1,840,419 for Years One and Three, respectively. The applicant projects a 2% increase in expenses in the first three years after establishment, but expects a $720,573 reduction in Other Direct Expenses to be achieved by centralizing financial and back-office functions and eliminating various administrative and consulting fees that exist for the current operations. The applicant's first year utilization projections by payor are based on the existing nursing home's January 2014 through November 2014 utilization experience. The budget appears reasonable.

The applicant states that their business model includes flexibility to transition to a Value Based Payment System prior to the end of the three-year transition window. For the current CON project, their revenue assumptions are based on the historical rate data of the facility, as they believe these rates will be held for a period of time going forward. The applicant intends to continue negotiations with the Montefiore Hudson Valley Collaborative (MHVC) and seek Managed Care Organization (MCO) coordination with affiliated parties. As a result of the facility's involvement in the MHVC PPS, the applicant anticipates an expanded relationship with the staff of the other PPS participants and closer monitoring of the residents, implementation of a special needs program with Medicare and active participation with MVHC to achieve DSRIP goals.

Transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, MCOs negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C, financial summary of Port Chester Nursing and Rehab Centre, indicates that the facility has had averaged positive working capital, a positive equity position and generated an operating surplus for 2013-2014 and a year-to-date operating surplus of $157,034 as of September 30, 2015.

BFA Attachment E, Financial Summary of the proposed members' affiliated nursing homes, shows that the facilities have maintained a positive net asset position and had positive income from operations for the periods shown, with the exception of The Grand Pavilion for Rehab & Nursing at Rockville which incurred a slight loss in 2014, shows positive net income for the first nine months of 2015.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Port Chester Operating, LLC Proposed Members
BFA Attachment B	Pro Forma Balance Sheet Port Chester
BFA Attachment C	Financial Summary, RWB Corporation 2012-2014
BFA Attachment D	Ownership interest, proposed members' affiliated Nursing Homes
BFA Attachment E	Financial Summary, proposed members' affiliated Nursing Homes
LTC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 Port Chester Operating, LLC as the new operator of the 160-bed RHCF located at 1000 High Street, Port Chester, 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:
151089 E	Port Chester Operating, LLC d/b/a Port Chester Nursing & Rehab Centre

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for the purchase of the operations of the RHCF, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
9. Submission of a signed and dated Restated Articles of Organization of Port Chester Operating LLC, acceptable to the Department. [CSL]
10. Submission of an executed amendment to the Operating Agreement of Port Chester Operating LLC, acceptable to the Department. [CSL]

11. Submission of a signed Certificate of Assumed Name of Port Chester Operating LLC, acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of R.W.B. Corporation, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 151307-E
Yertle Operations, LLC d/b/a Fishkill Center for Rehabilitation and Nursing

Program: **Residential Health Care Facility** ***County:*** **Dutchess**
Purpose: **Establishment** ***Acknowledged:*** **June 23, 2015**

Executive Summary

Description

Yertle Operations, LLC, a New York limited liability company, requests approval to be established as the new operator of Elant at Fishkill, a 160-bed Article 28 residential health care facility (RHCF) located at 22 Robert R. Kasin Way, Beacon (Dutchess County). A separate entity, 22 Robert Kasin Way Real Estate, LLC, will acquire the real property. Upon approval of this application, the facility will be named Fishkill Center for Rehabilitation and Nursing. There will be no change in services.

On December 1, 2014, Elant at Fishkill, Inc., the current operator, entered into an Asset Purchase Agreement (APA) with Yertle Operations, LLC, whereby Yertle Operations, LLC agreed to purchase the RHCF operations of Elant at Fishkill and Elant at Wappingers Falls upon approval by the Public Health and Health Planning Council (PHHPC). Elant at Wappingers Falls is a 62-bed RHCF located at 37 Mesier Avenue, Wappingers Falls. The APA provides that the purchase price for the assets is $1 plus the assumption of certain liabilities.

Concurrently, Elant at Fishkill, Inc., the real property owner of the two nursing facilities, and 22 Robert Kasin Way Real Estate, LLC entered into a Contract of Sale for the purchase of the real estate associated with the two facilities for $1. Upon PHHPC approval, 22 Robert Kasin Way Real Estate, LLC will lease the Beacon premises to Yertle Operations, LLC for a term of 30 years. There is a relationship between 22 Robert Kasin Way Real Estate, LLC and Yertle Operations, LLC in that the entities have common ownership.

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

Current Operator Elant at Fishkill, Inc.	
Member/Active Parent	%
Elant Inc.	100%

Proposed Operator Yertle Operations, LLC	
Members	%
Richard Platschek (Managing Member)	33.34%
Esther Farkovits	33.33%
Machla Abramczyk	20.00%
Robert Schuck	13.33%

BFA Attachment B presents an Organization Chart of the facility after the requested change.

Concurrently under review are CON 151327 (Elant at Goshen), CON 151321 (Elant at Wappingers Falls) and CON 152005 (Elant at Meadow Hill), in which the same proposed members are seeking approval to purchase three other Elant RHCF operations.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to the certified bed capacity as a result of this project. Elant at Fishkill's occupancy was 96.2% in 2011, 94.6% in 2012, 95.5% in 2013 and 95.1% in 2014. Current occupancy as of December 10, 2015 is 95.0%.

Program Summary

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with a related party entity, Sapphire HC Management Care, LLC. No other administrative services or consulting agreements are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicants. All related health care facilities are in substantial compliance with all rules and regulations. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

There are no project costs associated with this proposal. The purchase price for the assets is $1 and the assumption by Yertle Operations, LLC of certain liabilities from December 1, 2014 to pre-closing, amounting to $4,710,988. The operating budget is as follows:

Revenues	$18,514,529
Expenses	17,631,505
Gain	$883,024

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed assignment and assumption agreement for the operations, acceptable to the Department of Health. [BFA]
4. Submission of an executed assignment and assumption agreement for the realty, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.
    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of a plan, acceptable to the Department, for the disposition of the Long Term Home Health Care Program (LTHHCP) and Foster Family Care Program. The plan must demonstrate that the handling of the programs adheres to statutory requirements and results in a safe and orderly transition of any program participants. [LTC]
9. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
10. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]
11. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]

12. Submission of a copy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
13. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

Project Description

Yertle Operations, LLC seeks approval to become the established operator of Elant at Fishkill, an existing 160-bed Article 28 residential health care facility (RHCF), located at 22 Robert R. Kasin Way, Beacon, 12508, in Dutchess County. Upon approval of this application, Elant at Goshen will be renamed Fishkill Center for Rehabilitation and Nursing.

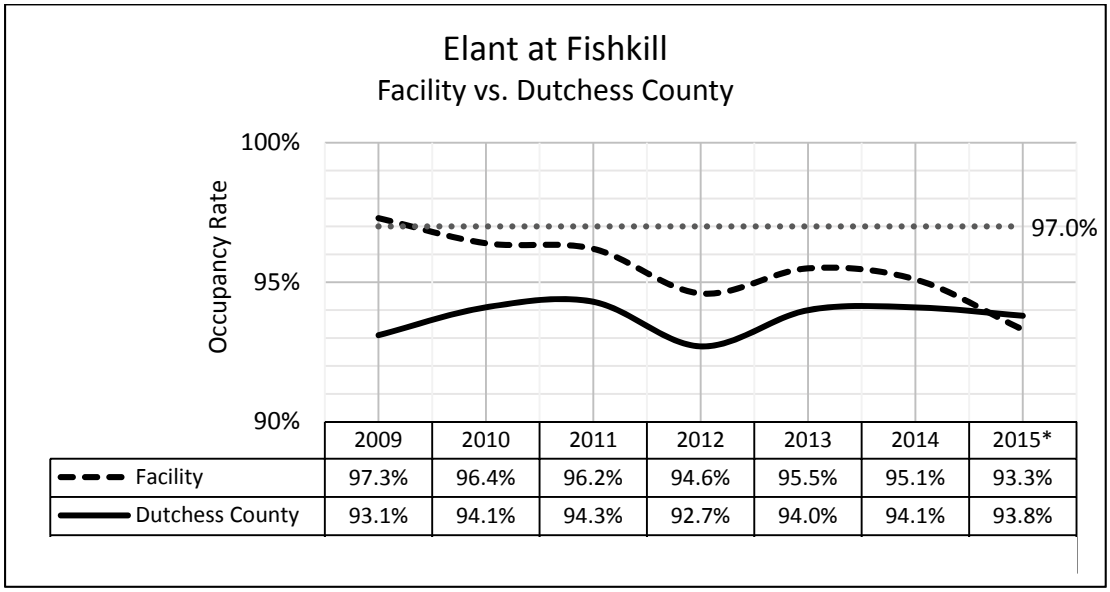
Analysis

There is currently a surplus of 23 beds in Dutchess County as indicated in the following table:

RHCF Need – Dutchess County

2016 Projected Need	1,903
Current Beds	1,926
Beds Under Construction	0
Total Resources	1,926
Unmet Need	-23

The overall occupancy for Dutchess County is 94.0% for 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014	2015*
Facility	97.3%	96.4%	96.2%	94.6%	95.5%	95.1%	93.3%
Dutchess County	93.1%	94.1%	94.3%	92.7%	94.0%	94.1%	93.8%

*unaudited; facility reported data

Current occupancy as of December 10, 2015 is 95.0%. The applicant plans to add programs and services that will allow the facility to serve more medically complex individuals. The programs and services to be implemented target those residents with chronic obstructive pulmonary disease (COPD), vascular insufficiencies, dementia (vascular and behavioral), and psycho-geriatric conditions. The applicant also plans to work closely with local health care providers, hospitals, and the community in an effort to prevent readmissions and discharge patients at an earlier time as well as publicize the new ownership of the facility.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage

of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Elant at Fishkill's Medicaid admissions of 29.6% in 2012 and 29.8% in 2013 exceeded the Dutchess County 75% rates of 18.9% in 2012 and 19.5% in 2013.

Conclusion

Approval of this application will result in maintaining a necessary Medicaid and community resource.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	**Proposed**
Facility Name	Elant at Fishkill, Inc.	Fishkill Center for Rehabilitation and Nursing
Address	22 Robert R. Kasin Way Beacon, NY 12508	Same
RHCF Capacity	160	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Elant at Fishkill, Inc. <u>Active Parent/Co-operator</u> Elant, Inc	Yertle Operations, LLC Richard Platschek* 33.34% Esther Farkovits 33.33% Machla Abramczyk 20.00% Robert Schuck 13.33% *Managing member

Character and Competence - Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	12/2005 to present
Ridge View Manor LLC	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present

Townhouse Extended Care Facility	07/2004 to present
Williamsville Suburban LLC	10/2012 to present
White Plains Center for Nursing	07/2011 to present

Home Care Agencies

Floral Home Care LLC	01/2012 to present

Individual Background Review

Current facility ownership shares are noted in brackets.

Richard (Aryeh) Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC [4.5%]	10/2012 to present
Ridge View Manor LLC [4.5%]	10/2012 to present
Sheridan Manor LLC [4.5%]	10/2012 to present
South Shore Rehabilitation and Nursing Center [5%]	04/2014 to present

Esther Farkovits is currently unemployed and lives out of the country. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Care Center [50%]	04/2011 to present
South Shore Rehabilitation and Nursing Center [45%]	04/2014 to present
Nassau Extended Care Facility [7%]	07/2004 to present
Park Avenue Extended Care Facility [7%]	07/2004 to present
The Citadel Rehab and Nursing Center at Kingsbridge [25%]	11/2015 to present
Throgs Neck Extended Care Facility [7%]	07/2004 to present
Townhouse Extended Care Center [7%]	07/2004 to present
Seagate Rehabilitation and Health Care Center [10%]	12/2014 to present
White Plains Center for Nursing [12%]	07/2011 to present

Machla Abramczyk lists her employment as Floral Home Care, LLC where she has been employed as a Quality Assurance Manager since January 2012. Ms. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC [63%]	01/2002 to present
Floral Home Care LLC [1%]	01/2012 to present

Robert Schuck is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center [25%]	04/2014 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation and Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Health Care Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, Williamsville Suburban LLC, White Plains Center for Nursing, The Citadel Rehab and Nursing Center at Kingsbridge, and Floral Home Care LLC results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined $6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined $2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

Project Review

This application is proposing to establish Yertle Operations, LLC as the new operator of Elant at Fishkill. The facility will be renamed Fishkill Center for Rehabilitation and Nursing as a result of this transaction. Yertle Operations, LLC is comprised of Richard Platschek (33.34%); Esther Farkovits (33.33%); Machla Abramczyk (20.00%); and Robert Schuck (13.33%). Richard Platschek will be the managing member of the facility.

The applicant acknowledges a relationship with the proposed purchaser of the real property, 22 Robert Kasin Way Real Estate, LLC. It should be noted that while one of the members of 22 Robert Kasin Way Real Estate, LLC is CEO of Sentosa Care, LLC, the applicant has asserted that the operating group will not enter into a contractual relationship with Sentosa Care, LLC for the provision of services to the facility.

The applicant has proposed to make no significant changes to staffing levels for RHCF operations and will attempt to retain key positions at the facility such as the Administrator of Record, Director of Nursing, Assistant Director of Nursing, Medical Director, Staff Physician, Nurse Practitioner, and Corporate Director of Rehabilitation. During the initial transition period the ownership group will designate a member to provide specific attention and oversight to the facility to ensure that the level and quality of care is maintained. Elant at Fishkill currently operates a Long Term Home Health Care Program (LTHHCP) and a Foster Family Care Program. These two programs are exclude from the purchase agreement and the staffing pattern proposed in the application reflects that the facility will not be operating the programs. It was not clear from the application what will become of the programs upon closing and a contingency has been added for submission of a plan, acceptable to the Department, for the disposition of the two programs.

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

Conclusion

The character an competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement (APA) for the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	December 1, 2014
Purchaser:	Yertle Operations, LLC
Seller:	Elant at Fishkill, Inc.
Purchased Assets:	All assets used in the operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	$1 and the assumption of all current liabilities of the seller which will be offset by the assumed assets prior to pre-closing, as of September 30, 2015, the current assets are $5,608,451 and liabilities amount to $4,710,988.
Payment of Purchase Price:	Cash at closing for $1.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid overpayment liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed real estate Purchase and Sale Agreement (PSA) related to the purchase of the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below**:**

Date:	December 1, 2014
Seller:	Elant at Fishkill, Inc.
Buyer:	22 Robert Kasiin Way Real Estate, LLC
Purchase Price:	$1 and the refinancing of the bonds payable of $16,524,685 as September 30, 2015.
Property Purchased:	Premises located at 22 Robert R. Kasin Way, Beacon, NY.

Under the APA, the purchaser agreed to assume the liabilities pursuant to section 3.1 and set forth on schedule 3.1. The assumed liabilities between the operation and the realty are indicated on BFA Attachment F. Under the PSA, in relation to the sale of the real property and pursuant to section 2.1, the transaction is conditioned upon the assumption of the assumed liabilities as set forth in the APA, which include the assumption of any mortgages and any other liabilities associate with the PSA transaction.

A loan letter of interest has been submitted by the applicant from Greystone to refinance the mortgage up to $19,000,000 at 5.5% over 30 years. Also, proposed member of the realty, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement summarized as follows:

Service Provider:	Sapphire HC Management Care, LLC
Service Purchaser:	Yertle Operations, LLC
Services Provided:	The billing, collection and management of Accounts Receivable; no less than weekly Medicaid billing; no less than monthly Commercial and Medicare billing; Payroll and Accounts Payable processing; providing data for financial reporting and any internal or external auditing; and cooperation with Federal and State reporting and regulatory requirements.
Exclusions:	The service purchaser will retain control of books and records, day-to-day operations, responsibility for regulatory compliance and the disposition of assets; the service provider will incur no liability on behalf of the facility, will not hire or fire employees and will not enforce policy regarding the operation of the facility.
Term:	One year with unlimited one year renewals, unless notice of termination is provided at least 30 days prior to the end of any renewal term.
Compensation:	$131,400 per year or $2.25 per bed per day ($10,950 per month)

Richard Platschek, one of the members of Yertle Operations, LLC, and his wife Golda Platschek own Sapphire HC Management Care, LLC. The entity will provide the above noted accounting services. Facility staff will perform all other administrative services. Sapphire HC Management Care, LLC will also provide accounting services to the other RHCFs being concurrently reviewed under CON 151327 (Elant at Goshen), CON 151321 (Elant at Wappingers Falls) and CON 152005 (Elant at Meadow Hill).

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 160-bed RHCF located at 22 Robert Kasin Way, Beacon, New York 12508
Landlord:	22 Robert Kasin Way Real Estate, LLC
Tenant:	Yertle Operations, LLC
Terms:	30 years commencing on execution of the lease with a 10-year option to renew.
Rental:	$2,177,795 annual base rent with a 3% increase each year thereafter.
Provisions:	Tenant responsible for real estate taxes, general liability insurance, utilities & maintenance.

The long-term liability as of September 30, 2015 is $16,524,685 and represents tax-exempt bonds which cannot be assumed by a proprietary entity. Therefore, they will be paid off and financed through the realty entity. Proposed member of the realty, Benjamin Landa , has submitted an affidavit attesting to his willingness to contribute personal resources disproportionate to his ownership interest. The amortized bonds are factored into the lease payments.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Operating Budget

The applicant has provided an operating budget for the RHCF operation, in 2016 dollars, for the first and third years subsequent to the change of ownership. The budget is summarized below:

	Per Diem	Current Year (2014)	Per Diem	Year One	Per Diem	Year Three
Revenues:						
Medicaid	$207.27	$7,858,148	$205.47	$7,782,160	$199.26	$7,546,892
Medicare	$487.51	5,618,015	$647.51	7,522,788	$647.12	7,593,308
Commercial	$639.63	765,200	$499.94	865,403	$499.94	865,403
Private Pay	$580.18	2,870,279	$457.67	2,344,178	$486.95	2,494,179
Total Revenues		$17,111,442		$18,514,529		$18,499,782

Expenses:						
Operating	$282.86	$15,721,647	$273.30	$15,398,872	$271.28	$15,316,985
Capital	30.66	1,704,302	39.62	2,232,633	39.57	2,234,290
Total Expenses	$313.52	$17,425,949	$312.92	$17,631,505	$310.85	$17,551,275
Net Income		($314,507)		$883,024		$948,507
Total Patient Days		55,581		56,345		56,462

The following is noted with respect to the submitted budget:

- The budget represents only the RHCF operations, as the LTHHCP and Adult Foster Care Program are not part of this application.
- For budget Years One and Three, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate.
- All Current Year rates, including Medicare, reflect the actual rates identified in the facility's 2014 Cost Report. The Year One and Year Three Medicare rates represent the actual Medicare rate experienced by the facility during 2015, held constant. The Commercial and Private Pay rates in Years One and Three represent an overall average of the actual rates experienced by the facility in 2015 from these payer sources. Commercial and Private pay rates typically range from $350 to $750 per diem. The applicant is using an average of these rates in the interest of producing a conservative and financially realistic forecast for Year One and Year Three.
- Overall utilization is 96.5% and 96.7% for year one and Year Three, respectively, while utilization by payor source is as follows:

	Year One	Year Three
Medicaid	67.2%	67.0%
Medicare	20.6%	20.8%
Private/Other	12.2%	12.2%

- Breakeven utilization is 91.88% and 91.72% for the first and third years, respectively.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the assets is $1 and the assumption by Yertle Operations, LLC of certain liabilities from December 1, 2014 to pre-closing amounting to $4,710,988.

The working capital requirement of $2,938,584, based on two months of first year expenses, will be satisfied from existing facility funds and proposed members' equity. Cash plus accounts receivables of $4,235,773, minus accounts payable and accrued expenses of $2,194,652 as of September 30, 2015, is $2,041,121 with the remaining $897,463 from proposed members' equity. Proposed member Machla Abramczyk has submitted an affidavit attesting to her willingness to contribute personal resources disproportionate to her ownership interest. BFA Attachment A, net worth of the proposed members of Yertle Operations, LLC, and BFA Attachment D, financial summary of Elant at Fishkill, reveal sufficient resources exist for stated levels of equity. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of $897,463. It is noted that assets include $309,401 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. With goodwill eliminated, the members' equity is $588,062.

The submitted budget indicates that net income of $883,024 and $948,507 will be generated for the first year and third years, respectively. BFA Attachment G is the budget sensitivity analysis based on current utilization of the facility as of September 30, 2015, which shows the budgeted revenues would increase by $261,151 resulting in a net profit in year one of $1,144,175. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three

years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, financial summary of Elant at Fishkill, indicates that the facility maintained positive working capital, positive equity position and generated an average annual net loss of $352,716 for the 2013-2014 period shown, and a net operating loss of $139,732 as of September 30, 2015. The operating loss is due to the write-off of accounts receivable, increasing the facility's bad debt expenses for those periods. Management has made an effort since 2014 to correct their admission practices by obtaining secondary insurance coverage on long-term residents, thus decreasing the bad debt expense.

BFA Attachments E, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Current 2015 is showing Operating Net Income.
- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- Williamsville Suburban, Ridgeview Manor and Sheridan Manor all show Operating Net Losses for certain years due to servicing of a high debt level. The facilities are in the process of being sold. Ridgeview Manor and Sheridan Manor have been approved through PHHPC and should be finalized shortly with the bankruptcy attorney. Williamsville Suburban is currently under review. The debt will be satisfied upon transfer of ownership.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 Operating Net Income.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Yertle Operations, LLC, Proposed Members Net Worth
BFA Attachment B	Net Worth Statement for Benjamin Landa
BFA Attachment C	Organizational Chart
BFA Attachment D	Financial Summary, Elant at Fishkill, Inc.
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Pro Forma Balance Sheet
BFA Attachment G	Budget Sensitivity Analysis
LTC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 Yertle Operations, LLC as the new operator of Elant at Fishkill, a 160-bed facility located at 22 Robert R. Kasin Way, Beacon, upon approval, the RHCF will be named Fishkill Center for Rehabilitation and Nursing 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:
151307 E	Yertle Operations, LLC d/b/a Fishkill Center for Rehabilitation and Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed assignment and assumption agreement for the operations, acceptable to the Department of Health. [BFA]
4. Submission of an executed assignment and assumption agreement for the realty, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of a plan, acceptable to the Department, for the disposition of the Long Term Home Health Care Program (LTHHCP) and Foster Family Care Program. The plan must demonstrate that the handling of the programs adheres to statutory requirements and results in a safe and orderly transition of any program participants. [LTC]

9. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
10. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]
11. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
12. Submission of a copy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
13. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 151321-E
Sapphire Nursing at Wappingers, LLC

Program: **Residential Health Care Facility** ***County:*** **Dutchess**
Purpose: **Establishment** ***Acknowledged:*** **June 29, 2015**

Executive Summary

Description

Sapphire Nursing at Wappingers, LLC (previously known as Dutchess Center for Rehabilitation and Nursing, LLC), a New York limited liability company, requests approval to be established as the new operator of Elant at Wappingers Falls, a 62-bed Article 28 residential health care facility (RHCF) located at 37 Mesier Avenue, Wappingers Falls (Dutchess County). A separate entity, 37 Mesier Avenue Real Estate, LLC, will acquire the real property. There will be no change in services.

On December 1, 2014, Elant at Fishkill, Inc., the current operator of Elant at Wappingers Falls, entered into an Asset Purchase Agreement (APA) with Yertle Operations, LLC, whereby Yertle Operations, LLC agreed to purchase the operations of Elant at Fishkill and Elant at Wappingers Falls upon approval by the Public Health and Health Planning Council (PHHPC). Elant at Fishkill is a160-bed Article 28 RHCF located at 22 Robert R. Kasin Way, Beacon (Dutchess County), New York. The APA provides that the purchase price for the assets is one dollar ($1) plus the assumption of certain liabilities by Yertle Operations, LLC. Yertle Operations, LLC and the applicant will enter into an Assignment and Assumption Agreement whereby Yertle Operations, LLC will assign its rights and obligations relating to the Wappingers Falls facility to the applicant.

Concurrently, Elant at Fishkill, Inc., the real property owner of the two nursing facilities, and 22 Robert Kasin Way Real Estate, LLC entered into a Contract of Sale for the purchase of the real estate associated with the two facilities for $1. Upon PHHPC approval, 22 Robert Kasin Way Real Estate, LLC will enter into an Assignment and Assumption Agreement with 37 Mesier Avenue Real Estate, LLC, whereby 22 Robert Kasin Way Real Estate, LLC will assign its rights and obligations relating to the Wappingers Falls facility to 37 Mesier Avenue Real Estate, LLC. Upon PHHPC approval, 37 Mesier Avenue Real Estate, LLC will lease the premises to the applicant for a term of 30 years. There is a relationship between 37 Mesier Avenue Real Estate, LLC and Sapphire Nursing at Wappingers, LLC in that the entities have common ownership.

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

Current Operator	
Elant at Fishkill, Inc.	
d/b/a Elant at Wappingers Falls	
Member/Active Parent	
Elant, Inc.	100%

Proposed Operator	
Sapphire Nursing at Wappingers, LLC	
Members	
Richard Platschek (Manager)	33.34%
Esther Farkovits	33.33%
Machla Abramczyk	20.00%
Robert Schuck	13.33%

BFA Attachment C presents an Organization Chart of the facility and the real property ownership after the requested change.

Concurrently under review are CON 151327 (Elant at Goshen), CON 151307 (Elant at Fishkill) and CON 152005 (Elant at Meadow Hill), in which the same proposed members are seeking approval to purchase three other Elant RHCF operations.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to the certified bed capacity as a result of this project. Elant at Wappingers Falls' occupancy was 92.7% in 2011, 91.2% in 2012, and 93.1% in 2013. Current occupancy, as of December 23, 2015 is 91.9%, with 5 vacant beds.

Program Summary

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with a related party entity, Sapphire HC Management Care, LLC. No other administrative services or consulting agreements are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicants. All related health care facilities are in substantial compliance with all rules and regulations. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

There are no project costs associated with this proposal. The purchase price for the assets is $1 plus the assumption by Yertle Operations, LLC of certain liabilities from December 1, 2014 to pre-closing, amounting to $754,047. The operating budget is as follows:

Revenues	$6,281,766
Expenses	6,271,009
Net Income	$ 10,757

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed assignment and assumption agreement for the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed assignment and assumption agreement for the realty, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
   d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   e. Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]
10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
11. Submission of a photocopy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
12. Submission of a photocopy of the Assignment and Assumption Agreement Yertle Operations to Applicant signed by all of the parties thereto (See Schedule 3A, General Instructions). [CSL]

13. Submission of a photocopy of the Assignment and Assumption Agreement 22 Robert Kasin Way Real Estate, LLC to 37 Mesier Avenue Real Estate, LLC signed by all of the parties thereto (See Schedule 3A, General Instructions). [CSL]
14. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

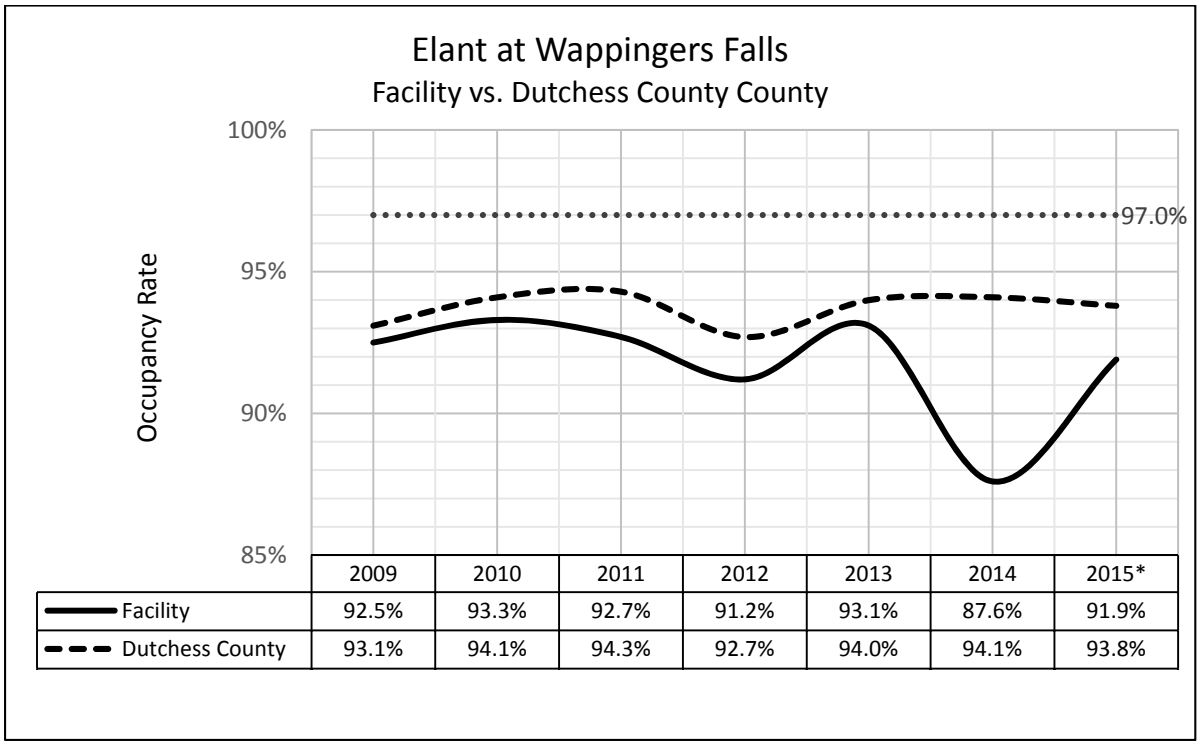
Analysis

There is currently a surplus of 23 beds in Dutchess County as indicated in the following table:

RHCF Need – Dutchess County

2016 Projected Need	1,903
Current Beds	1,926
Beds Under Construction	0
Total Resources	1,926
Unmet Need	-23

The overall occupancy for Dutchess County is 94.0% for 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014	2015*
Facility	92.5%	93.3%	92.7%	91.2%	93.1%	87.6%	91.9%
Dutchess County	93.1%	94.1%	94.3%	92.7%	94.0%	94.1%	93.8%

*unaudited; facility reported data

Elant at Wappingers Falls' occupancy was 92.7% in 2011, 91.2% in 2012, 93.1% in 2013 and 87.6% in 2014. The decline in occupancy between 2013 and 2014 is attributed to room renovations which required one or more resident rooms to be closed for a period of time.

According to the applicant, the existing facility is in need of interior renovation and reconfiguration which will be addressed upon approval of this application. The applicant also plans to add programs and services which would allow the facility to serve more medically complex individuals with chronic obstructive pulmonary disease (COPD), vascular insufficiencies, dementia, and psycho-geriatric conditions. It is anticipated that implementation of these programs and services, along with the renovations to the facility, will increase occupancy to 96.8% in the first year and 97.5% by the third year.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an

average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Elant at Wappingers Falls' Medicaid admissions of 53.7% in 2012 and 46.6% in 2013 exceeded the Dutchess County 75% rates of 18.9% in 2012 and 19.5% in 2013.

Conclusion

Approval of this application will result in maintaining a necessary resource for the Medicaid population.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Elant at Wappingers Falls	Sapphire Nursing at Wappingers
Address	37 Mesier Avenue Wappingers Falls, New York 12590	Same
RHCF Capacity	62	Same
ADHC Program Capacity	None	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Elant at Fishkill, Inc <u>Active Parent/Co-operator:</u> Elant, Inc	Sapphire Nursing at Wappingers, LLC Richard Platschek* 33.34% Esther Farkovits 33.33% Machla Abramczyk 20.00% Robert Schuck 13.33% *Managing Member

Character and Competence - Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	12/2005 to present
Ridge View Manor LLC	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Facility	07/2004 to present

Williamsville Suburban LLC	10/2012 to present
White Plains Center for Nursing	07/2011 to present

Home Care Agencies

Floral Home Care LLC	01/2012 to present

Individual Background Review

Current ownership shares are noted in brackets.

Richard (Aryeh) Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC [4.5%]	10/2012 to present
Ridge View Manor LLC [4.5%]	10/2012 to present
Sheridan Manor LLC [4.5%]	10/2012 to present
South Shore Rehabilitation and Nursing Center [5%]	04/2014 to present

Esther Farkovits is currently unemployed and lives out of the country. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Care Center [50%]	04/2011 to present
South Shore Rehabilitation and Nursing Center [45%]	04/2014 to present
Nassau Extended Care Facility [7%]	07/2004 to present
Park Avenue Extended Care Facility [7%]	07/2004 to present
The Citadel Rehab and Nursing Center at Kingsbridge [25%]	11/2015 to present
Throgs Neck Extended Care Facility [7%]	07/2004 to present
Townhouse Extended Care Center [7%]	07/2004 to present
Seagate Rehabilitation and Health Care Center [10%]	12/2014 to present
White Plains Center for Nursing [12%]	07/2011 to present

Machla Abramczyk lists her employment as Floral Home Care, LLC where she has been employed as a Quality Assurance Manager since January 2012. Ms. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC [63%]	01/2002 to present
Floral Home Care LLC [1%]	01/2012 to present

Robert Schuck is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center [25%]	04/2014 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation and Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Health Care Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, Williamsville Suburban LLC, White Plains Center for Nursing, The Citadel Rehab and Nursing Center at Kingsbridge, and Floral Home Care, LLC results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined $6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR

415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.

- The facility was fined $2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

Project Review

This application is proposing to establish Sapphire Nursing at Wappingers, LLC (originally named Dutchess Center for Rehabilitation and Nursing, LLC) as the new operator of Elant at Wappingers Falls. Sapphire Nursing at Wappingers, LLC is comprised of Richard Platschek (33.34%); Esther Farkovits (33.33%); Machla Abramczyk (20.00%); and Robert Schuck (13.33%). Richard Platschek will be the managing member of the facility. The current operator, Elant at Fishkill, entered into an asset purchse agreement with Yertle Operations, LLC. Yertle Operations, LLC will enter into an Assignment and Assumption Agreement whereby Yertle Operations, LLC will assign its rights and obligations relating to Elant at Wappingers Falls to the applicant. It should be noted that Yertle Operations, LLC and Sapphire Nursing at Wappingers, LLC have identical membership.

The applicant acknowledges a relationship with the proposed purchaser of the real property 22 Robert Kasin Way Real Estate, LLC. It should be noted that while one of the members of 22 Robert Kasin Way Real Estate, LLC is CEO of Sentosa Care, LLC, the applicant has asserted that the operating group will not enter into a contractual relationship with Sentosa Care, LLC for the provision of services to the facility.

The applicant has proposed to make no significant changes to staffing levels for RHCF operations and will attempt to retain key positions at the facility such as the Administrator of Record, Director of Nursing, Assistant Director of Nursing, Medical Director, Staff Physician, Nurse Practitioner, and Corporate Director of Rehabilitation. During the initial transition period the ownership group will designate a member to provide specific attention and oversight to the facility to ensure that the level and quality of care is maintained.

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

Conclusion

The character an competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed Asset Purchase Agreement for the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	December 1, 2014
Seller:	Elant At Fishkill, Inc.
Purchaser:	Yertle Operations, LLC
Acquired Assets:	All rights, title to and interest in all of the assets used in operation of the facility. All assets including furniture, fixtures equipment; vehicles; art works; computer hardware; machinery; tools; supplies and inventory; prepaid expenses; all intellectual property; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	All contracts other than assumed contracts, all nontransferable licenses, tax returns and records; all assets or seller's interest in the following entities: Glen Arden, Inc., Lifestyles Concepts, LLC, Elant Choice, Inc., Fishkill Foster Families, Fishkill Long Term Home Healthcare, Elant Foundation, Goshen Long Term Home Healthcare Program.
Assumption of Liabilities:	All liabilities of the seller incurred or arising and unpaid during pre-closing period.
Excluded Liabilities:	All non-assumable liabilities, All accounting and legal fees and all other costs and expenses incurred by seller in connection with the negotiation and execution of this contract, any liabilities arising from the ownership or use of the excluded assets, liability of seller that is not an assumed liability, all taxes prior to closing date, any liability of seller in excess of 500,000 in connections with any base year rate audit or any MDS audit, any liabilities of the seller not known at closing date.
Purchase Price:	$1 and the assumption of certain liabilities associated with RHCF, which will be offset by the assumed assets prior to pre-closing. As of September 30, 2015, the current assets are 1,856,713 and liabilities are $754,047.
Payment of Purchase Price:	Cash at Closing

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no current outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed real estate Purchase and Sale Agreement (PSA) related to the purchase of the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	December 1, 2014
Seller:	Elant at Fishkill, Inc.
Buyer:	22 Robert Kasin Way Real Estate, LLC
Purchase Price:	$1 and the refinancing of the bonds payable of $1,859,495 as of September 30, 2015.
Assets Purchased:	Premises located at 37 Mesier Avenue, Wappingers Falls, NY (Dutchess Co. Tax Id# 135601-6158-18-359123-0000).

Under the APA, the purchaser agreed to assume the liabilities pursuant to section 3.1 and set forth on schedule 3.1. The assumed liabilities between the operation and the realty are indicated on BFA Attachment F. Under the PSA, in relation to the sale of the real property and pursuant to section 2.1, the transaction is conditioned upon the assumption of the assumed liabilities as set forth in the APA, which include the assumption of any mortgages and any other liabilities associate with the PSA transaction.

A loan letter of interest has been submitted by the applicant from Greystone to refinance the mortgage up to $2,500,000 at 5.5% over 30 years. Also, proposed member of the realty, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

Assignment and Assumption Agreements

The applicant submitted draft Assignment and Assumption Agreements for the operations and realty related to the Wappingers Falls facility, as summarized below:

Operations

Assignor:	Yertle Operations, LLC
Assignee:	Dutchess Center for Rehabilitation and Nursing, LLC (now known as Sapphire Nursing at Wappingers, LLC per NYS Department of State filing 6/16/15)
Rights Assigned:	All rights assigned under the Asset Purchase Agreement for the Wappingers Falls facility.

Yertle Operations, LLC will enter into an Assignment and Assumption Agreement whereby Yertle Operations, LLC will assign its rights and obligations relating to the Wappingers Falls facility to the applicant.

Realty

Assignor:	22 Robert Kasin Way Real Estate, LLC
Assignee:	37 Mesier Ave Real Estate, LLC
Rights Assigned:	All rights assigned under the Contract of Sale for the Wappingers Falls property.

22 Robert Kasin Way Real Estate, LLC, the Fishkill realty entity, will purchase both the Fishkill and Wappinger properties, and will assign the Wappinger property to 37 Mesier Avenue Real Estate, LLC, the Wappinger realty entity.

Lease Agreement

Facility occupancy is subject to a draft Lease Agreement, the terms of which are summarized below:

Premises:	A 62-bed RHCF located at 37 Mesier Avenue, Wappingers Falls, NY 12590
Landlord:	37 Mesier Avenue Real Estate, LLC
Tenant:	Dutchess Center for Rehabilitation and Nursing, LLC
Terms:	30 years commencing on execution of the lease with a 10-year option to renew
Rental:	$131,525 annual base rent ($10,960.42/month) with a 3% increase per year thereafter.
Provisions:	Tenant is responsible for taxes, utilities, maintenance, insurance, alterations

The long-term liability is $1,859,495 as of September 30, 2015, and represents tax-exempt bonds which cannot be assumed by a proprietary entity. Therefore, they will be paid off and financed through the realty entity. Proposed member of the realty, Benjamin Landa, has submitted an affidavit attesting to his willingness to contribute personal resources disproportionate to his ownership interest. The amortized bonds are factored into the lease payments.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Administrative Service Agreement

The applicant has provided a draft agreement for administrative services, which is summarized below:

Service Provider:	Sapphire HC Management Care, LLC
Service Purchaser:	Sapphire Nursing at Wappingers, LLC
Services Provided:	The billing, collection and management of Accounts Receivable; no less than weekly Medicaid billing; no less than monthly Commercial and Medicare billing; Payroll and Accounts Payable processing; providing data for financial reporting and any internal or external auditing; and cooperation with Federal and State reporting and regulatory requirements.
Exclusions:	The service purchaser will retain control of books and records, day-to-day operations, responsibility for regulatory compliance and the disposition of assets; the service provider will incur no liability on behalf of the facility, will not hire or fire employees and will not enforce policy regarding the operation of the facility.
Term:	One year with unlimited one year renewals, unless notice of termination is provided at least 30 days prior to the end of any renewal term.
Compensation:	$50,918 per year or $2.25 per bed per day ($4,326 per month)

Richard Platschek, one of the members of Yertle Operations, LLC, and his wife Golda Platschek own Sapphire HC Management Care, LLC. The entity will provide the above noted accounting services. Facility staff will perform all other administrative services. Sapphire HC Management Care, LLC will also provided accounting services to the other RHCFs being concurrently reviewed under CON 151327 (Elant at Goshen), CON 151307 (Elant at Fishkill) and CON 152005 (Elant at Meadow Hill).

Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first and third years subsequent to the change of ownership. The budget is summarized below:

	Per Diem	Current Year (2014)	Per Diem	Year One	Per Diem	Year Three
Revenue						
Medicaid FFS	$207.50	$3,111,018	$207.85	$3,364,294	$215.98	$3,492,419
Medicare FFS	$613.15	$1,843,745	$633.67	$2,121,528	$662.37	$2,283,836
Commercial FFS	$434.74	$289,100	$473.50	$332,400	$468.99	$339,081
Private Pay	$566.12	$651,601	$336.65	$563,544	$333.26	$574,871
All Other		$27,990		($100,000)		($75,000)
Total Revenues		$5,923,454		$6,281,766		$6,615,207
Expenses						
Operating	$316.44	$6,270,658	$280.10	$6,137,082	$280.27	$6,184,398
Capital	$13.59	$269,365	$6.11	$133,927	$6.07	$133,975
Total Expenses	$330.04	$6,540,023	$289.55	$6,271,009	$289.55	$6,318,373
Net Income		($616,569)		$10,757		$296,834
Patient Days		19,816		21,910		22,066

The following is noted with respect to the submitted budget:

- The current year reflects the current operator's 2014 RHCF-4 cost report information.
- For budget Years One and Three, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate.
- The Current Year Medicare rate is the actual daily rate experienced by the facility during 2014 and the forecasted Year One Medicare rates represent the actual Medicare rates experienced by the facility during 2015.
- The Current Year commercial and private pay rates represent the average actual rates experienced by the facility for these payors during 2015. The Private Pay per diem rate is expected to be lower than the current year rate due to expected bad debt write-offs.

- Expenses will be reduced in Year One due to salary and benefit reductions related to reduced managerial staff. The reductions are held constant for Year Three. An increase in rent expense will be offset by an interest expense reduction.
- The current occupancy rate was 86.3% as of October 25, 2015, while utilization for 2014 was 88%. The decline is attributed to renovations that required one or more rooms to be closed for a period. The applicant expects to increase occupancy by upgrading and reconfiguring the physical plant and by adding programs and services to serve more medically complex individuals. The applicant also plans to work closely with local health care and social providers in an effort to publicize the new ownership of the facility. By implementing these programs and services, along with the renovations to the facility, it is anticipated that occupancy will increase to 97% by Year One.
- Utilization by payor for the first and third years after the change in ownership is summarized below:

	Current Year	Year One	Year Three
Medicaid-FFS	75.66%	73.87%	73.28%
Medicare-FFS	15.17%	15.28%	15.63%
Commercial-MC	3.36%	3.20%	3.28%
Private Pay	5.81%	7.64%	7.81%
Total	100.00%	100.00%	100.00%

- Breakeven utilization is projected at 96.6% for the first year.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the assets is $1 and the assumption by Sapphire Nursing at Wappingers, LLC of certain liabilities from December 1,2014 to pre-closing, amounting to $754,047.

The working capital requirement of $1,045,168, based on two months of the first year's expenses plus current account payables and accrued expenses of $762,966, will be met from $1,209,296 in assumed account receivables, $184,594 in assumed cash along with $414,244 in members' equity. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Machla Abramczyk has provided an affidavit stating that she will contribute personal resources disproportionate to her membership interest. BFA Attachment A, proposed members' net worth, and BFA Attachment D, financial summary of Elant at Wappingers, reveal sufficient resources exist for stated levels of equity. BFA Attachment F is the Pro Forma Balance Sheet for the first day of operation, which shows the operation will start off with the members' equity of $414,244.

The submitted budget indicates a net income of $10,757 and $296,834 during the first and third years, respectively. BFA Attachment G presents the budget sensitivity analysis based on current utilization as of October 30, 2015, which shows that budgeted revenues would increase by $3,048, resulting in a net profit in Year One of $13,805. Projected utilization by payor conforms to historical experience. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period. BFA Attachment D is the financial summary of Elant at Wappingers Falls. As shown, the facility has maintained negative working capital, negative equity position and generated an average annual operating loss of $394,908 for the period and a net operating income of $64,286 as of September 30, 2015. The applicant indicated the reason for the negative performance was due to a large amount of accounts receivable written off during this period. The management has implemented revised admission policy since 2013 to correct their admission practices by obtaining secondary insurance coverage on long-term residents to reduce uncollectible accounts.

BFA Attachments E, financial summary of the proposed members' affiliated RHCFs, shows the facilities have maintained positive net assets position, positive working capital position and positive income from operations for the periods shown with the exception of the following;

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Currently, the facilities are generating operating income in 2015.
- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- Williamsville Suburban, Ridgeview Manor and Sheridan Manor all show negative net assets position, negative working capital position and negative income from operation for the year 2013 and 2014 due to servicing of a high debt level. The facilities are in the process of being sold. Ridgeview Manor and Sheridan Manor have been approved through PHHPC and should be finalized shortly with the bankruptcy attorney. Williamsville Suburban is currently under review. The debt will be satisfied upon transfer of ownership.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 operating net income.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Proposed Members' Net Worth Summary
BFA Attachment B	Net Worth Statement for Benjamin Landa
BFA Attachment C	Organizational Chart and Pre and Post Ownership of Realty
BFA Attachment D	Financial Summary of Elant at Wappingers Falls & 2014 Certified Financial of Elant at Fishkill, Inc.
BFA Attachment E	Affiliated Residential Health Care Facilities and their Financial Summary
BFA Attachment F	Pro Forma Balance Sheet
BFA Attachment G	Budget Sensitivity Analysis
LTC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 Sapphire Nursing at Wappingers, LLC as the new operator of Elant at Wappingers Falls, an existing 62-bed RHCF located at 37 Mesier Avenue, Wappinger Falls, 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:
151321 E	Sapphire Nursing at Wappingers, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed assignment and assumption agreement for the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed assignment and assumption agreement for the realty, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
   d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   e. Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]

10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
11. Submission of a photocopy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
12. Submission of a photocopy of the Assignment and Assumption Agreement Yertle Operations to Applicant signed by all of the parties thereto (See Schedule 3A, General Instructions). [CSL]
13. Submission of a photocopy of the Assignment and Assumption Agreement 22 Robert Kasin Way Real Estate, LLC to 37 Mesier Avenue Real Estate, LLC signed by all of the parties thereto (See Schedule 3A, General Instructions). [CSL]
14. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 151327-E
Goshen Operations, LLC d/b/a
Sapphire Nursing and Rehab at Goshen

Program: **Residental Health Care Facility** ***County:*** **Orange**
Purpose: **Establishment** ***Acknowledged:*** **July 1, 2015**

Executive Summary

Description

Goshen Operations, LLC d/b/a Sapphire Nursing and Rehab at Goshen, a New York limited liability company, requests approval to be established as the new operator of Elant at Goshen, Inc., a 120-bed Article 28 residential health care facility (RHCF) located at 46 Harriman Drive, Goshen (Orange County). The acquisition request includes the 40-slot adult day health care program (ADHCP) the RHCF operates at same location. A separate realty entity, 46 Harriman Drive Real Estate, LLC, will acquire the real property. There will be no change in services.

On December 1, 2014, Elant at Goshen, Inc., the current operator of the RHCF, entered into an Asset Purchase Agreement with Goshen Operations, LLC for the sale and acquisition of the RHCF operating interests for $4,690,000 plus the assumption of certain liabilities, to be effectuated upon approval by the Public Health and Health Planning Council (PHHPC). Concurrently, Elant at Goshen, Inc., the current real property owner, entered into a Contract of Sale with 46 Harriman Drive Real Estate, LLC for the sale and acquisition of the real property for $1. Upon PHHPC approval, 46 Harriman Drive Real Estate, LLC will lease the facility to the new operator for 30 years. There is a relationship between 46 Harriman Drive Real Estate, LLC (landlord) and Goshen Operations, LLC (operator) in that the entities have common members.

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

Current Operator Elant at Goshen, Inc.	
Member/Active Parent	%
Elant, Inc.	100%

Proposed Operator Goshen Operations, LLC	
Members	%
Richard Platschek (Manager)	33.34%
Esther Farkovits	33.33%
Machla Abramczyk	20.00%
Robert Schuck	13.33%

BFA Attachment C present an Organization Chart of the facility after the requested change.

Concurrently under review are CON 151307 (Elant at Fishkill), CON 151321 (Elant at Wappingers Falls) and CON 152005 (Elant at Meadow Hill), in which the same proposed members are seeking approval to purchase three other Elant RHCF operations.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds as a result of this project, however the new operator will rename the facility upon approval of this application. Elant at Goshen's occupancy was 95.4% in 2011, 95.7% in 2012, 95.8% in 2013 and 96.0% in 2014.

Program Summary

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with a related party entity, Sapphire HC Management Care, LLC. No other administrative services or consulting agreements are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicants. All related health care facilities are in substantial compliance with all rules and regulations. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

There are no project costs associated with this proposal. The purchase price for the RHCF operations is $4,690,000 plus the assumption by Goshen Operations, LLC of certain liabilities from December 1, 2014 to pre-closing, estimated at $5,370,105 as of September 30, 2015. The acquisition price will be met with $469,000 in members' equity and a self-amortizing loan for $4,221,000 at 5.5% interest with a 30-year term. Greystone Bank has provided a letter of interest. 46 Harriman Drive Real Estate, LLC, the applicant's landlord, is purchasing the real property for $1.

The operating budget for the first year following the change is as follows:

Revenues	$18,045,784
Expenses	17,641,908
Gain/(Loss)	$ 403,876

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.
    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]
10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
11. Submission of a copy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
12. Submission of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
13. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

Project Description

Goshen Operations, LLC seeks approval to become the established operator of Elant at Goshen, an existing 120-bed Article 28 residential health care facility (RHCF), located at 46 Harriman Drive, Goshen, 10924, in Orange County. Upon approval of this application, Elant at Goshen will be renamed Sapphire Nursing and Rehab at Goshen. The acquisition includes the Adult Day Health Care Program operated by Elant at Goshen.

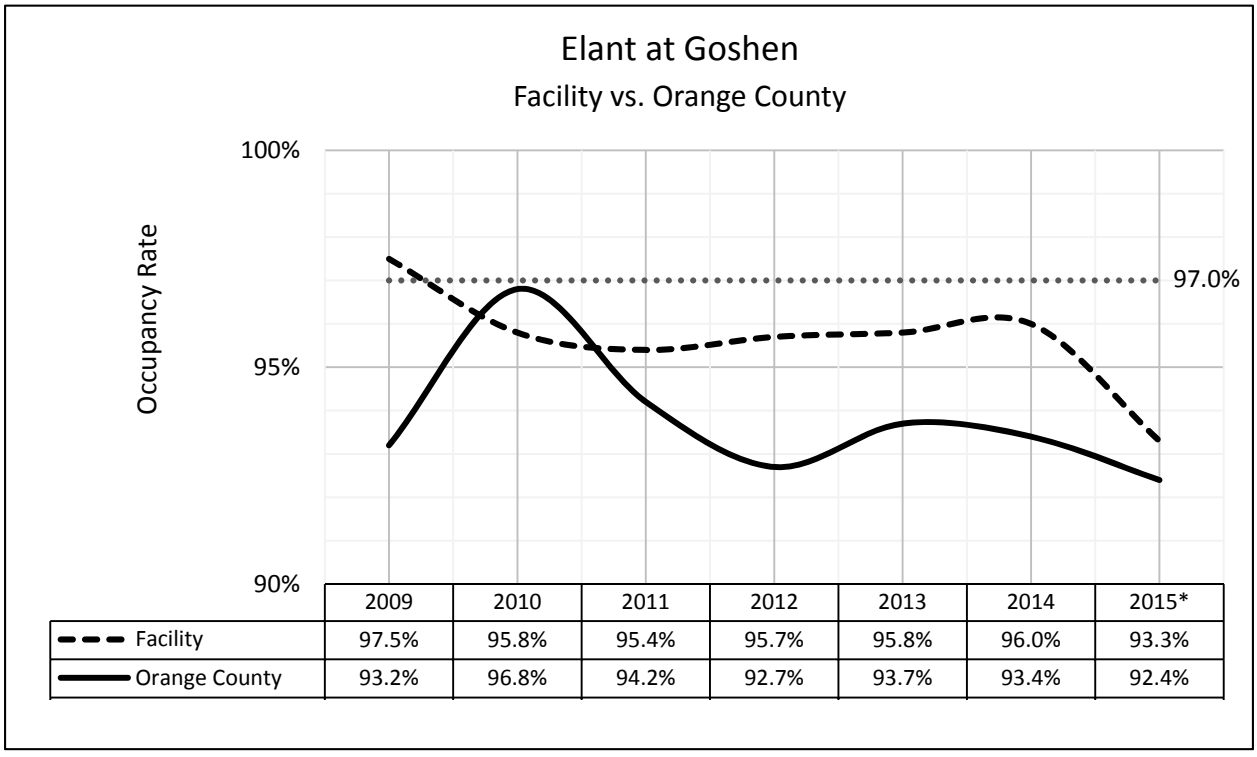
Analysis

There is currently a need for 724 beds in Orange County as indicated in the following table:

RHCF Need – Orange County

2016 Projected Need	2,122
Current Beds	1,398
Beds Under Construction	0
Total Resources	1,398
Unmet Need	724

The overall occupancy for Orange County is 93.7% for 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014	2015*
Facility	97.5%	95.8%	95.4%	95.7%	95.8%	96.0%	93.3%
Orange County	93.2%	96.8%	94.2%	92.7%	93.7%	93.4%	92.4%

*unaudited, facility reported data

Elant at Goshen's occupancy was 95.4% in 2011, 95.7% in 2012, 95.8% in 2013 and 96.0% in 2014. Current occupancy as of December 30, 2015 is 97.5%, with 3 vacant beds. This trend of high occupancy is expected to continue with the new operator.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Elant at Goshen's Medicaid admissions of 26.3% exceeded the Orange County 75% rate of 23.6% in 2012. Elant at Goshen's Medicaid admissions of 25.6% did not meet the Orange County 75% rate of 28.3% in 2013, and the new operator will need to follow the contingencies as noted.

Conclusion

Approval of this application will result in maintaining a necessary community resource.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	**Proposed**
Facility Name	Elant at Goshen, Inc.	Sapphire Nursing and Rehab at Goshen
Address	46 Harriman Drive Goshen, NY 10924	Same
RHCF Capacity	120	Same
ADHC Program Capacity	40	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Elant at Goshen, Inc <u>Active Parent/Co-operator</u> Elant, Inc	Goshen Operations, LLC Richard Platschek * 33.34% Esther Farkovits 33.33% Machla Abramczyk 20.00% Robert Schuck 13.33% * Managing Member

Character and Competence - Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	12/2005 to present
Ridge View Manor LLC	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present

Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Facility	07/2004 to present
Williamsville Suburban LLC	10/2012 to present
White Plains Center for Nursing	07/2011 to present

Home Care Agencies

Floral Home Care LLC	01/2012 to present

Individual Background Review

Current facility ownership shares are noted in brackets.

Richard (Aryeh) Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC [4.5%]	10/2012 to present
Ridge View Manor LLC [4.5%]	10/2012 to present
Sheridan Manor LLC [4.5%]	10/2012 to present
South Shore Rehabilitation and Nursing Center [5%]	04/2014 to present

Esther Farkovits is currently unemployed and lives out of the country. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Care Center [50%]	04/2011 to present
South Shore Rehabilitation and Nursing Center [45%]	04/2014 to present
Nassau Extended Care Facility [7%]	07/2004 to present
Park Avenue Extended Care Facility [7%]	07/2004 to present
The Citadel Rehab and Nursing Center at Kingsbridge [25%]	11/2015 to present
Throgs Neck Extended Care Facility [7%]	07/2004 to present
Townhouse Extended Care Center [7%]	07/2004 to present
Seagate Rehabilitation and Health Care Center [10%]	12/2014 to present
White Plains Center for Nursing [12%]	07/2011 to present

Machla Abramczyk lists her employment as Floral Home Care, LLC where she has been employed as a Quality Assurance Manager since January 2012. Ms. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC [63%]	01/2002 to present
Floral Home Care LLC [1%]	01/2012 to present

Robert Schuck is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center [25%]	04/2014 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation and Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Health Care Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, Williamsville Suburban LLC, White Plains Center for Nursing, The Citadel Rehab and Nursing Center at Kingsbridge, and Floral Home

Care, LLC results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined $6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined $2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

Project Review

This application is proposing to establish Goshen Operations, LLC as the new operator of Elant at Goshen. The facility will be renamed Sapphire Nursing and Rehab at Goshen as a result of this transaction. Goshen Operations, LLC is comprised of Richard Platschek (33.34%); Esther Farkovits (33.33%); Machla Abramczyk (20.00%); and Robert Schuck (13.33%). Richard Platschek will be the managing member of the facility.

The applicant acknowledges a relationship with the proposed purchaser of the real property, Harriman Drive Real Estate, LLC. It should be noted that while one of the members of Harriman Drive Real Estate, LLC is CEO of Sentosa Care, LLC, the applicant has asserted that the operating group will not enter into a contractual relationship with Sentosa Care, LLC for the provision of services to the facility.

The applicant has proposed to make no significant changes to staffing levels for RHCF operations and will attempt to retain key positions at the facility such as the Administrator of Record, Director of Nursing, Assistant Director of Nursing, Medical Director, Staff Physician, Nurse Practitioner, and Corporate Director of Rehabilitation. During the initial transition period the ownership group will designate a member to provide specific attention and oversight to the facility to ensure that the level and quality of care is maintained. Elant at Goshen previously operated a Long Term Home Health Care Program (LTHHCP) that was voluntarily closed in May of 2015. Any rights to this program are excluded from the purchase agreement and remaining positions related to this program will be eliminated. A separate application will be filed related to the purchase of the Adult Care Facility currently operated by Elant at Goshen.

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

Conclusion

The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed Asset Purchase Agreement to acquire the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON application. The terms of the agreement are summarized below:

Date:	December 1, 2014
Seller:	Elant at Goshen, Inc.
Purchaser:	Goshen Operations, LLC
Asset Transferred:	Tangible Personal Property; Intellectual Property; Assumed Contracts; Books and Records; Deposits; Licenses; Personnel Records; Warranties; Covenants; Provider Numbers; Insurance Proceeds; Cash, Accounts Receivable; Other Assets and Property held for use relating to or in connection with running the business; resident funds; goodwill; and refunds.
Excluded Assets:	Seller's Contracts, other than the Assumed; non-transferable licenses; organizational documents, corporate seal and tax records; real property; the name Elant; assets related to Glen Arden, Inc.; assets related to Lifestyles Concepts, LLC; assets related to Elant Choice, Inc.; assets related to Fishkill Foster Families; assets related to Elant Foundation; assets related to Fishkill Long Term Home Health Care Program; and assets related to Goshen Long Term Home Health Care Program.
Assumed Liabilities:	All liabilities of the Seller incurred or arising and unpaid during the pre-closing period and all obligations, costs and liabilities related to the Elant Inc. Defined Benefit Plan.
Purchase Price:	$4,690,000 plus assumed liabilities estimated at $5,370,105 as of 9/30/15 (which is classified between current liabilities of $2,773,536 and non-current of $2,596,565).
Payment of Purchase Price:	$240,000 initial deposit on date of execution of the Agreement; $2,100,000 additional deposit 60 days following execution of Agreement; $2,350,000 balance due at Closing

BFA Attachment G provides some additional details on the assumed assets of $4,632,826 and the assumed liabilities of $5,370,105. The values were as of September 30, 2015, and are subject to change.

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

Equity from Members	$469,000
Loan (30 years, 5.5% interest)	4,221,000
Total	$4,690,000

Greystone has provided a letter of interest for the financing.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed Purchase and Sale Agreement (PSA) related to the purchase of the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below**:**

Date:	December 1, 2014
Seller:	Elant at Goshen, Inc.
Buyer:	46 Harriman Drive Real Estate, LLC
Purchase Price:	$1 and the assumption of Mortgages Payable estimated at $12,881,354.
Premises:	Land, buildings, hereditaments, fixtures and equipment known as 46 Harriman Drive, Goshen, New York 10924.

Under the APA, the purchaser agreed to assume the liabilities pursuant to section 3.1 and set forth on schedule 3.1. The assumed liabilities between the operation and the realty are indicated on BFA Attachment F. Under the PSA, in relation to the sale of the real property and pursuant to section 2.1, the transaction is conditioned upon the assumption of the assumed liabilities as set forth in the APA, which include the assumption of any mortgages and any other liabilities associate with the PSA transaction.

A loan letter of interest has been submitted by the applicant from Greystone to refinance the mortgage up to $13,000,000 at 5.5% over 30 years. In addition, proposed member of the realty, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

Lease Agreement

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

Premises:	120-bed RHCF and 40-slot ADHCP located at 46 Harriman Drive, Goshen, New York 10924.
Owner/Landlord:	46 Harriman Drive Real Estate, LLC
Lessee:	Goshen Operations, LLC
Terms:	30 years, with a one (1) ten-year renewal option
Rent:	$1,163,602 ($96,967 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Administrative Services Agreement

The applicant has submitted a draft agreement for administrative services, which is summarized below:

Service Provider:	Sapphire HC Management Care, LLC
Service Purchaser:	Goshen Operations, LLC
Services Provided:	The billing, collection and management of Accounts Receivable; no less than weekly Medicaid billing; no less than monthly Commercial and Medicare billing; Payroll and Accounts Payable processing; providing data for financial reporting and any internal or external auditing; and cooperation with Federal and State reporting and regulatory requirements.
Exclusions:	The service purchaser will retain control of books and records, day-to-day operations, responsibility for regulatory compliance and the disposition of assets; the service provider will incur no liability on behalf of the facility, will not hire or fire employees and will not enforce policy regarding the operation of the facility.

Term:	One year with unlimited one year renewals, unless notice of termination is provided at least 30 days prior to the end of any renewal term.
Compensation:	$156,038 per year or $2.25 per bed per day ($13,003 per month)

Richard Platschek, one of the proposed members of Goshen Operations, LLC, and his wife Golda Platschek own Sapphire HC Management Care, LLC. The entity will provide the above noted accounting services. Facility staff will perform all other administrative services. Sapphire HC Management Care, LLC will also provide accounting services to the other RHCFs, concurrently being reviewed under CON 151307 (Elant at Fishkill), CON 151321 (Elant at Wappingers Falls) and CON 152005 (Elant at Meadow Hill).

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first and third years subsequent to the change in ownership, summarized as follows:

	Per Diem	Current Year 2014	Per Diem	Year One	Per Diem	Year Three
Revenues:						
Medicaid FFS	$245.52	$5,737,877	$244.34	$5,698,805	$244.34	$5,698,805
Medicare FFS	$550.76	7,245,258	$662.70	8,935,813	$663.11	8,941,431
Commercial FFS	$113.10	133,350	$399.98	495,180	$399.88	495,180
Private Pay	$622.18	2,710,216	$472.66	2,161,944	$472.73	2,161,944
Subtotal		$15,826,701		(150,000)		($150,000)
ADHCP	$106.09	851,899		$17,141,742		$17,147,360
LTHHCP	$91.66	4,683,744	$112.58	904,042	$114.85	922,213
Total Revenues		$21,362,344		$18,045,784		$18,069,573
Expenses:						
Operating	$188.79	$19,103,464	$324.26	$16,423,531	$327.21	$16,573,088
Capital	10.93	1,105,835	24.06	1,218,377	24.15	1,223,340
Total Expenses	$199.72	$20,209,299	$348.32	$17,641,908	$351.36	$17,796,428
Net Income		$1,153,045		$403,876		$273,145
RHCF Days/Util	42,060	96.03%	42,619	97.30%	42,619	97.30%
ADHCP Visits	8,030	77.21%	8,030	77.21%	8,030	77.21%
LTHHCP Visits	51,100	---------				

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 RHCF-4 cost report information.
- Average utilization for the RHCF years from 2011 through 2014 was 95.73%. As of December 16, 2015, occupancy was 98.3% per the Division of Nursing Homes and ICF/IID Surveillance report.
- The LTHHCP closed, thus no revenues are included in the first and third year budgets.
- For budget Years One and Three, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2014 and the forecasted year one Medicare rate is the actual daily rate experienced by the facility during 2015. The current year commercial and private pay rates represent the average actual rates experienced by the facility for these payers during 2015.
- As the LTHHCP and Adult Home are not part of this CON, related expenses of approximately $3,201,214 were excluding from the first and third year budgets. Those reduction were partially offset by adding 3% to the majority of current year expenses, plus an increase in rent expense that was partially offset by an interest expense reduction. Salaries and fringe benefits were increased by 3% in Year One, but held constant in Year Three. No staff changes are expected.
- The expenses and revenues related to the on-site ADHCP are included in the projected budget and are based on the current operator's historical experience providing this outpatient service.

- Utilization by payor is a follows:

	Current		Year One & Three	
	RHCF	ADHCP	RHCF	ADHCP
Medicaid	55.56%	47.04%	54.72%	47.04%
Medicare	31.28%	--	31.64%	--
Commercial	2.80%	--	2.91%	--
Private Pay	10.36%	52.96%	10.73%	52.96%

- Breakeven utilization is 95.12% and 95.83% for the first and third years, respectively.

Capability and Feasibility

There are no project costs associated with this application. Goshen Operations, LLC will acquire the RHCFs operations for $4,690,000 plus the assumption of certain liabilities, estimated at $5,370,105 as of September 30, 2015. The acquisition price will be met with $469,000 in members' equity and a $4,221,000 loan at the above stated terms. Greystone has provided a letter of interest. 46 Harriman Drive Real Estate, LLC, the applicant's landlord, is purchasing the real property for $1.

Working capital is estimated to be $2,940,318, which is two months of Year One expenses plus assumed current liabilities of $2,773,536. These obligations will be partially met by assuming the RHCF's $1,468,310 in cash and $2,655,133 in accounts receivables. The values were determined as of September 30, 2015, and are subject to change. The remaining $1,590,411 in working capital will be met from $795,206 in members' equity and a $795,205 working capital loan. Greystone has provided a letter of interest for the working capital loan. Review of BFA Attachment A, the operating members' net worth statements, shows there are sufficient assets overall to meet the equity requirement, but liquid resources may not be available in proportion to the members proposed ownership interest. Machla Abramczyk has provided an affidavit stating she will to contribute personal resources disproportionate to her ownership interest.

The submitted budget projects net income of $403,876 and $273,145 for Years One and Three, respectively. The budgeted revenues were expected to be the same for both years, while certain expenses were increased for inflation causing the third year surplus to drop. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of $1,264,208. Equity includes $5,573,399 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. Eliminating goodwill, total net assets are a negative $4,309,191. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, financial summary of Elant at Goshen, Inc., indicates that the facility has maintained positive working capital, negative equity position and generated an average annual operating surplus of $619,365 for the 2013-2014 period shown, and a net operating loss of $580,152 as of September 30, 2015. As of December 31, 2014, Elant at Goshen, Inc. had a $5,228,427 net asset deficiency. The applicant states the following steps have been taken to address the facility's financial status: the defined benefit pension plan was frozen in 2011, resulting in reduced annual plan expenses; the mortgage was refinanced, saving $494,000 in 2014; and the administrative charge from the parent was reduced, saving $490,000 in 2014.

BFA Attachment E, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Current 2015 is showing Operating Net Income.

- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- Williamsville Suburban, Ridgeview Manor and Sheridan Manor all show Operating Net Losses for certain years as shown due to servicing of a high debt level. The facilities are in the process of being sold. Ridgeview Manor and Sheridan Manor have been approved through PHHPC and should be finalized shortly with the bankruptcy attorney. Williamsville Suburban is currently under review. The debt will be satisfied upon transfer of ownership.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 Operating Net Income.

Financial summaries for Seagate Rehabilitation and Nursing Center, The Pavilion at Queens for Rehab & Nursing, Flushing Manor Nursing Home, and Highland View Care Center are not included as membership was only recently established.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Goshen Operations, LLC, Proposed Members Net Worth
BFA Attachment B	Net Worth Statement for Benjamin Landa
BFA Attachment C	Organizational Chart
BFA Attachment D	Financial Summary, Elant at Goshen, Inc.
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Pro Forma Balance Sheet
BFA Attachment G	Estimated of Assumed Assets and Liabilities as of 9/30/15
LTC Attachment A	Quality Measures and and Inspection Report

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 11th day of February, 2016 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 Goshen Operations, LLC as the new operator of Elant at Goshen, an existing 120 bed RHCF located at 46 Harriman Drive, Goshen, 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:
151327 E	Goshen Operations, LLC d/b/a Sapphire Nursing and Rehab at Goshen

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
        a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
        b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
        c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
        d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
        e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]

10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
11. Submission of a copy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
12. Submission of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
13. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152005-E
Newburgh Operations, LLC
d/b/a Sapphire Nursing at Meadow Hill

Program: **Residential Health Care Facility** ***County:*** **Orange**
Purpose: **Establishment** ***Acknowledged:*** **July 3, 2015**

Executive Summary

Description

Newburgh Operations, LLC d/b/a Sapphire Nursing at Meadow Hill, a New York limited liability company, requests approval to be established as the new operator of Elant at Meadow Hill, a 190-bed Article 28 residential health care facility (RHCF) located at 172 Meadow Hill Road, Newburgh (Orange County). The RHCF also operates a 20-slot adult day health care program (ADHCP) at the same location. There will be no change in services.

On December 1, 2014, the current operator of the RHCF, Elant at Newburgh, Inc., entered into an Asset Purchase Agreement (APA) with Newburgh Operations, LLC for the sale and acquisition of the operating interests of the RHCF and ADHCP, to be effectuated upon Public Health and Planning Council (PHHPC) approval. The APA provides that the purchase price for the assets is $5,310,000 plus the assumption of certain liabilities by Newburgh Operations, LLC. Concurrently, Elant at Newburgh, Inc., the current real property owner, entered into a Contract of Sale with 172 Meadow Hill Road Real Estate, LLC for the sale and acquisition of the real property for $1. Upon PHHPC approval, 172 Meadow Hill Road Real Estate, LLC will lease the facility to the new operator for 30 years. There is a relationship between Newburgh Operations, LLC and 172 Meadow Hill Road Real Estate, LLC in that these entities have a common member.

Current and proposed ownership are as follows:

Current Operator	
Elant at Newburgh, Inc.	
Member/Active Parent	%
Elant, Inc.	100%

Proposed Operator	
Newburgh Operations, LLC	
Members	%
Richard Platschek	33.34%
Esther Farkovits	33.33%
Machla Abramczyk	20.00%
Robert Schuck	13.33%

Concurrently under review are CON 151327 (Elant at Goshen), CON 151321 (Elant at Wappingers Falls) and CON 151307 (Elant at Fishkill), in which the same proposed members are seeking approval to purchase three other Elant RHCF operations.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds as a result of this project. Elant at Meadow Hill's occupancy was 95.1% in 2011, 96.8% in 2012, 97.1% in 2013 and 96.8% in 2014. Current occupancy, as of December 23, 2015 is 98.4% with 3 vacant beds. Occupancy at this facility has been strong and near the Department's planning optimum. This is expected to continue under the new operator.

Program Summary

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with a related party entity, Sapphire HC Management Care, LLC. No other administrative services or consulting agreements are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

There are no project costs associated with this proposal. The purchase price for the operating assets is $5,310,000 and the assumption of certain liabilities estimated at $3,079,593 as of September 30, 2015. The acquisition price will be met with $531,000 in members' equity and a loan for $4,779,000, self-amortizing with 5.5% interest and a 30-year term. Greystone Bank has provided a letter of interest. The operating budget is as follows:

Revenues	$21,875,189
Expenses	$20,273,591
Gain/(Loss)	$1,601,598

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed operations loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
   d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   e. Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a copy of a sample Unit Certificate. [CSL]
10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
11. Submission of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
12. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

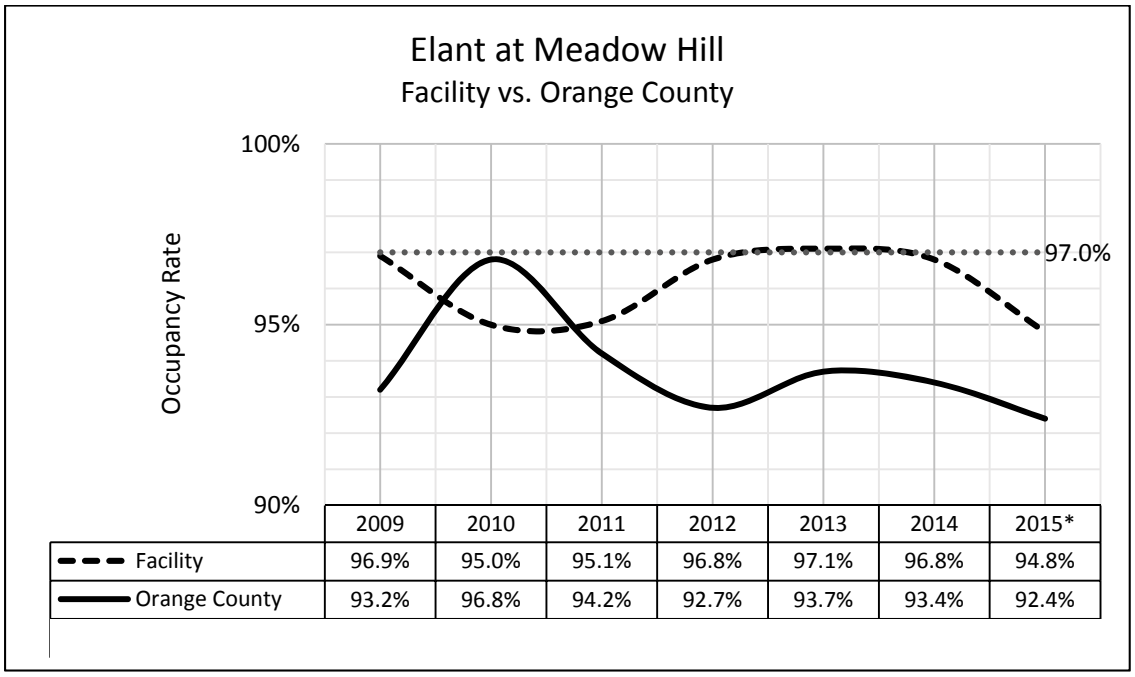
Analysis

There is currently a need of 724 beds in Orange County as indicated in the following table:

RHCF Need – Orange County

2016 Projected Need	2,122
Current Beds	1,398
Beds Under Construction	0
Total Resources	1,398
Unmet Need	724

Elant at Meadow Hill's occupancy was 95.1% in 2011, 96.8% in 2012, 97.1% in 2013 and 96.8% in 2014. Current occupancy, as of December 23, 2015 is 98.4% with 3 vacant beds. Occupancy at this facility has been strong and near the Department's planning optimum. This is expected to continue under the new operator.



	2009	2010	2011	2012	2013	2014	2015*
Facility	96.9%	95.0%	95.1%	96.8%	97.1%	96.8%	94.8%
Orange County	93.2%	96.8%	94.2%	92.7%	93.7%	93.4%	92.4%

*unaudited; facility reported data

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Elant at Meadow Hill's Medicaid admissions of 41.2% and 41.1%, in 2012 and 2013, respectively, exceeded the Orange County 75% rate of 23.6% and 28.3%, in 2012 and 2013, respectively.

Conclusion

Approval of this application will result in maintaining a necessary community resource for both the Medicaid population and the community at large.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Elant at Meadow Hill	Sapphire Nursing at Meadow Hill
Address	172 Meadow Hill Road Newburgh, New York 12550	Same
RHCF Capacity	190	Same
ADHC Program Capacity	20	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Elant at Newbugh, Inc <u>Active Parent/Co-operator</u> Elant, Inc	Newburgh Operations, LLC Richard Platschek * 33.34% Esther Farkovits 33.33% Machla Abramczyk 20.00% Robert Schuck 13.33% *Managing Member

Character and Competence - Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	12/2005 to present
Ridge View Manor LLC	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Facility	07/2004 to present
Williamsville Suburban LLC	10/2012 to present
White Plains Center for Nursing	07/2011 to present

<u>Home Care Agencies</u>

Floral Home Care LLC	01/2012 to present

Individual Background Review
Current facility ownership interest is shown in brackets.

Richard (Aryeh) Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC [4.5%]	10/2012 to present
Ridge View Manor LLC [4.5%]	10/2012 to present
Sheridan Manor LLC [4.5%]	10/2012 to present
South Shore Rehabilitation and Nursing Center [5%]	04/2014 to present

Esther Farkovits is currently unemployed and lives out of the country. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Care Center [50%]	04/2011 to present
South Shore Rehabilitation and Nursing Center [45%]	04/2014 to present
Nassau Extended Care Facility [7%]	07/2004 to present
Park Avenue Extended Care Facility [7%]	07/2004 to present
The Citadel Rehab and Nursing Center at Kingsbridge [25%]	11/2015 to present
Throgs Neck Extended Care Facility [7%]	07/2004 to present
Townhouse Extended Care Center [7%]	07/2004 to present
Seagate Rehabilitation and Health Care Center [10%]	12/2014 to present
White Plains Center for Nursing [12%]	07/2011 to present

Machla Abramczyk lists her employment as Floral Home Care, LLC where she has been employed as a Quality Assurance Manager since January 2012. Ms. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC [63%]	01/2002 to present
Floral Home Care LLC [1%]	01/2012 to present

Robert Schuck is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center [25%]	04/2014 to present

Character and Competence - Analysis
No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation and Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Health Care Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, Williamsville Suburban LLC, White Plains Center for Nursing, The Citadel Rehab and Nursing Center at Kingsbridge, and Floral Home Care, LLC results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined $6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined $2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

Project Review

This application is proposing to establish Newburgh Operations, LLC as the new operator of Elant at Meadow Hill. The facility will be renamed Sapphire Nursing at Meadow Hill as a result of this transaction. Newburgh Operations, LLC is comprised of Richard Platschek (33.34%); Esther Farkovits (33.33%); Machla Abramczyk (20.00%); and Robert Schuck (13.33%). Richard Platschek will be the managing member of the facility.

The applicant acknowledges a relationship with the proposed purchaser of the real property, 172 Meadow Hill Road Real Estate, LLC. It should be noted that while one of the members of 172 Meadow Hill Road Real Estate, LLC is CEO of Sentosa Care, LLC, the applicant has asserted that the operating group will not enter into a contractual relationship with Sentosa Care, LLC for the provision of services to the facility.

The applicant has proposed to make no significant changes to staffing levels for RHCF operations and will attempt to retain key positions at the facility such as the Administrator of Record, Director of Nursing, Assistant Director of Nursing, Medical Director, Staff Physician, Nurse Practitioner, and Corporate Director of Rehabilitation. During the initial transition period the ownership group will designate a member to provide specific attention and oversight to the facility to ensure that the level and quality of care is maintained.

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

Conclusion

The character an competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	December 1, 2014
Seller:	Elant at Newburgh, Inc.
Purchaser:	Newburgh Operations, LLC
Asset Transferred:	Tangible Personal Property; Intellectual Property; Assumed Contracts; Books and Records; Deposits; Licenses; Personnel Records; Warranties; Covenants; Provider Numbers; Insurance Proceeds; Cash; Accounts Receivable; Other Assets and Property held for use relating to or in connection with running the business; resident funds; goodwill; and refunds.

Excluded Assets:	Seller's Contracts, other than the Assumed; non-transferable licenses; organizational documents, corporate seal and tax records; real property; the name Elant; assets related to Glen Arden, Inc.; assets related to Lifestyles Concepts, LLC; assets related to Elant Choice, Inc.; assets related to Fishkill Foster Families; assets related to Elant Foundation; assets related to Fishkill Long-Term Home Healthcare; and assets related to Goshen Long-Term Home Healthcare Program.
Assumed Liabilities:	All liabilities of the Seller incurred or arising and unpaid during the pre-closing period and all obligations, costs and liabilities related to the Elant Inc. Defined Benefit Plan.
Purchase Price:	$5,310,000 plus assumed liabilities estimated at $3,079,595 as of 9/30/15
Payment of Purchase Price:	$260,000 on the date of execution of Agreement; $2,400,000 deposit 60 days following execution of Agreement; $2,650,000 balance due at closing

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

Equity from Members	$531,000
Loan (30 years, 5.5%)	$4,779,000
Total	$5,310,000

A letter of interest has been provided by Greystone.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no current outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed Contract of Sale (COS) related to the purchase of the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below**:**

Date:	December 1, 2014
Seller:	Elant at Newburgh, Inc.
Buyer:	172 Meadow Hill Road Real Estate, LLC
Purchase Price:	$1 and the assumption of Mortgages Payable estimated at $8,802,827.
Premises:	Land, buildings, hereditaments, fixtures and equipment known as 172 Meadow Hill Road, Newburgh, New York 12550

Under the APA, the purchaser agreed to assume the liabilities pursuant to section 3.1 and set forth on schedule 3.1. The assumed liabilities between the operation and the realty are indicated in BFA Attachment F. Under the COS, in relation to the sale of the real property and pursuant to section 2.1, the transaction is conditioned upon the assumption of the assumed liabilities as set forth in the APA, which include the assumption of any mortgages and any other liabilities associate with the COS transaction.

A loan letter of interest has been submitted by the applicant from Greystone to refinance the mortgage up to $9,500,000 at 5.5% over 30 years. Also, proposed member of the realty, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

Lease Agreement

Facility Operations are subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	190-bed RHCF located at 172 Meadow Hill Road, Newburgh, New York with all buildings, structures, fixtures, equipment and other improvements.
Landlord:	172 Meadow Hill Road Real Estate, LLC
Tenant:	Newburgh Operations, LLC
Terms:	30 years commencing on execution of the lease with a ten year option to renew.
Rentals:	$1,231,064 ($102,589 per month) annual base rent with a 3% increase each year thereafter.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Service Provider:	Sapphire HC Management Care, LLC
Service Purchaser:	Newburgh Operations, LLC
Services Provided:	The billing, collection and management of Accounts Receivable; no less than weekly Medicaid billing; no less than monthly Commercial and Medicare billing; Payroll and Accounts Payable processing; providing data for financial reporting and any internal or external auditing; and cooperation with Federal and State reporting and regulatory requirements.
Exclusions:	The service purchaser will retain control of books and records, day-to-day operations, responsibility for regulatory compliance and the disposition of assets; the service provider will incur no liability on behalf of the facility, will not hire or fire employees and will not enforce policy regarding the operation of the facility.
Term:	One year with unlimited one year renewals, unless notice of termination is provided at least 30 days prior.
Compensation:	$156,038 per year or $2.25 per bed per day ($13,003 per month)

Richard Platschek, one of the proposed members of Newburgh Operations, LLC, and his wife Golda Platschek own Sapphire HC Management Care, LLC. The entity will provide the above noted accounting services. Facility staff will perform all other administrative services. Sapphire HC Management Care, LLC will also provide accounting services to the other RHCFs being concurrently reviewed under CON 151327 (Elant at Goshen), CON 151321 (Elant at Wappingers Falls) and CON 151307 (Elant at Fishkill).

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first and third years subsequent to the change in ownership, summarized as follows:

	Per Diem	Current Year (2014)	Per Diem	Year One
Revenues:				
Commercial	$501.84	$617,768	$400.00	$588,800
Medicare	$577.45	$5,849,583	$693.47	$8,418,004
Medicaid	$213.36	$11,278,622	$214.33	$10,864,065
Private Pay	$501.84	$1,459,859	$472.68	$1,669,506
Other		$35,710		$0
Subtotal		$19,205,832		$21,540,375
ADHCP	$72.03	$315,503	$76.44	$334,814
Total Revenues		$19,521,335		$21,875,189

Expenses:				
Operating	$251.72	$18,000,944	$262.95	$18,987,624
Capital	17.06	$1,220,218	17.81	$1,285,967
Total Expenses	$268.78	$19,221,162	$280.76	$20,273,591
Net Income		$335,883		$1,601,598
Total Patient Days		67,132		67,831
ADHCP Visits		4,380		4,380

The following is noted with respect to the submitted budget:

- The budget represents the RHCF and ADHCP operations.
- For Year One, Medicaid revenues are based on the actual 2015 rate experience for the facility, plus an additional, one-time, 4% increase in overall rates that the applicant expects based on past experience at, what they believe are, comparable facilities.
- The applicant notes that the projected difference between the Current Year Medicare rate and the projected Year One rate includes an increase of 6.1% experienced in October 2014, a 5.8% increase experienced in October 2015 and an additional 1% for Year One, with the expectation of an additional Medicare rate increase in October 2016.
- The Current Year includes $35,710 in Other Income related to the following: investment income, barbershop revenues, meals and contributions.
- Year One expenses were calculated by taking the Current Year (2014) and adding 3% per annum. The applicant does not anticipate any staffing increases.
- Utilization for Year One is based on the utilization experienced during October 2014, annualized and reduced by approximately 2%. It is noted that the facility occupancy was 97.4% as of December 9, 2015.
- Current Year (2014) utilization is 96.80% and the applicant projects Year One and Year Three occupancy at 97.81%.

	Current Year	Year One
Medicare	15.1%	17.9%
Medicaid	78.7%	74.7%
Private/Other	6.2%	7.4%

- Per internal financial documents, the current operator's year-to-date Medicare utilization was 17.67%, Medicaid utilization was 68.36% and Private/Other utilization was 13.97% as of September 30, 2015.
- The applicant projects RHCF breakeven utilization at 64,089 patient days (92%) for Year One.

Capability and Feasibility

There are no project costs associated with this application. Newburgh Operations, LLC will acquire the RHCFs operations for $5,310,000 plus the assumption of certain liabilities estimated at $3,079,593. The acquisition price will be met with $531,000 in member's equity and a $4,779,000 loan at the above stated terms. Greystone has provided a letter of interest. The applicant's landlord, 172 Meadow Hill Road Real Estate, LLC, is purchasing the real property for $1.

Working capital is estimated to be $5,867,521; equal to two months of Year One expenses plus assumed accounts payable of $812,488 and assumed expenses payable $1,676,101. These obligations will be partially met by assuming the RHCF's $1,130,184 in cash and $2,496,006 in accounts receivables. The remaining $2,241,331 in working capital will be met from $1,120,666 in members' equity and a $1,120,666 working capital loan. Greystone has provided a letter of interest for the working capital loan. Review of BFA Attachment A, the operating members' net worth statements, shows there are sufficient assets overall to meet the equity requirement, but liquid resources may not be available in proportion to the members proposed ownership interest. Machla Abramczyk has provided an affidavit stating she will to contribute personal resources disproportionate to her ownership interest.

The submitted budget projects net income of $1,601,598 for Year One. The budgeted revenues are expected to increase by $2,318,144 over the current year based on an overall increase of 699 patient days and an increase in the percentage of Medicare and Commercial utilizations. BFA Attachment D shows that, as of September 30, 2015, the facility had an increase in the percentage of Medicare and Commercial utilizations greater than what the proposed operator has projected. Budgeted expenses are expected increase by $1,052,429, with the majority of the increase based on increases in wages, benefits and utilities. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, financial summary of Elant at Meadow Hill, Inc., shows the facility had negative working capital, a negative equity position and generated an average annual operating loss of $74,816 for 2013-2014, and an operating surplus of $973,882 as of September 30, 2015. As of December 31, 2014, Elant at Meadow Hill had a $4,789,066 net asset deficiency. While the facility has incurred losses for several years, the applicant states that the following has occurred, improving their financial status, as demonstrated by the $335,793 operating gain in 2014: a reduction in their pension shortfall; mortgage refinancing from the previous 7% IDA loan to a 4.11% HUD loan as of the end of 2014; and a reduction in the Administrative cost charge from Elant Inc. from $1,127,000 in 2013 to $705,000 in 2014.

BFA Attachment E, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Current 2015 is showing Operating Net Income.
- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- Williamsville Suburban, Ridgeview Manor and Sheridan Manor all show Operating Net Losses for certain years as shown due to servicing of a high debt level. The facilities are in the process of being sold. Ridgeview Manor and Sheridan Manor have been approved through PHHPC and should be finalized shortly with the bankruptcy attorney. Williamsville Suburban is currently under review. The debt will be satisfied upon transfer of ownership.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 Operating Net Income.

Financial summaries for Seagate Rehabilitation and Nursing Center, The Pavilion at Queens for Rehab & Nursing, Flushing Manor Nursing Home, and Highland View Care Center are not included as membership was only recently established.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement, Newburgh Operations, LLC's Proposed Members
BFA Attachment B	Net Worth Statement, members of 172 Meadow Hill Road Real Estate, LLC
BFA Attachment C	Organizational Chart
BFA Attachment D	Financial Summary, Elant at Meadow Hill
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Pro Forma Balance Sheet
LTC Attachment A	Quality Measures Inspection Report

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 11th day of February, 2016 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 Newburgh Operations, LLC as the new operator of Elant at Meadow Hill, an existing 190-bed residential health care facility, 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:
152005 E	Newburgh Operations, LLC Sapphire Nursing at Meadow Hill

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed operations loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
   d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   e. Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a copy of a sample Unit Certificate. [CSL]
10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]

11. Submission of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
12. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	County of Orange
Address:	Goshen
County:	Orange
Structure:	Public
Application Number:	152137E

Description of Project:

The County of Orange, a governmental subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The County Legislature will serve as the governing body, ultimately responsible for the operation of the Licensed Home Care Services Agency (LHCSA) to be located within the Orange County Department of Health. .

The County of Orange currently operates a certified home health agency, a long term home health care program and a diagnostic and treatment center through the Orange County Department of Health. The County of Orange intends to sell its certified home health agency and is requesting approval to become licensed as a LHCSA to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Orange County from offices located at:

124 Main Street, Goshen, NY 10924;
33 Fulton Plaza, Middletown, NY 10940;
141 Broadway, Newburgh, NY 12250.

The applicant proposes to provide the following health care services:

Nursing Medical Social Services Nutrition Medical Equipment, Supplies & Appliances

A seven (7) year review of the operations of the certified home health agency, long term home health care program and diagnostic and treatment center operated by the county was performed as part of this review.

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency and long term home health care program reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	January 4, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	Saratoga County
Address:	Saratoga Springs
County:	Saratoga
Structure:	Public
Application Number:	152298E

Description of Project:

Saratoga County, a governmental subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The Saratoga County Board of Supervisors will serve as the governing body, ultimately responsible for the operation of the Licensed Home Care Services Agency (LHCSA) to be located within the Saratoga County Public Health Services.

Saratoga County currently operates a certified home health agency, a long term home health care program and a diagnostic and treatment center through the Saratoga County Public Health Nursing Service. The county is requesting approval to become licensed as a LHCSA to enable the county to continue to provide essential public health nursing services.

The applicant proposes to provide necessary home visits to the residents of Saratoga County receiving public health services from an office located at 31 Woodlawn Avenue, Saratoga Springs, New York 12866.

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Medical Equipment, Supplies & Appliances

A seven (7) year review of the operations of the certified home health agency, long term home health care program and diagnostic and treatment center operated by the county was performed as part of this review.

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency and long term home health care program reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	January 12, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care
Address:	Brooklyn
County:	Kings
Structure:	Proprietary Corporation
Application Number:	2250-L

Description of Project:

Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care, a business corporation, requests approval for a change in ownership in the home care services agency under Article 36 of the Public Health Law.

ADJ Wisdom Home Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its June 20, 2012 meeting and subsequently licensed as 1916L001. At that time, ADJ Wisdom Home Care, Inc. was owned Ducarmel Sagesse – 100 shares, Wildor Merivil – 35 shares, Monclas Noel – 35 shares and Stanley Ferol – 30 shares.

Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care has authorized 200 shares of stock of which 100 shares have been issued to Xiu Mei Weng and the remaining 100 shares are unissued.

The Board of Directors of Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care is comprised of the following individual:

Xiu Mei Weng – President
Owner, Asian Elder Adult Daycare Center, Inc.
Consultant, ADJ Wisdom Home Care, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents in the following counties from an office located at 230 Grand Street, Suite 2M, New York, NY 10013:

Kings	Queens	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	January 12, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	Evergreen Homecare Service of NY Inc.
Address:	Flushing
County:	Queens
Structure:	For-Profit Corporation
Application Number:	2512-L

Description of Project:

Evergreen Homecare Service of NY Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

SR Homecare of NY, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its February 7, 2013 meeting and subsequently licensed 1907L001 and 1907L002. At that time, the shareholders of SR Homecare of NY, Inc. were Susan Rabinovich 180 shares of stock and Janette Shtaynberg 20 shares of stock.

The applicant has authorized 200 Shares of Stock which are owned as follows:

Hyunjong T. Koo – 100 Shares

Mi J. Kim – 100 Shares

The Board of Directors of Evergreen Homecare Service of NY Inc. are the following individuals:

Hyunjong T. Koo, President, Secretary, Director
Claims Officer/Representative, U.S. Social Security Administration

Mi J. Kim, Vice President, Treasurer, Director
Manager, Western Nail

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Although the applicant will purchase both sites currently operated by SR Homecare of NY, Inc., they intend to close the site currently licensed as 1907L002 that has approval to serve Nassau and Suffolk counties.

The applicant proposes to serve the residents of the following counties from an office located at 37-10 149th Place, Unite 1B, Flushing, New York 11354.

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	December 1, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	Aquinas LLC d/b/a Senior Helpers
Address:	New York
County:	New York
Structure:	Limited Liability Company
Application Number:	2540-L

Description of Project:

Aquinas LLC d/b/a Senior Helpers, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Aquinas LLC d/b/a Senior Helpers, was previously approved as a home care services agency by the Public Health and Health Planning Council at its June 16, 2011 meeting and subsequently licensed 1893L001. At that time, Aquinas LLC d/b/a Senior Helpers was solely owned by Glen J. Galka.

Glen J. Galka has proposed to assign 25% membership interest in the Limited Liability Company to Kathryn Livingston.

Aquinas LLC will continue to operate as a Franchise of SH Franchising, LLC.

The proposed members of Aquinas LLC d/b/a Senior Helpers comprise the following individuals:

Glen J. Galka – 75% President/CEO, Aquinas LLC d/b/a Senior Helpers	Kathryn Livingston – 25% Senior Vice President, Aquinas, LLC d/b/a Senior Helpers

Glen J. Galka is exempt from character and competence review due to the fact that he was previously approved by the Public Health and Health Planning Council for this operator.

A search for Kathryn Livingston revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve the residents of the following counties from an office located at 30 Broad Street, 14th Floor, New York, New York 10004:

New York	Bronx	Kings
Queens	Richmond	Westchester

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	December 8, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare
Address:	Amherst
County:	Erie
Structure:	For-Profit Corporation
Application Number:	2628-L

Description of Project:

Pediatric Home Nursing Services, Inc. (PHNS) d/b/a PSA Healthcare, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Pediatric Home Nursing Services, Inc. (PHNS) d/b/a PSA Healthcare was previously approved as a home care services agency by the Public Health Council at its January 25, 2002 meeting and subsequently licensed 1051L001. At that time PHNS was approved as a 100% wholly-owned subsidiary of Pediatric Services of America, Inc. (a Georgia corporation); Pediatric Services of America, Inc. was a 100% wholly owned subsidiary of Pediatric Services of America, Inc. (a Delaware corporation); and Pediatric Services of America, Inc. was a 100% wholly-owned subsidiary of Pediatric Services Holding Corporation (a Delaware corporation).

On December 9, 2014, a Stock Purchase Agreement was executed pursuant to which the holders of 100% of the outstanding stock of Pediatric Services Holding Corporation transferred all of its shares to PSA Healthcare Acquisition, Inc. (PSAHA), as of March 19, 2015. On that same date, PSAHA merged into Pediatric Services Holding Corporation, with Pediatric Services Holding Corporation surviving. Affidavits of the board of directors of PSAHA were submitted that state that the directors of PSAHA will not exercise control over the LHCSA between the time that PSAHA and PHNS close on the transaction and the time that the Public Health and Health Planning Council approves this application.

PHNS will remain a 100% wholly-owned subsidiary of Pediatric Services of America, Inc. Pediatric Services of America, Inc. will remain a 100% wholly owned subsidiary of Pediatric Services of America, Inc. Pediatric Services of America, Inc. will remain a 100% wholly-owned subsidiary of Pediatric Services Holding Corporation.

Pediatric Services Holding Corporation has authorized 1,000 shares of stock which are owned as follows:

PSA Healthcare Intermediate Holding, Inc. – 1,000 shares

The Board of Directors of Pediatric Services Holding Corporation is comprised of the following individuals:

Steven E. Rodgers – Chairman
Managing Director and Operating Partner, J.H. Whitney Capital Partners

Eric F. Minkove – President/CEO/Board Member
President and CEO, PSA Healthcare

Affiliations:

- Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare (March 2013 –Present)
- Healthcare Pediatric Services of America, Inc. d/b/a PSA Healthcare (March 2013 – Present: Various States)

Daniel T. Harknett – Board Member
Vice President, J.H. Whitney Capital Partners

Robert M. Williams Jr. – Board Member
Retired

PSA Healthcare Intermediate Holding, Inc. has authorized 1,000 shares of stock which are owned as follows:

PSA Healthcare Holding, LLC – 1,000 shares

The Board of Directors of PSA Healthcare Intermediate Holding, Inc. is comprised of the following individuals:

Steven E. Rodgers – Chairman
(Previously Disclosed)

Eric F. Minkove – President/CEO/Board Member
(Previously Disclosed)

Daniel T. Harknett – Board Member
(Previously Disclosed)

Robert M. Williams Jr. – Board Member
(Previously Disclosed)

The members of PSA Healthcare Holding, LLC is comprised of the following entity and individuals:

PSA Healthcare Investment Holding, LLC – 97.88%

Erik F. Minkove – 1.631%
(Previously Disclosed)

Opal P. Ferraro – 0.196%
Chief Financial Officer, Pediatric Services of America, Inc. d/b/a PSA Healthcare
Chief Financial Officer, Pediatric Home Nursing Services, Inc.

Keith Jones – 0.196%
Chief Business Operations Officer, Pediatric Home Nursing Services
Chief Business Operations Officer, Pediatric Services of America, Inc. d/b/a PSA Healthcare

John P. Johnson – 0.098%
Vice President Strategy, Pediatric Home Nursing Services
Vice President Strategy, Pediatric Services of America, Inc. d/b/a PSA Healthcare

The members of PSA Healthcare Investment Holding, LLC comprised of the following entities and individuals:

J.H. Whitney VII, L.P. – 65.15%

Whitney Strategic Partners VII, L.P. – 2.85%

Hamilton Lane Co-Investment Fun III Holdings, L.P. – 30%

PSA Holding, L.P. – 2.0%

The sole General Partner of J.H. Whitney VII, L.P. is J.H. Whitney Equity Partners VII, LLC.

J.H. Whitney Equity Partners VII, LLC controls J.H. Whitney VIII, L.P. pursuant to a partnership agreement.

The managing members of J.H. Whitney Equity Partners VII, LLC comprise the following individuals:

Paul R. Vigano – Managing Member
Retired

Robert M. Williams, Jr. – Managing Member
(Previously Disclosed)

Michael C. Salvator – Managing Member
Chief Financial Officer, J.H. Whitney Capital Partners, LLC

A search of the individuals (and entities, where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of agencies affiliated with this applicant located in the following states was performed as part of this review (unless otherwise noted):

- Arizona
- California
- Colorado
- Connecticut
- Florida
- Georgia
- Illinois
- Louisiana
- Massachusetts
- New Jersey
- New York
- North Carolina
- Pennsylvania
- South Carolina
- Texas
- Virginia
- Washington

Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare. The information provided by the New York State 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 residents and to prevent recurrent code violations.

Responses were received from the following states: Colorado, Connecticut, Florida, Illinois, Louisiana, Massachusetts, New Jersey, North Carolina, Pennsylvania and Washington. The responses received indicated that entities in these jurisdictions have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients. The applicant provided sufficient evidence that they made an adequate effort to obtain out of state compliance for each health care facility located outside of New York State.

Pediatric Services of America, Inc. d/b/a PSA Healthcare – Clermont, Florida: was fined five thousand dollars ($5,000.00) pursuant to a Survey Deficiency on September 19, 2012 – Acceptance of Patients or Client's; missed visits to patient's/client's home.

Pediatric Services of America, Inc. d/b/a PSA Healthcare – Clermont, Florida: was fined five thousand dollars ($5,000.00) pursuant to a Survey Deficiency on November 18, 2013 – Acceptance of Patients or Client's; missed visits to patient's/client's home.

Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare operates either directly or through wholly owned subsidiaries, start-up home care businesses in Arizona, Colorado, Pennsylvania and Massachusetts. There is no compliance information available for these agencies.

Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare operates either directly or through wholly owned subsidiaries, in Massachusetts, Virginia, and South Carolina which do not require licensure. There is no compliance information available for these agencies.

Affidavits were submitted stating that Pediatric Services of America, Inc. d/b/a PSA Healthcare operates either directly or through wholly owned subsidiaries, home care businesses in California, Florida, Texas and Georgia and to the best of their knowledge each of the home care agencies currently operates, and has operated during the period their ownership or operation in compliance with all applicable codes, rules and regulations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 2250 Wehrle Drive, Suite 1, Amherst, New York 14221.

Allegany	Cattaraugus	Chautauqua	Erie	Genesee
Monroe	Niagara	Orleans	Wyoming	

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: November 24, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	Serenity Health & Wellness, LLC
Address:	Fresh Meadows
County:	Queens
Structure:	Limited Liability Company
Application Number:	152019-E

Description of Project:

Serenity Health & Wellness, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Balm of Gilead Homecare Agency, Inc. was previously approved by the Public Health Council at its July 28, 2000 meeting and was subsequently licensed 0992L001. At that time, the shareholders were Gregory Emili – 60 shares and Florence Emili – 40 shares. In September 2013, the Department of Health approved a notice of change in shareholder interest which resulted in Florence Emili becoming the sole shareholder.

The following individual is the sole member of Serenity Health & Wellness, LLC:

Sonny Pham, HHA
Director of Global Operations, Informa Global Markets

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Balm of Gilead Home Health Agency, Inc. and Serenity Health & Wellness, LLC have proposed to enter into a management agreement which is currently under review by the Department of Health.

The applicant proposes to serve the residents of the following counties from an office located at 160-30 78th Avenue, Fresh Meadows, New York 11366:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	January 12, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	Health Acquisition Corp. d/b/a Allen Health Care Services
Address:	Hempstead
County:	Nassau
Structure:	For-Profit Corporation
Application Number:	152224

Description of Project:

Health Acquisition Corp. d/b/a Allen Health Care Services, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Health Acquisition Corp. d/b/a Allen Health Care Services was previously approved by the Public Health Council at its November 16, 2007 meeting and subsequently licensed 1548L001 and 1548L002. At that time all issued and outstanding shares of stock were solely owned by AG Home Health, LLC through their subsidiary National Home Health Care Corp. Through a Stock Purchase Agreement, the applicant proposes to purchase all issued and outstanding shares of stock of National Home Health Care Corp, from AG Home Health, LLC. AG Home Health, LLC will no longer be affiliated with this LHCSA.

The proposed ownership of the LHCSA is as follows:

Health Acquisition Corp. d/b/a Allen Health Care Services authorized 200 shares of stock, which will be owned as follows:

National Home Health Care Corp – 200 shares

National Home Health Care Corp authorized 100,000 shares of stock, which are owned as follows:

BW NHHC Holdco Inc. – 10,000 shares

90,000 shares of stock remain unissued.

BW NHHC Holdco Inc. has authorized 1,000 shares of stock, which are owned as follows:

BW NHHC Holdings LLC – 1,000 shares

The Board of Directors of National Home Health Care Corp, BW NHHC Holdco, Inc. and BW NHHC Holdings LLC comprises the following individuals:

Adam M. Blumenthal – Director
Managing Partner, Blue Wolf Capital Partners, LLC

Charles P. Miller, Esq. – Director
Partner and Chief Compliance Officer, Blue Wolf Capital Partners, LLC

Michael C. Ranson – Director
Partner, Blue Wolf Capital Partners, LLC

Richard B. Becker, M.D. – Director
Chief Executive Officer, New Found Health, LLC

Steven D. Fialkow – Director
President and Chief Executive Officer, National Home Health Care Corp.

Affiliations:

- Accredited Health Services, Inc.
- Medical Resources Home Health Care Corp
- New England Home Care, Inc.
- Allen Health Care Services

The members of BW NHHC Holdings LLC comprises the following Limited Partnerships:

Blue Wolf Capital Fund III, L.P.

BW NHHC Co-Invest, L.P.

The managers of Blue Wolf Capital Fund III, L.P. and BW NHHC Co-Invest, L.P. comprises the following individuals:

Adam M. Blumenthal
(Previously Disclosed)

Charles P. Miller, Esq.
(Previously Disclosed)

Michael C. Ranson
(Previously Disclosed)

A search of the individuals (and entities, where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicate no issues with the licensure of the health professionals associated with this application.

The applicant has confirmed 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.

A Certificate of Good Standing has been received for all attorneys.

A seven (7) year review of the operations of facilities affiliated with this applicant was performed as part of this review (unless otherwise noted):

- Accredited Health Services, Inc.
- Medical Resources Home Health Care Corp
- New England Home Care, Inc.
- Health Acquisition Corp. d/b/a Allen Health Care Services
- New York Health Care, Inc. (NY)

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 residents and to prevent recurrent code violations.

An Affidavit was submitted by Steven Fialkow that to the best of his actual knowledge and belief, each of the Out-of-State Health Care Entities (Connecticut, Massachusetts and New Jersey) currently operates, and has operated for the past seven (7) years or since the date of his affiliation, whichever is shorter, in substantial compliance with all material codes, and published rules and regulations required for the lawful conduct by the Out-of-State Health Care Entities of their respective businesses. To the best of Mr. Fialkow's actual knowledge and belief, no material enforcement or material administrative actions have been taken against any of the Out-of-State Health Care Entities during the time period and that Mr. Fialkow has no actual knowledge of any issues regarding any of the Out-of-State Health Care Entities in respect to which he has formed the opinion that DOH should be aware of in determining the character and competence of the undersigned with respect to this application.

The applicant proposes to continue to serve the residents of the following counties from an office located at 175 Fullerton Avenue, Suite 101, Hempstead, New York 11501:

Dutchess	Nassau	Orange	Queens
Rockland	Suffolk	Sullivan	Ulster
Westchester			

The applicant proposes to also continue to serve the residents of the following counties from an office located at 70-00 Austin Street, Suite 201, Forest Hills, New York 11375:

Dutchess	Nassau	Orange	Queens
Rockland	Suffolk	Sullivan	Ulster
Westchester			

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Housekeeper
Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 14, 2016

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 11th day of February, 2016, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, 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 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:
152137 E	County of Orange (Orange County)
152298 E	Saratoga County (Saratoga County)
2250 L	Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)
2375 L	Blue Line Agency, LLC (Kings, New York, Queens, Richmond, Bronx and Westchester Counties)

2512 L	Evergreen Homecare Service of NY Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
2540 L	Aquinas LLC d/b/a Senior Helpers (New York, Queens, Bronx, Richmond, Kings, and Westchester Counties)
2628 L	Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare (Allegany, Monroe, Cattaraugus, Niagara, Chautauqua, Orleans, Erie, Wyoming and Genesee Counties)
152019 E	Serenity Health & Wellness, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
152224 E	Health Acquisition Corp. d/b/a Allen Health Care Services (Dutchess, Nassau, Orange, Queens, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties)

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

TO: Lisa Thomson
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

FROM: Mark Furnish, Director
Bureau of Health Facility Planning and Development

DATE: January 11, 2016

SUBJECT: Proposed Restated Certificate of Incorporation for Help/PSI Services Corp.

This is to request that the above matter be included on the agendas for the next Establishment Committee and Public Health Council meetings.

The attachments relating to this matter include the following:

1. Memorandum to the Public Health and Health Planning Council from Richard J. Zahnleuter, General Counsel;

2. A letter dated November 20, 2015 from Helen R. Pfister, attorney for the applicant;

3. Proposed Restated Certificate of Incorporation for Help/PSI Services Corp.

Attachments

cc: B. DelCogliano
C. Jolicoeur

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: Richard J. Zahnleuter
General Counsel

DATE: January 11, 2016

SUBJECT: Restated Certificate of Incorporation for HELP/PSI Services Corp.

Attached is the proposed Restated Certificate of Incorporation of HELP/PSI Services Corp. (the 'Applicant') This not-for-profit corporation seeks approval to change its name to "Brightpoint Health." Public Health and Health Planning Council approval for a change in corporate name is therefore required by Not-for-Profit Corporation Law §804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated November 20, 2015 from Helen R. Pfister, attorney for the Applicant,which explains the intent and purpose of the name change.

The Department has no objection to the proposed name change, and the proposed Restated Certificate of Incorporation is in legally acceptable form.

Attachments

manatt
manatt | phelps | phillips

Helen R. Pfister
Manatt, Phelps & Phillips, LLP
Direct Dial: (212) 830-7277
E-mail: hpfister@manatt.com

November 20, 2015

VIA ELECTRONIC MAIL

Colleen M. Leonard
Executive Secretary
Public Health and Planning Council
Albany, NY 12237

Re: **Restated Certificate of Incorporation for HELP/PSI Services Corp. (Op. Cert. No. 7000277R)**

Dear Ms. Leonard:

Enclosed for the approval of the Public Health and Health Planning Council please find an executed Restated Certificate of Incorporation which would change the legal name of my client, HELP/PSI Services Corp. (the "Applicant"), to Brightpoint Health. I have also enclosed a copy of the original Certificate of Incorporation of the Applicant.

The Applicant is a New York not-for-profit organization that is licensed as a diagnostic and treatment center under Article 28 of the Public Health Law. The Applicant is a well-established and respected organization with a proud history of providing health care services to underserved populations in New York City. However, the Applicant suffered poor name recognition, and many important audiences were not aware of the Applicant's operations or the results the Applicant achieves. Accordingly, last year, the Applicant applied for and received the consent of the Department of Health to operate under the assumed name Brightpoint Health, which has permitted the Applicant to develop greater name recognition among donors, government agencies, community leaders and patients, and which more accurately reflects the Applicant's mission than its legal name, HELP/PSI Services Corp.

In order to avoid any residual confusion associated with having a legal name that is different from the name the Applicant operates under, the Applicant is now seeking the Public Health and Health Planning Council's approval of the enclosed Restated Certificate of Incorporation, which would legally change the Applicant's name to Brightpoint Health.

If you have any questions concerning this submission, please do not hesitate to contact me.

Sincerely,

Helen R. Pfister

Encl.

RESTATED CERTIFICATE OF INCORPORATION

OF

HELP/PSI SERVICES CORP.

(Under Section 805 of the Not-For-Profit Corporation Law)

I, the undersigned, being the President and Chief Executive Officer of HELP/PSI Services Corp. (hereinafter the "Corporation"), do hereby certify:

1. The name of the Corporation is HELP/PSI Services Corp. The name under which the Corporation was formed is H.E.L.P./Project Samaritan Services Corp.

2. The Corporation was formed and duly incorporated under Section 402 of the Not-For-Profit Corporation Law (the "N-PCL") on January 27, 2000. A restated certificate of incorporation of the Corporation was filed by the New York State Department of State on July 27, 2007, and a second restated certificate of incorporation of the Corporation was filed by the New York State Department of State on February 26, 2008, and a third restated certificate of incorporation was filed by the New York State Department of State on July 23, 2008, and a fourth restated certificate of incorporation was filed by the New York State Department of State on July 22, 2015.

3. The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the N-PCL:

   a. Article FIRST, setting forth the name of the Corporation, is hereby amended to read in its entirety as follows:

      "FIRST, the name of the Corporation is Brightpoint Health (hereinafter referred to as the "Corporation")."

   b. Article ELEVENTH, designating the post office address to which the Secretary of State shall mail a copy of any process against the Corporation, is hereby amended to read in its entirety as follows:

      "ELEVENTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address at which the Secretary of State shall mail a copy of any process against the Corporation is:

      Brightpoint Health
      71 West 23rd Street, 8th Floor
      New York, NY 10010"

4. The text of the certificate of incorporation is hereby restated, as amended, to read as herein set forth in full:

"FIRST: The name of the corporation is Brightpoint Health (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For Profit Corporation Law (hereinafter referred to as "N-PCL") and is a Type B corporation under N-PCL § 201.

THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

i. To promote the welfare of persons in the community and raise the standards of their lives by providing administrative, management, purchasing, promotional and marketing services to affiliated not-for-profit entities which operate community-based facilities and programs for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and

ii. To assist community-based providers of health-related services in identifying the needs of persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive; and

iii. To promote the delivery of health-related services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive; and

iv. To assist community-based health care providers to provide educational programs and services to persons in the community

with special needs, including those of low-income, homeless, AIDS and/or HIV positive, regarding health-related matters; and

v. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and

vi. To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate; and

vii. To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Alcoholism and Substance Abuse Services; and

viii. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

FIFTH: Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(a) through (n), Section 404(p), Section 404(r), or Section 404(v) of the Not-for-Profit Corporation Law.

SIXTH: Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as "I.R.C."), as an organization described in I.R.C. § 501(c)(3) and (2) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2).

SEVENTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article THIRD hereof,

and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article EIGHTH.

EIGHTH: Upon the dissolution of the Corporation, its Board of Directors, after making provision for the payment of all of the liabilities of the Corporation and subject to the approval of a Justice of the Supreme Court of the State of New York, shall arrange for either the direct distribution of all of the assets of the Corporation to HELP/PSI, Inc., or distribution to one or more other organizations that then qualify for exemption under the provisions of I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3), subject to the laws of the State of New York.

NINTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under I.R.C. § 501(c)(3). Except as may otherwise be permitted by I.R.C. § 501(h) or any other provision of the Internal Revenue Code of 1986, as amended, and the corresponding laws of the State of New York, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

TENTH: The office of the Corporation shall be located in the County of New York, State of New York.

ELEVENTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address at which the Secretary of State shall mail a copy of any process against the Corporation is:

Brightpoint Health
71 West 23rd Street, 8th Floor
New York, NY 10010

TWELFTH: The Corporation may be authorized by resolution of its board of directors to accept subventions from members and non-members, on terms and conditions not inconsistent with the Not-for-Profit Corporation Law, and to issue certificates therefor."

5. This amendment and restatement of the certificate of incorporation of the Corporation was authorized by the affirmative vote of a majority of the entire Board of Directors of the Corporation at a meeting duly called and held for that purpose, the affirmative vote being at least equal to a quorum.

IN WITNESS WHEREOF, this certificate has been subscribed this 23rd day of July, 2015 by the undersigned who affirms that the statements made are true under the penalties of perjury.

Paul Vitale
President and Chief Executive Officer

203274251.1

F00012700075 01-07

CERTIFICATE OF INCORPORATION

OF

H.E.L.P./ PROJECT SAMARITAN SERVICES CORP.

(Under Section 402 of the Not-For-Profit Corporation Law)

The undersigned, natural persons at least 18 years of age, for the purpose of forming a corporation under Section 402 of the Not-For Profit Corporation Law of the State of New York, do hereby certify:

FIRST: The name of the corporation is H.E.L.P./ Project Samaritan Services Corp. (hereinafter referred to as the Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For Profit Corporation Law (hereinafter referred to as "N-PCL") and is a Type B corporation under N-PCL § 201.

THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

i. To promote the welfare of persons in the community and raise the standards of their lives by providing administrative, management, purchasing, promotional and marketing services to affiliated and non-affiliated not-for-profit entities which operate community-based facilities and programs for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and

ii To assist community-based providers of health-related services in identifying the needs of persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive; and

iii. To promote the delivery of health-related services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive; and

iv. To assist community-based health care providers to provide educational programs and services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive, regarding health-related matters; and

v. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein. Nothing contained in this Certificate of Incorporation shall authorize the corporation to establish or operate a hospital or to provide hospital or health-related services, or operate a home care 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 or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital.

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in N-PCL § 202, together with the power to solicit grants and

contributions for corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

FIFTH: Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities not otherwise authorized or approved pursuant to N-PCL § 404 (a) - (v).

SIXTH: Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as "I.R.C."), as an organization described in I.R.C. § 501(c)(3) and (2) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a(2).

SEVENTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article THIRD hereof, and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article EIGHTH.

EIGHTH: Upon the dissolution of the Corporation, its Board of Directors, after making provision for the payment of all of the liabilities of the Corporation and subject to the

approval of a Justice of the Supreme Court of the State of New York, shall arrange for either the direct distribution of all of the assets of the Corporation to Project Return Foundation, Inc. and Samaritan Village, Inc., in equal shares, or distribution to one or more other organizations that then qualify for exemption under the provisions of I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3), subject to the laws of the State of New York.

NINTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under I.R.C. § 501(c)(3). Except as may otherwise be permitted by I.R.C. § 501(h) or any other provision of the Internal Revenue Code of 1986, as amended, and the corresponding laws of the State of New York, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

TENTH: The office of the Corporation shall be located in the County of Queens, State of New York.

ELEVENTH: The Secretary of State of the State of New York is hereby designated as the 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 as agent of the Corporation is:

Davidoff & Malito, LLP
605 Third Avenue - 34th Floor
New York, New York 10158

TWELFTH: All references herein to "I.R.C." shall be deemed to include both amendments thereto and statues which succeed such provisions (i.e., the corresponding provisions of future United States Internal Revenue Laws).

THIRTEENTH: The names and addresses of the initial directors, until the first annual meeting, are:

Name	Address
Jane Velez	10 Astor Place New York, NY 10003-6935.
Richard Pruss	138-02 Queens Boulevard Briarwood, NY 11435
Marshall Goldberg	10 Astor Place New York, NY 10003-6935
Wallace Leinheardt	666 Old Country Road, Suite 705 Garden City, NY 11530
Nancy Schonberg	10 Astor Place New York, NY 10003-6935
Raymond Diaz	138-02 Queens Boulevard Briarwood, NY 11435

FOURTEENTH: The Corporation shall have one class of membership comprised of two members - Project Return Foundation, Inc. and Samaritan Village, Inc. The Corporation shall issue non-transferable membership certificates to evidence membership.

FIFTEENTH: The corporation shall be managed by a board composed of four to twelve directors to be elected at the first annual meeting. One-half of the total number of directors shall be elected, appointed and chosen by Project Return Foundation, Inc and one-half of the directors shall be elected, appointed and chosen by Samaritan Village, Inc.

IN WITNESS WHEREOF, this certificate has been subscribed this 25th day of January 2000 by the undersigned who affirm that the statements made are true under the penalties of perjury.

Jane Velez
10 Astor Place
New York, NY 10003-6935

Richard Pruss
138-02 Queens Boulevard
Briarwood, NY 11435

CT-07 F000127000796

CERTIFICATE OF INCORPORATION

OF

H.E.L.P./PROJECT SAMARITAN SERVICES CORP.

PURSUANT TO SECTION 402

OF THE NOT-FOR-PROFIT CORPORATION LAW

JAN 27 3 12 PM '00

1cc

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JAN 27 2000
TAX $ [illegible]
BY: [illegible]

Queens

Howard S. Weiss
Davidoff & Malito
605 Third Avenue
34th Floor
New York, NY 10158-0000

DRAWDOWN

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000127000796

TOTAL P.08

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Restated Certificate of Incorporation of Help/PSA Services, Inc. dated July 23, 2015.

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 15, 2016

Subject: The Greater Hudson Valley Family Health Center, Inc.
Proposed Certificate of Amendment to Certificate of Incorporation to change name to Cornerstone Family Healthcare

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The Greater Hudson Valley Family Health Center, Inc. is a not for profit corporation that operates a Diagnostic and Treatment Center that has been designated as a Federally Qualified Health Center. The facility proposes to change its name to Cornerstone Family Healthcare by way of an amendment to its Certificate of Incorporation. Approval of this name change by the Public Health and Health Planning Council is required by Not-for-Profit Corporation Law §804(a) and 10 NYCRR §600.11(a)(1).

Attached are the following with regard to this matter:

1. Proposed Certificate of Amendment of Certificate of Incorporation.

2. Existing Certificate of Incorporation and amendments thereto.

Pursuant to Not-for-Profit Corporation Law §301(a)(1), the word "corporation", "incorporated" or "limited", or an abbreviation of one of such words, does not have to be included in the corporate name because this is a not for profit corporation the formation of which requires the approval of the Council.

The proposed Certificate of Amendment is in legally acceptable form.

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE GREATER HUDSON VALLEY FAMILY HEALTH CENTER, INC.

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

THE GREATER HUDSON VALLEY FAMILY HEALTH CENTER, INC.

The corporation was formed under the name Family Health Center of Orange and Ulster County, Inc.

SECOND: The certificate of incorporation was filed by the Department of State on February 6, 1981.

THIRD: The corporation was formed under Section 402 of the the Not-for-Profit Corporation Law of the State of New York.

FOURTH: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph FIRST of the Certificate of Incorporation regarding the name of the corporation is hereby amended to read in its entirety as follows:

FIRST: The name of the corporation is:

CORNERSTONE FAMILY HEALTHCARE

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

2570 Route 9W
Cornwall, New York 12518

SEVENTH: The certificate of amendment was authorized by a vote of a majority of the entire board of directors. The corporation has no members.

Dated: November 11, 2015

Linda S. Muller, President

1140889/mr

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE GREATER HUDSON VALLEY FAMILY HEALTH CENTER, INC.

Under Section 803 of the Not-for-Profit Corporation Law

Filed by: Catania, Mahon, Milligram & Rider, PLLC
One Corwin Court
Newburgh, NY 12550

1140889/mr

CERTIFICATE OF INCORPORATION

OF

FAMILY HEALTH CENTER OF ORANGE
AND ULSTER COUNTY, INC.

UNDER Section 402 of the Not-for-Profit Corporation Law

We, the undersigned, being of full age, acting as incorporators for the purpose of creating a non-profit corporation under the laws of the State of New York, in conformity with Section 402 of the New York State Not For Profit Corporation Law, do hereby certify:

FIRST: The name of the corporation shall be FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC. and the period of duration of the corporation shall be perpetual.

SECOND: The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law and will be a Type B corporation under Section 201 of said Law.

Third: The purposes for which the corporation is organized are as follows:

(a) To establish, operate, and maintain a primary care diagnostic and treatment center at one or more sites, provided however, that prior to operating or opening each such site the corporation will obtain all approval required by Article 28 of the Public Health Law, and to deliver comprehensive primary health services to migrant and seasonal farm workers and all other medically underserved citizens of Orange and Ulster County with health services provided on a sliding fee basis in relation to the patient's ability to pay.

(b) To increase the availability of high quality family centered health care services to the medically underserved portions of the community.

A737065

(c) It is intended that this corporation will qualify as an exempt organization under Section 501 (C) (3) of the Internal Revenue Code and shall be entitled to do any acts as may pertain to the operation of a business in pursuit of the purposes above stated which are permitted by law and permitted by Section 501 (C) (3) of the Internal Revenue Code.

(d) Subject to the approval of any body or governmental entity as may be required, to own and acquire land to construct, erect and maintain buildings for corporate purposes.

FOURTH: The corporation shall principally conduct its activities in Counties of Orange and Ulster, State of New York.

FIFTH: Prior to the delivery of this certificate to the Department of State for filing all approvals or consents required by Not-For-Profit Corporation Law, the Public Health Law or any other applicable ~~statute of the State of New York shall be endorsed~~ upon or annexed to the certificate, including the approval of the Public Health Counsel as required by Article 28 of the Public Health Law.

SIXTH: The office of the corporation shall be located at 20 Grand Street (P.O. Box 357) in the Village and Town of Warwick, County of Orange, State of New York.

SEVENTH: The names and addresses of the initial directors of the Corporation until the first annual meeting, each of whom is at least eighteen years of age, are:

HERBERT [illegible], JR. Bellvale Road
Warwick, New York 10990

JAYNE L. FIERO	R.D. 3, Box 257 Beyers Road Middletown, New York 10940
DOUGLAS J. ANDERSON	Pine Hill Road Chester, New York 10918
DOMINIC CAPPELLERI	Pinecrest Warwick, New York 10990
PAUL S. McCOY	Jessup Road Warwick, New York 10990
CHARLES CARLTON	R.D. 1, Glenwood Road Pine Island, New York 10969
FRED WIBIRALSKE	Barry Road Monroe, New York 10950
JOHN SANFORD, III	Seward Highway Warwick, New York 10990
SILVIA QUIROZ	C/O Sobiech Pine Island Turnpike Pine Island, New York 10969
ELVIA S. CORTEZ	212 Wisner Avenue Middletown, New York 10940
ANGELA M. GIARDINO	21 Grand Street Warwick, New York 10990
SOLOMAN WILLIAMS	C/O Sobiech Pine Island Turnpike Pine Island, New York 10969

EIGHTH: The post office address to which the Secretary of State shall mail a copy of any notice required by law is c/o MANDELL & CHARDE, 105 Main Street, P.O. Box 82, Warwick, New York 10990.

IN WITNESS WHEREOF, we the undersigned incorporators, being all at least eighteen years of age, have made, subscribed and acknowledged this certificate this 3rd day of November 1980.

MANDELL AND CHARDE
105 MAIN STREET
P. O. BOX 82

Heather Gardner, Esq.
Bellvill Road, Warwick, New York 10990

Jayne L. Fiero, R.D.3, Box 257, Beyers Rd.
Middletown, New York 10940

Douglas J. Anderson, Pine Hill Road,
Chester, New York 10918

Dominic Cappelleri, Pinecrest, Warwick,
New York 10990

Paul S. McCoy, Jessup Road, Warwick,
New York 10990

Charles Carlton, R.D. 1, Glenwood Road,
PineIsland, New York 10969

Fred Wibiralske, Barry Road, Monroe,
New York 10950

John W. Sanford, III, Seward Highway,
Warwick, New York 10990

Silvia Quiroz, c/o Sobiech, Pine Island
Turnpike, Pine Island, New York 10969

Elvia S. Cortez, 222 Wisner Avenue,
Middletown, New York 10940

Angeda M. Giardino, 21 Grand Street,
Warwick, New York 10990

Soloman Williams, c/o Sobiech, Pine Island
Turnpike, Pine Island, New York 10969

STATE OF NEW YORK)
COUNTY OF ORANGE)ss.:

On the 3rd day of November, 1980, before me personally came Herbert Gareiss, Jr., to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

RICHARD MANDELL
Notary Public, State of New York
No. 4631428
Qualified in Orange County
Commission Expires March 30, 19[illegible]

MANDELL AND CHARGE
109 MAIN STREET
P. O. BOX 68
[illegible], NY 10940

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

On the 3rd day of November, 1980, before me personally came JAYNE L. FIBRO, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she executed the same.

[illegible]
Notary [illegible] York
Commission [illegible] 81

STATE OF NEW YORK)
COUNTY OF ORANGE)ss.:

On the 3rd day of November, 1980, before me personally came DOUGLAS J. ANDERSON, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

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STATE OF NEW YORK)
COUNTY OF ORANGE)ss.:

On the 3rd day of November, 1980, before me personally came DOMINIC CAPPELLERI, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public, State of New York
Qualified in Orange County
Commission expires March 30, 19..

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

On the 2nd day of November, 1980, before me personally came PAUL S. MC COY, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public, State of New York
No. 4621439
Qualified in Orange County
Commission expires March 30, 19..

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

On the 3rd day of November, 1980, before me personally came CHARLES CARLTON, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public, State of New York
No. [illegible]
Qualified in Orange County
Commission expires [illegible]

MANDELL AND CHARDE
100 MAIN STREET
P.O. BOX [illegible]
WARWICK, NY 10990

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

On the 2nd day of November, 1980, before me personally came FRED WIBIRALSKE, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

RICHARD MANDELL
Notary Public, State of New York
No. 4621439
Qualified in Orange County
Commission expires March 30, 1981

Richard Mandell

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

On the 2nd day of November, 1980, before me personally came JOHN W. SANFORD, III, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me, that he executed the same.

RICHARD MANDELL
Notary Public, State of New York
No. 4621439
Qualified in Orange County
Commission expires March 30, 1981

Richard Mandell

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

On the 2nd day of November, 1980, before me personally came SILVIA QUIROZ, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she executed the same.

RICHARD MANDELL
Notary Public, State of New York
No. 4621439
Qualified in Orange County
Commission expires March 30, 1981

Richard Mandell

STATE OF NEW YORK)
COUNTY OF ORANGE)ss.:

On the 2nd day of November, 1980, before me personally came ELVIA S. CORTEZ, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she executed the same.

RICHARD MANDELL
Notary Public, State of New York
No. 4621439
Qualified in Orange County
Commission expires March 30, 1981

Richard Mandell

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

On the 2nd day of November, 1980, before me personally came ANGELA M GIARDINO, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she executed the same.

RICHARD MANDELL
Notary Public, State of New York
[illegible]

Richard Mandell

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

On the 3rd day of November, 1980 before me personally came SOLOMAN WILLIAMS, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Richard Mandell

RICHARD MANDELL
Notary Public, State of New York
No. 4621130
Qualified in Orange County 81
Commission expires March 30, 19...

MANDELL AND CHARDE
100 MAIN STREET
P.O. BOX 94
[illegible]

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STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N.Y. 12224

ROBERT ABRAMS
ATTORNEY GENERAL

Telephone: 474-7206

January 13, 1981

Richard Mandell, Esq.
105 Main Street
P.O. Box 82
Warwick, New York 10990

Dear Mr. Mandell:

Re: FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, 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,

ROBERT ABRAMS
Attorney General

By Richard S. Redlo
RICHARD S. REDLO
Assistant Attorney General

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of Orange, at the Orange County Government Center, Goshen, New York, on the 28 day of January, 1981.

Present: HON. EDWARD M. O'GORMAN.

In the Matter of the Approval of the Certificate of Incorporation of the FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC. pursuant to Section 404(t) of the Not For Profit Corporation Law.

O R D E R

Index No.

Upon reading the foregoing Certificate of Incorporation and upon motion of RICHARD MANDELL, attorney for the proposed corporation for an Order approving such Certificate of Incorporation, I, EDWARD M. O'GORMAN, the undersigned Justice of the Supreme Court, State of New York Ninth Judicial District do hereby approve the foregoing Certificate of Incorporation.

ENTER:

Dated:
JANUARY 28, 1981

Edward M. O'Gorman, Justice
Supreme Court

MANDELL AND CHARDE

STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

January 12, 1981

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation, I hereby certify that the establishment application of Family Health Center of Orange and Ulster County, Inc. to operate a diagnostic and treatment center is APPROVED, the contingencies having been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of October 24, 1980.

The Certificate of Incorporation of Orange and Ulster County, Inc. is also APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

STEPHEN P. KRILL
Secretary

Sent to: Richard Mandell, Esq.
Mandell and Charde
P.O. Box 82
105 Main Street
Warsaw, New York 10990

cc: Ms. Peggy O'Neil Hammond
Family Health Center of Orange and Ulster County, Inc.
P.O. Box 357
20 Grand Street
Warwick, New York 10990

CERTIFICATE OF INCORPORATION

OF

FAMILY HEALTH CENTER OF

ORANGE AND ULSTER COUNTY,

INC.

580366

STATE OF NEW YORK
DEPARTMENT OF STATE
FEB 6 1981

B008531

CERTIFICATE OF AMENDMENT

of the Certificate of Incorporation of

FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.

UNDER Section 803 of the Not-for-Profit Corporation Law.

We, the undersigned, PAUL S. McCOY, President, and DOROTHY SANFORD, Secretary, of the FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC., hereafter sometimes referred to as the Corporation, hereby certify as follows:

1. The name of the Corporation at the time of incorporation was FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.

2. The certificate of its incorporation was filed by the Department of State on February 6, 1981.

3. The Corporation is a corporation as defined in sub-paragraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation.

4. The Certificate of Incorporation is hereby amended to change the name of the corporation to FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.

5. The Certificate of Incorporation is hereby amended to add additional paragraphs NINTH, TENTH, ELEVENTH and TWELFTH as follows:

NINTH: Notwithstanding any other provision of these articles, the corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or

equipment), [redacted], 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.

TENTH: No part of the net earnings of the corporation shall inure to 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.

ELEVENTH: No substantial part of the activities of the corporation shall be carrying on progaganda, or otherwise attempting to influence legislation (except as other provided by Internal Revenue Code section 501 (h), or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

TWELFTH: 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, or, to another organization to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this corporation was formed.

6. The corporation has no members and the above amendments to the Certificate of Incorporation were authorized by a vote of a majority of all members of the Board of Directors at a regular meeting of the Board of Directors held on September 7, 1982.

7. The Secretary of State is designated as agent of the corporation upon whom process on any notice required by law may be served, and the address to which the Secretary of State shall mail a copy of such process or notice is Drawer 1, Warwick, New York 10990.

8. See below.

IN WITNESS WHEREOF, we have subscribed our names and affixed our seals this 18th day of December, 1982.

Paul S. McCoy, President

Dorothy Sanford, Secretary

8. Annexed to the original certificate of incorporation were the approvals of the New York State Attorney General, a New York State Supreme Court Justice, and the New York State Public Health Council and prior to delivery of this Certificate of Amendment to the Department of State for filing the same approvals will be annexed.

STATE OF NEW YORK)
COUNTY OF ORANGE) ss:

PAUL S. McCOY, being duly sworn, deposes and says that he is the President of the FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC., the corporation named in and described in the foregoing certificate. He has read the foregoing certificate and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Paul S. McCoy

Sworn to before me this 21st day of December, 1982.

Richard Mandell
Notary Public

RICHARD MANDELL
Notary Public, State of New York
No. 4621429
Qualified in Orange County
Commission expires March 30, 19[illegible]

STATE OF NEW YORK)
COUNTY OF ORANGE) ss:

DOROTHY SANFORD, being duly sworn, deposes and says that she is the Secretary of the FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC., the corporation named in and described in the foregoing certificate. She has read the foregoing certificate and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Dorothy Sanford

Sworn to before me this 21st day of December, 1982.

Richard Mandell
Notary Public

RICHARD MANDELL
Notary Public, State of New York
No. 4621429
Qualified in Orange County
Commission expires March 30, 19[illegible]

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I, Abraham Isseks, a Justice of the Supreme Court of the State of New York, Ninth Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Orange and Ulster County, Inc., and consent that same be filed.

Dated: February 25, 1983
Supreme Court, Orange County
Special Term, Part II
Goshen, New York

Justice of the Supreme Court
Ninth Judicial District

HONORABLE ABRAHAM ISSEKS
JUSTICE OF THE SUPREME COURT

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STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N.Y. 12224

ROBERT ABRAMS
ATTORNEY GENERAL

JAMES G. McSPARRON
ASSISTANT ATTORNEY GENERAL
IN CHARGE
LITIGATION BUREAU

Telephone: 474-7206

March 31, 1983

Luke M. Charde, Jr., Esq.
105 Main Street
P.O. Box 82
Warwick, New York 10990

Dear Mr. Charde:

RE: FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.
(NEW)
FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.
(OLD)

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-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

RICHARD S. REDLO
Assistant Attorney General

6

STATE OF NEW YORK
DEPARTMENT OF HEALTH

PUBLIC HEALTH COUNCIL

July 25, 1983

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 22nd day of July, 1983, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Orange and Ulster County, Inc., dated December 21, 1982 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Susan I. Langlitz

SUSAN I. LANGLITZ
Acting Secretary

Sent to: Richard Mandell, Esq.
P.O. Box 92
105 Main Street
Warwick, New York- 10990

cc: Family Health Center of Orange
and Ulster County, Inc.
Drawer 1
Warwick, New York 10990

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STATE OF NEW YORK
DEPARTMENT OF STATE

FILED AUG 5 - 1983

AMT. OF CHECK $ 30
FILING FEE $ 30
TAX $
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CERT $
REFUND $
SPEC HANDLE $

BY: m

Dated: December 21, 1982

CERTIFICATE OF AMENDMENT

OF THE CERTIFICATE OF

INCORPORATION OF FAMILY

HEALTH CENTER OF ORANGE

AND ULSTER COUNTY, INC.

RICHARD MANDELL, ESQ.
105 Main Street
P.O. Box 82
Warwick, New York 10990
(914) 986-1172

DC FY2042 DC 96

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, being the President and Secretary of FAMILY HEALTH CENTER OR ORANGE AND ULSTER COUNTIES, INC. do hereby certify and set forth:

1. The name of the corporation is FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.

2. The Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. was filed by the Department of State on the 6th day of February, 1981, under the name of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC. The said corporation was formed under the Not-For-Profit Corporation Law of the State of New York.

3. FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under Section 201 of said law.

4. Paragraph (FIRST) of the Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. which sets forth the name of the corporation is hereby amended to read as follows:

FIRST: The name of the corporation is FAMILY HEALTH CENTER OF NEWBURGH, INC. and the period of duration of the corporation shall be perpetual.

5. Paragraph (EIGHTH) of the Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. which sets forth the post office address to which the Secretary of State shall mail a copy of any process served by law is hereby amended to read as follows:

EIGHTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served and the post office address to which the Secretary of State shall mail a copy of any process is 3 Washington Center, Newburgh, NY 12550.

6. The Secretary of State is designated as agent of the corporation upon whom process against it may be served and the post office address to which the Secretary of State shall mail a copy of any process is 3 Washington Center, Newburgh, NY 12550.

7. The corporation shall hereafter be (or continue to be) a Type B Corporation under Section 201 of the Not-For-Profit Corporation Law.

8. The manner in which this amendment to the Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. was authorized by the consent of a majority of the members of the entire Board of Directors of the Corporation, voting in person at a meeting duly called. There are no members eligible to vote.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate this 24th day of September 1991 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

S/ Ann Pagliaro
ANN PAGLIARO, President

S/ Anne M. Coon
ANNE M. COON, Secretary

STATE OF NEW YORK)
: ss.:
COUNTY OF ORANGE)

ANN PAGLIARO being duly sworn, says: I am the President of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC., a corporation; I have read the annexed Certificate of Amendment of the Certificate of Incorporation, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon investigation into the books and records of the corporation.

S/ Ann Pagliaro
ANN PAGLIARO

Sworn to before me this
24th day of March, 1992

S/ Marsha Henderson

STATE OF NEW YORK)
: ss.:
COUNTY OF ORANGE)

ANNE M. COON being duly sworn, says: I am the Secretary of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC., a corporation; I have read the annexed Certificate of Amendment of the Certificate of Incorporation, know the contents thereof and

the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon investigation into the books and records of the corporation.

ANNE M. COON

Sworn to before me this
24th day of March, 1992

MARSHA HENDERSON
Notary Public, State of New York
No. [redacted]
Qualified in Orange County
Commission Expires January 01, 1993

I, HOWARD MILLER, a Justice of the Supreme Court of the Ninth Judicial District of the State of New York, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.

Dated: April 7 1992

HOWARD MILLER, Justice Supreme Court

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

JAMES G. McSPARRON
DEPUTY FIRST ASSISTANT
ATTORNEY GENERAL

(518) 474-5303

October 9, 1991

Alan J. Axelrod, Esq.
Larkin & Axelrod
34 Rt. 17K
Newburgh, New York 12550

Dear Mr. Axelrod:

RE: OLD: FAMILY HEALTH CENTER OF ORANGE AND ULSTER, INC.
NEW: FAMILY HEALTH CENTER OF NEWBURGH, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment to the certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application. Approval is contingent upon your designating the Secretary of State as agent of the corporation upon whom process may be served pursuant to Section 803 of the Not-For-Profit Corporation Law,

Very truly yours,

ROBERT ABRAMS
Attorney General

By: Richard S. Redlo

RICHARD S. REDLO
Assistant Attorney General

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

November 25, 1991

Mr. Alan J. Axelrod
Larkin & Axelrod
Attorneys at Law
34 Route 17K
Newburgh, NY 12550

Re: Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Orange and Ulster, Inc.

Dear Mr. Axelrod:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 22nd day of November, 1991, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of Family Health Center of Orange and Ulster, Inc. hereafter to be known as Family Health Center of Newburgh, Inc. dated September 24, 1991 is approved.

Sincerely,

Karen S. Westervelt
Executive Secretary

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RESOLUTION

RESOLVED, that the Public Health Council, on this 22nd day of November, 1991, approves the filing of the Certificate of Amendment to the Certificate of Incorporation of Family Health Center of Orange and Ulster, Inc., hereafter to be known as Family Health Center of Newburgh, Inc., dated September 24, 1991.

F920423000496

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 23 1992
TAX $ —
BY: JAA

Orange

RECEIVED
Apr 23 10 02 AM '92

LARKIN & AXELROD
34 Route 17K
Newburgh, NY 12550

DC

BILLED

RECEIVED
Apr 21 10 07 AM '92

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DC-08

040205000285

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
41 State Street
Albany, NY 12231

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF FAMILY HEALTH CENTER OF NEWBURGH, INC.

UNDER SECTION 803 OF THE NOT-FOR PROFIT CORPORATION LAW

FIRST: The name of the Corporation is: Family Health Center of Newburgh, Inc.

SECOND: The date of filing of the certificate of incorporation with the Department of State is: February 6, 1981.

THIRD: The law of the corporation was formed under is: Not-for Profit Corporation Law - Section 402.

FOURTH: 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 certificate of incorporation of: FAMILY HEALTH CENTER OF NEWBURGH, INC. was filed by the Department of State on the 6TH day of February, 1981 under the name of: FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC. A Certificate of Amendment for FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC. was filed 8/5/1983, changing the name to: FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.. A Certificate of Amendment for FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. was filed 4/23/1992, changing the name to: FAMILY HEALTH CENTER OF NEWBURGH, INC.

FIFTH: The amendment effected by this certificate of amendment is as follows:
Paragraph 1 of the Certificate of Incorporation relating to the name of the Corporation is hereby amended to read in its entirety as follows:
The name of the Corporation is: The Greater Hudson Valley Family Health Center, Inc.

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is: 3 Washington Centre, Newburgh, NY 12550

SEVENTH: The certificate of amendment was authorized by a vote of a majority of the members at a meeting.

(Signature)

Marcel Martino - Chairman - Authorized Person
(Name & Capacity of Signer)

Dated: August 5, 2003

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

January 27, 2004

Ms. Meg King Broderick
Rider, Weiner, Frankel & Calhelha, P.C.
655 Little Britain Road
New Windsor, New York 12553

Re: Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Newburgh, Inc.

Dear Ms. Broderick:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of January, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Newburgh, Inc" hereinafter known as The Greater Hudson Valley Family Health Center, Inc., dated August 5, 2003.

Sincerely,

Karen S. Westervelt
Executive Secretary

/rnd

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040205000 245

CERTIFICATE OF AMENDMENT

OF

FAMILY HEALTH CENTER OF NEWBURGH, INC.

Under SEction 803 of the Not-for-Profit Corporation Law

RECEIVED
2004 FEB -4 PM 2:16

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED FEB 05 2004
TAX $
BY:

Filed By:

Rider, Weiner, & Frankel, P.C.
655 Little Britain Road
New Windsor NY 12553

D.C.-08
DRAWDOWN

☐ ROUTINE ☐ SAME DAY
☒ 24 HOUR ☐ 2 HOUR

040205000245

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Greater Hudson Valley Family Health Center, Inc., dated November 11, 2015.

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Lisa Thomson
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Mark Furnish, Senior Attorney
Bureau of House Counsel

Date: January 7, 2016

Subject: Proposed Certificate of Amendment of the Certificate of Incorporation of Samaritan Daytop Village Inc.

Please include this matter on the next Establishment and Project Review Committee and Public Health and Health Planning Council agendas.

The attachments relating to this matter include the following:

1) Memorandum to the Public Health and Health Planning Council from Richard J. Zahnleuter, Acting General Counsel;

2) Letter, dated October 19, 2015 from the applicant's attorney seeking Public Health and Health Planning Council approval of the proposed Certificate of Amendment of the Certificate of Incorporation of Samaritan Daytop Village, Inc.

3) Proposed Certificate of Amendment of the Certificate of Incorporation of Samaritan Daytop Village, Inc.

Attachments

cc: B. DelCogliano
C. Jolicoeur

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: Richard J. Zahnleuter
Acting General Counsel

DATE: January 7, 2016

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Samaritan Daytop Village, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Samaritan Daytop Village, Inc. ("Samaritan") This not-for-profit corporation seeks approval to amend its Certificate of Incorporation to reflect the transition of certain operations of Narco Freedom, Inc. to Samaritan. The New York State Office of Mental Health (OMH) – pursuant to an Omnibus Program Termination Agreement, dated September 1, 2015 – is requiring Samaritan to amend its Certificate of Incorporation in order for Samaritan to operate as an OMH provider. Samaritan's ability to file the certificate depends on the approval of the Public Health and Health Planning Council, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law and Section 2801-a of the Public Health Law.

Also attached is the proposed Certificate of Amendment of the Certificate of the Incorporation of Samaritan Daytop Village, Inc. and a letter dated October 19, 2015 from Tricia A. Asaro, attorney for Samaritan which explains the intent and purpose of the proposed amendment.

The Department has no objection to the proposed amendments, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments

GT GreenbergTraurig

Tricia A. Asaro
518-689-1416
asarot@gtlaw.com

October 19, 2015

VIA E-MAIL & OVERNIGHT DELIVERY

Ms. Janet L. Paloski
Director, Bureau of Certification and Systems Management
NYS Office of Alcoholism and Substance Abuse Services
1450 Western Avenue
Albany, New York 12203-3526
janet.paloski@oasas.ny.gov

Ms. Kathleen Bova-Lang
Project Manager
Bureau of Inspection and Certification
Office of Mental Health
44 Holland Avenue
Albany, New York 12229
kathleen.bovalang@omh.ny.gov

Colleen M. Leonard
Executive Secretary, Public Health and Health Planning Council
Center for Health Care Facility Planning, Licensure and Finance
NYS Department of Health
Corning Tower, Room 1805
Albany, New York 12237
colleen.leonard@health.ny.gov

Re: Proposed Certificate of Amendment of Certificate of Incorporation of Samaritan Daytop Village, Inc.

Dear Ms. Paloski, Ms. Bova-Lang, and Ms. Leonard:

I am writing on behalf of Samaritan Village, Inc. ("Samaritan"). As you know, in connection with the transition of certain operations of Narco Freedom, Inc. to Samaritan pursuant to that certain Omnibus Program Termination Agreement, dated September 1, 2015, the New York State Office of Mental Health ("OMH") is requiring Samaritan to amend its Certificate of Incorporation in order for Samaritan to operate as an OMH provider. As you may also know, Samaritan is in the process of changing its name to Samaritan Daytop Village, Inc., which we anticipate will be effectuated on or before October 30, 2015.

Enclosed for your review is a proposed Certificate of Amendment effectuating the language changes required by OMH (for your convenience we have highlighted the relevant language). Because we anticipate the name change to be effective by the time of filing, we have drafted the proposed Certificate of Amendment using the name Samaritan Daytop Village, Inc.

Please let me know if you have any questions or would like to discuss.

Respectfully Submitted,

GREENBERG TRAURIG, LLP

Tricia A. Asaro/BMF

Tricia A. Asaro

TAA/EJO/map
Enclosure
cc: Mark Boss (via e-mail)
Keith McCarthy (via e-mail)
Michael Bass (via e-mail)

ALB 1888829v3

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
SAMARITAN DAYTOP VILLAGE, INC.

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the Corporation is Samaritan Daytop Village, Inc. The name under which the Corporation was formed is Samaritan Village, Inc.

SECOND: The Certificate of Incorporation was filed by the Department of State on December 29, 1981.

THIRD: The Corporation was formed under Section 402 of the Not-for-Profit Corporation Law of the State of New York.

FOURTH: The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The Certificate of Incorporation is amended as follows:

Paragraph THIRD of the Certificate of Incorporation regarding the purposes and powers of the Corporation is hereby deleted and amended to read in its entirety as follows:

"THIRD: The purposes for which the Corporation is formed are:

To establish, maintain and operate community based programs and facilities for the care, education and treatment of persons who because of drug abuse or dependency or other mental, physical or emotional conditions cannot be care for, educated or treated in regular public or private programs, including, but not limited to, the operation of "drug-free" substance abuse programs, chemotherapy programs utilizing methadone, and ambulatory and day care prevention and other specialized services programs for substance abusers, specialized groups or the general public.

To operate a substance abuse program, providing substance abuse services within the meaning of Articles 19 and 23 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall in accordance therewith include, but not be limited to, the power to provide intervention, prevention, diagnostic testing, detoxification, chemotherapy, counseling, vocational remediation, educational remediation, referral and other necessary services. Such services may be provided in either residential or non-residential settings;

To operate a methadone-to-abstinence clinic offering a range of treatment procedures and services for the rehabilitation of heroin addicts as defined in Article 23 of the Mental Hygiene Law;

d) To acquire, purchase, sell, hold title, lease, improve, maintain, manage, operate, conduct, control, supervise, direct, fit out, license the use of and generally deal in any manner in and with any and all real and personal property.

e) To borrow money, and, from time to time, to make, accept, endorse, execute and issue bonds, debentures, promissory notes, bills of exchange and other obligations.

f) To make and adopt by-laws, and rules and regulations for the admission, suspension and expulsion of the members of the Corporation, and for their government, and for the establishment of one or more classes of membership, for the collection of fees and dues, for the election and appointment of the directors and officers of the Corporation, and the definition of their duties, and for the safekeeping and protection of the property and funds of the Corporation, and in general to regulate, manage and preserve the property and interests of the Corporation, and from time to time to alter, repeal, rescind or vary such by-laws, rules and regulations, or any of them.

g) Either directly to worthy or needy individuals or indirectly alone or in conjunction or cooperation with other whether such others be persons or organizations of any sort or nature, such as firms, associations, trusts, syndicates, institutions, agencies, corporations or government bureaus, departments or agencies to do any and all lawful acts and things, including the making and carrying out of any contract, and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable and proper to the fostering or attainment of any or all of the foregoing purposes and powers.

Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law Section 404 (b through n, p, r s).

Except as authorized by Title VIII of the Education Law or other applicable statute, nothing herein shall authorize the corporation to engage in the practice of any professions in New York, unless authorized to do so under an operating certificate or license by an appropriate State, regional or local agency.

Such services will be carried out by individuals authorized to do so pursuant to Title VIII of the Education Law, including New York State licensed psychologists, social workers, mental health counselors, marriage and family therapists, psychoanalysts and creative art therapists. Such practitioners will provide such services for the corporation only to the extent permitted under section 6503-a of the Education Law."

SIXTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: Samaritan Daytop Village, Inc., 138-02 Queens Boulevard, Briarwood, New York, 11435.

SEVENTH: This Certificate of Amendment was authorized by a unanimous written consent of the board of directors of the Corporation. The Corporation has no members.

[Remainder of page intentionally left blank]

To operate medical facilities such as diagnostic and treatment centers providing health services under Article 28 and the Public Health Law; and

To render such other services pursuant to Articles 28 and 33 of the Public Health Law as may be necessary to carry out such care, treatment and rehabilitation.

To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health, provided that the Corporation may not establish any facility or program without first obtaining such operating certificate.

To provide information as to narcotics addiction and abuse;

To stimulate research and community concern about drug dependency, emotion and mental illness;

To provide counseling service to all within its bounds who are in need of help, guidance, or some form of care;

To provide a place or places where such persons may receive opportunities for personal counseling, social and recreational activities;

To solicit and administer funds, grants-in-aid and donations of real and personal property and apply the principal and income to corporate purposes;

To finance and plan to do all acts incidental to the execution of therapeutic programs for narcotic addicts;

In furtherance of the above-mentioned purposes, the Corporation, in addition to the powers granted under the laws of the State of New York, shall have the following powers:

a) To solicit donations of property, and administer gifts, legacies, bequests, devises, whether real or personal, of any sort or nature without limitation as to amount or value, and to use, apply, employ, expend, disburse and/or donate the income and/or principal thereof.
b) To receive and maintain a fund or funds, to have control and manage such fund or funds, change the investments thereof, to invest and reinvest the same and the proceeds thereof and to collect and receive the income and profits thereof and therefrom.
c) To voluntarily aid and/or assist institutions, organizations, and governmental bodies, the activities of which shall be such as to further, accomplish, foster or attain any of the purposes for which the Corporation is organized, including, without limiting the foregoing, the acquisition of property and the making of such property and any improvements thereto available to any such institution, organization or governmental body with or without charge.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment.

TINO HERNANDEZ
Chief Executive Officer

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
SAMARITAN DAYTOP VILLAGE, INC.

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name and Address:

Tricia A. Asaro, Esq.
54 State Street, 6th Floor
Albany, New York 12207

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Samaritan Daytop Village, Inc., dated as attached.

NEW YORK STATE OF OPPORTUNITY. Department of Health

MEMORANDUM

To: Lisa Thomson
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Mark Furnish, Senior Attorney
Bureau of House Counsel

Date: December 22, 2015

Subject: Proposed Dissolution of Gouverneur Nursing Home Company, Inc.

Please include this matter on the next Establishment and Project Review Committee and Public Health and Health Planning Council agendas.

The attachments relating to this matter include the following:

(1) Memorandum to the Public Health and Health Planning Council from Richard Zahnleuter, Acting General Counsel;

(2) Letter, dated October 29, 2015 from the applicant's attorney seeking Public Health and Health Planning Council approval of the proposed dissolution

(3) Proposed Certificate of Dissolution;

(4) Proposed Plan of Dissolution; and

(5) Proposed verified petition seeking the Attorney General's approval of the filing of the applicant's certificate of dissolution.

Attachments

cc: B. DelCogliano
C. Jolicoeur

NEW YORK STATE OF OPPORTUNITY. Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, Acting General Counsel

Date: December 22, 2015

Subject: Proposed Dissolution of Gouverneur Nursing Home Company, Inc.

Gouverneur Nursing Home Company, Inc. ('Company") requests Public Health and Health Planning Council 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.

The Company was incorporated pursuant to New York's Not-For-Profit Law on July 22, 1969 for the purpose of providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income. The Company ceased operations on October 28, 2015 and surrendered its operating certificate to the Department of Health. The Company has not carried on any business or activities since that time, has no assets and has liabilities of $1,657, 514.00 and has no reason to continue its existence.

Attached are a copy of the proposed Certificate of Dissolution, a letter from the Family Medical Care's attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution and Distribution of Assets and a proposed Verified Petition seeking the Attorney General's approval to file Company's Certificate of Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

Attachments.

LECLAIRRYAN

October 29, 2015

VIA FEDERAL EXPRESS

Ms. Colleen Leonard
Executive Assistant
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1441
Albany, New York 12223

Re: Dissolution of Gouverneur Nursing Home Company, Inc.

Dear Ms. Leonard:

At the direction of Attorney Mark Furnish of the NYS Department of Health, I enclose a copy of the dissolution papers of Gouverneur Nursing Home Company, Inc. for your Council's review and approval. Please note that the Petitioner plans to file its 2014 990 Form by the November 16, 2015 deadline so that paragraph 8 of the Verified Petition will be accurate.

Of course, I am available to respond to any questions or concerns the Council may have about the enclosures.

Respectfully submitted,

Janice B. Grubin

JBG:kkr
Encls.
cc: Deanna Nelson, Esq. (w/enclosures)
Mark Furnish, Esq. (w/enclosures)

E-mail: Janice.Grubin@leclairryan.com
Direct Phone: (212) 634-5016
Direct Fax: (212) 634-5062

885 Third Avenue, Sixteenth Floor
New York, New York 10022
Phone: 212.697.6555 \ Fax: 212.986.3509

In the Matter of the Application of GOUVERNEUR NURSING HOME COMPANY, INC. For Approval of Certificate of Dissolution pursuant to Section 1002 of the New York Not-For-Profit Corporation Law.

VERIFIED PETITION

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Watertown Regional Office
Dulles State Office Building
317 Washington Street
Watertown, NY 13601-3744

Petitioner, Gouverneur Nursing Home Company, Inc. (the "Petitioner"), by Michael J. Burgess, Chairman of the corporation, for its Verified Petition alleges:

1. Gouverneur Nursing Home Company, Inc., whose principal address is located in the County of St. Lawrence, was incorporated pursuant to New York's Not-for-Profit Corporation Law on July 22, 1969.

2. The names, addresses and titles of the directors and officers are as follows:

Name	Director/Officer/Title	Address
Michael J. Burgess	Chairman (d)	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Nicholas Gardner, DDS	Board Member (d) Vice Chairman	119 East Main Street Gouverneur, New York 13642
Mark Brackett	Board Member (d) Secretary/Treasurer	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Andrew Williams, MD	Board Member (d)	Community Health Center of the North Country 4 Commerce Lane Canton, New York 13617

VERIFICATION

I, Michael J. Burgess, affirm and say: I am the Chairman of the Board of GOUVERNEUR NURSING HOME COMPANY, INC., a non-profit corporation and Petitioner of the within action; I have read the foregoing Petition and know the contents thereof and the same is true to my own knowledge. I make this verification because the above party is a corporation and I am the Chairman of the Board thereof.

Michael J. Burgess

Name: Michael J. Burgess
Title: Chairman of the Board

STATE OF NEW YORK: COUNTY OF ST. LAWRENCE: ss:

On October 29, 2015, before me, the undersigned, personally appeared Michael J. Burgess, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, executed the instrument.

Alane Day
Notary Public

ALANE DAY
Notary Public, State of New York
No. 01DA[illegible]83510
Qualified in St. Lawrence County
Commission Expires November 18, 2018

GOUVERNEUR NURSING HOME COMPANY, INC. DBA KINNEY NURSING HOME
BALANCE SHEET
SEPTEMBER 30,2015

ASSETS	
TOTAL ASSETS (1)	$ -
LIABILITIES	
TOTAL LIABILITIES (2)	$ 1,657,514
NET ASSETS	
UNRESTRICTED	$ (1,657,514)
TOTAL NET ASSETS	$ (1,657,514)
TOTAL LIABILITIES AND NET ASSETS	$ -

(1) TOTAL ASSETS REPRESENTS AMOUNT DUE FROM FORMER PATIENT ($55,000) CURRENTLY IN LITIGATION. MANAGEMENT IS UNCERTAIN AS TO THE COLLECTIBILITY OF THIS ACCOUNT DUE TO THE CURRENT LITIGATION.

(2) AMOUNT DUE GOUVERNEUR HOSPITAL (UNSECURED)	$	1,607,183
AMOUNTS DUE TO THE FOLLOWING UNSECURED CREDITORS-		
OMNICARE	$	1,098
HEALTH FACILITY ASSESSMENT	$	37,768
HEALTH DIRECT	$	11,465
TOTAL	$	1,657,514

Certificate of Dissolution

of

Gouverneur Nursing Home Company, Inc.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

I, Michael J. Burgess, the Chairman of the Board of Gouverneur Nursing Home Company, Inc. hereby certifies:

1. The name of this corporation is Gouverneur Nursing Home Company, Inc.

2. The Certificate of Incorporation of Gouverneur Nursing Home Company, Inc. was filed by the Department of State of the State of New York on the 22nd day of July, 1969.

3. The names and addresses of each of the directors and officers of the corporation and the title of each are as follows:

Name	Officer or Director/Title	Address
Michael J. Burgess	Chairman	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Nicholas Gardner, DDS	Board Member	119 East Main Street Gouverneur, New York 13642
Mark Brackett	Board Member	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Andrew Williams, MD	Board Member	Community Health Center of the North Country 4 Commerce Lane Canton, New York 13617

4. Dissolution of the corporation was authorized by a unanimous vote of the Board of Directors. The corporation has no members.

5. The corporation elects to dissolve.

6. At the time of dissolution, the corporation is a charitable corporation.

7. The corporation will file with the Attorney General a petition for Approval of the Certificate of Dissolution with the original certified Plan of Dissolution.

8. When the Board authorized the Plan of Dissolution, the corporation had no assets and liabilities of $1,657,514.00 and did not hold any assets required to be used for a restricted purpose.

9. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Gouverneur Nursing Home Company, Inc. this 29th day of October, 2015.

Michael J Burgess

Signature

Michael J. Burgess, Chairman of the Board

EXHIBIT A

Plan of Dissolution

of

Gouverneur Nursing Home Company, Inc.

The Board of Directors ("Directors") of Gouverneur Nursing Home Company, Inc. does hereby resolve that the corporation be dissolved. The Directors agreed to this resolution at a meeting duly convened on the 28th day of October, 2015, pursuant to notice given in accordance with law. At the meeting, a quorum was present at all times, and the Directors considered the advisability of voluntarily dissolving the corporation. All of the Directors determined that dissolution was advisable and in the best interest of the corporation. They adopted the following plan:

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. Approval of the dissolution must be obtained from the following government agency, whose approval is attached.

   a. New York State Department of Health

3. The corporation has no assets and liabilities of $1,657,514.00.

4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Certification

I, Michael J. Burgess, Chairman of the Board of Directors of the Gouverneur Nursing Home Company, Inc., hereby certifies under penalties for perjury that a meeting of the Board of Directors and the Corporation was duly held at 6:00 p.m. on October 28, 2015 at 77 West Barney Street, Gouverneur, New York and the within Plan of Dissolution was duly submitted and passed by a unanimous vote of the Board of Directors.

Michael J. Burgess

Signature

Michael J. Burgess, Chairman of the Board of Directors

Dated the 29th day of October, 2015.

EXHIBIT B

GOUVERNEUR NURSING HOME COMPANY, INC. DBA KINNEY NURSING HOME
BALANCE SHEET
SEPTEMBER 30,2015

ASSETS	
TOTAL ASSETS (1)	$ -
LIABILITIES	
TOTAL LIABILITIES (2)	$ 1,657,514
NET ASSETS	
UNRESTRICTED	$ (1,657,514)
TOTAL NET ASSETS	$ (1,657,514)
TOTAL LIABILITIES AND NET ASSETS	$ -

(1) TOTAL ASSETS REPRESENTS AMOUNT DUE FROM FORMER PATIENT ($55,000) CURRENTLY IN LITIGATION. MANAGEMENT IS UNCERTAIN AS TO THE COLLECTIBILITY OF THIS ACCOUNT DUE TO THE CURRENT LITIGATION.

(2) AMOUNT DUE GOUVERNEUR HOSPITAL (UNSECURED)	$ 1,607,183
AMOUNTS DUE TO THE FOLLOWING UNSECURED CREDITORS-	
OMNICARE	$ 1,098
HEALTH FACILITY ASSESSMENT	$ 37,768
HEALTH DIRECT	$ 11,465
TOTAL	$ 1,657,514

EXHIBIT C

In the Matter of the Application of GOUVERNEUR NURSING HOME COMPANY, INC. For Approval of Certificate of Dissolution pursuant to Section 1002 of the New York Not-For-Profit Corporation Law.

VERIFIED PETITION

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Watertown Regional Office
Dulles State Office Building
317 Washington Street
Watertown, NY 13601-3744

Petitioner, Gouverneur Nursing Home Company, Inc. (the "Petitioner"), by Michael J. Burgess, Chairman of the corporation, for its Verified Petition alleges:

1. Gouverneur Nursing Home Company, Inc., whose principal address is located in the County of St. Lawrence, was incorporated pursuant to New York's Not-for-Profit Corporation Law on July 22, 1969.

2. The names, addresses and titles of the directors and officers are as follows:

Name	Director/Officer/Title	Address
Michael J. Burgess	Chairman (d)	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Nicholas Gardner, DDS	Board Member (d) Vice Chairman	119 East Main Street Gouverneur, New York 13642
Mark Brackett	Board Member (d) Secretary/Treasurer	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Andrew Williams, MD	Board Member (d)	Community Health Center of the North Country 4 Commerce Lane Canton, New York 13617

Marlinda LaValley	CEO (o)	77 West Barney Street. Gouverneur, New York 13642
Richard T. Lang	CFO (o)	77 West Barney Street Gouverneur, New York 13642

3. Petitioner was incorporated for the purpose of providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income and, in furtherance of that goal, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, maintaining and operating a nursing home project pursuant to the terms and provisions of the Public Health Law.

4. Petitioner is a charitable corporation.

5. Petitioner's Board of Directors (the "Directors") met pursuant to duly given notice on October 28, 2015 at 6:00 p.m. At the meeting, a resolution was passed by a unanimous vote by all of the Directors. The Directors adopted a Plan of Dissolution and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law.

6. Petitioner has no members.

7. A certified copy of Petitioner's Plan of Dissolution is attached as Exhibit A hereto.

8. As set forth on the balance sheet attached as Exhibit B hereto, Petitioner has no assets and has liabilities in the amount of $1,657,514.00. Its final report showing zero assets has been filed with the Attorney General.

9. Approval of Petitioner's dissolution must be obtained from the following governmental body, and a copy of such approval is attached as an Exhibit C attached hereto:

a. New York State Department of Health

10. With this Petition, the Original Certificate of Dissolution is being submitted to

the Attorney General for approval pursuant to the Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Gouverneur Nursing Home Company Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed

This twenty-ninth day of October, 2015, by

LECLAIRRYAN, A PROFESSIONAL CORPORATION

By: _____

Janice B. Grubin
LeClairRyan, A Professional Corporation
885 Third Avenue – 16th Floor
New York, NY 10022
(212) 634-5016

Counsel for Petitioner
Gouverneur Nursing Home Company, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Certificate of Dissolution of Gouverneur Nursing Home Company, Inc., dated October 29, 2015.

NEW YORK STATE OF OPPORTUNITY. Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 15, 2016

Subject: Jewish Home Lifecare, Receivership Corporation
Proposed Dissolution

Jewish Home Lifecare, Receivership Corporation is a not for profit corporation. Counsel for the Corporation advises that the Corporation was formed for the purpose of acting as a receiver for nursing homes in distress, but has not conducted any business in over ten years. Approval of the dissolution of the Corporation by the Public Health and Health Planning Council is required by Not-for-Profit Corporation Law §1003(b) and 10 NYCRR Part 650.

Attached are the following with regard to this matter:

1. Proposed Certificate of Dissolution.
2. Plan of Dissolution.
3. Petition for Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

738310

CERTIFICATE OF DISSOLUTION

OF

JEWISH HOME LIFECARE, RECEIVERSHIP CORPORATION

(Under Section 1003 of the Not-for-Profit Corporation Law)

I, Audrey S. Weiner, the President of Jewish Home Lifecare, Receivership Corporation hereby certify:

FIRST: The name of the corporation is Jewish Home Lifecare, Receivership Corporation (the "corporation").

SECOND: The certificate of incorporation of the corporation was filed by the Department of State on May 28, 1987 under the original name of JH & H Receivership Corporation.

THIRD: The names and addresses of each of the officers and directors of the corporation and the title of each are as follows:

Name	Title	Address
Audrey S. Weiner	President	120 West 106th Street New York, NY 10025
Elizabeth Grayer	Chair	120 West 106th Street New York, NY 10025
David Haas	Treasurer/Secretary	120 West 106th Street New York, NY 10025

FOURTH: Dissolution of the corporation was authorized by an unanimous written consent of the Board of Directors. The Corporation has no members.

FIFTH: The corporation elects to dissolve.

SIXTH: At the time of dissolution, the corporation is a type B corporation.

SEVENTH: The corporation filed with Attorney General a certified copy of its Plan of Dissolution.

EIGHTH: The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution the corporation had no assets or liabilities.

NINTH: At the time of the authorization of its Plan of Dissolution, the corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

TENTH: Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Jewish Home Lifecare, Receivership Corporation this 26 day of December, 2014.

Audrey S. Weiner, President

738310

Certificate of Dissolution

Of

Jewish Home Lifecare, Receivership Corporation

Pursuant to § 1003 of the Not-for-Profit Corporation Law

Filed by:

Wolf Haldenstein Adler Freeman & Hertz LLP

270 Madison Avenue, 9th Floor

New York, NY 10016

738312

PLAN OF DISSOLUTION OF

JEWISH HOME LIFECARE, RECEIVERSHIP CORPORATION

The Board of Directors of Jewish Home Lifecare, Receivership Corporation, by unanimous written consent dated December 26, 2014, pursuant to N-PCL §708 (b), having considered the advisability of voluntarily dissolving the corporation, and it being the unanimous opinion of the Board that dissolution is advisable and it is in the best interests of the corporation to effect such dissolution , and the Board of Directors having adopted, by unanimous written consent, a Plan for voluntary dissolution of the corporation, does hereby resolve that the corporation be dissolved in accordance with the following plan:

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. Approval of the dissolution of the corporation is required by NYS Department of Health.

3. The corporation has no assets or liabilities.

4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PLC § 1002(d).

5. A certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

CERTIFICATION

STATE OF NEW YORK }
} ss.:
COUNTY OF NEW YORK }

I, Audrey S. Weiner, President of Jewish Home Lifecare, Receivership Corporation, hereby certify under penalties for perjury that the within Plan of Dissolution was duly submitted and passed by an unanimous written consent of the Board of Directors.

Audrey S. Weiner, President

----------X

In the Matter of the Application of
JEWISH HOME LIFECARE, RECEIVERSHIP
CORPORATION,

VERIFIED PETITION

For Approval of Certificate of
Dissolution pursuant to
Section 1002 of the Not-for –Profit
Corporation Law.

----------X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau
120 Broadway, 3rd Floor
New York, New York 10271

Petitioner, Jewish Home Lifecare, Receivership Corporation, by Audrey S. Weiner, President of the corporation, for its Verified Petition alleges:

1. Jewish Home Lifecare, Receivership Corporation, whose principal address is 120 West 106th Street, New York, NY 10025 was incorporated pursuant to New York's Not-for-Profit Corporation Law on March 9, 1988. Copies of the Certificate of Incorporation and Certificate of Amendment are attached.

2. The names, addresses and titles of the corporation's officers and directors are as follows:

Title	Name	Address
President	Audrey S. Weiner	120 West 106th Street New York, NY 10025
Chair	Elizabeth Grayer	120 West 106th Street New York, NY 10025
Treasurer/Secretary	David Haas	120 West 106th Street New York, NY 10025

3. The purposes for which the corporation was organized are as follows:

The Corporation was formed for the purpose of acting as a receiver for nursing homes in distress.

4. The corporation is a Type B corporation.

5. The Board of Directors of the corporation executed a unanimous written consent dated December 26, 2014 adopting a Plan and authorizing the filing of the Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Plan and written consent of the Directors is attached as an exhibit.

6. The corporation has no members.

7. A certified copy of the corporation's Plan of Dissolution was filed with the Office of the Attorney General.

8. The corporation has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the dissolution of the corporation is required by NYS Department of Health.

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of Jewish Home Lifecare, Receivership Corporation, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 402.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 26 day of December, 2014 by

Audrey S. Weiner, President

Verification

STATE OF NEW YORK)
:SS.:
COUNTY OF NEW YORK)

Audrey S. Weiner, being duly sworn, deposes and says:

I am the President of Jewish Home Lifecare, Receivership Corporation, the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Audrey S. Weiner

Sworn to before me this
24 day of December, 2014.

Notary Public

JANET A. POWERS
COMMISSIONER OF DEEDS
CITY OF NEW YORK - NO. 4-4886
CERTIFICATE FILED IN QUEENS COUNTY
COMMISSION EXPIRES MARCH 1, 2015

738397

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Certificate of Dissolution of Jewish Home Lifecare, Receivership Corporation, dated December 26, 2014.

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 15, 2016

Subject: W.K. Diagnostic and Treatment Center, Inc.
Proposed Dissolution

W.K. Diagnostic and Treatment Center, Inc. is a not for profit corporation. Counsel for the Corporation advises that the Corporation has not conducted any business since it was decertified as a diagnostic and treatment center approximately seven years ago. Approval of the dissolution of the Corporation by the Public Health and Health Planning Council is required by Not-for-Profit Corporation Law §1003(b) and 10 NYCRR Part 650.

Attached are the following with regard to this matter:

1. Proposed Certificate of Dissolution.
2. Plan of Dissolution.
3. Petition for Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

724620

CERTIFICATE OF DISSOLUTION

OF

W.K. DIAGNOSTIC AND TREATMENT CENTER, INC.

(Under Section 1003 of the Not-for-Profit Corporation Law)

I, Audrey S. Weiner, the President of W.K. Diagnostic and Treatment Center, Inc. hereby certify:

FIRST: The name of the corporation is W.K. Diagnostic and Treatment Center, Inc. (the "corporation").

SECOND: The certificate of incorporation of the corporation was filed by the Department of State on March 9, 1988.

THIRD: The names and addresses of each of the officers and directors of the corporation and the title of each are as follows:

Name	Title	Address
Audrey S. Weiner	President	120 West 106th Street New York, NY 10025
Lynn Oberlander	Chair	120 West 106th Street New York, NY 10025
Rita Morgan	Treasurer/Secretary	120 West 106th Street New York, NY 10025

FOURTH: Dissolution of the corporation was authorized by an unanimous written consent of the Board of Directors. The Corporation has no members.

FIFTH: The corporation elects to dissolve.

SIXTH: At the time of dissolution, the corporation is a type B corporation.

SEVENTH: The corporation filed with Attorney General a certified copy of its Plan of Dissolution.

EIGHTH: The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution the corporation had no assets or liabilities.

NINTH: At the time of the authorization of its Plan of Dissolution, the corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

TENTH: Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of W. K. Diagnostic and Treatment Center, Inc. this 26 day of December, 2014.

Audrey S. Weiner, President

Certificate of Dissolution

Of

W.K. Diagnostic and Treatment Center, Inc.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

Filed by:

Wolf Haldenstein Adler Freeman & Hertz LLP

270 Madison Avenue, 9th Floor

New York, NY 10016

724617

PLAN OF DISSOLUTION OF

W.K. DIAGNOSTIC AND TREATMENT CENTER, INC.

The Board of Directors of W.K. Diagnostic and Treatment Center, Inc., by unanimous written consent dated December 26, 2014, pursuant to N-PCL §708 (b), having considered the advisability of voluntarily dissolving the corporation, and it being the unanimous opinion of the Board that dissolution is advisable and it is in the best interests of the corporation to effect such dissolution , and the Board of Directors having adopted, by unanimous written consent, a Plan for voluntary dissolution of the corporation, does hereby resolve that the corporation be dissolved in accordance with the following plan:

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. Approval of the dissolution of the corporation is required by Public Health Council.

3. The corporation has no assets or liabilities.

4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PLC § 1002(d).

5. A certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

CERTIFICATION

STATE OF NEW YORK }
} ss.:
COUNTY OF NEW YORK }

I, Audrey S. Weiner, President of W.K. Diagnostic and Treatment Center, Inc., hereby certify under penalties for perjury that the within Plan of Dissolution was duly submitted and passed by an unanimous written consent of the Board of Directors.

Audrey S. Weiner, President

----------X

In the Matter of the Application of
W.K. DIAGNOSTIC AND TREATMENT
CENTER, INC.,

VERIFIED PETITION

For Approval of Certificate of
Dissolution pursuant to
Section 1002 of the Not-for –Profit
Corporation Law.

----------X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau
120 Broadway, 3rd Floor
New York, New York 10271

Petitioner, W.K. Diagnostic and Treatment Center, Inc., by Audrey S. Weiner, President of the corporation, for its Verified Petition alleges:

1. W. K. Diagnostic and Treatment Center, Inc., whose principal address is 120 West 106th Street, New York, NY 10025 was incorporated pursuant to New York's Not-for-Profit Corporation Law on March 9, 1988. A copy of the Certificate of Incorporation is attached.

2. The names, addresses and titles of the corporation's officers and directors are as follows:

Title	Name	Address
President	Audrey S. Weiner	120 West 106th Street New York, NY 10025
Chair	Lynn Oberlander	120 West 106th Street New York, NY 10025
Treasurer/Secretary	Rita Morgan	120 West 106th Street New York, NY 10025

3. The purposes for which the corporation was organized are as follows:

The Corporation was formed for the purpose of providing diagnostic and therapeutic rehabilitative services on an out-patient basis to aged persons suffering from illness or disease.

4. The corporation is a Type B corporation.

5. The Board of Directors of the corporation executed a unanimous written consent dated December 26, 2014 adopting a Plan and authorizing the filing of the Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Plan and written consent of the Directors is attached as an exhibit.

6. The corporation has no members.

7. A certified copy of the corporation's Plan of Dissolution was filed with the Office of the Attorney General.

8. The corporation has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the dissolution of corporation is required from Public Health and Health Planning Council and attached thereto.

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of W.K. Diagnostic and Treatment Center, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 402.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 26 day of December, 2014 by

Audrey S. Weiner, President

Verification

STATE OF NEW YORK)
:SS.:
COUNTY OF NEW YORK)

Audrey S. Weiner, being duly sworn, deposes and says:

I am the President of W.K. Diagnostic and Treatment Center, Inc., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Audrey S. Weiner

Sworn to before me this
21st day of December, 2014.

Notary Public

JANET A. POWERS
COMMISSIONER OF DEEDS
CITY OF NEW YORK - NO. 4-4886
CERTIFICATE FILED IN QUEENS COUNTY
COMMISSION EXPIRES MARCH 1, 20[illegible]

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Certificate of Dissolution of W.K. Diagnostic and Treatment Center, Inc., dated December 26, 2014.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152323-E
Alice Hyde Medical Center

Program: **Hospital**
Purpose: **Establishment**
County: **Franklin**
Acknowledged: **November 30, 2015**

Executive Summary

Description

The University of Vermont Health Network (UVM Health Network, formerly known as Fletcher Allen Partners) and Community Providers, Inc. (CPI) seek approval to become the active parents of Alice Hyde Medical Center (AHMC), a 64 bed acute care hospital located at 133 Park Street, Malone (Franklin County). There will be no change in services or the number or type of beds as a result of the proposed change in governance structure. AHMC will remain a separate not-for-profit corporation certified under Article 28 of the New York Public Health Law, maintaining a separate operating certificate.

On October 7, 2015, UVM Health Network, CPI and AHMC entered into a Membership Agreement to further the development of an integrated regional health care system to improve quality, increase efficiencies, and lower costs of health care delivery in northern New York and Vermont. AHMC will amend and restate its Certificate of Incorporation and bylaws to name CPI as its sole member and to grant both UVM Health Network and CPI operator powers. BFA Attachment A provides the organizational chart of UVM Health Network and CPI before and after the requested change.

As active parent, UVM Health Network and CPI will have the power and authority to make decisions for its affiliates, as stated in its certificate of incorporation and bylaws, and the active parent powers as described in 10 NYCRR 405.1(c), including:

- appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation;
- approval of hospital operating and capital budgets;
- adoption or approval of hospital operating policies and procedures;
- approval of certificate of need applications filed by or on behalf of the hospital;
- approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- approval of hospital contracts for management or for clinical services; and
- approval of settlements of administrative proceedings or litigation to which the hospital is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceeds insurance coverage or any applicable self-insurance fund.

The composition of the Board of AHMC will not change on the effective date of the transaction and powers of the Board will also be unchanged, subject only to the Reserved Powers of CPI and UVM Health Network.

UVM Health Network and CPI's exercise of powers will allow the following for AHMC providers:

- Formulate consistent corporate policies and procedures across the system;
- Ensure a consistent approach to regulatory compliance, standards of care, and medical staff credentialing;
- Organize the network providers into an efficient and accessible continuum of care responsive to community needs;
- Collaborate in areas designed to conserve resources, such as joint purchasing;
- Facilitate clinical integration and the use of best practices;
- Share resources; and
- Reflect common mission, philosophy, values and purposes.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in beds or services.

Program Summary

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

Financial Summary

There are no project costs or budgets associated with the project.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the fully executed Amended and Restated Articles of Incorporation of the University of Vermont Health Network Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's updated and amended Amended and Restated Bylaws of the University of Vermont Health Network, Inc. (formally Fletcher Allen Partners, Inc.), acceptable to the Department. [CSL]
3. Submission of a photocopy of the updated and amended Bylaws of Community Providers, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of a fully executed Amended and Restated Certificate of Incorporation of Alice Hyde Medical Center, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed and amended bylaws of the Alice Hyde Medical Center, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

February 11, 2016

Need Analysis

Background

The University of Vermont Health Network (UVM Health Network) and Community Providers, Inc. (CPI) are submitting this Establishment-Only Certificate of Need (CON) Application to seek approval to become the active parents/co-operators of Alice Hyde Medical Center. The purpose of the proposal is to strengthen health care delivery regionally and in Franklin County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Character and Competence

The composition of the Board of AHMC will not change on the effective date of the transaction and powers of the Board will also be unchanged, subject only to the Reserved Powers of UVM Health Network and CPI. UVM Health Network is the sole member of CPI. UVM Health Network has no corporate member.

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted for all of the members of both the University of Vermont Health Network, Inc. and Community Providers, Inc. (27 individuals in total) regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Black disclosed one settled malpractice claim.

Mr. Perkins disclosed that he received a DWI in 2007 for which he pleaded guilty and paid a fine.

Ms. Stickney disclosed that the State of Vermont fined Wake Robin Corporation $5,000 for a violation of the Certificate of Need process during her tenure as President/CEO. Specifically, approval was obtained from the Vermont licensing body for nursing homes to undergo a $300,000 conversion of three assisted living rooms to skilled nursing rooms, however, the facility did not obtain proper Certificate of Need approval. There were no other regulatory or legal issues with the project. [Ms. Stickney was not the licensed nursing home administrator for Wake Robin.]

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.

In November 2011, Fletcher Allen and the NYS Office of Medicaid Inspector General (OMIG) entered into a Stipulation of Settlement in regard to an audit report by OMIG with respect to billings for ambulatory surgery services. The stipulation required Fletcher Allen to pay $510,973 with no admission of liability.

CVPH Skilled Nursing Facility (SNF)

- *In a Stipulation and Order (S&O) dated in June 2009, the facility was fined $10,000 based on findings from an investigation where a resident eloped from the facility, fell and sustained injury.*
- *In a Stipulation and Order dated June 21, 2010, the facility was fined $6,000 based on findings from a survey completed on August 20, 2008. Deficient practice was cited in the areas of: Quality Assessment and Assurance, Organization and Administration, and Quality of Care – Accidents.*
- *In a Stipulation and Order dated March 12, 2012, the facility was fined $22,000 based on findings from a survey completed on February 3, 2011. Deficient practice was cited in the areas of: Quality of Care – Medication Errors, Physician Visits, and Drug Regime Review.*

Champlain Valley Physicians Hospital Medical Center

- *The Department issued a Stipulation and Order dated March 7, 2012 and fined CVPH $28,000 based on an investigation into the death of a patient who had been admitted for knee surgery. When emergency care became necessary for this patient, there was a delay in resuscitation and a misplaced breathing tube.*
- *The Department issued a Stipulation and Order effective July 16, 2014, and fined CVPH $40,000 based on deficiencies found during inspections completed on July 23, 2013 and December 30, 2013. Deficient practices were found in the following areas: Governing Body (Compliance with Laws and Care of Patients); Administration (Records and Reports); Medical Staff (Accountability); Nursing Services (Delivery of Services); Quality Assurance (QA and Program Activities); Surgical Services; Anesthesia Services (Operation and Delivery); Outpatient Services; and Patient Rights.*

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no issues of capability or feasibility, as there are no project costs or budgets associated with this application.

The applicant stated that upon Public Health and Health Planning Council approval of this application, UVM Health Network and CPI will obtain consent for the proposed changes from necessary lenders, insurers and trustees. There will be no change in the daily operations of the health care facility, although the facility is expected to experience cost benefits from the active parent designation.

BFA Attachment B is AHMC's 2014 audited financial summary and internal financials as of October 31, 2015. As shown, the hospital experienced negative working capital, positive net assets and a net loss from operations of $466,059 in 2014 due to increased expenses in accounts payable and accrued expenses as a result of the cost of constructing the new nursing home. Alice Hyde Medical Center has shown positive working capital, positive net assets and a net income from operations of $2,024,302 as of October 31, 2015.

BFA Attachment C is the 2014 certified and current internal 2015 financial summaries for UVM Health Network, which has shown positive working capital, positive net assets and a net income from operations.

BFA Attachment D is the current internal 2015 financial summary for CPI which has shown positive working capital, positive net assets and a net income from operations.

Designation as an active parent is expected to enhance UVM Health Network and CPI facilities and contribute to a greater marketing presence for the Network and its providers. Based on the preceding,

the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Current & Proposed Organizational Chart
BFA Attachment B	Financial Summary, Alice Hyde Medical Center - 2014 audited, internals as of October 31, 2015
BFA Attachment C	Financial Summary, UVM Health Network, internal 2015 financials and certified 2014 financials
BFA Attachment D	Financial Summary, CPI, internal 2015 financials

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of February, 2016 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 University of Vermont Health Network Inc. and Community Providers Inc. as the active parents of Alice Hyde Medical Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
152323 E	Alice Hyde Medical Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the fully executed Amended and Restated Articles of Incorporation of the University of Vermont Health Network Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's updated and amended Amended and Restated Bylaws of the University of Vermont Health Network, Inc. (formally Fletcher Allen Partners, Inc.), acceptable to the Department. [CSL]
3. Submission of a photocopy of the updated and amended Bylaws of Community Providers, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of a fully executed Amended and Restated Certificate of Incorporation of Alice Hyde Medical Center, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed and amended bylaws of the Alice Hyde Medical Center, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 151227-E
SurgiCare of Manhattan

Program: **Diagnostic and Treatment Center** ***County:*** **New York**
Purpose: **Establishment** ***Acknowledged:*** **May 19, 2015**

Executive Summary

Description
SurgiCare of Manhattan, LLC d/b/a SurgiCare of Manhattan, an existing proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 800 Second Avenue, 7th Floor, New York, requests approval for a two-year extension of their limited life status. The D&TC is certified as a multi-specialty freestanding ambulatory surgery center (FASC) and provides orthopedic and pain management services utilizing six operating rooms and twelve recovery bays. The facility was approved by the Public Health Council with a five-year limited life beginning operation effective May 18, 2010. The FASC's limited life expired on May 18, 2015. SurgiCare of Manhattan requested an extension of their operating certification prior to their limited life expiration date.

OPCHSM Recommendation
Contingent Approval for a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.

Need Summary
Required submission of data by the applicant, as a contingency of CON 071052, has been completed.

Based on CON 071052, Surgicare of Manhattan projected 10,123 procedures with Medicaid at 1% and charity care at 3% for Year 3. According to their annual reports, they performed 8,650 procedures in Year 3 (2013) with actual charity care at 0.40% and Medicaid at 0%.

Surgicare of Manhattan projects 3,808 patient visits in the next year (equating to roughly 8,700 procedures), with 2% Medicaid and 2% charity care. There will be no changes in services.

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

Financial Summary
There are no project costs associated with this application.

Budget:

Revenues	$21,264,968
Expenses	12,187,776
Net Income	$9,077,192

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval for a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. Said reports should include:
    a. Data showing actual utilization including procedures
    b. Data showing breakdown of visits by payor source;
    c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
    d. Data showing number of emergency transfers to a hospital;
    e. Data showing percentage of charity care provided, and
    f. Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of a certification from the applicant indicating that none of the company's legal and corporate documents have changed since the company's last CON project approval (project no. 071052-E), acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

November 19, 2015 – EPRC recommended Contingent Approval of a One-Year extension to the operating certificate.

December 10, 2015 – PHHPC recommended Deferral of the project until the following meeting cycle.

February 11, 2016

Need Analysis

Project Description

Surgicare of Manhattan, LLC, an Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, is requesting a two-year extension of its five-year limited life. It is located at 800 Second Avenue, New York, 10017, in New York County. The center provides orthopedic and pain management surgery services, and has six operating rooms.

Analysis

The primary service area is New York County. The table below provides projections and utilization for Year 3 (2013) of the original CON 071052.

Procedures	**Projected Year 3 (2013)**	**Actual Year 3 (2013)**
Total	10,123	8,650

The table below provides projections under CON 071052 and actual utilization for 2013, as well as actual 2014 and Year 1, after approval, projections.

	Projected Year 3 (2013) 071052	**Actual Year 3 (2013)**	**Actual 2014**	**Projections Years 1 151227**
Medicare FFS/MC	12.0%	14.1%	14.1%	14.1%
Medicaid FFS/MC	1.0%	0.0%	0.0%	2.0%
Commercial	83.0%	83.5%	83.5%	79.8%
Private Pay/Other	1.0%	2.0%	.9%	2.1%
Charity Care	3.0%	0.4%	1.5%	2.0%
Total	100%	100%	100%	100%

Source: Applicant's annual report

Since the passage of the Affordable Care Act (ACA), access to healthcare coverage has improved in New York State, with fewer people needing traditional charity care. Through February 2015, the number of uninsured individuals in New York County has dropped from 222,000 before passage of the ACA to approximately 52,700 after passage (a 76% drop). Approximately 70% of these newly insured people are enrolled in Medicaid.

Per the original CON 071052, the combined Medicaid and charity care projected utilization was to be 4%. The Center has been experiencing difficulty in meeting this projection. The applicant indicated that this was due to improved healthcare coverage options in New York County, resulting in fewer uninsured individuals. The center realized a high percentage of bad debt attributable to patients covered by insurance with high co-pays and deductibles. The center re-evaluated the number of self-pay individuals for 2014 and determined that 45 cases could be labeled charity care, increasing the amount of charity care provided in 2014 to 1.5%.

In recognition of the need for the center to improve its charity care, it has developed a detailed action plan. The Center has appointed a full-time staff member to facilitate the provision of charity care by engaging in meaningful outreach. The center plans to leverage North Shore-LIJ's robust charity program and will work closely with Lenox Hill Hospital to refer underinsured patients to the center.

The applicant has submitted documentation confirming that contracts have been negotiated with two Medicaid Managed Care plans: Healthfirst and Wellcare. The applicant has also submitted documentation confirming submission of the outstanding 2011-2013 AHFC cost reports to DOH.

It is reasonable to expect that under its proposed action plan for reaching uninsured individuals, and with its connection to the NorthShore-LIJ organization, Surgicare of Manhattan will be able to achieve its proposed level of Medicaid and charity care within the two-year extension of limited life.

Surgicare of Manhattan is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion

The proposed project will continue providing ambulatory surgery services to the communities of New York County.

Recommendation

From a need perspective, contingent approval of a two-year extension of the operating certificate is recommended.

Program Analysis

Program Proposal

SurgiCare of Manhattan, LLC d/b/a SurgiCare of Manhattan, an existing Article 28 multi-specialty Diagnostic and Treatment Center located at 800 Second Avenue, 7th Floor, New York (New York County), is requesting permission for a two year extension of their five-year conditional, limited life approval (initially granted via CON #071052-E).

The Center, accredited by The Joint Commission Ambulatory Health Care Accreditation Program, provides surgical services in orthopedics and pain management utilizing six (6) operating rooms. At the present time, there are no proposals to add any services, expand or renovate the facility or change anything about the Center. Staffing is expected to remain at 26.0 FTEs and Christopher Riegler, M.D. will continue to serve as the Center's Medical Director.

Compliance with Applicable Codes, Rules and Regulations

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the current year of operation and for Year One and Year Three subsequent to approval, as shown below:

	Current Year (Actual 2014)	Year One & Year Three
Revenues:		
Operating	$21,569,570	$21,264,968
Non-Operating	0	0
Total Revenues	$21,569,570	$21,264,968
Expenses:		
Operating	$10,279,246	$10,279,246
Capital	1,908,530	1,908,530
Total Expenses	$12,187,776	$12,187,776
Net Income	$9,381,794	$9,077,192
Utilization (Procedures)	3,808	3,808
Cost Per Procedure	$3,200.57	$3,200.57

Utilization by payor source related to the submitted operating budget is as follows:

	Current Year (Actual 2014)		Projected Year One & Year Three	
Payor Source:	Procedures	%	Procedures	%
Medicaid Fee For Service	1	.03%	77	2.02%
Commercial Fee For Service	3,179	83.47%	3,039	79.80%
Medicare Fee For Service	535	14.05%	535	14.05%
Private Pay	36	.95%	81	2.13%
Charity Care	57	1.50%	76	2.00%
Total	3,808	100.00%	3,808	100.00%

Capability and Feasibility

There are no project costs associated with this application.

The submitted budgets indicate a net income of $9,077,192 and $9,077,192 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is the 2013 and 2014 certified financial statements of SurgiCare of Manhattan, LLC. As shown, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity achieved an average net income of $8,646,291 from 2013 through 2014.

BFA Attachment B is the internal financial statements of Surgicare of Manhattan, LLC for April 30, 2015 and May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period. Also, the entity achieved a net income of $2,307,099 through May 31, 2015.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary - 2013 and 2014 certified financial statements of Surgicare of Manhattan, LLC
BFA Attachment B	Financial Summary - April 30, 2015 through May 31, 2015 internal financial statements of Surgicare of Manhattan, 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 11th day of February, 2016 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 for a two-year extension of their limited life for CON 071052, 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:
151227 E	SurgiCare of Manhattan

APPROVAL CONTINGENT UPON:

Approval for a two-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. Said reports should include:
    a. Data showing actual utilization including procedures
    b. Data showing breakdown of visits by payor source;
    c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
    d. Data showing number of emergency transfers to a hospital;
    e. Data showing percentage of charity care provided, and
    f. Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of a certification from the applicant indicating that none of the company's legal and corporate documents have changed since the company's last CON project approval (project no. 071052-E), acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152219-B
Comprehensive Care ASC, LLC

Program: **Diagnostic and Treatment Center** ***County:*** **New York**
Purpose: **Establishment and Construction** ***Acknowledged:*** **October 19, 2015**

Executive Summary

Description

This project amends and supersedes CON 141300, which was approved by the Public Health and Health Planning Council (PHHPC) in October 2014, due to a change in the ownership as approved. Per this amended application, Comprehensive Care ASC, LLC, a New York State limited liability corporation, request approval to establish and construct an Article 28 diagnostic and treatment center to be certified as a multi-specialty, freestanding ambulatory surgery center (FASC) specializing in orthopedic surgery and pain management services. The FASC will be located in leased space at 200 West 13th Street, Suite 400, New York (New York County), and will have four operating rooms and two procedure rooms. Comprehensive Care ASC, LLC's primary service area will be New York County. This application has been developed with the cooperation and support of Lenox Hill Hospital and North Shore-LIJ Health System.

The 100% member of Comprehensive Care ASC, LLC is North Shore-LIJ Ventures CCC, LLC, a New York State not-for-profit corporation solely owned by North Shore University Hospital. A certificate of amendment was filed on October 7, 2015 with the Secretary of the State of New York to change the name, Comprehensive Care ASC, LLC, to Greenwich Village Ambulatory Surgery Center, LLC upon PHHPC approval of this application.

Greenwich Village Ambulatory Surgery Center, LLC will enter into a consulting and administrative services agreement with North Shore-Long Island Jewish Health Care, Inc. (NSLIJHC), whereby NSLIJHC will provide development, consulting, and administrative services to the proposed Center, including but not limited to: budgeting, credentialing, billing, and physician scheduling.

OPCHSM Recommendation

Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary

3,125 procedures are projected in Year 1. The proposed project will improve access to ambulatory surgery services for the communities of New York County.

Program Summary

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

Financial Summary

Project costs of $24,998,962 will be met with $4,678,107 in cash, a $9,620,855 bank loan and a leasehold improvements to be provided by the landlord in the amount of $10,700,000. The operating budget is as follows:

Revenues:	$19,699,291
Expenses:	13,947,552
Gain:	$5,751,739

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON upon mailing. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
    a. Data showing actual utilization including procedures;
    b. Data showing breakdown of visits by payor source;
    c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    d. Data showing number of emergency transfers to a hospital;
    e. Data showing percentage of charity care provided, and
    f. Number of nosocomial infections recorded during the year in question. (RNR)
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. (RNR)
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. (RNR)
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of a loan commitment for project costs, acceptable to the Department of Health. (BFA)
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of a photocopy of the fully executed Operating Agreement of the Greenwich Village Operating Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the fully executed Operating Agreement of North Shore LIJ Ventures CCC, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. (AER)
7. The applicant shall complete construction by March 15, 2017. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. (AER)

Council Action Date
February 11, 2016

Need Analysis

Project Description

Comprehensive Care ASC, LLC proposes to establish and construct an Article 28 diagnostic and treatment center to provide multi-specialty ambulatory surgery services specializing in orthopedic, spinal and interventional pain management services. It will have four operating rooms and two procedure rooms. The proposed location is 200 West 13th Street, Suite 400, New York, 10011, in New York County.

Background and Analysis

The primary service area is New York County. New York County currently has a total of 15 freestanding ambulatory surgery centers: 7 multi-specialty ASCs and 8 single specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2013 and 2014.

ASC Type	Facility	Patients 2013	Patients 2014
Single	Carnegie Hill Endo, LLC	10,695	11,426
Multi	Center for Specialty Care	4,174	3,885
Single	East Side Endoscopy	9,183	9,284
Multi	Fifth Avenue Surgery Center	1,665	1,544
Multi	Gramercy Park Digestive Disease Center	8,666	9,343
Multi	Gramercy Surgery Center, Inc.	2,550	2,667
Single	Kips Bay Endoscopy Center LLC	9,241	9,084
Single	Manhattan Endoscopy Center, LLC	12,014	12,656
Multi	Manhattan Surgery Center (Opened 4/1/13)	900	2,502
Single	Mid-Manhattan Surgi-Center	4,312	2,984
Multi	Midtown Surgery Center, LLC	3,114	3,161
Single	Retinal Ambulatory Surgery Center	1,862	1,984
Multi	Surgicare of Manhattan, LLC	3,648	3,666
Single	West Side GI	12,516	12,549
Single	Yorkville Endoscopy Center (opened 2/22/13)	9,140	10,685
	Total	**93,680**	**97,420**

Source-SPARCS 2015

As shown above, there was a 4% year-to-year increase in the number of patients served by ambulatory surgery centers in New York County. The multi-specialty ASCs provided the following types of procedures: ear, nose and throat (ENT), gastroenterology, podiatry, plastic, ophthalmology and orthopedic. These multi-specialty ASCs had 24,717 patient visits in 2013 and 26,768 in 2014. This represents an 8.3% year-to-year increase.

The population of New York County in 2010 was 1,585,873, with 615,731 individuals (38.8%) who are 45 and over - the primary population group utilizing ambulatory surgery services. Per the Cornell Program on Applied Demographics (PAD) projection data, the 45 and over population group is estimated to grow to 660,206 by 2025 and represent 40.9% of the projected population of 1,615,772.

3,125 procedures are projected in Year 1 and 6,350 in Year 3. These projections are based on the participating physicians' current case load. Of the eight physicians who have pledged to perform surgeries at the ASC, six currently perform their ambulatory surgery cases at North Shore-LIJ Health System hospital. The table below shows the projected payor source utilizations for Year 1 and Year 3.

Projections	Year 1	Year 1	Year 3	Year 3
Commercial INS	2,016	64.5%	4,098	64.5%
Medicare	359	11.5%	729	11.5%
Medicaid	91	2.9%	184	2.9%
Private Pay	46	1.5%	94	1.5%
Charity Care	62	2.0%	126	2.0%
Other	551	17.6%	1,119	17.6%
Total	3,125	100.0%	6,350	100.0%

The applicant indicated that as a to-be-established ASC, the center is not yet in a position to execute and negotiate contracts or letters of intent with Medicaid Managed Care plans. The center intends to contract with the HealthFirst and Emblem Medicaid Managed Care plans once operational. The center will follow the guidelines in North Shore-LIJ's robust charity program to serve the underinsured patients in the service area. The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.

Conclusion

The proposed project will improve access to ambulatory surgery services for the communities of New York County.

Recommendation

From a need perspective, contingent approval is recommended for a limited life of five years.

Program Analysis

Program Description

Comprehensive Care ASC, LLC seeks approval to establish and construct an Article 28 diagnostic and treatment center that will be certified as a multi-specialty ambulatory surgery center (ASC). Upon approval, Comprehensive Care ASC, LLC intends on amending its Articles of Organization to change its name to Greenwich Village Ambulatory Surgery Center, LLC.

Proposed Operator	Comprehensive Care ASC, LLC
Site Address	200 West 13th Street, Suite 400, New York, NY
Surgical Specialties	Multi-Specialty, to include: Orthopedics Pain Management
Operating Rooms	4 - Class C Operating Rooms (2 additional Class C ORs will be constructed but not equipped at this time)
Procedure Rooms	2 – Class A Procedure Rooms
Hours of Operation	Monday through Friday from 6:00 am to 6:00 pm (Will consider expanding hours as demand increases.)
Staffing (1st Year / 3rd Year)	21.50 FTEs / 30.00 FTEs
Medical Director(s)	Nicholas Sgaglione, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Lenox Hill Hospital 4.1 miles/15 minutes away
On-call service	Upon discharge, patients will be provided instructions on how to contact their surgeon and the Center will have an after-hours phone message as well.

Character and Competence
Comprehensive Care ASC, LLCs sole member is North Shore-LIJ Ventures CCC, LLC. The sole passive member of NSLIJ Ventures CCC, LLC is North Shore-LIJ Health System. A full Character and Competence Review was conducted on all voting members of the NSLIJ Board. Disclosures were made as part of project CON #151217 which was approved by PHHPC in August 2015. The Managers of Comprehensive Care ASC (listed below) are all officers of NSLIJ.

Name	**Membership**
North Shore LIJ Ventures CCC, LLC	**100.00%**
Managers:	
Dennis Dowling	
Laurence A. Kraemer	
John McGovern	
Mark Jarrett, MD	
Joseph Moscola	

In keeping with past practice, disclosure information was submitted and reviewed for the Medical Director, Nicholas Sgaglione, M.D. Dr. Sgaglione has over 30 years of experience. He is Board-certified in Orthopedic Surgery and is the Chair of the Department of Orthopedic Surgery at North Shore University Hospital – Long Island Jewish Medical Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of $6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of $19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of $74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling $13,353 were collected.

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulator fines (each under $5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Richard Horowitz disclosed that he is affiliated with a non-profit organization and has been named as a defendant (among 41 members of a Board of Trustees) in a pending lawsuit an individual filed alleging employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with the organization.

Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.

Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.

Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.

Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.

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.

On October 16, 2006, the Department issued a Stipulation and Order (S&O) and $14,000 fine to Southside Hospital when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.

On December 8, 2006, the Department issued a S&O and $12,000 fine to Forest Hills Hospital after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined $8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined $12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of $76.4M to the federal government and $12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

On December 11, 2008, the Department issued a Stipulation and Order and $18,000 fine to North Shore University Hospital – Manhasset following a complaint investigation into the post-operative care rendered to an elderly patient. Subsequent to surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed and sustained a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.

On July 8, 2010, the Department issued a Stipulation and Order and $42,000 fine to Syosset Hospital following a complaint investigation related to the care a child having an adenotonsillectomy received. It was determined that the patient was improperly cleared for surgery and, that despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The $2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHHs conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

Integration with Community Resources
The Center is committed to providing charity care for persons without the ability to pay and a uniformly-administered system of reduced fees or financial assistance will be implemented for those who are uninsured or do not have access to the financial resources to pay for medical care.

The Center is committed to exploring implementation of an electronic medical record (EMR) system that best suits the aim of providing rapid and accurate exchange of patient information between the Center and utilizing physicians. In the interim, the Center will utilize a paper medical record what will be scanned into a virtual medical record. The Center will consider joining a regional health information (RHIO) or qualified health information exchange (HIE) for data exchange.

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

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Administrative Services Agreement

Comprehensive Care ASC, LLC, which will change its name to Greenwich Village Ambulatory Surgery Center, LLC after PHHPC approval, will enter into an Administrative Services Agreement with North Shore-Long Island Jewish Health Care, Inc. The consultant will provide certain professional business and administrative services to the ambulatory surgery center relating to the operation of the facility. The applicant has submitted an executed agreement, which is summarized below:

Date:	October 8, 2015
Facility:	Greenwich Village Ambulatory Surgery Center, LLC
Contractor:	North Shore-Long Island Jewish Health Care, Inc.
Administrative Term:	3 Years, with option to renew for additional terms of 2-year periods.
Compensation:	$500,000 per annum ($41,666.67/month) for administrative services and can never exceed $800,000 per annum. Billing and collection services are $45-$60 per claim based on the complexity of client's case mix.
Contractor's Duties:	Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Utilities/Waste Management, Operating Licenses and Banking, Billing and Collection Services.

While North Shore-Long Island Jewish Health Care, Inc. will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

Lease Rental Agreement

The applicant will lease approximately 30,897 square feet of space on the fourth floor, Suite 400 of 200 West 13th Street, New York, NY, under the terms of the executed lease agreement summarized below:

Date:	December 5, 2014
Landlord:	Lenox Hill Hospital
Tenant:	Greenwich Village Ambulatory Surgery Center, LLC
Term:	10 Years with an annual increase of 3% each year and a 5-year renewal option.
Rental:	The annual base rent is $1,853,820 ($60 per sq. ft.) plus supplemental rent of $1,457,956 per annum based on the amortized cost at 6.5% interest of Landlord's leasehold improvements over 10 years.
Provisions:	Maintenance, insurance and taxes.

The applicant has indicated that the lease will be an arm's length lease arrangement, and has submitted letters from real estate brokers attesting to the reasonableness of the base per square foot rental.

BFA Attachment C shows the amortization of the leasehold improvements to be performed by the Landlord and added as supplemental rent.

Total Project Cost and Financing

Total project costs for new construction and the acquisition of movable equipment are estimated at $24,998,962, broken down as follows:

New Construction	$ 17,330,612
Design Contingency	567,708
Construction Contingency	283,854
Planning Consultant Fees	170,312
Architect/Engineering Fees	454,167
Construction Manager Fees	283,854
Other Fees (Consulting)	224,332
Movable Equipment	5,159,600
Telecommunications	385,792
Application Fee	2,000
Additional Processing Fee	136,731
Total Project Cost	$24,998,962

Project costs are based on a construction start date of March 15, 2016, and a 12-month construction period.

The applicant's financing plan appears as follows:

Equity	$4,678,107
Bank Loan at prime (3.50% as of 12/30/2015) over 7 years	$9,620,855
Leasehold Improvements to be provided by the Landlord	$10,700,000

A letter of interest has been submitted by VNB New York, LLC for both the equipment and construction loan.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first and third years of operation, summarized below:

	Year One		Year Three	
	Per Procedure	Total	Per Procedure	Total
Revenues				
Commercial Managed Care	$3,632.43	$7,322,978	$3,633.07	$14,881,052
Medicare Fee-For-Service	$1,426.70	512,185	$1,425.77	1,040,812
Medicaid Managed Care	$995.12	90,556	$1,000.10	184,019
Self-Pay	$3,570.30	167,804	$3,589.43	340,996
Other *	$2,910.03	1,600,514	$2,909.13	3,252,412
Total Revenues		$9,694,037		$19,699,291
Expenses				
Operating	$1,758.03	$5,493,841	$1,335.47	$8,480,250
Interest	$369.53	1,154,778	$148.33	941,900
Depreciation &Rent	$1,437.84	4,493,259	$712.66	4,525,402
Total Expenses	$3,565.40	$11,141,878	$2,196.46	$13,947,552
Net Income (Loss)		$(1,447,841)		$5,751,739
Utilization (procedures)		3,125		6,350
Cost Per Procedure		$3,565.40		$2,196.46

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

	First and Third Years
Commercial Managed Care	64.5%
Medicare Fee-For-Service	11.5%
Medicaid Managed Care	2.9%
Self-Pay	1.5%
Other *	17.6%
Charity Care	2.0%

* Other Payor: Workmen's Comp and No Fault

Revenue, expense and utilization assumptions are based on the historical experience of similar Ambulatory Surgery Centers.

The applicant indicated that they are committed to serving all persons in need of care without regard to ability to pay or source of payment, and admissions for surgery will be based solely on medical need. The facility intends to contract with two Medicaid managed care plans, HealthFirst and Emblem Health, and self-pay patients will be offered discounted rates, as applicable, consistent with North Shore-LIJ's Financial Aid Program.

Capability and Feasibility

Project cost will be satisfied by a loan from VNB New York, LLC, for $9,620,855 at the above stated terms, leasehold improvements to be provided by the landlord in the amount of $10,700,000 and the remaining $4,678,107 from proposed member's equity. The leasehold improvements will be paid back to the landlord through the operating lease over ten years at 6.5% interest.

Working capital requirements are estimated at $2,324,592 based on two months of third year expenses, and will be provided through equity of the proposed member. BFA Attachment B is the pro-forma balance sheet of Greenwich Village Ambulatory Surgery Center, LLC as of the first day of operation, which indicates positive member's equity position of $5,717,664.

The submitted budget indicates a net loss of $1,447,841 the first year, and a net income of $5,751,739 the third year of operation. The budget appears reasonable.

BFA Attachment A, Financial Summary of North Shore-LIJ Health System and North Shore University Hospital, shows that the entities have maintained positive working capital, net assets and net income from operations for the period shown.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary of North Shore-LIJ Health System, Inc./North Shore University Hospital- 2014 and as of September 30, 2015
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Amortization of Leasehold Improvements

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 11th day of February, 2016 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 freestanding ambulatory surgery center specializing in orthopedic surgery and pain management services to be located at 200 West 13th Street, New York (amends and supercedes #141300), 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:
152219 B	Comprehensive Care ASC, LLC

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON upon mailing. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
    a. Data showing actual utilization including procedures;
    b. Data showing breakdown of visits by payor source;
    c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    d. Data showing number of emergency transfers to a hospital;
    e. Data showing percentage of charity care provided, and
    f. Number of nosocomial infections recorded during the year in question. (RNR)
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. (RNR)
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. (RNR)
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of a loan commitment for project costs, acceptable to the Department of Health. (BFA)
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of a photocopy of the fully executed Operating Agreement of the Greenwich Village Operating Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the fully executed Operating Agreement of North Shore LIJ Ventures CCC, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. (AER)
7. The applicant shall complete construction by March 15, 2017. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. (AER)

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 151019-B
Liberty Endo, LLC d/b/a Liberty Endoscopy Center

Program: **Diagnostic and Treatment Center** ***County:*** **New York**
Purpose: **Establishment and Construction** ***Acknowledged:*** **January 15, 2015**

Executive Summary

Description

Liberty Endo, LLC d/b/a Liberty Endoscopy Center (Liberty Endo), an existing New York limited liability company, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC) to be certified as a single-specialty FASC in the discipline of gastroenterology. The applicant will lease 9,618 square feet on the fourth floor of an existing building located at 156 William Street, New York (New York County). The site will include three procedure rooms, a pre-operating area with four pre-op bays, eight recovery bays, along with the requisite support areas.

As proposed, Liberty Endo will have 19 members comprised of

- 18 individual board-certified gastroenterologists with 90% total ownership, and
- Beth Israel Ambulatory Care Services Corporation (BIACSC) with 10% ownership.

BFA Attachment B provides an organizational chart listing the names and ownership percentages of the respective members.

The 18 individual physician members are members of Manhattan Endoscopy Center, LLC, an existing Article 28 FASC located in New York County. They currently perform surgical procedures at Manhattan Endoscopy Center and will be investing members only in Liberty Endo. Liberty Endo's projected first year procedures will be cases transferred from the private office-based practices of seven non-member board-certified gastroenterologists. The practicing physicians are committed to utilizing the FASC to perform procedures currently being done in their private practices, which are located in the same community that the applicant will serve. The applicant indicates that none of the projected procedures will come from any local hospital.

The sole passive member of BIACSC is BIMC Holding Corp. (BIMC). BIMC is a not-for-profit corporation which has no members, but whose Board of Trustees consists of officers of Mount Sinai Beth Israel Medical Center (MSBI). The applicant states that MSBI will not take an active role in the operations of the proposed FASC. BIACSC is also the operator of Beth Israel Ambulatory Surgi-Center and is a member of Digestive Diseases Diagnostic & Treatment Center.

OPCHSM Recommendation

Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary

The procedures to be performed at Liberty Endoscopy Center are presently being performed in private physician offices. The number of projected procedures is 3,100 in Year 1 with Medicaid at 3.0% and charity care at 2.0%.

Program Summary

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

Financial Summary

Total project costs of $4,341,851 will be met through members' equity of $868,370, with the remaining $3,473,481 balance being financed over five years through JP Morgan Chase Bank at 5% interest.

The operating budget is as follows:

	Year One	Year Three
Revenues	$3,196,375	$3,260,278
Expenses	$2,717,643	$2,759,742
Gain/(Loss)	$ 478,732	$500,536

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
    a. Data showing actual utilization including procedures;
    b. Data showing breakdown of visits by payer source;
    c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
    d. Data showing number of emergency transfers to a hospital;
    e. Data showing percentage of charity care provided; and
    f. Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Business Associate Agreement, acceptable to the Department. [HSP]
7. Submission of an executed loan commitment acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
9. Submission of a lease agreement, acceptable to the department. [CSL]
10. Submission of a fully executed Administrative Services Agreement that is acceptable to the Department. [CSL]
11. Submission of a fully executed Operating Agreement for the applicant that is acceptable to the Department. [CSL]
12. Submission of a fully executed Articles of Organization for the applicant that is acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Corridor walls separating Article 28 facility from public egress corridors are to match fire-resistance/protection proposed for tenant (occupancy) separation from adjacent tenant sharing the building floor. Revision will be reflected in 100% construction documents. [AER]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction. [AER]
8. Construction must start on or before May 1, 2016 and construction must be completed by September 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date
February 11, 2016

Need Analysis

Project Description

Liberty Endo, LLC d/b/a Liberty Endoscopy Center, an existing New York limited liability company, is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty gastroenterology surgery services at 123 William Street, New York, 10038, New York County.

Analysis

The service area consists of New York County. New York County has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2013 & 2014.

ASC Type	Name	Total Patients 2013	Total Patients 2014
Single	Carnegie Hill Endo, LLC	10,695	11,426
Multi	Center for Specialty Care	4,174	3,885
Single	East Side Endoscopy	9,183	9,284
Multi	Fifth Avenue Surgery Center	1,665	1,544
Multi	Gramercy Park Digestive Disease	8,666	9,343
Multi	Gramercy Surgery Center, Inc.	2,550	2,667
Single	Kips Bay Endoscopy Center LLC	9,241	9,084
Single	Manhattan Endoscopy Ctr., LLC	12,014	12,656
Multi	Manhattan Surgery Center (Opened April 1, 2013)	900	2,502
Single	Mid- Manhattan Surgi-Center	4,312	2,984
Multi	Midtown Surgery Center, LLC	3,114	3,161
Single	Retinal Ambulatory Surgery Ctr.	1,862	1,984
Multi	Surgicare of Manhattan, LLC	3,648	3,666
Single	West Side GI	12,516	12,549
Single	Yorkville Endoscopy Center (Opened Feb 22, 2013)	9,140	10,685
Total		93,680	97,420

(Source: SPARCS-2015)

For New York County, the total number of patient visits was 93,680 in 2013 and 97,420 in 2014. This represents a 4% year-to-year increase in the number of patients served by ambulatory surgery centers in New York County. For the single gastroenterology specialty ASC's, the number of patient visits was 62,789 in 2013 and 65,684 in 2014. This represents a 4.6%year-to-year increase in the number of patients served by gastroenterology specialty ASC's in New York County.

The population of New York County in 2010 was 1,585,873, with 615,731 individuals (38.8%) who are 45 and over - the primary population group utilizing Gastroenterology services. Per the Cornell Program on Applied Demographics (PAD) projection data, the 45 and over population group is estimated to grow to 660,206 by 2025 and represent 40.9% of the projected population of 1,615,772.

The number of projected procedures is 3,100 in Year 1 and 3,163 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Liberty Endoscopy Center for Years 1 and 3.

Projections	Year 1	Year 1	Year 3	Year 3
Commercial Ins	2,728	88.0%	2,783	88.0%
Medicare	186	6.0%	190	6.0%
Medicaid	93	3.0%	95	3.0%
Private Pay	31	1.0%	32	1.0%
Charity Care	62	2.0%	63	2.0%
Total	3,100	100.0%	3,163	100.0%

To serve the underinsured population, the center provided the following information to DOH. The center intends to obtain contracts with the following Medicaid Managed Care plans: Healthfirst, Fidelis, and Amerigroup. The center is planning to enter into partnerships with several organizations that can refer qualified uninsured patients to the center. The center's owners have pre-existing relationships with the following organizations: Settlement Health (an FQHC), Gouverneur Health (an FQHC), and The Bowery Mission. The center's owners have also reached out to the following organizations to develop relationships for referrals: Beth Israel Medical Group, Mount Sinai Comprehensive Health program, and two free health clinics operated by NYU. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Conclusion

Approval of this project will bring additional office-based surgical procedures into an Article 28 ambulatory surgery center serving the communities of New York County. This center will expand access to gastroenterology services delivered in a regulated setting for the communities of New York County.

Recommendation

From a need perspective, contingent approval is recommended for a limited period of five (5) years.

Program Analysis

Project Proposal

Liberty Endo, LLC d/b/a Liberty Endoscopy Center seeks approval to establish and construct a single-specialty ambulatory surgery center (ASC) specializing in gastroenterological procedures at 123 William Street, New York (New York County).

Proposed Operator	Liberty Endo, LLC
Doing Business As	Liberty Endoscopy Center
Site Address	123 William Street, New York (New York County)
Surgical Specialties	Single Specialty: Endoscopy
Operating Rooms	0
Procedure Rooms	3 (Class A)
Hours of Operation	Monday through Friday from 7:00 a.m. to 5:00 p.m. (Weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling issues.)
Staffing (1st Year / 3rd Year)	13.0 FTEs / 13.0 FTEs
Medical Director(s)	Peter Kim, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Mount Sinai - Beth Israel 3.9 miles / 15 minutes
On-call service	24/7 service to immediately refer the patient to the Center's on-call physician.

Character and Competence
The members of the LLC are:

Name	Percentage
Individual Physician Members	**90%**
Peter Baiocco, MD	4.812%
Jennifer Bonheur, MD	4.812%
Anthony Borcich, MD	4.812%
Alexander Chun, MD	4.812%
Julia Foont, MD	4.812%
Albert Harary, MD	4.812%
Makoto Iwahara, MD	4.812%
Peter Kim, MD	8.200%
Michael Krumholt, MD	4.812%
Carl McDougall, MD	4.812%
Yasmin Metz, MD	4.812%
Eric Morgenstern, MD	4.812%
Paulo Pacheco, MD	4.812%
David Robbins, MD	4.812%
Mylan Satchi, MD	4.812%
Jonathan Warman, MD	4.812%
Ivan Weisberg, MD	4.812%
Juauf Zlatanic, MD	4.812%
Beth Israel Ambulatory Care Services Corp. (BIACSC)	**10%**
Donald Scanlon	
Jeremy Boal, MD	
Adam Henick	

Holding a 90% membership interest in the center are 18 physicians, all of whom are practicing surgeons/board-certified gastroenterologists, with a 4.12% interest each with the exception of the Medical Director, Dr. Kim, who holds an 8.20% interest. Beth Israel Ambulatory Care Services Corp. is a not-for-profit corporation whose sole passive member is BIMC Holding Corporation. BIMC Holding Corp. is a not-for-profit corporation that has no members but whose Board of Trustees consists of the officers of Mount Sinai Beth Israel.

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.

Drs. Baiocco, Harary, Krumholt and Satchi disclosed one pending malpractice case. Drs. Iwahara and Pacheco disclosed one settled malpractice case. Dr. Warman disclosed two open malpractice cases and one settled malpractice case.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Integration with Community Resources

The Center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers. The applicant will develop a formal outreach program directed at the local community, to include local physicians and other existing healthcare providers, particularly those who provide care to the underserved residents of the Center's primary service area. In addition, efforts will be made to recruit Chinese-speaking physicians to practice at the Center. The Center may also consider advertising in local Chinese-language newspapers about charitable services available at the Center. Patients will not be excluded based on ability to pay. Charity care will be provided and the Center will utilize a sliding fee scale for those who are uninsured or unable to pay.

The Center plans on utilizing an electronic medical record (EMR) and would consider participating in a Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification. The Center would also consider entering into an integrated system of care, such as the Mount Sinai Health Network, which is comprised of hundreds of clinical and academic relationships throughout the greater New York metropolitan area.

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site, the terms of which are summarized below:

Date:	October 16, 2015
Premises:	9,618 gross square feet located at 156 Williams Street, New York, NY 10038
Landlord:	156 William Street Owner, LLC
Lessee:	Liberty Endo, LLC
Term:	15 years, base rent at $566,350 in year one ($58.88 per sq. ft.) and increased yearly based upon terms. Renewal option (2) with 5-year terms
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit stating that the lease is an arm's length arrangement. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

Administrative Service Agreement

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

Date:	September 28, 2015
Facility:	Liberty Endo, LLC
Contractor:	Gotham Administrative Services, LLC
Services Provided:	Provide non-clinical, non-professional administrative services to support the Board of Managers to achieve established objectives across operational, financial and network/strategic disciplines as agree upon and approved by the applicant.
Term:	1 year – automatically renew for one (1) year
Fee:	Annual Fee $125,000 (1/12 to be paid monthly = $10,416.67) Fee will increase by 1.5% per year after the first year

The administrative services provider, Gotham Administrative Services, LLC, is solely owned by Peter Kim, M.D., a member of the applicant. Liberty Endo, LLC retains ultimate control in all of the final decisions associated with the services.

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment is estimated at $4,341,851, broken down as follows:

Renovation & Demolition	$1,802,819
Design Contingency	180,282
Construction Contingency	180,282
Architect/Engineering Fees	180,282
Construction Manager Fees	156,000
Other Fees	207,480
Movable Equipment	1,501,883
Financing Costs	34,730
Interim Interest Expense	72,354
CON Application Fee	2,000
CON Processing Fee	23,739
Total Project Cost	$4,341,851

Project costs are based on a start date of May 1, 2016, with a four-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	$868,370
Bank Loan (5% interest, 5-year term)	3,473,481
Total	$4,341,851

JP Morgan Chase Bank has provided a letter of interest.

BFA Attachments A and C are, respectively, the members' net worth summaries and Beth Israel Ambulatory Care Services Corporation's certified and internal financial statement dated December 31, 2014 and September 30, 2015, respectively, which show sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted first and third years operating budgets, in 2015 dollars, as summarized below:

	Year One	Year Three
Revenues	$3,196,375	$3,260,278
Expenses:		
Operating	$1,487,613	$1,565,474
Capital	1,230,030	1,194,268
Total Expenses	$2,717,643	$2,759,742
Net Income or (Loss)	$478,732	$500,536
Utilization (procedures)	3,100	3,162
Cost Per Procedure	$876.66	$872.78

Utilization projections are based the experience of the participating providers along with their estimate of the number cases that can be transferred from their private office-based practices.

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

Medicaid Managed Care	3.0%
Medicare Fee-For-Service	5.0%
Medicare Managed Care	1.0%
Commercial Fee-For-Service	80.0%
Commercial Managed Care	8.0%
Private Pay	1.0%
Charity	2.0%
Total	100.0%

Expense assumptions are based upon the experience of the participating providers and members who operate other similar FASCs. The breakeven point is approximately 85% of the projected volume or 2,636 and 2,677 procedures in the first and third years, respectively.

Capability and Feasibility

Total project costs of $4,341,851 will be satisfied as follows: $868,370 in proposed members' equity, plus a $3,473,481 loan financed through JP Morgan Chase Bank at the above stated terms.

Working capital requirements are estimated at $459,957, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase Bank to finance $200,000 of the working capital with a one-year payback period at an estimated 4% interest rate. The remaining $259,957 in working capital will be provided from the members financial resources. Review of BFA Attachments A and C, applicant's personal net worth statements and Beth Israel Ambulatory Care Services Corp certified and internal financial statement dated December 31, 2014 and September 30, 2015, shows sufficient liquid resources to meet the total equity requirement. BFA Attachment D is Liberty Endo's pro-forma balance sheet that shows operations will start off with $1,128,327 in equity. Liberty Endo projects an operating surplus of $478,732 and $500,536 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected rates and private payers are based on members experience in the region. The applicant's budgets appear to be reasonable.

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: NYU Langone Medical Center --- **No Response**
550 First Avenue
New York, NY 10016

Facility: Bellevue Hospital Center --- **No Response**
First Avenue at 27th Street
New York, NY 10016

Facility: Beth Israel Medical Center --- **No Response**
Petrie Division
First Avenue at 16th Street
New York, NY 10003

Facility: New York Presbyterian Hospital—
New York Weill Cornell Medical Center --- **No Response**
525 East 68th Street
New York, NY 10032

Supplemental Information from Applicant

Need and Source of Cases: The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private office-based practices of the applicant physicians. The applicant also cites data showing a continued growth in New York County in the number of persons 45 years and older, which is the primary service group for colorectal cancer screening. The applicant also refers to the relatively low number of gastroenterologists and of other freestanding ASCs specializing in gastroenterology in New York County, a jurisdiction of 1.9 million people.

Staff Recruitment and Retention: The applicant states that, initially, recruitment will be of selected staff currently employed by the member physicians in their office-based practice, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

Office-Based Cases: The applicant states that all of the projected gastrointestinal surgical procedures for the proposed ASC are currently performed in the private, office-based practices of the applicant physicians. None of the projected procedures are performed in any hospital.

DOH Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year, limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Attachments

BPNR Attachment A	Map
BFA Attachment A	Personal Net Worth Statements of Proposed Members of Liberty Endo, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Beth Israel Ambulatory Care Services Corp, Certified and Internal Financial Summaries for December 31, 2014 and September 31, 2015
BFA Attachment D	Pro Forma Balance Sheet of Liberty Endo, 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 11th day of February, 2016 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 to be located at 156 William Street, New York, for the provision of gastroenterology surgical services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
151019 B	Liberty Endo, LLC d/b/a Liberty Endoscopy Center

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
    a. Data showing actual utilization including procedures;
    b. Data showing breakdown of visits by payer source;
    c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
    d. Data showing number of emergency transfers to a hospital;
    e. Data showing percentage of charity care provided; and
    f. Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Business Associate Agreement, acceptable to the Department. [HSP]
7. Submission of an executed loan commitment acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
9. Submission of a lease agreement, acceptable to the department. [CSL]
10. Submission of a fully executed Administrative Services Agreement that is acceptable to the Department. [CSL]
11. Submission of a fully executed Operating Agreement for the applicant that is acceptable to the Department. [CSL]

12. Submission of a fully executed Articles of Organization for the applicant that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Corridor walls separating Article 28 facility from public egress corridors are to match fire-resistance/protection proposed for tenant (occupancy) separation from adjacent tenant sharing the building floor. Revision will be reflected in 100% construction documents. [AER]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction. [AER]
8. Construction must start on or before May 1, 2016 and construction must be completed by September 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 151252-E
185 Old Military Road Operating Company, LLC
d/b/a Elderwood of Uihlein at Lake Placid

Program: **Residential Health Care Facility** ***County:*** **Essex**
Purpose: **Establishment** ***Acknowledged:*** **June 2, 2015**

Executive Summary

Description

185 Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid, a New York limited liability company, requests approval to be established as the new operator of Uihlein Living Center, a 156-bed Article 28 residential health care facility (RHCF) located at 185 Old Military Road, Lake Placid (Essex County). A separate entity, 185 Old Military Road, LLC, will acquire lease rights to the real property. There will be no change in services.

On April 13, 2015, Post Acute Partners Acquisition, LLC (Post Acute Partners) entered into an Asset Purchase Agreement (APA) with Adirondack Medical Center (AMC), the current RHCF operator, to acquire the operating interests and certain property assets (furniture and equipment) of Uihlein Living Center for $600,000, upon Public Health and Planning Council approval. As part of the APA, Post Acute Partners also entered into a Ground Lease with AMC to secure site control of the facility. Post Acute Partners will assign its rights and title to the operating interests and the purchased/leased real property assets to 185 Old Military Road Operating Company, LLC and 185 Old Military Road, LLC, respectively. 185 Old Military Road, LLC will lease the premises to 185 Old Military Road Operating Company, LLC. There is a relationship between the proposed operating and realty LLCs in that the entities have common membership.

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

Current Operator	
Adirondack Medical Center	100%

Proposed Operator	
185 Old Military Road Operating Company, LLC	
Members	%
185 Old Military Road Operating Holdco, LLC	100%
Warren Cole	50%
Jeffrey Rubin	50%

BFA Attachment B is an Organizational Chart of the facility after the requested change.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Uihlein Living Center's occupancy was 75.8% in 2011, 74.5% in 2012, 50.0% in 2013 and 45.9% in 2014. The facility has been staffed for a reduced capacity of 80 beds since 2013 due to financial losses.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The applicant will enter into an administrative services agreement with

Elderwood Administrative Services, LLC which has common ownership with the proposed operating LLC. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

Post Acute Partners agreed to acquire the RHCF's operations and certain property assets (furniture and equipment) for $600,000. The purchase price will be met with members' equity. Post Acute Partners will assign its rights and title to the RHCF's operations and real property to 185 Old Military Road Operating Company, LLC and 185 Old Military Road, LLC, respectively, for $10. There are no project costs associated with this proposal.

The operating budget is:

Revenues	$13,420,717
Expenses	12,665,231
Gain/(Loss)	$755,486

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
2. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed Ground Lease, acceptable to the Department of Health. [BFA]
4. Submission of executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of a final financing package for mandated capital expenditures, acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
9. Submission of all consulting and services agreements between the applicant and Elderwood Administrative Services, LLC, or any other entity. [LTC]
10. Submission and Department approval of a plan to restore nursing units at the facility that have been taken out of service by the current operator. The plan will describe the necessary increase in staffing and any cosmetic renovations that are needed in the units. [LTC]
11. Submission of a photocopy of an executed and completed facility lease agreement between 185 Old Military Road, LLC and 185 Old Military Road Operating Company, LLC, acceptable to the Department. [CSL]

12. Submission of a photocopy of the executed membership interest transfer and any additional transfer documents, which are acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's executed proposed amended and restated operating agreement, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's executed proposed restated articles of organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed administrative services agreement, which is acceptable to the Department. [CSL]
17. Submission of a completed Schedule 15 and any pertinent documents, which are acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

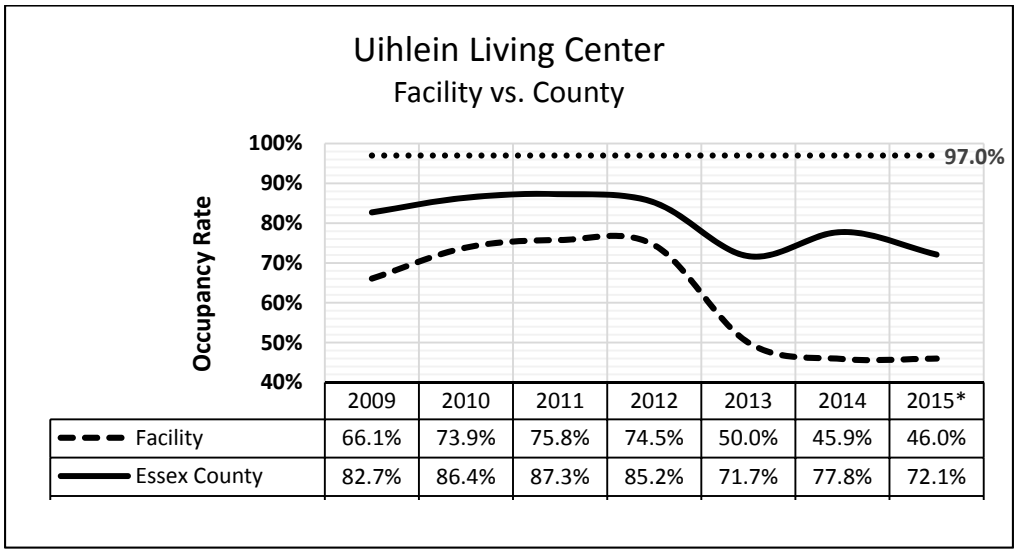
Analysis

There is currently a need for 28 beds in Essex County as indicated in the table below:

RHCF Need – Essex County

2016 Projected Need	368
Current Beds	340
Beds Under Construction	0
Total Resources	340
Unmet Need	28

The overall occupancy for Essex County is 71.7% in 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014	2015*
Facility	66.1%	73.9%	75.8%	74.5%	50.0%	45.9%	46.0%
Essex County	82.7%	86.4%	87.3%	85.2%	71.7%	77.8%	72.1%

**unaudited; facility reported data*

Uihlein Living Center's (Uihlein) occupancy was 75.8% in 2011, 74.5% in 2012, 50.0% in 2013 and 45.9% in 2014. To mitigate financial losses, the facility restricted admissions to short-term residents from January, 2012 to August, 2013. During 2013, the current operator's Board of Directors decided to downsize the facility to 80 beds to accommodate plans for space renovation and to move hospital services to the facility, which resulted in the discharge of 38 residents. Later in 2013, the Board decided against moving hospital operations to the facility and considered plans for closure of Uihlein. The facility's 2013 and 2014 cost reports indicate only 80 of the 156 certified beds were staffed. The reduced number of staffed beds, admission restrictions and closure plans have considerably impacted the facility's occupancy rate.

There are only three RHCFs in Essex County, including Uihlein. The next closest RHCF to Uihlein is Essex Center for Rehab and Healthcare, which is 25.4 miles and a 34 minute drive from the facility. The other RHCF in the County, Heritage Commons Residential Health Care, is 62.6 miles and one hour and 13 minutes away. Mercy Living Center, a 60-bed RHCF in Franklin County, is 30.4 miles and a 40 minute drive from Uihlein. Occupancy at Mercy Living Center is 96.7% as of January 13, 2016.

Essex County's occupancy rates are indicated in the following table:

Essex County Facilities	Distance/Time	RHCF Beds	2013	2014	2015	Most Recent	Date
Uihlein Living Center	*0.0*	*156*	*50.0%*	*45.9%*	*46.0%*	*46.2%*	*1/13/16*
Essex Center for Rehab	25.4mi/34 mins	100	89.8%	94.6%	93.9%	97.0%	1/6/16
Heritage Commons	62.6mi/1hr 13 mins	84	90.6%	90.1%	94.8%	90.5%	1/6/16
Essex County		**340**	**71.7%**	**77.8%**	**72. 1%**	**72.1%**	

Through the applicant's affiliated organization, Post Acute Partners, the proposed operators plan to put in place programs that meet the needs of the Eastern Adirondack community related to their experience providing ventilator and respiratory services, cardiac, stroke and diabetic care programs and behavioral management for the cognitively impaired. The applicant has the goal of addressing the long term care needs of the region to allow residents to access services closer to their families while also providing sub-acute care for residents discharged from out-of-state acute care facilities. To increase occupancy at the facility the proposed operators will:

- Implement the Smarts Express Care program to reduce emergency and hospital admissions by providing testing and treatment for conditions that include pneumonia, weakness, chronic heart failure and COPD. Through the program, residents receive personalized occupational and physical therapy to facilitate and expedite their return to the community;
- Implement programs for residents with bariatric, wound care, cardio-pulmonary and diabetic conditions and various forms of dementia to assist local hospitals participating in DSRIP initiatives to prevent readmissions and more quickly discharge patients;
- Continue to develop relationships with Lake Placid Orthopedics to provide a seamless transition from surgery to post-acute rehabilitation to home;
- Work closely with Adirondack Medical Center, which is proposing a new state-of-the-art inpatient and ambulatory surgical suite on its Saranac Lake campus (CON No. 152093), to create capacity for treating patients who would otherwise leave the region for care. Adirondack Health has also submitted an administrative CON (No. 152092) for approval to relocate all existing services from its Lake Placid hospital campus to the Uihlein Campus in a newly constructed building as part of larger, more integrated strategy for the campus to improve value and quality and serve as a source of referrals to the RHCF;
- Preserve the history of the facility by maintaining a relationship with the Sisters of Mercy who reside in the Uihlein building and continuing the on-campus Chapel, also in the building, and a vital part of the Lake Placid community;
- Establish a dedicated administrative unit whose coordinator who will directly report to the facility administrator to conduct outreach and marketing;
- Contract with the managed care plans that cover the facility's catchment area to ensure options for residents required to enroll in managed care; and
- Invest in physical plant improvements in the first three years of ownership to create an attractive, friendly and home-like environment.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Uihlein's Medicaid admissions for 2012 was 35.1% and exceeded the Essex County 75% rate of 26.4%. Uihlein's Medicaid admissions for 2013 was 33.1% , which was below the Essex County 75% rate of 34.4%; the facility will be required to follow the contingency plan as noted.

Conclusion

Approval of this application will result in providing a much needed resource for residents in the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Uihlein Living Center	Elderwood of Uihlein at Lake Placid
Address	185 Old Military Road Lake Placid, NY 12946	Same
RHCF Capacity	156	Same
ADHC Program	N/A	N/A
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Adirondack Medical Center	185 Old Military Road Operating Company, LLC Sole Member 185 Old Military Road Operating Holdco, LLC Warren Cole 50.00% Jeffrey Rubin 50.00%

Character and Competence - Background

Facilities Reviewed

NYS Nursing Homes

Elderwood at Hamburg	07/2013 to present
Elderwood at Liverpool	07/2013 to present
Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Wheatfield	07/2013 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Williamsville	07/2013 to present
Elderwood Assisted Living at Wheatfield	07/2013 to present
Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present
Elderwood Assisted Living at Waverly	07/2013 to present

NYS Licensed Home Care Agency		
Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present
Woodmark Pharmacy of New York, LLC		07/2013 to present
Alabama		
Laurelton Rehabilitation and Nursing Center	SNF	10/2006-5/2008
California		
Care Alternatives of California	HOS	07/2005-10/2009
Connecticut		
Danbury Health Care Center	SNF	07/2005-10/2009
Darien Health Care Center	SNF	07/2005-2007
Golden Hill Health Care Center	SNF	07/2005-10/2009
Long Ridge of Stamford	SNF	07/2005-10/2009
Newington Health Care Center	SNF	07/2005-10/2009
River Glen Health Care Center	SNF	07/2005-10/2009
The Highlands Health Care Center	SNF	07/2005-10/2009
West River Health Care Center	SNF	07/2005-10/2009
Westport Health Care Center	SNF	07/2005-10/2009
Wethersfield Health Care Center	SNF	07/2005-10/2009
Partners Pharmacy of Connecticut	RX	07/2005-10/2009
Kansas		
Care Alternatives of Kansas	HOS	07/2005-10/2009
Maryland		
Montgomery Village Health Care Center	SNF	07/2005-10/2009
Massachusetts		
Brookline Health Care Center	SNF	07/2005-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	07/2005-10/2009
Cedar Hill Health Care Center	SNF	07/2005-10/2009
Concord Health Care Center	SNF	07/2005-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	07/2005-10/2009
Holyoke Health Care Center	SNF	07/2005-10/2009
Lexington Health Care Center	SNF	07/2005-10/2009
Lowell Health Care Center	SNF	07/2005-10/2009
Milbury Health Care Center	SNF	07/2005-10/2009
New Bedford Health Care Center	SNF	07/2005-10/2009
Newton Health Care Center	SNF	07/2005-10/2009
Peabody Glen Health Care Center	SNF	07/2005-10/2009
Redstone Health Care Center	SNF	07/2005-10/2009
Weymouth Health Care Center	SNF	07/2005-10/2009
Wilmington Health Care Center	SNF	07/2005-10/2009
Care Alternatives of Massachusetts	HOS	07/2005-10/2009
Partners Pharmacy of Massachusetts	SNF	07/2005-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2013 to present
Michigan		
Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri		
Care Alternatives of Missouri	HOS	07/2005-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-05/2008
Partners Pharmacy of Missouri	RX	07/2005-10/2009
New Jersey		
Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HHA	2007-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Care One at Dunroven	SNF	07/2005-10/2009
Care One at East Brunswick	SNF	07/2005-10/2009
Care One at Evesham	SNF	07/2005-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	07/2005-10/2009
Care One at Hamilton	SNF	07/2005-10/2009
Care One at Holmdel	SNF	07/2005-10/2009
Care One at Jackson	SNF	07/2005-10/2009
Care One at King James	SNF	07/2005-10/2009
Care One at Livingston	SNF	09/2005-10/2009
Care One at Livingston	ALF	09/2005-10/2009
Care One at Madison Avenue	SNF	07/2005-10/2009
Care One at Moorestown	SNF	07/2005-10/2009
Care One at Moorestown	ALF	07/2005-10/2009
Care One at Morris	SNF	07/2005-10/2009
Care One at Morris Assisted Living	ALF	07/2005-10/2009
Care One at Pine Rest	SNF	07/2005-10/2009
Care One at Raritan Bay MC	LTA	07/2005-10/2009
Care One Harmony Village at Moorestown	SNF	07/2005-10/2009
Care One at Teaneck	SNF	04/2007-10/2009
Care One at The Cupola	SNF	07/2005-10/2009
Care One at The Highlands	SNF	07/2005-10/2009
Care One at Valley	SNF	07/2005-10/2009
Care One at Wall	SNF	07/2005-10/2009
Care One at Wayne	SNF/ALF	07/2005-10/2009
Care One at Wellington	SNF	07/2005-10/2009
Ordell Health Care Center	SNF	07/2005-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2006-10/2009
South Jersey Health Care Center	SNF	07/2005-10/2009
Woodcrest Health Care Center	SNF	07/2005-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Partners Pharmacy of New Jersey	RX	07/2005-10/2009
North Carolina		
Blue Ridge Health Care Center	SNF	07/2005-10/2009
Ohio		
Bellbrook Health Care Center	SNF	07/2005-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009
Pennsylvania		
Presque Isle Rehabilitation and Nursing Center	SNF	10/2006-10/2009
The Rehab and Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Pediatric Specialty Care at Point Pleasant	ICF	02/2011 to present
Pediatric Specialty Care at Doyleston	SNF	02/2011 to present
Pediatric Specialty Care at Quakertown	ICF	02/2011 to present
Pediatric Specialty Care at Lancaster	ICF	02/2011 to present

Pediatric Specialty Care at Hopewell	ICF	02/2011 to present
Pediatric Specialty Care at Philadelphia	ICF	02/2011 to present
Senior Living at Lancaster	HOM	02/2011 to present
Care Alternatives of Pennsylvania	HOS	07/2005-10/2009

Puerto Rico

Medicare Y Mucho Mas	Medicare Advantage Plan	07/2005-11/2009

Rhode Island

Chestnut Terrace Rehabilitation and Nursing	SNF	02/2014 to present
Scallop Shell Nursing and Rehabilitation Center	SNF	12/2010 to present

Virginia

Colonial Heights Health Care Center	SNF	07/2005-10/2009
Glenburnie Rehabilitation	SNF	07/2005-10/2009
Hopewell Health Care Center	SNF	07/2005-10/2009

Key

ACU	acute care/hospital	ICF	intermediate care facility/group home
ALF	assisted living facility	IRF	intermediate rehab facility
HHA	home health agency	LTA	long term acute care hospital
HOM	homecare	RX	pharmacy
HOS	hospice	SNF	skilled nursing facility/nursing home

The principals of 185 Old Military Road Operating Company, LLC have also received Public Health and Health Planning Council contingent approval on August 6, 2015 to operate Mcauley Manor at Mercycare. This ownership interest was not included in the Character and Competence – Background because the transaction has not been finalized.

Individual Background Review

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole has had extensive health facility ownership interests, which are listed above.

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility ownership interests, which are listed above.

In the ten year period preceding the formation of Post Acute Partners early in 2010 both Dr. Rubin and Mr. Cole held minority ownership interests, and in some circumstances also held management positions, in a group of affiliated, privately held companies which owned and operated various health care facilities and/or services in several states. Upon their separation from the companies in late 2009, they relinquished their management positions, and since that time they've had no authority or ability to direct, influence or otherwise affect the operations of the companies' holdings.

A review of the facilities that Mr. Cole and Dr. Rubin held and relinquished prior to the formation of Post Acute Care Partners was undertaken at their time of acquisition of Elderwood Senior Care, and revealed no issues of character and competence.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Elderwood at Hamburg, Elderwood at Liverpool, Elderwood at Amherst, Elderwood at Grand Island, Elderwood at Lancaster, Elderwood at Cheektowaga, Elderwood at Williamsville, Elderwood at Waverly, Elderwood at Wheatfield, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Elderwood Village at Williamsville, Elderwood Assisted Living at Wheatfield, Elderwood Assisted Living at West Seneca, Elderwood Assisted Living at Cheektowaga, Elderwood Assisted Living at Hamburg, and Elderwood Assisted Living at Waverly for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations Elderwood Assisted Living at West Seneca, Elderwood Assisted Living at Cheektowaga, Elderwood Assisted Living at Hamburg, and Elderwood Assisted Living at Waverly (LCHSAs) for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Review of the current out of state facilities for which Mr. Cole and Dr. Rubin hold current ownership interests is notified below.

A review of Chestnut Terrace Rehabilitation and Nursing, and Scallop Shell Nursing and Rehabilitation of Rhode Island for the periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements. This was information was obtained from a Rhode Island State Official, as well as the Medicare.gov Nursing Home Compare website.

A review of Woodmark Pharmacy of Massachusetts for the period indicated above reveals that there were no issues with licensing and certification, as provided by the State of Massachusetts.

The applicants have submitted an affidavit regarding the six pediatric intermediate care facilities in which they attest to the provision of a substantially consistent high level of care.

On or about August 16, 2013 an affiliate of the applicant (Niagara Advantage Health Plan, LLC) submitted an application to NYSDOH to establish a Managed Long Term Care Plan. This application is currently pending in the Department.

Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into an administrative services agreement with Elderwood Administrative Services, LLC. Elderwood Administrative is 100% owned by Post Acute Partners Management, LLC, which is jointly owned by Warren Cole and Jeffrey Rubin.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the operating interests of the RHCF, to be effectuated upon PHHPC approval of this application. The terms of the agreement are summarized below:

Date:	April 13, 2015
Seller:	Adirondack Medical Center
Purchaser:	Post Acute Partners Acquisition, LLC
Asset Transferred:	All right, title and interest in: supplies, inventory, consumables and other medical goods; furniture, furnishings, equipment, computers, machinery; tangible personal property; books, records, documents, surveys, reports, related to Real Property; all assumed contracts; transferrable licenses; right to trademarks, trade names and variations thereof, specifically including the name Uihlein.
Excluded Assets:	Seller's cash and equivalents and securities; replacement and tax escrow; prepaid expenses; accounts receivable; rights, royalties and privileges relating to Kate Smith associated with the song "God Bless America"; tax returns; assets related to the sleep center, now or formerly located at the facility; and assets, funds and gift with respect to federal state or local vital access grants.
Assumed Liabilities:	Assumed contracts and Admission Agreements as they relate to periods after the Effective Time.
Purchase Price:	$600,000
Payment of the Purchase Price:	$60,000 Deposit; $540,000 at the Closing

The purchase price for the operations is proposed to be satisfied with members' equity. The applicant states that the allocation of the purchase price will not be finalized until Closing. BFA Attachment A is the net worth summaries for the proposed members of Post Acute Partners, which shows sufficient liquid assets to meet equity requirements.

In association with the APA, Post Acute Partners agrees to spend an amount not less than $4,500,000 for construction, rehabilitation or renovations, at the Purchaser's discretion, with no less than $2,000,000 coming on or before the first anniversary date. The proposed operator is responsible for the capital expenditures. The applicant believes they have the capability to secure and service the debt to meet the obligation.

The applicant notes that Post Acute Partners is acquiring only the furniture and equipment associated with the operations and not the building or property. As prescribed by the APA, pursuant to the Ground Lease, AMC will lease its interest in the land, buildings, structures and easement rights to alleys and strips adjoining the real property to Post Acute Partners.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently there are no outstanding Medicaid liabilities.

Assignment of Rights

The applicant has submitted a proposed Assignment of Rights for the assignment of the assets associated with the APA, as shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee-Operating Assets:	185 Old Military Road Operating Company, LLC
Operating Assets Transferred:	Assets as defined by the Asset Purchase Agreement
Assignee-Leasehold Interest:	185 Old Military Road, LLC
Leasehold Assets Transferred:	Land, Buildings and Structures as defined by the Ground Lease
Considerations:	$10

Health Care Facility Lease Agreement

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

Premises:	All of the landlord's right, title and interest in and to the real property and facility at 185 Old Military Road, Lake Placid, New York 12946
Landlord:	185 Old Military Road, LLC
Lessee:	185 Old Military Road Operating Company, LLC
Term:	10 years with four 5-year renewal options
Rent:	An amount not less than the amounts necessary to cover any debt service of the landlord, its affiliates, or parent, and related to the property.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an original affidavit attesting to the relationship between the landlord and the operating entity.

It is noted that the Health Care Facility Lease Agreement is governed by the above referenced Ground Lease between Post Acute Partners and AMC.

Administrative Services Agreement

The applicant has submitted a draft Administrative Service Agreement, summarized as follows:

Provider:	Elderwood Administrative Services, LLC
Company:	185 Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid
Services Provided:	All functions related to: Accounts Receivable, Billing, Accounts Payable, Payroll (excluding responsibility, obligation or liability); and budgets; financial reporting; regulatory reports; bookkeeping; human resources; information technology; insurance and risk management; and corporate compliance.
Term:	From Effective Date until December 31, 2016, with automatic 1-year renewals.
Fee:	$25,000 per month with periodic adjustments based on a consideration of the fees, the scope of operations, the changes in the purchasing power of money, the services being performed, the size of nonprofessional workforce and the expenses of the provider, reflecting the fair market value.

The sole member of the administrative services provider entity is Post Acute Partners Management, LLC, whose members are Warren Cole and Jeffrey Rubin.

Operating Budget

The applicant has provided the current year, and first and third year operating budgets subsequent to the change in ownership, in 2015 dollars, summarized as follows:

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Commercial FFS	$313.92	$158,845	$386.56	$561,677	$426.06	$1,821,425
Medicare FFS	$356.62	$895,818	$444.50	$1,605,545	$474.17	$2,413,505
Medicaid FFS	$178.22	$3,651,484	$188.39	$4,504,118	$195.56	$5,454,900
Private Pay	$308.89	$798,780	$396.16	$1,582,647	$436.77	$3,044,289
All Other		$919,820		$504,474		$686,598
Total Revenues		$6,424,747		$8,758,461		$13,420,717
Expenses						
Operating	$322.94	$8,426,547	$303.06	$9,991,435	$274.64	$12,146,911
Capital	$8.99	$234,649	$5.65	$186,224	$11.72	$518,320
Total Expenses	$331.93	$8,661,196	$308.71	$10,177,659	$286.36	$12,665,231
Net Income		($2,236,449)		($1,419,198)		$755,486
Patient Days		26,093		32,969		44,229
Occupancy		45.8%		57.9%		77.7%

The following is noted with respect to the submitted budget:

- The Current Year represents the facility's 2014 experience. Due to low occupancy, the facility was staffed for 80 beds rather than the full 156 certified beds.
- The Medicare rates for Years One and Three are based on the facility's average 2014 rate experience. Commercial rates in Year One are based on actual first quarter 2015 commercial insurance per diems. A 5% increase each year thereafter is projected based on plans to negotiate with commercial insurance carriers for improved rates.
- Utilization increases are projected beginning in Year Two driven primarily by the renovation and reopening of a currently certified, but unstaffed 48-bed unit, accompanied by cosmetic renovations throughout the facility and increased marketing efforts.
- Capital costs are projected to increase in Year Three based on additional depreciation expense related to the anticipated new capital investments.
- All Other revenue includes: Medicare Part B; reimbursement from the Sisters of Mercy who have a convent and Chapel on the premises, for staff, utilities and other services; administrative fee charged to Mercy Living Center (AMC's other RHCF operation) for processing their payroll; CNA training reimbursement; and rental income.
- Additional working capital needs resulting from any negative cash flow balance will be funded by the members.
- Overall utilization is 57.9% and 77.7% in Years One and Three, respectively, while utilization by payor source is as follows:

	Current Year	Year One	Year Three
Commercial FFS	2.0%	4.4%	9.7%
Medicare FFS	9.6%	11.0%	11.5%
Medicaid FFS	78.5%	72.5%	63.1%
Private Pay	9.9%	12.1%	15.7%

- Breakeven utilization is estimated at 67.3% (38,311 patient days) and 73.3% (41,739 patient days) in Year One and Year Three, respectively.

Capability and Feasibility

There are no project costs associated with this application. Post Acute Partners has agreed to acquire the rights to the RHCF's real property and operating interests for $600,000. The acquisition price will be met with $600,000 in members' equity. Post Acute Partners will assign its rights to the operating interest of the RHCF to 185 Old Military Road Operating Company, LLC and will transfer the leasehold rights to the property to185 Old Military Road, LLC for a total of $10.

The working capital requirement of $2,110,872 is based on two months of third year expenses, as the facility shows a loss in the first year. Working capital will be met with $1,270,872 in members' equity and an $840,000 loan at LIBOR plus 2.75% for a five-year term. Capital Funding, LLC has provided a letter of interest for the working capital loan. Review of the operating members' net worth (BFA Attachment A) shows sufficient assets overall to meet equity requirements.

BFA Attachment C is 185 Old Military Road Operating Company, LLC's pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of $1,870,872.

The current operator is staffing only 80 of the 156 certified beds. The applicant plans to upgrade the physical plant and eventually staff the full complement of certified beds. A schedule of expenditures has not been established and the related funding is not provided. The applicant anticipates that the general renovations and cosmetic improvements will lead to reopening of a 48-bed unit and drive increases in utilization.

The budget projects a $1,419,198 loss in Year One and net income of $755,486 in Year Three. This represents an increase of $2,333,714 and $6,995,970 in Year One and Year Three, respectively, over the Current Year's revenue. The budget projects 69.5% utilization growth, driven primarily by the above referenced renovation, the reopening of the unstaffed 48-bed unit and additional cosmetic renovations. The applicant intends to increase marketing efforts and implement a program to provide treatment for a variety of conditions including pneumonia, chronic heart failure and COPD. The applicant projects additional expenses of $1,516,463 and $4,004,035 in Year One and Year Three, respectively, based on increases in salaries and wages needed to accommodate the increase in utilization, but partially offset by utility savings and reduced employee benefits already agreed upon by the employee's union.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, the 2012-2014 financial summary of Uilhein Living Center, indicates that the facility had a net asset deficit, generated an annual operating deficit and maintained a positive working capital position for 2013-2014.

BFA Attachment E, financial summary of affiliated RHCFs, shows the facilities maintained positive net income from operations for 2014 with the exception of 2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island whose operating loss the applicant attributes to its involvement in a union campaign that impacted census and expenses. It is noted that the proposed operators established membership in the affiliated facilities as of July 28, 2013.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net worth summary, members of Post Acute Partners Acquisition, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Pro Forma Balance Sheet, 185 Old Military Road Operating Company, LLC
BFA Attachment D	Financial Summary, Uihlein Living Center
BFA Attachment E	Financial Summary, affiliated nursing home facilities
LTC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 185 Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid as the new operator of Uihlein Living Center, a 156-bed RHCF located at 185 Old Military Road, Lake Placid, 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:
151252 E	185 Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid

APPROVAL CONTINGENT UPON:

1. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
2. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed Ground Lease, acceptable to the Department of Health. [BFA]
4. Submission of executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of a final financing package for mandated capital expenditures, acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
9. Submission of all consulting and services agreements between the applicant and Elderwood Administrative Services, LLC, or any other entity. [LTC]

10. Submission and Department approval of a plan to restore nursing units at the facility that have been taken out of service by the current operator. The plan will describe the necessary increase in staffing and any cosmetic renovations that are needed in the units. [LTC]
11. Submission of a photocopy of an executed and completed facility lease agreement between 185 Old Military Road, LLC and 185 Old Military Road Operating Company, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed membership interest transfer and any additional transfer documents, which are acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's executed proposed amended and restated operating agreement, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's executed proposed restated articles of organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed administrative services agreement, which is acceptable to the Department. [CSL]
17. Submission of a completed Schedule 15 and any pertinent documents, which are acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152049-E
Terrace Acquisition II, LLC d/b/a Fordham Nursing & Rehabilitation Center

Program: **Residential Health Care Facility** ***County:*** **Bronx**
Purpose: **Establishment** ***Acknowledged:*** **July 28, 2015**

Executive Summary

Description

Terrace Acquisition II, LLC d/b/a Fordham Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the operator of Terrace Health Care Center, a 240-bed Article 28 residential health care facility (RHCF) located at 2678 Kingsbridge Terrace, Bronx (Bronx County). There will be no change in services provided.

On June 1, 2015, Terrace Health Care Center, Inc. entered into an Asset Purchase Agreement (APA) with Terrace Acquisition II, LLC for the sale and acquisition of the operating interests of Terrace Health Care Center. Concurrently, Terrace Land Corp., the real property owner, entered into a Real Estate Purchase Agreement with Terrace Acquisition I, LLC for sale and acquisition of the real property of the facility. The applicant will lease the premises from Terrace Acquisition I, LLC. There is a relationship between Terrace Acquisition I, LLC and Terrace Acquisition II, LLC in that the entities have common membership. An affidavit has been received by the Department affirming the relationship.

The current and proposed ownership are as follows:

Current Operator	
Terrace Health Care Center, Inc.	
Stockholders:	%
Lowell Feldman	91%
Soloman Rutenberg	9%
Total	100%

Proposed Operator	
Terrace Acquisition II, LLC	
Members:	%
Soloman Rutenberg (Manager)	35.25%
Pasquale DeBenedictis (Manager)	25.25%
Alex Solovey (Manager)	25.25%
Greg Seidner	9.25%
Michael Schrieber	5.00%
Total	100.00%

The applicant members have ownership interest in various New York State RHCFs. BFA Attachments D and E are the financial summaries and ownership interest percentages, respectively, of the proposed members' affiliated skilled nursing facilities.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. Terrace Health Care Center's occupancy was 97.6% in 2011, 98.5% in 2012, and 97.1% in 2013. Current occupancy as of August 12, 2015 is 99.6%, with one vacant bed.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

Terrace Acquisition II, LLC will acquire the RHCF operations for $8,500,000, which will be paid by an assumption of agreed upon liabilities and receivables. Terrace Acquisition I, LLC will purchase the real property for $15,000,000 funded with $500,000 cash and a note payable to Lowell Feldman (current property owner/seller) for $14,500,000 at 5% interest for a 10-year term and 30-year amortization. Affidavits were submitted by all applicant members, excluding Mr. Schrieber, attesting to fund the balloon payment if acceptable refinancing is not available when the note payable becomes due.

Budget :	Revenues	$21,462,600
	Expenses	21,302,100
	Net Income	$160,500

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of a note payable, acceptable to the Department of Health. [BFA]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
5. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
   d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   e. Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
6. Submission of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
7. Submission of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
8. Submission of the applicants executed Asset Purchase Agreement including executed and complete copies of exhibits A, B and D, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended and executed lease agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

Project Description

Terrace Acquisition II, LLC d/b/a Fordham Nursing and Rehabilitation Center, seeks approval to become the established operator of Terrace Health Care Center, an existing 240-bed Article 28 residential health care facility (RHCF), located at 2678 Kingsbridge Terrace, Bronx, 10463, in Bronx County.

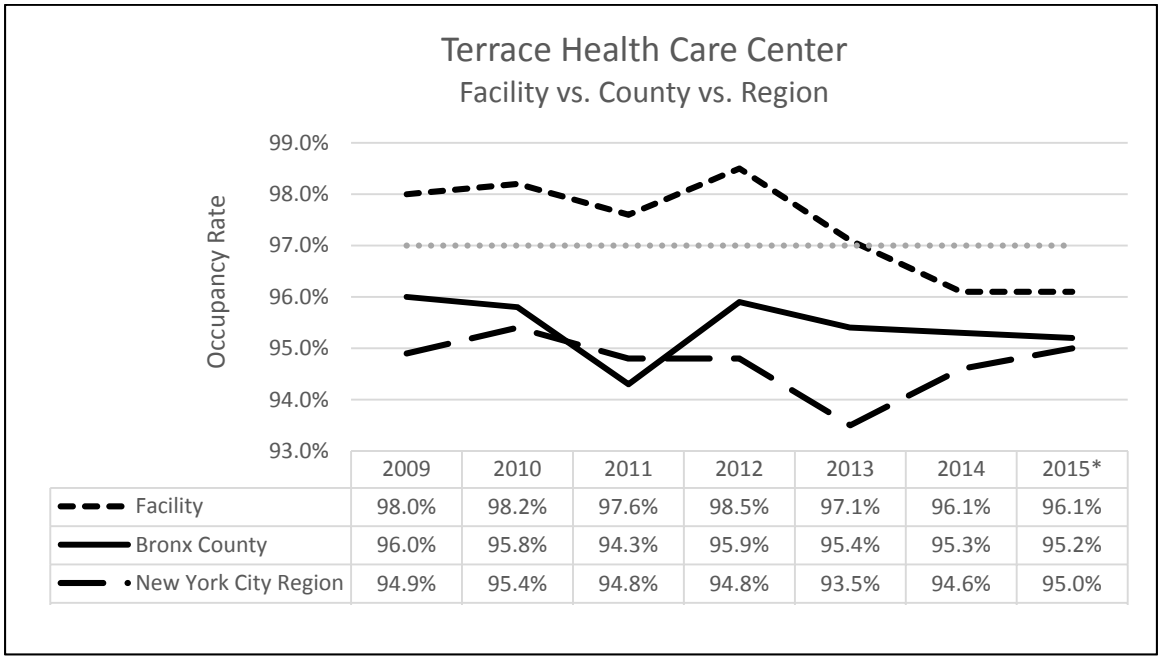
Analysis

There is currently a need for an additional 8,357 beds in the New York City Region as indicated in the following table:

RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,178
Beds Under Construction	536
Total Resources	42,714
Unmet Need	8,357

Terrace Health Care Center's occupancy was 97.6% in 2011, 98.5% in 2012, and 97.1% in 2013. Occupancy has been near or above the Department's planning optimum for the last six years, and this is expected to continue under the proposed operator.



	2009	2010	2011	2012	2013	2014	2015*
Facility	98.0%	98.2%	97.6%	98.5%	97.1%	96.1%	96.1%
Bronx County	96.0%	95.8%	94.3%	95.9%	95.4%	95.3%	95.2%
New York City Region	94.9%	95.4%	94.8%	94.8%	93.5%	94.6%	95.0%

*unaudited; based on facility reporting

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Terrace Health Care Center's Medicaid admissions of 97.1% in 2012 and 96.9% in 2013 exceeded the Bronx County 75% rates of 35.8% in 2012 and 29.8% in 2013.

Conclusion

Approval of this application will result in maintaining a necessary resource for both the Medicaid population and the community it serves.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Terrace Health Care Center	Fordham Nursing and Rehabilitation Center
Address	2678 Kingsbridge Terrace Bronx NY 10463	Same
RHCF Capacity	240	240
ADHC Program Capacity	N/A	N/A
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Terrace Health Care Center, Inc. <u>Shareholders</u>: Lowell Feldman 91% Soloman Rutenberg 9%	Terrace Acquisition II, LLC. <u>Shareholders:</u> Pasquale DeBenedictis 25.25% Alex Solovey 25.25% Soloman Rutenberg 35.25% Gregg Seidner 9.25% Michael Schreiber 5.00% .

Character and Competence – Background

<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

Barnwell Nursing and Rehabilitation Center	10/2005 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	10/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	02/2013 to present
Sayville Nursing & Rehab Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Terrace Health Care Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present

<u>Connecticut Nursing Home</u>

Cassena Care at Norwalk	06/2013 to present

Other Health Facilities

Mills Pond Dialysis Center, LLC	(D&TC)	08/2015 to present

Individual Background Review

Pasquale DeBenedictis has been employed as the Director of Finance at the Carillon Nursing and Rehabilitation Center since 1997. Mr. DeBenedictis discloses ownership interests in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. DeBenedictis has been approved by PHHPC to become an owner of the following facilities, which to date have not closed:

CON 131349 Sea-Crest Nursing and Rehabilitation
CON 141205 Workmen's Circle Dialysis Center (D&TC)
CON 141210 Cassena Care Dialysis at Peninsula (D&TC)

Alex Solovey has been a New York State licensed physical therapist since 1994 and is considered to be in good standing. He is the founder and CEO at Theradynamics Physical Therapy Rehabilitation P.C. since 1999. Mr. Solovey discloses ownership interests in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. Solovey has been approved by PHHPC to become an owner of the following facilities, which to date have not closed:

CON 131349 Sea-Crest Nursing and Rehabilitation
CON 141205 Workmen's Circle Dialysis Center (D&TC)
CON 141210 Cassena Care Dialysis at Peninsula (D&TC)

Michael Schreiber holds an active New York Nursing Home Administrator's license, since 2006, and is considered to be in good standing. Mr. Schreiber has been employed as the Vice President of Strategic Planning at Cassena Care Consulting, located in Woodbury, New York, since 2013. He is also currently employed as the Assistant Executive Director at Shore View Nursing Home and as the Executive Director at Sea-Crest Health Care Center, and has been since 2004. Mr. Schreiber discloses ownership interests in the following residential health care facility:

Shore View Nursing and Rehabilitation Center	06/2014 to present

Soloman Rutenberg is employed as the CEO at Workmen's Circle Multicare Center, a skilled nursing facility located in Bronx, New York, and has been since 2006. Mr. Rutenberg discloses the following nursing home ownership interests:

Mills Pond Nursing and Rehabilitation Center	05/2014 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Terrace Health Care Center, Inc.	06/2014 to present

Gregg Seidner is employed at Bronx Park Rehabilitation & Nursing Center in the payroll and billing department, and has worked there since 1998. Mr. Seidner discloses ownership interest in the following Connecticut nursing home:

Cassena Care at Norwalk	06/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Barnwell Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to Stipulation and Order NH-15-001 issued January 12, 2014 for surveillance findings on March 13, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care : Accidents/Supervision.
  - A federal CMP of $3,250 was paid for the Immediate Jeopardy on 3/13/12.
- The facility was fined $10,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on February 1, 2013. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors; 10NYCRR 415.26 Administration; and 10NYCRR 415.27 Quality Assurance.
  - A federal CMP of $5,000 was paid for the Immediate Jeopardy on 2/1/13.
- The facility was fined $8,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on September 26, 2013. Deficiencies were found under 10NYCRR 415.4(b)(1)(2)(3) Free from Mistreatment Neglect and Misappropriation of Property; and 10NYCRR 415.12 Quality of Care Highest Practicable Potential.
  - A federal CMP of $8,000 was paid for the Immediate Jeopardy on 9/26/13.

A review of operations of Barnwell Nursing and Rehabilitation Center indicates that the requirements for approval, as set forth in Public Health Law §2801-a (3), have been met.

A review of East Neck Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined $6000 pursuant to Stipulation and Order NH-15-039 issued 11/20/15 for surveillance findings on March 21, 2014. Deficiencies were found under 10NYCRR 415.3 (e)(1)(ii) Resident Rights: Right to Accept/Refuse Treatment; Right to Formulate Advance Directives; 10NYCRR 415.26 Administration and 10NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of East Neck Nursing and Rehabilitation Center for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

A review of operations for DeWitt Rehabilitation and Nursing Center, Mills Pond Nursing and Rehabilitation Center, Morningside Nursing and Rehabilitation Center, Peninsula Nursing and Rehabilitation Center, Sayville Nursing and Rehabilitation Center, Shore View Nursing and Rehabilitation Center, Terrace Health Care Center and Workmen's Circle Multicare Center, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of a letter from the Department of Public Health in the State of Connecticut as well as an affidavit submitted by the applicant for Cassena Care at Norwalk in the State of Connecticut for the periods identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements. The facility is operating in compliance with state and federal laws and regulations.

A review of operations for Mills Pond Dialysis Center, LLC (D&TC) for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The Department has received an executed Asset Purchase Agreement, the terms of which are summarized as follows:

Effective Date:	June 1, 2015 (Effective date and date Soloman Rutenberg was hired as the Chief Operating Officer (COO)
Seller:	Terrace Health Care Center, Inc.
Buyer:	Terrace Acquisition II, LLC
Facility:	Terrace Health Care Center
Facility Location:	2678 Kingsbridge Terrace, Bronx NY 10463
Purchase Price:	Total Amount $23,500,000 to be apportioned between Basic Assets and Real Estate (pursuant to separate real estate purchase agreement)
Asset Acquired:	All Seller's right, title and interest to assets in business and operations of the Facility at Closing; All Copies of financial books &records; all menus, policies & procedures manuals; All computers, computer software, all licenses and permits; All cash and cash equivalents as of the Effective Date.
Excluded Assets:	All Seller's right, title and interest, as of Closing Date, in personal property as set forth in Schedule 1.18.1; As of Effective date: All personal bank accounts, investments, marketable securities and accrued interest and dividends thereon in name of Seller. Any real estate tax refunds prior to effective date.
Assumption of Liabilities:	Ongoing obligations under Contracts and Equipment leases assumed by Buyer; Accounts Payables, Liabilities and Accrued Wages/Taxes as agreed to and effective at Closing.
Payment of Purchase Price:	At Closing Buyer shall execute a Note for value of purchase price less adjustment for any agreed upon assumed liabilities, receivables or any other agreed amounts up to a maximum of the total purchase price of $23,500,000

Terrace Acquisition II, LLC will acquire the RHCF operations for $8,500,000, which will be paid by an assumption of agreed upon liabilities and receivables. Terrace Acquisition I, LLC, an affiliate of the applicant, will purchase the real property for $15,000,000 funded with $500,000 cash and a note payable to Lowell Feldman (current property owner/seller) for $14,500,000 at 5% interest for a 10-year term and 30-year amortization. Affidavits were submitted from all applicant members, excluding Mr. Schrieber, attesting to fund the balloon payment if acceptable refinancing is not available when the note payable becomes due.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid liabilities.

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the nursing home premises, summarized below:

Date:	June 1, 2015
Premises:	The land, parking areas, fixtures, buildings and other improvements situated on the parcel of land located at 2678 Kingsbridge Terrace, Bronx, New York.
Seller:	Terrace Land Corp.
Purchaser:	Terrace Acquisition I, LLC
Purchase Price:	$15,000,000, which is included in the Asset Purchase Agreement.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the nursing home site, summarized below:

Premises:	The premises located at 2678 Kingsbridge Terrace, Bronx, New York
Lessor:	Terrace Acquisition I, LLC
Lessee:	Terrace Acquisition II, LLC
Term:	35 years
Rental:	$2,700,000 and commencing on the fifth anniversary of the Commencement Date, and every five years thereafter, the Base Rent shall increase to an amount equal to one hundred three percent (103%) of the Base Rent payable.
Provisions:	The lessee shall be responsible for utilities, insurance, maintenance and real estate taxes.

The lease agreement is a non-arm's length lease arrangement since there is common ownership. The applicant has submitted and affidavit attesting to the relationship between landlord and tenant.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first year after the change in operator, summarized below:

	Current Year (2014)		Year One	
	Per Diem	Total	Per Diem	Total
Revenues:				
Medicaid FFS/MC	$208.12	$16,927,971	$224.65	$17,180,700
Medicare FFS/MC	$741.74	582,263	$643.30	2,733,400
Commercial FFS	$208.43	433,198	$364.74	619,300
Private Pay	$0	0	$364.06	929,200
Total Revenues		$17,943,432		$21,462,600

Expenses:				
Operating	$213.14	$17,944,843	$215.71	$18,329,400
Capital	21.77	1,833,198	34.98	2,972,700
Total Expenses	$234.91	$19,778,041	$250.69	$21,302,100
Net Income		($1,834,609)		$160,500
Utilization: (Patient days)		84,194		84,973
Occupancy		96.11%		97.00%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current payment rates for the various payors. The applicant states that their business model includes flexibility to transition to a Value Based Payment System prior to the end of the three-year transition window. For the current CON project, revenue assumptions were based on the historical data of the facility, as they believe the rates will continue for a period of time going forward.
- The Medicaid case mix is expected to increase from 0.87 to 1.00 due to admitting higher acuity patients and increasing the facility's short-term and long-term rehabilitation programs.
- Expense assumptions are based on the historical experience of the facility.
- Utilization by payor source for the current year (2014) and first year is as follows:

	Current Year	Year One
Medicaid FFS/MC	96.60%	90.00%
Medicare FFS/MC	.94%	5.00%
Commercial FFS	2.46%	2.00%
Private Pay	0%	3.00%

- The applicant has projected an increase in patient days due to a new admissions strategy implemented by the buyers via the existing consulting services agreement. Medicare and Private Pay patient days are expected to increase due to the new admissions policies.
- Breakeven Occupancy in the first year is 96.25% or 84,315 patient days.

Capability and Feasibility

The purchase price of the operations is $8,500,000 and will be paid by an assumption of agreed upon liabilities and receivables. Terrace Acquisition I, LLC, with related members to the operating ownership, will purchase the property for $15,000,000 with payment of $500,000 in cash and a note payable to Mr. Feldman, the current property owner/seller, for $14,500,000 at 5% interest for a 10-year term and 30-year amortization period. All applicant members, excluding Mr. Schrieber, have submitted affidavits attesting to fund the balloon payment if acceptable refinancing is not available when the note payable becomes due.

Working capital requirements are estimated at $3,550,350, which is equivalent to two months of first year expenses. The applicant will provide equity of $2,342,850 from the proposed members' personal resources and the remaining $1,207,500 will be provided via acquired accounts receivable. BFA Attachment A is the personal net worth statements of the proposed members of Terrace Acquisition II, LLC, which indicates the availability of sufficient funds to meet the equity contribution for the real estate portion and the working capital requirement. BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of $3,981,500.

The submitted budget indicates a net income of $160,500 during the first year after the change in operator. The budget appears reasonable.

BFA Attachment B is the financial summary of Terrace Health Care Center from 2012 through 2014. As shown, the facility had an average negative working capital position and an average negative net asset position from 2012 through 2014 because the facility owed $3,250,000 in unpaid benefits and back wages for collective bargaining agreement mandated raises not implemented. These amounts are recorded as liabilities in the financials. The facility incurred average net losses of $754,173 from 2012 through 2014. The applicant indicated that the reason for the losses is that the current operator undertook very little marketing and the patient population consisted primarily of Medicaid with little emphasis on Medicare. In addition, the current operator was not equipped to work with the managed care plans in an effort to secure a fee structure that was in the interest of the provider. The proposed operator has worked with the existing operator to modify the payor mix to include a Medicare population and has negotiated better payment rates with the managed long term care plans.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment D is the financial summary for the members' affiliated RHCFs which shows that all of the facilities had average positive working capital positions, average positive net asset positions and average net incomes for the period shown.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal net worth statement of proposed members
BFA Attachment B	Financial summary- Terrace Health Care Center
BFA Attachment C	Pro forma balance sheet
BFA Attachment D	Financial summary- Affiliated nursing homes
BFA Attachment E	Proposed members ownership interests of other affiliated nursing homes.
LTC Attachment A	Quality Measures Inspection Report

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 11th day of February, 2016 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 Terrace Acquisition II, LLC as the new operator of the 240-bed RHCF located at 2678 Kingsbridge Terrace, Bronx, currently operated as Terrace Health Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
152049 E	Terrace Acquisition II, LLC d/b/a Fordham Nursing & Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of a note payable, acceptable to the Department of Health. [BFA]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
5. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
   d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   e. Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
6. Submission of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
7. Submission of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
8. Submission of the applicants executed Asset Purchase Agreement including executed and complete copies of exhibits A, B and D, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended and executed lease agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152072-E
Dewitt Rehabilitation and Nursing Center Inc.

Program: **Residential Health Care Facility** ***County:*** **New York**
Purpose: **Establishment** ***Acknowledged:*** **August 7, 2015**

Executive Summary

Description

DeWitt Rehabilitation and Nursing Center, Inc. (the Company), a 499-bed Article 28 residential health care facility (RHCF) located at 211 East 79 Street, New York (New York County), requests approval to transfer 91% in the shares of the facility. The majority owner, Ms. Marilyn Lichtman, proposes to sell all her shares (91%) to three current and four new shareholders. This transfer will increase the current shareholders to a total in excess of 10% membership interest each, requiring approval by the Public Health and Health Planning Council (PHHPC). There will be no change in services provided, nor any change in management.

On May 26, 2015, a Stock Purchase Agreement (SPA) was executed for the sale and purchase of 9% of the shares of the Company, with sole shareholder Marilyn Lichtman selling 9% (18 shares) of her ownership interest to three new shareholders: Pasquale DeBenedictis, Alex Solovey, and Leopold Friedman, each purchasing 3% interest of the issued and outstanding shares of common stock of the Company (2 shares per 1% interest). This sale of 9% of the shares is referred to in the SPA as the "First Purchased Stock" transaction. The SPA also provides for a "Second Transaction" for the sale of the balance (91%) of the Company's shares. The real property for the facility was sold simultaneously on May 26, 2015, to 79th Street Acquisition, LLC and a new lease was executed on July 9, 2015.

The total purchase price of all shares of stock sold in the "First Purchased Stock" (9%) and the "Second Transaction" (91%) is $2,500,000. On July 7, 2015, a Stockholders Agreement was executed for the 9% stock sale with a cash payment of $1,000,000. The balance of $1,500,000 will be paid at the closing of the "Second Transaction." No financing is required as the total purchase price will be paid in cash. A total of 200 shares is being sold with a purchase price of $12,500 for each share. BFA Attachment B presents the organizational change in shareholders, shares and cost.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need review of this project.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

On July 7, 2015, a Stockholders Agreement was executed for two transactions of stock transfer totaling 200 shares (100%) of DeWitt Rehabilitation and Nursing Center, Inc. The total purchase amount for all 200 shares is $2,500,000 ($12,500 per share). There are two separate stock purchase transactions associated with the sale of all the stock. The first transaction of 9% of the stock was completed on July 7, 2015, with a cash payment of $1,000,000. This application is for the second transaction of the 91% balance of shares with the balance of $1,500,000 to be paid at closing. There is no financing required as the total purchase price is being paid in cash.

There are no project cost associated with this application, and the first year budget projects an operating gain.

Revenues:	$63,769,000
Expenses:	$61,167,100
Gain:	$ 2,601,900

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's amended lease between 79th Street Acquisition Group, LLC and Dewitt Rehabilitation and Nursing Center, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's amended Stock Purchase Agreement, amending Section 5.7 of the applicant's Stock Purchase Agreement. [CSL]

Approval conditional upon:

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

Council Action Date

February 11, 2016

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Dewitt Rehabilitation and Nursing Center, Inc.	Same
Address	211 East 79 Street, New York, NY 10021 (New York County)	Same
RHCF Capacity	499	499
ADHC Program Capacity	n/a	Same
Type of Operator	Corporation	Corporation
Class of Operator	Proprietary	Proprietary
Operator	Dewitt Rehabilitation and Nursing Center, Inc. Shareholders: Marilyn Lichtman 91.00% Pasquale DeBendictis 3.00% Alex Solovey 3.00% Leopold Friedman 3.00%	Dewitt Rehabilitation and Nursing Center, Inc. Shareholders Pasquale DeBenedictis 34.50% Alex Solovey 34.50% Leopold Friedman 10.50% Joseph F. Carillo II 10.50% Jimmy Solovey 4.25% Soloman Rutenberg 4.25% Michael Schreiber 1.50% .

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Barnwell Nursing and Rehabilitation Center	10/2005 to present
Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
Carillon Nursing & Rehabilitation Center	10/2005 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Highland View Care Center	02/2015 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
Sayville Nursing & Rehab Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Terrace Health Care Center	06/2014 to present
The Citadel Rehabilitation and Nursing Center at Kingsbridge (f.k.a. Kingsbridge Heights Rehabilitation and Care Center)	02/2015 to present
Workmen's Circle Multicare Center	07/2013 to present

Connecticut Nursing Home

Cassena Care at Norwalk	06/2013 to present

Other Health Facilities

Mills Pond Dialysis Center, LLC	(D&TC)	08/2015 to present
Carillon Dialysis Center	(D&TC)	01/2008 to present
Ultimate Care LLC	(LHCSA)	02/2010 to present

Individual Background Review

Pasquale DeBenedictis is currently employed as the Director of Finance at the Carillon Nursing and Rehabilitation Center, since 1997. Mr. DeBenedictis discloses ownership interests in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. DeBenedictis has pending ownership applications for the following facilities, which have been approved by NYS, but have not transferred title as of this writing:

131349	Sea-Crest Nursing and Rehabilitation
141205	Workmen's Circle Dialysis Center (D&TC)
141210	Cassena Care Dialysis at Peninsula (D&TC)

Alex Solovey is a New York State licensed physical therapist, since 1994, considered to be in good standing. He is the founder and CEO of Theradynamics Physical Therapy Rehabilitation P.C. since 1999. Mr. Solovey discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. Solovey has pending ownership in the following facilities, which have been approved by PHHPC, but have not transferred title as of this writing:

131349	Sea-Crest Nursing and Rehabilitation
141205	Workmen's Circle Dialysis Center (D&TC)
141210	Cassena Care Dialysis at Peninsula (D&TC)

Joseph F. Carillo II holds an active New York Nursing Home Administrator's License in good standing. He is the Administrator at Carillon Nursing and Rehabilitation since 1986. He has disclosed ownership interest in the following health care facilities:

Carillon Nursing and Rehabilitation Center	01/1999 to present
Barnwell Nursing and Rehabilitation Center	10/2006 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Workmen's Circle Multicare Center	07/2013 to present
Carillon Dialysis Center (D&TC)	01/2008 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. Carillo has pending ownership in the following facility, which has been approved by PHHPC, but has not transferred title as of this writing:

141205 Workmen's Circle Dialysis Center (D&TC)

Leopold Friedman is the Chief Executive Officer, since 2006, of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman discloses the following ownership interests:

Peninsula Center for Extended Care & Rehabilitation (rec/op)	01/2013 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present
The Citadel Rehabilitation and Nursing Center	02/2015 to present

Mr. Friedman has pending ownership in the following facilities, which have been approved by PHHPC, but have not transferred title as of this writing:

151108 Long Beach Nursing and Rehabilitation Center
151308 Brooklyn Gardens Dialysis Center (D&TC)
141210 Cassena Care Dialysis at Peninsula (D&TC)

Michael Schreiber holds an active New York Nursing Home Administrator's license, since 2006, and is considered to be in good standing. Mr. Schreiber is employed, since 2013, as the Vice President of Strategic Planning at Cassena Care Consulting located in Woodbury, New York. He is also currently employed as the Assistant Executive Director, since 2004, at Shore View Nursing Home and as the Executive Director at Sea-Crest Health Care Center, since 2004. Mr. Schreiber discloses ownership interests in the following residential health care facility:

Shore View Nursing and Rehabilitation Center	06/2014 to present

Mr. Schreiber has pending ownership in the following facility, which has been approved by NYS, but has not transferred title as of this writing:

131349 Sea-Crest Nursing and Rehabilitation

Soloman Rutenberg is employed, since 2006, as the CEO at Workmen's Circle Multicare Center, a skilled nursing facility located in Bronx, New York. Mr. Rutenberg discloses an ownership interest in the following health care facilities:

Mills Pond Nursing and Rehabilitation Center	05/2014 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Terrace Health Care Center, Inc.	06/2014 to present

Mr. Rutenberg has pending ownership in the following facilities, which have been approved by NYS, but have not transferred title as of this writing:

131349 Sea-Crest Nursing and Rehabilitation
141205 Workmen's Circle Dialysis Center (D&TC)
Morningside Acquisition III, LLC (ALP and LHCSA)

Jimmy Solovey discloses he is the senior vice-president of business development, since 2000, at Smart Linx Solutions in Edison, NJ. Mr. J. Solovey discloses no ownership interests in health care facilities.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Barnwell Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to Stipulation and Order NH-15-001 issued January 12, 2014 for surveillance findings on March 13, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care : Accidents/Supervision.

  - A federal CMP of $3,250 was paid for the Immediate Jeopardy on 3/13/12.
- The facility was fined $10,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on February 1, 2013. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors; 10NYCRR 415.26 Administration; and 10NYCRR 415.27 Quality Assurance.
  - A federal CMP of $5,000 was paid for the Immediate Jeopardy on 2/1/13.
- The facility was fined $8,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on September 26, 2013. Deficiencies were found under 10NYCRR 415.4(b)(1)(2)(3) Free from Mistreatment Neglect and Misappropriation of Property; and 10NYCRR 415.12 Quality of Care Highest Practicable Potential.
  - A federal CMP of $8,000 was paid for the Immediate Jeopardy on 9/26/13.

A review of operations of Barnwell Nursing and Rehabilitation Center indicates that the requirements for approval, as set forth in Public Health Law §2801-a (3), have been met.

A review of East Neck Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined $6000 pursuant to Stipulation and Order NH-15-039 issued 11/20/15 for surveillance findings on March 21, 2014. Deficiencies were found under 10NYCRR 415.3 (e)(1)(ii) Resident Rights: Right to Accept/Refuse Treatment; Right to Formulate Advance Directives; 10NYCRR 415.26 Administration and 10NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of East Neck Nursing and Rehabilitation Center for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

A review of operations for Brooklyn Gardens Nursing & Rehabilitation Center, Carillon Nursing & Rehabilitation Center, Dewitt Nursing and Rehabilitation Center, Hendon Garden Nursing and Rehabilitation Center, Mills Pond Nursing and Rehabilitation Center, Morningside Nursing and Rehabilitation Center, Peninsula Nursing and Rehabilitation Center, Sayville Nursing and Rehabilitation Center, Shore View Nursing and Rehabilitation Center, Shore View Nursing and Rehabilitation Center, Terrace Health Care Center, The Citadel Rehabilitation and Nursing Center at Kingsbridge and Workmen's Circle Multicare Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.
The applicant has submitted an affidavit which attests that there have been no enforcement actions for Cassena Care at Norwalk in the State of Connecticut for the periods identified above. A conclusion of substantially consistent high level of care can be made since there were no repeat enforcements. The facility is operating in compliance with state and federal laws and regulations.

A review of operations for Mills Pond Dialysis Center, LLC (D&TC) and Carillon Dialysis Center (D&TC) for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care LLC (LHCSA) for the periods identified earlier, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Stock Purchase Agreement

Each current and potential shareholder has submitted a separate Shareholder's Affidavit attesting to the share transactions, the number of total shares being issued, and the number of shares to be owned by that shareholder at the completion of the second transaction. An executed Stock Purchase Agreement has been received by the Department:

Date:	May 26, 2015
Seller:	Dewitt Rehabilitation and Nursing Center, Inc.'s Member Marilyn Lichtman, an individual
Buyer:	Pasquale DeBenedictis, Alex Solovey, Leopold Friedman
Purchase Price:	Total purchase price $2,500,000
Stock Purchased:	Buyers will purchase 18 shares (9% interest) at "First Purchased Stock" and the balance of the stock (91% interest) at the "Second Transaction"
Closing:	"First Purchased Stock" July 7, 2015 and "Second Transaction" TBD
Payment of Purchase Price:	$1,000,000 cash at "First Purchased Stock" on July 7, 2015; and $1,500,000 balance to be paid in cash on closing of "Second Transaction"

The purchase price per share is $12,500 with total price of $2,500,000 for the 200 shares. The purchase price is being paid in two transactions, with the first payment of $1,000,000 made on July 7, 2015 with the transfer of 9% of shares to three members. The balance of $1,500,000 is to be paid at closing of the remaining 91% of shares upon approval of this application. The balance will be paid in cash with no funds financed.

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized below:

Date:	July 9, 2015
Premises:	A 499-bed RHCF located at 211 East 79th Street, New York 10075
Lessor:	79th Street Acquisition Group, LLC
Lessee:	DeWitt Rehabilitation and Nursing Center, Inc.
Terms:	35 years
Rental:	$11,000,000 annual base rent with a 3% increase each year thereafter.
Provisions:	Tenant responsible for real estate taxes, general liability insurance, utilities & maintenance.

On May 26, 2015, the real property for the facility sold for $105,500,000 to 79th Street Acquisition, LLC, of which all of the proposed shareholders of the second stock purchase are also members along with one other individual. An affidavit disclosing this non-arm's length relationship has been submitted by the applicant.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the current year and year one subsequent to change in shareholders' interest, summarized as follows:

	Current Year (2014)		Year One	
Revenues:	Per Diem	Total	Per Diem	Total
Medicare	$640.89	$9,215,372	$640.89	$16,984,400
Medicaid	$301.91	36,267,616	$289.95	34,833,600
Commercial	$263.87	8,893,080	$350.77	5,273,900
Private Pay/Other	$289.47	2,151,306	$444.64	6,677,100
Total Operating Revenues		$56,527,374		$63,769,000
Non-Operating Revenues		3,289,214		0
Total Revenue		$59,816,588		$63,769,000
Expenses:				
Operating	$308.65	54,211,374	$282.54	$49,917,100
Capital	$11.83	2,077,995	$63.68	11,250,000
Total Expenses		$56,289,369		$61,167,100
Net Income		$3,527,219		$2,601,900
Total Patient Days		175,643		176,672
Occupancy %		96.4%		97.0%

The following is noted with respect to the submitted budget:

- Private Pay rates are projected based on the facility's 2014 payment rates.
- Medicare rates are projected based on the Medicare PPS rates in effect for 2014 increased by 2% per annum for inflation to reflect 2016 dollars and include Medicare Part B payments.
- The Medicaid rates are projected based on the statewide pricing methodology and reflect the current FFS rates guaranteed for Medicaid Managed Care during the transition period. The applicant indicated that they are prepared to work with Managed Care Organizations to transition to a Value Based Reimbursement Model once the plans have the capability to support this reimbursement system. The Medicaid rates and related revenues include the facility's current operating and capital components based on the 2015 Medicaid rate plus assessments.
- The applicant indicated that the Medicare revenues and related utilization reported for the current year (reflects cost report filing) are skewed due to a facility error in categorizing Managed Care and Commercial Insurances and bad debt write-offs.
- Salaries, benefits, and other expenses are projected based on actual 2014 experience increased for inflation by 2% per annum to reflect 2016 dollars. Reflected in the budget is a reduction in select salaries for the following: administrative and fiscal salaries were reduced by $892,952 and $597,809, respectively, due to centralized operations, and the direct nursing staffing pattern was revised to reduce avoidable overtime with a net savings of $591,055.
- The Current Year Non-Operating Revenues represent bankruptcy vendor adjustments that are not anticipated to recur going forward.
- Utilization by payor is as follows:

Payor	Year One
Medicare	15.0%
Medicaid	68.0%
Private Pay/Other	17.0%

- Breakeven utilization is projected at 93.04% for year one.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for all 200 shares is $2,500,000 ($12,500 per share). The first transfer of 18 shares was performed on July 7, 2015. The second transfer of 182 shares will be done upon approval of this application. The total purchase price will be paid in cash with $1,000,000 paid at first transfer and $1,500,000 at second transfer. Affidavits have been received from each member with the number of shares, percent of total shares, and voting rights

granted. BFA Attachment A is the summary net worth statement for the members, which shows sufficient resources to cover the equity funding of the stock purchase price.

The working capital requirement is estimated at $10,194,517 based on two months of the first year expenses. Working capital will be satisfied from the facility's existing operations and additional members' equity. The net cash plus accounts receivable (minus accounts payable) was $9,990,722 as of October 31, 2015, resulting in a need for additional equity of $203,795 to be paid from members' equity. Members Pasqule DeBenedictis and Alex Solovey of DeWitt Rehabilitation and Nursing Center, Inc. have submitted affidavits stating they are willing to contribute resources disproportionate to their ownership percentages toward working capital requirements. BFA Attachment A is a summary of the net worth of the members of DeWitt Rehabilitation and Nursing Center, Inc., which indicates the availability of sufficient funds for working capital. BFA Attachment C is the pro forma balance sheet of the RHCF after the change in ownership interest for the existing members, which indicates a positive members' equity of $9,384,200.

The submitted budget indicates an excess of revenues over expenses of $2,601,900 during the first year of the change in ownership. BFA Attachment F is a budget sensitivity analysis based on current utilization of the facility, as of October 31, 2015, which shows the budgeted revenues would decrease by $2,380,197 resulting in a net profit in year one of $221,703. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment D is the Financial Summary for Dewitt Rehabilitation and Nursing Center, Inc. for audited years 2013-2014 and internal financials for eight months of 2015. The facility has maintained positive working capital, positive net equity and a net profit from operations in 2014 and as of October 31, 2015. In 2013 the facility experienced negative working capital and negative net equity due to a carry forward deficit.

BFA Attachments E, financial summary of the proposed members affiliated RHCFs, shows the facilities maintained positive net income from operations for the periods shown, with the exception of Sayville Nursing and Rehabilitation Center which had negative net equity of $78,854 and a net operating loss of $231,056 during 2013 due to a one-time charge against operations associated with the change in ownership which occurred in December 2012, but realized in 2013.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of the Members Purchasing Shares
BFA Attachment B	Schedule of Shareholders Costs
BFA Attachment C	Pro Forma for DeWitt Rehabilitation and Nursing Center
BFA Attachment D	DeWitt Rehabilitation and Nursing Center – Financial Summary
BFA Attachment E	Affiliated Residential Healthcare Facilities – Financial Summary
BFA Attachment F	Budget Sensitivity based on October 31, 2015 Historical
LTC Attachment A	Quality Measures Inspection Report

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 11th day of February, 2016 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 91.00% ownership interest in this RHCF from one (1) withdrawing member to four (4) new members and (3) existing 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:
152072 E	Dewitt Rehabilitation and Nursing Center Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's amended lease between 79th Street Acquisition Group, LLC and Dewitt Rehabilitation and Nursing Center, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's amended Stock Purchase Agreement, amending Section 5.7 of the applicant's Stock Purchase Agreement. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152128-B
Harlem Center for Nursing and Rehabilitation, LLC

Program: **Residential Health Care Facility** ***County:*** **New York**
Purpose: **Establishment** ***Acknowledged:*** **September 1, 2015**

Executive Summary

Description

Harlem Center for Nursing and Rehabilitation, LLC (Harlem Center), a New York limited liability company, requests approval to be established as the operator of the facility formerly known as Greater Harlem Center for Nursing and Rehabilitation, LLC, a 200-bed Article 28 residential health care facility (RHCF) located at 30 West 138th Street, New York (New York County). In addition, the applicant is proposing to perform renovations to bring ten beds back into operation in order to operate the RHCF at its full certified capacity. RHCF has been operating under receivership since August 19, 2014, with applicant member Joel Landau appointed as Receiver. There will be no change in services provided.

Harlem Center will enter into an Asset Purchase Agreement (draft provided) with Greater Harlem Nursing Home Company, Inc., the current owner of the nursing facility, for the sale and acquisition of the operating interests of the RHCF. Concurrently, Harlem Center Properties, LLC will enter into a Contract of Sale Agreement (draft provided) with Greater Harlem Nursing Home Company, Inc. for the sale and acquisition of the real property interests of the facility. The applicant will lease the premises from Harlem Center Properties, LLC. There is a relationship between Harlem Center Properties, LLC and Harlem Center for Nursing and Rehabilitation, LLC in that the two entities have common membership.

Proposed Operator
Harlem Center for Nursing and Rehabilitation, LLC

Members	%
Joel Landau (Manager)	33 1/3%
Marvin Rubin	33 1/3%
Solomon Rubin	33 1/3%

OPCHSM Recommendation

Contingent Approval

Need Summary

The change in ownership will not result in any changes in certified bed capacity. Greater Harlem Nursing Home and Rehabilitation Center, Inc.'s occupancy was 95.5% in 2011 and 95.0% in 2012. In 2013, the facility did not submit a cost report, however, based on self-reported data, occupancy was approximately 88.5%. Current occupancy, as of September 16, 2015, is 96.3%, based on the facility's operational capacity of 190 beds.

Program Summary

Harlem Center for Nursing and Rehabilitation is currently operated under a receivership by Harlem Center for Nursing and Rehabilitation, LLC whose sole member is Joel Landau. The subject application will establish the limited liability company as the permanent operator, add two members, and undertake renovations to restore ten beds which had been taken out of service as a result of an earlier HEAL 12 project.

No negative information has been received concerning the character and competence of the proposed applicants. No administrative services or consulting agreements are proposed in this application.

Financial Summary

Total project costs of $312,700 for renovations will be met via equity. **Total reimbursable costs are $0 as the costs are being incurred to amend construction previously paid for with HEAL NY Phase 12 grant funds.**

The purchase price for the acquisition of the operating interests of the nursing home is $5,000,000. The purchase price will be met with $500,000 of equity from the proposed members and a bank loan for $4,500,000 at 4.75% interest for a ten-year term and 15-year amortization period. The purchase price for the acquisition of the RHCF real estate interests is $25,000,000 and will be met with equity of $2,500,000 from the proposed realty members and a $22,500,000 bank loan at 4.75% interest for a ten-year term and 20-year amortization period. Skyline Capital has provided letters of interest for the respective operating and real estate loans at the stated terms. Proposed member Joel Landau has submitted an affidavit for the respective loans attesting that he will provide equity for the balloon payments if refinancing is not attainable when they become due.

The operating budget is as follows

Revenues	$21,538,228
Expenses	21,261,731
Net Income	$276,497

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. A copy of the check must uploaded into NYSECON. [PMU]
2. Submission of an executed loan commitment for the real estate, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
4. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed real estate purchase agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
8. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
9. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

10. Submission of a copy of the fully executed Operating Agreement of Harlem Center for Nursing and Rehabilitation, LLC, acceptable to the Department. [CSL]
11. Submission of a copy of a fully executed Asset Purchase Agreement between Harlem Center for Nursing and Rehabilitation, LLC and Greater Harlem Nursing Home & Rehabilitation Center, Inc., acceptable to the Department. [CSL]
12. Submission of a copy of a fully executed Agreement for the Sale of Real Property between Greater Harlem Nursing Home & Rehabilitation Center, Inc. and Harlem Center Properties, LLC, acceptable to the Department. [CSL]
13. Submission of a copy of a fully executed Lease Agreement between Harlem Center for Nursing and Rehabilitation, LLC and Harlem Center Properties, LLC, acceptable to the Department. [CSL]
14. Submission of a copy of the Articles of Organization of Harlem Center Properties, LLC, acceptable to the Department, along with proof of filing with the New York State Department of State. [CSL]
15. Submission of a copy of the Operating Agreement of Harlem Center Properties, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Approval by MARO staff of all areas undergoing renovation, prior to the re-occupancy of the rooms to the full 200 bed complement. [LTC]
3. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes.
4. Construction must start on or before 03/01/2016, and must be completed by 09/01/2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date
February 11, 2016

Need Analysis

Project Description

Harlem Center for Nursing and Rehabilitation, LLC seeks approval to become the established operator of Greater Harlem Nursing Home and Rehabilitation Center, Inc. (Greater Harlem), a 200-bed Article 28 residential health care facility (RHCF), located at 30 West 138th Street, New York, 10037, in New York County. Greater Harlem is currently under receivership by the proposed operator.

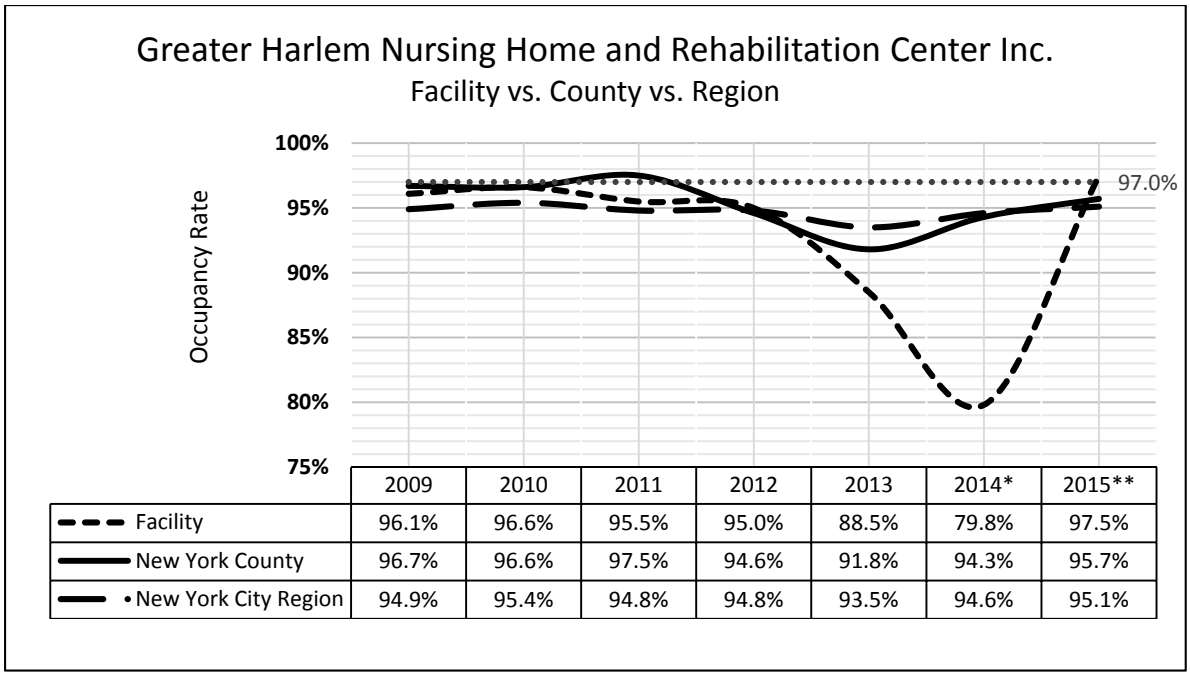
Analysis

There is currently a need for 8,824 beds in the New York City Region as indicated in the following table:

RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,151
Beds Under Construction	96
Total Resources	42,247
Unmet Need	8,824

The overall occupancy for the New York City Region is 93.5% for 2013, as indicated in the following chart:



	2009	2010	2011	2012	2013	2014*	2015**
Facility	96.1%	96.6%	95.5%	95.0%	88.5%	79.8%	97.5%
New York County	96.7%	96.6%	97.5%	94.6%	91.8%	94.3%	95.7%
New York City Region	94.9%	95.4%	94.8%	94.8%	93.5%	94.6%	95.1%

*unaudited; based on weekly census and/or facility reports at certified capacity of 200 beds
**2015 census is based on 190 beds, the facility's current capacity

Greater Harlem Nursing Home and Rehabilitation Center, Inc.'s occupancy was 96.6% in 2010, 95.5% in 2011, and 95% in 2012. The facility has experienced financial losses since 2004, averaging $1.4 million annually. The facility received HEAL Phase 12 funding to develop a 30-bed ALP, in addition to decertifying 25 RHCF beds, but was not been able to proceed with full completion of the project as the necessary approvals from the United States Department of Housing and Urban Development to close on the land where the ALP was to be located were delayed. Without the HEAL funding, the facility was not able to make the necessary capital enhancements to remain competitive in the marketplace. The applicant also noted that Harlem Hospital, which is located within two blocks of Greater Harlem, was not referring patients to the facility.

The current receiver and proposed operator was appointed to address the facility's quality issues and has since put 15 of the 25 beds that were to be decertified through HEAL Phase 12 funding back into operation. It is the applicant's intent to restore the facility to its full certified capacity of 200 beds by re-establishing and re-constructing the two-bedded rooms that were previously removed on floors 2-6 while maintaining the common-area space enhancements planned under HEAL Phase 12 funding. It is also important to note that another RHCF located in New York County, the Manhattan Center for Nursing and Rehabilitation, submitted a LRA to decertify 36 beds. The restoration of ten beds at this facility will not result in any changes to its certified bed capacity and taken in combination with Manhattan Center's decertification, will result in a net of 26 beds being removed from New York County.

While occupancy is currently near the Department's planning optimum, the applicant intends to maintain this level by implementing initiatives such as:

- Using a nurse practitioner model, Greater Harlem will work closely with area hospitals to reduce acute care length of stay at the hospitals by accelerating patient discharge and putting into place a program that will substantially eliminate hospital readmissions. This program has been successfully implemented at Linden Center for Nursing and Rehabilitation in Kings County;
- Entering into contracts with MLTCPs and other managed care insurers to accept their enrollees who need nursing home care. It is expected that Greater Harlem will attract an increasing number of MLTCP contracts;
- Working with Harlem Hospital Center to build a long-term relationship where they can refer patients to the nursing home. The hospital has already re-credentialed one of their physicians to begin working at the nursing home again and is currently discussing credentialing at the nursing home with specialists in cardiology, gastroenterology, and infectious diseases;
- Developing a Total Parenteral Nutrition (TPN) Program;
- Creating a Wound Care Program to allow the facility to admit patients with difficult wounds, multiple stage 3 and 4 decubiti, diabetic wounds, and those requiring hyperbaric chambers. These patients are often very difficult for hospitals to place and through this program, Greater Harlem will be responsive to meeting a community need;
- Hiring an urologist to perform bladder scans in-house;
- Admitting new trachea tube patients and contract with a Respiratory Therapist to work on weaning, care/management, and education to the nurses when necessary;
- Training existing staff to become IV certified nurses, thereby reducing unnecessary hospitalizations;
- Conducting in-house, at bed-side, FEES exams, thereby preventing re-hospitalizations for barium swallow exams; and
- Offering balance diagnostics, balance testing and outcomes-based vestibular therapy, which will serve to reduce hospitalizations due to falls.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Greater Harlem Nursing Home and Rehabilitation Center, Inc.'s Medicaid admissions for 2011 and 2012 were 68.4% and 23.8%, respectively. The facility exceeded the New York County 75% rate of 27.3% in 2011, but it did not exceed the 2012 New York County 75% rate of 26.1%. The applicant will be required to follow and satisfy the contingencies related to such.

Conclusion

Approval of this application will result in maintaining a necessary community resource to meet the current health care needs of the residents of New York County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Greater Harlem Nursing Home and Rehabilitation Center	Harlem Center for Nursing and Rehabilitation, LLC
Address	30 West 138th Street New York, NY. 10037	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Harlem Center for Nursing and Rehabilitation, LLC (receiver) Sole member: Joel Landau 100% Established Operator: Greater Harlem Nursing Home Co, Inc.	Harlem Center for Nursing and Rehabilitation, LLC Members: *Joel Landau 33.33% Marvin Rubin 33.33% Solomon Rubin 33.33% *Managing Member

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Linden Center for Nursing and Rehabilitation	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present
Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present
King David Nursing and Rehabilitation Center	01/2015 to present
Greater Harlem Nursing Home (receivership)	01/2014 to present
Nostrand Center for Nursing and Rehabilitation Center	07/2015 to present
Rivington Center, LLC (real estate owner of Manhattan Center for Nursing and Rehabilitation Center currently in closure process)	02/2015 to present

New Jersey Nursing Home

Norwood Terrace Health Center	03/2005 to present

Licensed Home Care Services Agency (LHCSA)

True Care, Inc.	03/2011 to present

Individual Background Review

Joel Landau is the director of Care to Care, LLC, a radiology benefit management company. He is also the president of The Intelimed Group, a medical contracting and credentialing company. Mr. Landau is a notary public, licensed by the Department of State in New York State. Mr. Landau discloses the following ownership interests in health facilities:

Linden Center for Nursing and Rehabilitation	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present
King David Nursing and Rehabilitation Center (33.33%)	01/2015 to present
Nostrand Center for Nursing and Rehabiltation (33.33 %)	07/2015 to present
Rivington Center LLC (40%) (Facility in closure process)	02/2015 to present

Marvin Rubin lists his current employment as management at Hamilton Park Nursing and Rehabilitation Center. Mr. Rubin discloses the following ownership interests in health facilities:

Linden Center for Nursing and Rehabilitation (15%)	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation (20%)	04/2013 to present
Hopkins Center for Rehabilitation and Healthcare (30%)	03/2012 to present
Hamilton Park Nursing and Rehabilitation Center (40%)	12/2012 to present
King David Nursing and Rehabilitation Center (33.3%)	01/2015 to present
True Care, Inc. (10%)	03/2011 to present
Rivington Center LLC (15%) (Facility in closure process)	02/2015 to present
Nostrand Center for Nursing and Rehabiltation (33.33 %)	07/2015 to present

Solomon Rubin is the controller at Grandell Rehabilitation and Nursing Center and the Beach Terrace Care Center in Long Beach. He also lists employment as management at Hamilton Park Nursing and Rehabilitation Center in Brooklyn. Mr. Rubin discloses the following ownership interests in health facilities:

Hamilton Park Nursing and Rehabilitation Center (40%)	08/2009 to present
Linden Center for Nursing and Rehabilitation (15%)	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation (20%)	04/2013 to present
King David Nursing and Rehabilitation Center	01/2015 to present
Norwood Terrace Health Center (NJ) (25%)	2000 to present
Nostrand Center for Nursing and Rehabilitation (33.33 %)	07/2015 to present
Rivington Center LLC (40%) (Facility in closure process)	02/2015 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of operations for Crown Heights Center for Nursing and Rehabilitation, Greater Harlem Nursing Home, Linden Center for Nursing and Rehabilitation, Hamilton Park Nursing and Rehabilitation Center, Hopkins Center for Rehabilitation and Healthcare, King David Nursing and Rehabilitation Center, Nostrand Center for Nursing and Rehabilitation and Rivington Center, LLC for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations the Norwood Terrace Health Center in Plainfield, New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the licensed home care services agency True Care, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

The Department executed a receivership agreement for the facility effective August 19, 2014. Pursuant to this agreement, Harlem Center for Nursing and Rehabilitation, LLC (Joel Landau, sole member) assumed operation of the facility in order to stabilize operations until such time as this Certificate of Need application could be processed. Approval of this application is consistent with the terms set forth in the executed receivership agreement.

The previous operator had undertaken a construction project to create a 30 bed Assisted Living Program which required the decertification of 25 beds. Upon implementation of the receivership agreement the project was abandoned, but the nursing home could not restore the facility to its full capacity. In conjunction with the change of ownership application minor construction is necessary to enable the restoration of the full 200-bed certified capacity. The renovation project will add some lounge space, which will slightly improve the residential environment.

No changes in the program or additional physical environment changes are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement for the purchase of the RHCF operations, which is summarized below:

Date:	March 5, 2014
Seller:	Greater Harlem Nursing Home and Rehabilitation Center, Inc.
Purchaser:	Harlem Center For Nursing and Rehabilitation, LLC
Assets Acquired:	Business and operation of the Facility; all tangible assets, whether owned or leased by Seller, including but not limited to, all hard assets, furniture , fixtures, equipment, instruments, supplies, inventory, vehicles, artwork, leasehold improvements and phone systems; copies of all records of the Business; all of Seller's right, title and interest in and to any Licenses that are transferable used or in any way connected with the Business or required by Law or Governmental Authority for the conduct of the Business; personnel records of employees of Seller that Purchaser hires on or after the Closing Date; all rights of Seller under or pursuant to all warranties; to the extent transferable, all of Seller's Medicare and Medicaid provider numbers relating to the Business; all insurance proceeds from Seller's insurance policies and rights thereto derived from loss, damage or destruction of or to the Real Property; all cash, cash equivalents, book accounts, certificate deposits, and other cash items and investment accounts of Seller maintained by Purchaser; subject to the terms of the Receiver Agreement, all accounts receivable of Seller generated on and after the Receivership Date and all other assets and property owned by or licensed to Seller and used or held for use relating to or in connection with the Business, including, without limitation, all intangible assets, telephone and facsimile numbers, electronic mail addresses, goodwill and going concern value of the Business.
Excluded Assets:	Any of Seller's contracts including, but not limited to, any collective bargaining agreement between Seller and any labor organization which represents Seller's employees; those claims against third parties related to Seller's operations prior to the Receivership Date; all of Seller's non-transferable licenses used in connection with the Business; the Organizational documents, corporate seal, tax returns and other tax records of Seller; all equity, interests in Seller and the real property.
Assumed Liabilities:	Purchaser shall not assume or become responsible for any liabilities of Seller.
Purchase Price:	$5,000,000

Payment of Purchase Price:	$1,500,000 in escrow $3,500,000 at Closing

The purchase price will be financed as follows:

Equity	$500,000
Bank Loan (4.75% interest, 10-year term, 15-year amortization period)	$4,500,000

Skyline Capital has provided a letter of interest for the loan at the above stated terms. Joel Landau has submitted an affidavit to fund the balloon payment if acceptable financing is not available at the time of refinancing.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharge, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its liability and responsibility. As of December 7, 2015, the facility had outstanding Medicaid liabilities totaling $123,589 related to assessments/surcharges.

Real Estate Purchase Agreement

The applicant has submitted a draft real estate purchase agreement for the acquisition of the real estate, which is summarized below:

Date	February 13, 2014
Premises:	The parcel of land situated at 30 West 138th Street, New York, New York.
Seller:	Greater Harlem Nursing Home & Rehabilitation Center, Inc.
Purchaser:	Harlem Center Properties, LLC
Purchase Price:	$25,000,000
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan for the real estate purchase is as follows:

Equity	$2,500,000
Loan (4.75% interest rate, 10-year term, 20-year amortization period)	$22,500,000

Skyline Capital has provided a letter of interest for the realty loan at the above stated terms. The applicant has submitted an affidavit indicating that the proposed realty members will provide equity to meet the balloon payment when it becomes due.

Lease Rental Agreement

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

Premises:	The site located at 30 West 138th Street, New York, New York
Lessor:	Harlem Center Properties, LLC
Lessee:	Harlem Center For Nursing and Rehabilitation, LLC
Term:	25 years
Rental:	$1,767,386 (annual)
Provisions:	Tenant shall be responsible for real estate taxes, maintenance, insurance and utilities.

The lease arrangement will be a non-arm's length lease agreement, since there is common ownership between the landlord and the tenant.

Total Project Cost and Financing

Total project cost, which is for renovations, is estimated at $312,700, further broken down as follows:

Renovation and Demolition	$257,500
Design Contingency	25,750
Construction Contingency	25,750
CON Fee	2,000
Additional Processing Fee	1,700
Total Project Cost	$312,700
Total Reimbursable Cost	**$0**

Project costs are based on a construction start date of March 1, 2016, and a six-month construction period.

The total project cost will be financed with equity, and will be non-reimbursable as the costs are being incurred to amend construction previously paid for with HEAL NY Phase 12 grant funds.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first and third years of operation after the change in operator, summarized below:

	Current Year (2014)		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues:						
Medicaid FFS/MC	$243.91	$11,957,809	$238.37	$12,563,707	$238.37	$12,828,206
Medicare FFS/MC	$584.32	3,375,027	$625.00	6,935,000	$624.98	7,081,000
Commercial FFS	$346.51	1,277,240	$374.36	2,039,521	$367.60	2,082,458
Total Revenues		$16,610,076		$21,538,228		$21,991,664
Expenses:						
Operating	$309.98	$18,130,318	$259.12	$17,969,838	$253.77	$17,969,838
Capital	14.45	844,927	47.47	3,291,893	45.78	3,241,423
Total Expenses	$324.43	$18,975,245	$306.59	$21,261,731	$299.55	$21,211,261
Net Income		($2,365,169)		$276,497		$780,403
Patient Days		58,488		69,350		70,811
Occupancy %		80.12%		95.00%		97.00%
Breakeven %				93.77%		93.58%

Utilization broken by payor source for the current year (2014) and the first and third years after the change in operator is summarized as follows:

	Current Year	Year One	Year Three
Medicaid FFS/MC	83.83%	76.00%	76.00%
Medicare FFS/MC	9.87%	16.00%	16.00%
Commercial FFS	6.30%	8.00%	8.00%

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

- Expense assumptions are based on the historical experience of the facility, except for capital expenses which are based on an increase due to the lease rental payments. The lease amount is based on the annual debt service of the real estate loan plus estimated real estate taxes.
- Revenue assumptions are based on facility's current reimbursement rates by payor. The Medicaid rate was determined based on the most current 2015 Medicaid pricing rate incorporating the facility's current case mix. The Medicare rate was based on the current actual average per diem received by the facility. Commercial/Private Pay rates are based on actual 2014 revenue increased by 3% per year to 2016.

- Projected utilization is based on the actual experience of the proposed members of Harlem Center operating their other existing RHCFs. The applicant intends to change the model of care at the facility to one that directly supports Medicaid Redesign Team (MRT) initiatives, including: MRT 82 (reducing reimbursement for hospital acquired conditions and potential preventable conditions); MRT 90 (mandatory enrollment in MLTC plans); and MRT 191 (decrease the incidence and improve treatments of pressure ulcers). The applicant indicated that these changes in Harlem Center's model of care would contribute to an overall increase in the percentage of Medicare short stay patients, and potentially decrease the length of stay for Medicaid patients.

Capability and Feasibility

Total project cost of $312,700 for renovations will be met via equity, and will be non-reimbursable as the costs are being incurred to amend construction previously paid for with HEAL NY Phase 12 grant funds.

The purchase price of $5,000,000 for the operation will be met with proposed members' equity of $500,000 and a bank loan for $4,500,000 at 4.75% interest for a ten-year term and 15-year amortization period. Joel Landau has submitted an affidavit attesting that if refinancing is not available he will fund the balloon payment. The purchase price of $25,000,000 for the real estate portion will be met with equity of $2,500,000 from the proposed realty members and a bank loan for $22,500,000 at an interest rate of 4.75% for a ten-year term and 20-year amortization period. The applicant has submitted an affidavit indicating that proposed realty member Joel Landau will provide equity to meet the balloon payment when it becomes due if refinancing is not available. Skyline Capital has provided letters of interest for the respective operating and realty loans.

Working capital requirements are estimated at $3,542,622 based on two months of first year expenses. The applicant will finance $1,771,311 at an interest rate of 4.5% for a five-year term. Skyline Capital has provided a letter of interest for the working capital loan at the stated terms. The remaining $1,771,311 will be met via equity from the proposed members' personal resources. BFA Attachment A is the personal net worth statements of the proposed members of Harlem Center for Nursing and Rehabilitation, LLC, which indicates the availability of sufficient funds for the equity contribution. The applicant provided an affidavit indicating that the proposed members will provide equity disproportionate to their ownership percentages. BFA Attachment C is the pro forma balance sheet of Harlem Center for Nursing and Rehabilitation, LLC as of the first day of operation, which indicates a positive net asset position of $2,586,011. Assets include $5,000,000 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. The total net assets without goodwill are negative $2,413,989.

The submitted budget indicates a net income of $276,497 and $780,403 during the first year and third years subsequent to the change in ownership. The submitted budget appears reasonable, given the applicant's intent to change their business model to increase Medicare short stay rehabilitation patients. This shift in model of care is expected to increase the facility's Medicare patient day volume in the first year subsequent to the change by 62% over 2014 levels. A budget sensitivity analysis was done to assess feasibility assuming utilization by payor for the first and third years remains consistent with the facility's payor source during the current year (2014). This results in first and third year losses of $1,490,775 and $609,640, respectively.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B is the financial summary of Greater Harlem Nursing Home and Rehabilitation Center from 2012 through 2014. As shown, the facility had an average negative working capital position and an average negative net asset position from 2012 through 2014. The applicant indicated that the reason for the negative net asset position in 2014 was due to the write-off of an abandoned project and a $3,000,000 loan due to Allure to repay a working capital loan. Also, the facility incurred average losses of

$1,729,474 from 2012 through 2014. The historical losses were the result of higher employee health and welfare costs, daily census reductions, and depleted cash reserves in both operating investment accounts. The facility submitted a request for receivership which was approved effective August 19, 2014. Subsequently, occupancy has steadily increased to 98.4% through June 2015. According to the applicant, the increase in occupancy was the result of a strengthened relationship with Harlem Hospital Center.

BFA Attachment D is the internal financial statements of Greater Harlem Nursing Home and Rehabilitation Center as of May 31, 2015. As shown, the entity had a negative working capital position and a negative net asset position through May 31, 2015. Also, the entity achieved income from operations of $231,088 through May 31, 2015.

BFA Attachment E provides the financial summaries of the other nursing facilities that the proposed members own. As shown, the entities had an average positive working capital position and an average positive net asset position, except for Hamilton Park which had an average negative working capital position due to a $2,000,000 line of credit facility took out and issues with vendors that increased accounts payables and accrued expenses. Also, the entities all achieved an average income from operations from 2012 through 2014. The proposed members acquired ownership interest in Nostrand Center on July 1, 2015, therefore no financial data is available for this facility.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary – Greater Harlem Nursing Home and Rehabilitation Center
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Internal financial statements of Greater Harlem Nursing Home and Rehabilitation Center as of May 31, 2015
BFA Attachment E	Financial Summaries of other owned nursing home facilities
BFA Attachment F	Sensitized Budget Analysis
LTC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 Harlem Center for Nursing and Rehabilitation, LLC as the new operator of the 200-bed RHCF located at 30 West 138th Street, New York, currently operated as Greater Harlem Nursing Home, and perform renovations, 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:
152128 B	Harlem Center for Nursing and Rehabilitation, 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. A copy of the check must uploaded into NYSECON. [PMU]
2. Submission of an executed loan commitment for the real estate, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
4. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed real estate purchase agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
8. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
9. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.

d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
e. Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

10. Submission of a copy of the fully executed Operating Agreement of Harlem Center for Nursing and Rehabilitation, LLC, acceptable to the Department. [CSL]
11. Submission of a copy of a fully executed Asset Purchase Agreement between Harlem Center for Nursing and Rehabilitation, LLC and Greater Harlem Nursing Home & Rehabilitation Center, Inc., acceptable to the Department. [CSL]
12. Submission of a copy of a fully executed Agreement for the Sale of Real Property between Greater Harlem Nursing Home & Rehabilitation Center, Inc. and Harlem Center Properties, LLC, acceptable to the Department. [CSL]
13. Submission of a copy of a fully executed Lease Agreement between Harlem Center for Nursing and Rehabilitation, LLC and Harlem Center Properties, LLC, acceptable to the Department. [CSL]
14. Submission of a copy of the Articles of Organization of Harlem Center Properties, LLC, acceptable to the Department, along with proof of filing with the New York State Department of State. [CSL]
15. Submission of a copy of the Operating Agreement of Harlem Center Properties, LLC, acceptable to the Department. [CSL]

<u>APPROVAL CONDITIONAL UPON:</u>

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Approval by MARO staff of all areas undergoing renovation, prior to the re-occupancy of the rooms to the full 200 bed complement. [LTC]
3. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes.
4. Construction must start on or before 03/01/2016, and must be completed by 09/01/2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152167-E
SBNH Acquisitions, LLC d/b/a
St. Barnabas Rehabilitation & Continuing Care Center

Program: **Residential Health Care Facility** ***County:*** **Bronx**
Purpose: **Establishment** ***Acknowledged:*** **September 18, 2015**

Executive Summary

Description

SBNH Acquisition, LLC d/b/a St. Barnabas Center for Nursing and Rehabilitation, a New York limited liability company, requests approval to be established as the operator of St. Barnabas Rehabilitation & Continuing Care Center, a 199-bed Article 28 residential health care facility (RHCF) located at 2175 Quarry Road, Bronx (Bronx County). The beds are certified as follows: 144 RHCF beds, 33 AIDS beds, and 22 Ventilator Dependent beds. The facility also operates an on-site, 30-slot adult day health care program (ADHCP). There will no change in services.

On March 20, 2015, SBNH Acquisition, LLC entered into an Asset Purchase Agreement with St. Barnabas Nursing Home, Inc. for the sale and acquisition of the operating interests of St. Barnabas Rehabilitation & Continuing Care Center. The real estate will remain unchanged. The applicant will lease the premises from St. Barnabas Nursing Home, Inc., which is an unrelated party.

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

Current Operator	
St. Barnabas Nursing Home, Inc.	100%

Proposed Operator	
SBNH Acquisition, LLC	
Members	%
Leopold Friedman (Manager)	50%
Esther Farkovits	25%
Avi Philipson	25%

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to certified beds or services upon approval of this application. St. Barnabas Rehabilitation and Continuing Care Center's (St. Barnabas) occupancy was 99.1% in 2011, 96.6% in 2012, and 95.8% in 2013. Occupancy is expected to remain near the Department's planning optimum going forward with the new operator.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. The applicant has stated there will be no administrative services or consulting agreements.

Financial Summary

The purchase price for the acquisition of the operating interests is $28,000,000 and will be paid as follows: equity of $1,600,000 from the proposed members; a promissory note for $5,000,000 at 5% interest for a three-year term and ten-year amortization period; and a bank loan for $21,400,000 at 5% interest for a 30-year term. Bent Philipson, the father of proposed member Avi Philipson, and Benjamin Landa, the father of proposed member Esther Farkovitz, have submitted affidavits stating they will provide the equity to fund the balloon payment on the promissory note when the payment comes due, if needed.

The operating budget is as follows:

Revenues	$29,838,300
Expenses	29,838,300
Net Income:	$710,310

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
   d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   e. Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of a photocopy of an executed and completed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's completed and executed Asset Purchase Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended and completed Operating Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended and completed Articles or Organization, acceptable to the Department. [CSL]
12. Submission of an affidavit signed by Bent Philipson, acceptable to the Department, stating that it is recognized that any debt guarantee or equity payment made as part of this project does not grant

ownership interest, and it is understood that no operational control can be gained or exerted as a result of such an arrangement. [LTC]

13. Submission of an affidavit signed by Benjamin Landa, acceptable to the Department, stating that it is recognized that any debt guarantee or equity payment made as part of this project does not grant ownership interest, and it is understood that no operational control can be gained or exerted as a result of such an arrangement. [LTC]

Approval conditional upon:

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

Council Action Date
February 11, 2016

Need Analysis

Project Description

SBNH Acquisition, LLC d/b/a St. Barnabas Center for Nursing and Rehabilitation seeks approval to become the established operator of St. Barnabas Rehabilitation and Continuing Care Center, an existing 199-bed Article 28 residential health care facility (RHCF), located at 2175 Quarry Road, Bronx, 10457, in Bronx County. The 199 beds consist of 144 RHCF beds, 33 AIDS beds, and 22 ventilator-dependent (vent) beds.

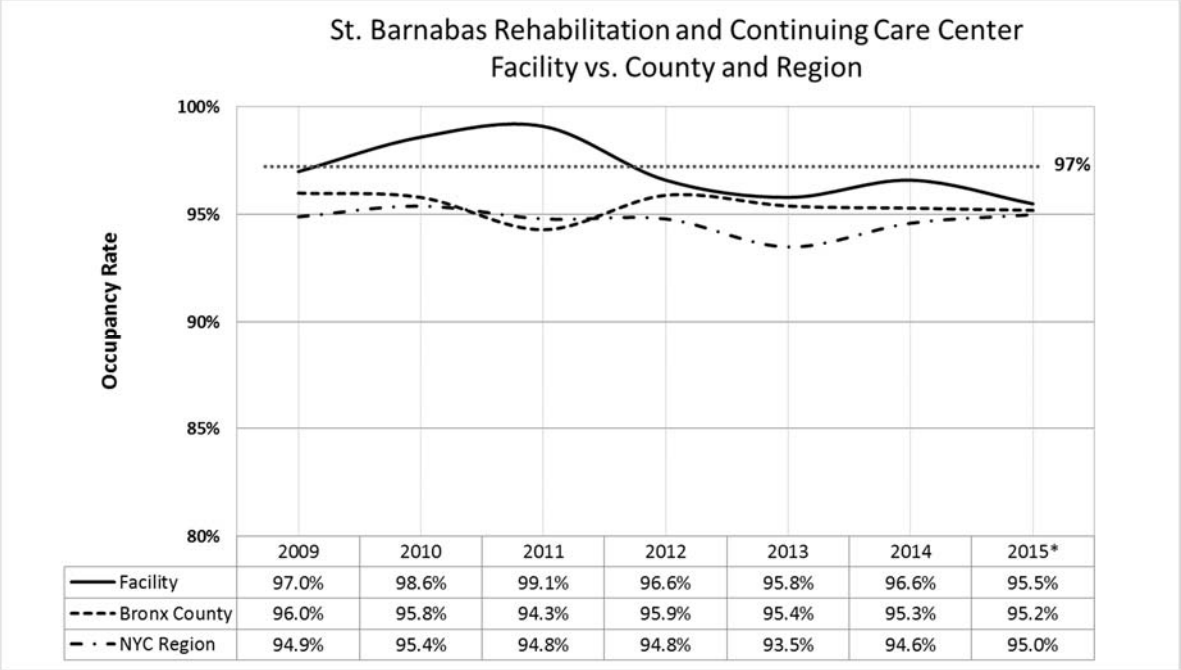
Analysis

There is currently a need of 8,824 beds in the New York City Region as indicated in the following table:

RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,151
Beds Under Construction	96
Total Resources	42,247
Unmet Need	8,824

The overall occupancy for the New York City Region is 93.5% for 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014	2015*
Facility	97.0%	98.6%	99.1%	96.6%	95.8%	96.6%	95.5%
Bronx County	96.0%	95.8%	94.3%	95.9%	95.4%	95.3%	95.2%
NYC Region	94.9%	95.4%	94.8%	94.8%	93.5%	94.6%	95.0%

*unaudited, facility reported data

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

St. Barnabas' Medicaid admissions of 80.0% in 2012 and 96.3% in 2013 exceeded the Bronx County 75% rates of 35.8% in 2012 and 29.8% in 2013.

Conclusion

Approval of this application will result in maintaining a necessary Medicaid resource as well as a community resource**.**

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	St. Barnabas Rehabilitation and Continuing Care Center	St. Barnabas Center for Nursing and Rehabilitation
Address	2175 Quarry Road Bronx, NY. 10457	Same
RHCF Capacity	199	Same
ADHC Program Capacity	30	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary / Not-for-profit	Proprietary
Operator	St. Barnabas Nursing Home, Inc.	SBNH Acquisitions, LLC Membership: *Leopold Friedman 50.0% *Avi Philipson 25.0% Esther Farkovits 25.0% 100.0% *Managing Member

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Brooklyn Gardens Nursing and Rehabilitation Center	10/2014 to present
Dewitt Rehabilitation and Nursing Center	6/2015 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Little Neck Care Center	04/2011 to 1/2013
Nassau Extended Care Facility	07/2001 to present
Park Avenue Extended Care Facility	07/2004 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
Seagate Rehabilitation and Nursing Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
Split Rock Nursing and Rehabilitation Center	09/2002 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation and Nursing	07/2004 to present
The Citadel Rehab and Nursing Center	02/2015 to present
White Plains Center for Nursing	07/2004 to present

Licensed Home Care Services Agency
Ultimate Care, LLC 2/2010 to present

Individual Background Review

Leopold Friedman is the Chief Executive Officer, since 2006, of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman will serve as managing member of SBNH Acquisitions, LLC and discloses the following ownership interests:

Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
The Citadel Rehab and Nursing Center	02/2015 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present

Mr. Friedman has received Public Health and Health Planning Council approval to operate Brooklyn Gardens Dialysis Center (D&TC), Highland View Care Center (receiver since 02/03/2015), and Cassena Care Dialysis at Peninsula (D&TC). The applicant has not closed on these purchases.

Esther Farkovits currently resides in Israel and lists no employment at present. Ms. Farkovits discloses the following health facility ownerships:

Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	03/2014 to present
The Citadel Rehab and Nursing Center	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing	07/2011 to present

Avi Philipson is a student in Israel. Mr. Philipson will serve as a managing member of SBNH Acquisitions, LLC and has disclosed the following health facility ownership interest:

Seagate Rehabilitation and Nursing Center (managing member)	12/2014 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Nassau Extended Care Facility for the period identified above reveals the following:

- The facility was fined $6,000 pursuant to Stipulation and Order NH-14-007 issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined $2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of operations Brooklyn Gardens Nursing and Rehabilitation Center, Dewitt Rehabilitation and Nursing Center, Hendon Garden Nursing and Rehabilitation Center, Little Neck Nursing Home, Park Avenue Extended Care Facility, Peninsula Nursing and Rehabilitation Center, Seagate Rehabilitation and Health Care Center, South Shore Rehabilitation and Nursing Center, Split Rock Nursing and Rehabilitation Center, The Citadel Rehab and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Center for Rehabilitation and Nursing, and White Plains Center for Nursing for the time period

indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care LLC (LHCSA) for the periods identified earlier, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements with Sentosa Care LLC or any other company. It is also noted that the proposed ownership includes family members of the principals of Sentosa Care LLC and individuals who are directly employed by Sentosa Care. The applicant has disclosed that Sentosa Care LLC contracts for administrative services with the following nursing homes, which are owned by the proposed members of SBNH Acquisitions, LLC:

- Nassau Extended Care Center
- Park Avenue Extended Care Facility
- Seagate Rehabilitation and Nursing Center
- Throgs Neck Extended Care Facility
- Townhouse Center for Rehabilitation and Nursing
- White Plains Center for Nursing

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. While Benjamin Landa and Bent Philipson have agreed to guarantee an operating entity loan on behalf of their children, they have agreed to provide the Department with affidavits stating that they recognize they have no operating interest or control through this arrangement. The experience of the members of SBNH Acquisitions, LLC, and their track record in operating nursing homes provides sufficient confidence that they will be able to maintain quality of care at St. Barnabas. Coupled with the satisfactory individual background review, the determination that the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3) can be made.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the sale of the operation, summarized below:

Date:	March 20, 2015
Seller:	St. Barnabas Nursing Home, Inc.
Purchaser:	SBNH Acquisition, LLC
Assets Acquired:	All equipment, instruments, tools, vehicles, inventory, supplies, medical supplies, linens, furniture and office equipment and all fixtures and leasehold improvements, all computer hardware and software, computer systems and computer programs, all patient and marketing information, all of Seller's right, title and interest under manufacturers and vendors warranties, all of Seller's books and records relating to the operation of the Business, the Seller's Medicare and Medicaid provider numbers, all resident funds held in trust by Seller, the goodwill and going concern value of the Business and any rights to refunds in connection with the Medicare and Medicaid provider numbers provided on or after the Closing Date.
Assumption of Liabilities:	All liabilities exclusively arising from and after the Closing Date with respect to the Assigned Contracts, all outstanding New York Health Facility Cash Assessment Program Liabilities of Seller as of and after the Closing Date relating to the period after the Closing Date and all known liabilities relating to Healthcare Program Liabilities relating to any period or events or emissions on or after the Closing.
Purchase Price:	$28,000,000
Payment of Purchase Price:	Initial deposit of $1,600,000 * Promissory note of $5,000,000 Remaining $21,400,000 balance paid in cash at Closing
*If CON approval has not occurred by the date which is twelve months after filing the CON application, the Buyer may seek to obtain an extension of the Closing Date by delivering and additional $280,000 to the Escrow Agent, as further additional deposits, on the first day of each 90-day period thereafter until CON approval has occurred.	

The applicant's financing plan is as follows:

Equity	$1,600,000
Promissory Note (5% interest, 3-year term, 10-year amortization)	5,000,000
Bank Loan (5% interest, 30-year term)	21,400,000
Total	$28,000,000

Bent Philipson and Benjamin Landa have submitted a letters stating that they will provide the equity to fund the balloon payment on the promissory note when the payment becomes due, if needed.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid liabilities.

Lease Rental Agreement

The applicant has submitted a draft lease agreement, which is summarized below:

Premises:	The site located at 2175 Quarry Road, Bronx, New York.
Lessor:	St. Barnabas Nursing Home, Inc.
Lessee:	SBNH Acquisition, LLC
Term:	99 years
Rental:	$1
Provisions:	Lessee shall be responsible for insurance, utilities, maintenance and real estate taxes.

The lease agreement will be an arm's length lease arrangement.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the current year and first year after the change in operator, summarized below:

RHCF	Current Year (2014)		Year One	
	Per Diem	Total	Per Diem	Total
Revenues:				
Medicaid SNF	$309.29	$11,386,559	$292.00	$11,985,900
Medicare SNF	$520.53	3,915,397	$645.00	5,586,900
Private Pay SNF	$480.41	3,100,102	$409.25	521,800
Medicaid Vent	$578.86	3,917,136	$612.00	3,885,800
Medicare Vent	$755.09	646,355	$949.00	961,400
Private Pay Vent	$912.56	689,898	$657.34	282,200
Medicaid AIDS	$471.14	4,778,337	$427.23	4,552,600
Medicare AIDS	$980.99	548,376	$850.00	503,200
Private AIDS	$657.59	562,895	$650.00	283,400
Other Operating Revenue		335,552		4,800
Total Revenues		$29,880,607		$28,568,000
Expenses:				
Operating	$396.22	$27,983,150	$341.13	$24,035,000
Capital	36.48	2,576,207	63.77	4,493,290
Total Expenses	$432.70	$30,559,357	$404.90	28,528,290
Net Income		($678,750)		$39,710
Utilization (patient days)		70,626		70,457
Occupancy		97.23%		97.00%

ADHCP	Current Year (2014)	Year One
Revenues	$1,750,386	$1,270,300
Expenses	605,483	599,700
Net Income	$1,144,903	$670,600
Visits	10,244	9,828
Cost Per Visit	$59.11	$61.02

COMBINED	Current Year (2014)	Year One
Revenues	$31,630,993	$29,838,300
Expenses	31,164,840	29,127,990
Net Income	$466,153	$710,310

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current 2015 payment rates by payor, as the applicant believes these rates will be held for a period of time going forward.
  - ✓ The Medicaid rates for the respective services are based on the statewide pricing methodology (SNF) and specialty unit (Vent and AIDS) payment rates and include cash receipt assessments.
  - ✓ Medicare SNF and Vent rates reflect the current operator's average current reimbursement rates for Medicare geriatric and ventilator dependent patients. The Medicare AIDS rate is expected to decrease due to the impact of Managed Care, DSRIP and other service delivery reforms.
  - ✓ Private Pay Vent rates are decreasing due to anticipated billing adjustments resulting from the current operators' hospital-based ownership status transitioning to proprietary ownership.
- The applicant states that their business model includes flexibility to transition to a Value Based Payment System prior to the end of the three-year transition window.
- Expense reductions are based on the following assumptions:
  - ✓ Salaries/Wages and related Employee Benefits expenses are projected to decrease by $1,947,013 and $848,365, respectively, due to the elimination of costs allocated from the hospital executives and other centralized administrative functions.
  - ✓ Medical & Surgical Supplies are projected to decrease by $782,538.
  - ✓ Other Direct Expenses are projected to decrease by $421,338.
- The additional capital expenses are related to depreciation on moveable equipment/asset acquired under the APA, debt service for the acquisition, real estate taxes the facility will incur due to for-profit status, and debt service on the promissory note to the former operator.
- Breakeven occupancy will be 96.86% for the nursing facility beds.
- Utilization by payor for the 199 beds during the current year and anticipated for the first year after the change in ownership is as follows:

	Current Year (2014)	Year One
Medicaid	76.07%	76.13%
Medicare	12.65%	12.42%
Private Pay	11.28%	11.45%

- The ADHCP's utilization was 100% Medicaid in 2014 and will continue to be 100% Medicaid during the first year.

Capability and Feasibility

The purchase price for the acquisition of the operating interests is $28,000,000. The applicant will meet the purchase price with equity of $1,600,000 from the proposed members (deposit paid), a $5,000,000 promissory note at 5% interest for a three-year term and ten-year amortization period, and a bank loan of $21,400,000 at 5% interest for a 30-year term. Bent Philipson has submitted a letter stating that he will pay off the balloon payment on the promissory note when it becomes due.

Working capital requirements are estimated at $4,854,665 based on two months of first year expenses. The applicant will finance $2,427,332 at an interest rate of 5% for a five-year term and has submitted a letter of interest in regard to the financing. The remaining $2,427,333 will be provided as equity from the proposed members' personal resources. BFA Attachment A is the personal net worth statements for the proposed members of SBNH Acquisition, LLC, which indicates the proposed members have insufficient funds to provide required working capital equity. Bent Philipson has submitted a letter stating that he will provide the equity for Avi Philipson. Benjamin Landa has submitted an affidavit indicating he will provide equity to offset any shortfalls of the proposed members. BFA Attachment F is the net worth statement for Bent Phillipson and Benjamin Landa, which indicates the availability of sufficient funds to provide the equity for Avi Philipson's share, for the balloon payment on the promissory note and for any other equity shortfalls for the other proposed members.

BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of $4,077,333.

The submitted budget projects a net income of $710,310 during the first year after the change in operator. The applicant's revenue assumptions were based on the historical experience of the facility, as they anticipate the various payor rates to continue for a period of time going forward. The applicant indicated

that their business model includes flexibility to a transition for a value Based Payment System. The budget appears reasonable.

A transition of nursing home residents to Medicaid Managed Care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper", provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment B is the financial summary of St. Barnabas Nursing Home from 2012 through 2014. As shown, the entity had an average positive working capital position and an average positive net asset position for the period. Also, the entity incurred average losses of $212,995 from 2012 through 2014.

BFA Attachment G is the August 31, 2015 internal financial statement of St. Barnabas Nursing Home. As shown, the entity had a positive working capital position and positive net asset position through August 31, 2015. Also, the entity incurred a loss of $88,147 through August 31, 2015.

BFA Attachment D is the 2012 – 2015 internals financial summaries of the nursing homes in which the proposed members have ownership interests. As shown, the facilities have maintained a positive net asset position, positive working capital position and a positive income from operations for the period shown, with the exception of White Plains, Park Avenue, Throgs Neck, Little Neck and Townhouse Extended, of which the negative working capital positions for certain year were due to vacation and sick time accrual, a prior year Medicaid adjustment, above average spending in the ancillary services and a reduction in the private pay census.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement- proposed members
BFA Attachment B	Financial Summary- St. Barnabas Nursing Home
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summaries - Proposed Members' Affiliated Nursing Facilities
BFA Attachment E	Lists of other facilities owned and percentages owned by the proposed members
BFA Attachment F	Personal Net Worth Statement for Bent Philipson and Benjamin Landa
BFA Attachment G	August 31, 2015 internal financial statements of St. Barnabas Nursing Home
LTC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 SBNH Acquisitions, LLC as the new operator of the 199-bed RHCF located at 2145 Quarry Road, Bronx, 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:
152167 E	SBNH Acquisition, LLC St. Barnabas Rehabilitation & Continuing Care Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
6. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    e. Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
8. Submission of a photocopy of an executed and completed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's completed and executed Asset Purchase Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended and completed Operating Agreement, acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant's amended and completed Articles or Organization, acceptable to the Department. [CSL]
12. Submission of an affidavit signed by Bent Philipson, acceptable to the Department, stating that it is recognized that any debt guarantee or equity payment made as part of this project does not grant ownership interest, and it is understood that no operational control can be gained or exerted as a result of such an arrangement. [LTC]
13. Submission of an affidavit signed by Benjamin Landa, acceptable to the Department, stating that it is recognized that any debt guarantee or equity payment made as part of this project does not grant ownership interest, and it is understood that no operational control can be gained or exerted as a result of such an arrangement. [LTC]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152177-E
TCPRNC, LLC d/b/a The Plaza Rehab and Nursing Center

Program: **Residential Health Care Facility** ***County:*** **Bronx**
Purpose: **Establishment** ***Acknowledged:*** **September 21, 2015**

Executive Summary

Description

TCPRNC, LLC d/b/a The Plaza Rehab and Nursing Center (The Plaza), a New York limited liability company, requests approval to be established as the new operator of Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx (JHL, Bronx), a 744-bed Article 28 residential health care facility (RHCF) located at 100 West Kingsbridge Road, Bronx (Bronx County). The facility currently operates a 100-slot adult day health care program (ADHCP) onsite, which is not part of the proposed sale. JHL, Bronx will transfer the license of the ADHCP to the license of the Jewish Home Lifecare, Manhattan Division (JHL, Manhattan). The ADHCP will remain operational at the current site under an agreement with the proposed buyers for up to 24 months, while an appropriate site in the Bronx for the ADHCP is sought by JHL Manhattan. The facility also operates a Long Term Home Health Care Program that will close prior to the change in ownership. Upon the change in ownership, the facility will transition from a voluntary/not-for-profit corporation to a proprietary facility. There will be no change in certified beds or in RHCF services other than as noted.

On July 7, 2015, Jewish Home Lifecare (parent entity) and JHL, Bronx (operations and real estate sellers) entered into an Asset Purchase Agreement (APA) with SentosaCare, LLC for the sale of the operations and real estate associated with the RHCF. The total purchase price for the operations and real estate is $110,000,000 apportioned as follows: $22,000,000 for the operations and $88,000,000 for the real estate.

On September 10, 2015, SentosaCare, LLC entered into two Assignment and Assumption Agreements, whereby the RHCF operations were assigned to TCPRNC, LLC and the real estate was assigned to TCPRNC Real Estate, LLC. There is a relationship between TCPRNC, LLC and TCPRNC Real Estate, LLC in that the entities have common members. The applicant will lease the premise from TCPRNC Real Estate, LLC.

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

Current Owner Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx	
Member	%
Jewish Home Lifecare (nfp)	100%

Purchaser SentosaCare, LLC	
Members	%
Bent Philipson	50%
Benjamin Landa	50%

Proposed Owner via Assignment TCPRNC, LLC d/b/a The Plaza Rehab and Nursing Center	
Members	%
Leopold Friedman	25.0%
Esther Farkovits	25.0%
Avi Philipson	12.5%
Raquel Philipson	12.5%
Bernard Fuchs	15.0%
Bescar, LLC*	10.0%

*Bescar, LLC members are Regina Weinstock (20%), Meryl Maybruch (20%), Barbara Gold (20%), Benjamin Fishoff (20%) and Abraham Fishoff (20%); therefore, each Bescar, LLC member will have 2% ownership interest in TCPRNC, LLC. Bescar, LLC also has 10% ownership interest in TCPRNC Real Estate, LLC, resulting in a 2% ownership interest per Bescar, LLC member in the realty entity.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds upon approval of this application. Facility occupancy was 96.8% in 2011, 97.5% in 2012, and 99.0% in 2013 with 18 vacant beds. Occupancy is expected to remain near or exceed the Department's planning optimum going forward with the new operator.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. The applicant has stated there will be no administrative services or consulting agreements.

Financial Summary

SentosaCare, LLC will acquire the operating and real estate interests of the RHCF for a total purchase price of $110,000,000 and will then assign the operating interests to TCPRNC, LLC and the real estate interests to TCPRNC Real Estate, LLC. The purchase price will be paid with $22,000,000 equity from the proposed members of TCPRNC, LLC and TCPRNC Real Estate, LLC. The remaining $88,000,000 will be financed as follows: a $17,600,000 loan to TCPRNC, LLC for the RHCF operations and a $70,400,000 loan to TCPRNC Real Estate, LLC for the real estate. The terms for both loans are identical, with interest at 5.5% for ten-year terms and 25-year amortizations. HHC Finance has provided letters of interest for the respective loans. Applicant member Bernard Fuchs (operations/realty loans) and SentosaCare members Benjamin Landa and Bent Philipson (realty loan) have provided affidavits to fund the balloon payments for the respective operating and realty financings, if acceptable terms are not available at the time of refinancing.

There are no project costs associated with this proposal. The operating budget is as follows:

Revenues	$97,388,000
Expenses	$95,635,000
Gain/(Loss)	$ 1,753,000

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment for a permanent mortgage for the real estate portion of the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of a commitment for a permanent mortgage for the operations portion of the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
   a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
   c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
6. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
   a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
   d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
   e. Other factors as determined by the applicant to be pertinent.
   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
7. Submission of a plan, acceptable to the Department, for the disposition of the Long Term Home Health Care Program (LTHHCP). The plan must demonstrate that the handling of the programs adheres to statutory requirements and results in a safe and orderly transition of any program participants. [LTC]

8. Submission of Articles of Organization of Bescar, LLC, acceptable to the Department. [CSL]
9. Submission of Articles of Organization of Kennedy RH Holdings, LLC, acceptable to the Department. [CSL]
10. Submission of Articles of Organization of Philipson Family, LLC, acceptable to the Department. [CSL]
11. Submission of an Operating Agreement of TCPRNC LLC, acceptable to the Department. [CSL]
12. Submission of an Operating Agreement of TCPRNC Real Estate LLC, acceptable to the Department. [CSL]
13. Submission of an Operating Agreement of Bescar LLC, acceptable to the Department. [CSL]
14. Clarification as to whether or not TCPRNC LLC will have a Shared Services Agreement with Sentosacare LLC. [CSL]
15. Submission of an executed copy of the Assignment and Asusmption Agreement between Jewish Home LifeCare, Harry and Jeanette Weinberg Campus, Bronx and Sentosacare LLC. [CSL]
16. Submission of a fully executed Title Affidavit, Limited Guarantee, and Bargain and Sale Deed. [CSL]
17. Submission of a Certificate of Assumed Name for TCPRNC, LLC, acceptable to the Department. [CSL]
18. Submission of Amended Articles of Organization of TCPRNC, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Changes in the membership of subsidiary LLCs require the prior approval of the New York State Department of Health [CSL]

Council Action Date
February 11, 2016

Need Analysis

Project Description

TCPRNC, LLC, seeks approval to become the established operator of Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, an existing 744-bed Article 28 residential health care facility (RHCF), located at 100 West Kingsbridge Road, Bronx, 10468, in Bronx County.

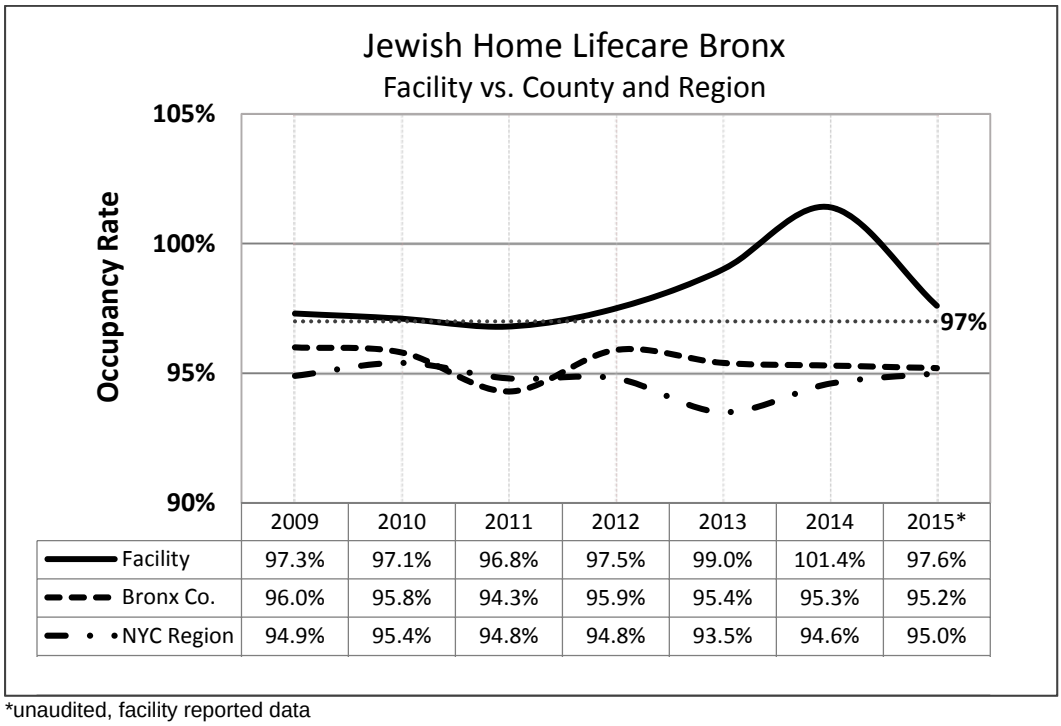
Analysis

There is currently a need for 8,824 beds in the New York City Region as indicated in the following table:

RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,151
Beds Under Construction	96
Total Resources	42,247
Unmet Need	8,824

The overall occupancy for the New York City Region is 93.5% for 2013 as indicated in the following chart:



	2009	2010	2011	2012	2013	2014	2015*
Facility	97.3%	97.1%	96.8%	97.5%	99.0%	101.4%	97.6%
Bronx Co.	96.0%	95.8%	94.3%	95.9%	95.4%	95.3%	95.2%
NYC Region	94.9%	95.4%	94.8%	94.8%	93.5%	94.6%	95.0%

*unaudited, facility reported data

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

JHL, Harry & Jeanette Weinberg's Medicaid admissions of 33.3% in 2012 and 24.7% in 2013 did not meet or exceed the Bronx County 75% rates of 35.8% and 29.8% in 2012 and 2013, respectively, and will be required to follow the contingency plan as noted.

Conclusion

Approval of this application will result in maintaining a necessary community resource in Bronx County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The New Jewish Home Lifecare, Harry and Jeanette Weinberg Campus	The Plaza Rehab and Nursing Center
Address	100 West Kingsbridge Road Bronx, NY. 10468	Same
RHCF Capacity	744	Same
ADHC Program Capacity	100	0
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary / Not-for-profit	Proprietary
Operator	The New Jewish Home Lifecare, Harry and Jeanette Weinberg Campus, Bronx	TCPRNC LLC Membership: Esther Farkovits 25.0% *Leopold Friedman 25.0% Bernard Fuchs 15.0% *Avi Philipson 12.5% Raquel Philipson 12.5% Bescar, LLC 10.0% *Benjamin Fishoff 20.0% Meryl Maybruch 20.0% Barbara Gold 20.0% Regina Weinstock 20.0% Abraham Fishoff 20.0% 100.0% 100.0% *Managing Member

Facilities Reviewed

Nursing Homes

Bay Park Center for Nursing and Rehab	12/2009 to present
Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present
Brooklyn Gardens Nursing and Rehabilitation Center	10/2014 to present
Dewitt Rehabilitation and Nursing Center	06/2015 to present
Eastchester Rehabilitation and Healthcare Center	01/2006 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Hudson Pointe at Riverdale Center for Rehabilitation & Healthcare	01/2006 to 8/2010
Little Neck Care Center	04/2011 to 1/2013
Nassau Extended Care Facility	07/2001 to present
Park Avenue Extended Care Facility	07/2004 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
Sapphire Center for Rehabilitation and Nursing of Central Queens	01/2015 to present
Seagate Rehabilitation and Nursing Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
Split Rock Nursing and Rehabilitation Center	09/2002 to present
The Hamptons Center for Rehabilitation and Nursing	05/2008 to present
The Pavilion at Queens for Rehabilitation and Nursing	01/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation and Nursing	07/2004 to present
The Citadel Rehab and Nursing Center	02/2015 to present
The Villages of Orleans Health and Rehabilitation Center	01/2015 to present
White Plains Center for Nursing	07/2004 to present

Licensed Home Care Services Agency

Ultimate Care, LLC	2/2010 to present

Individual Background Review

Esther Farkovits currently resides in Israel and lists no employment at present. Ms. Farkovits discloses the following health facility ownerships:

Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	03/2014 to present
The Citadel Rehab and Nursing Center	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing	07/2011 to present

Leopold Friedman is the Chief Executive Officer, since 2006, of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman discloses the following health facility ownership interests:

Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
The Citadel Rehab and Nursing Center	02/2015 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present

Mr. Friedman has received Public Health and Health Planning Council approval to operate Brooklyn Gardens Dialysis Center (D&TC), Highland View Care Center (receiver since 02/03/2015), and Cassena Care Dialysis at Peninsula (D&TC). The applicant has not closed on these purchases.

Bernard Fuchs lists his employment as the principal to Platinum Management (NY) LLC, a hedge fund investment company located in New York, New York. He is also the CEO and Chief Investment Officer of Tiferes Investors LLC, an investment company located in Lawrence, New York. Mr. Fuchs discloses the following health facility ownership interests:

Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present
Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Sapphire Center for Rehabilitation and Nursing of Central Queens	01/2015 to present
The Villages of Orleans Health and Rehabilitation Center	01/2015 to present
The Pavilion at Queens for Rehabilitation and Nursing	01/2015 to present

Mr. Fuchs has also received Public Health and Health Planning Council approval to operate Greene Meadows Nursing and Rehabilitation Center. The applicant has not closed on this purchase.

Avi Philipson is a student in Israel. Mr. Philipson will serve as the managing member of TCPRNC, and has disclosed the following health facility ownership interest:

Seagate Rehabilitation and Nursing Center (managing member)	12/2014 to present

Raquel Philipson is a student. Ms. Philipson has no management experience with a health facility or agency, nor does she have any health facility ownership interests.

Benjamin Fishoff is retired. Mr. Fishoff is the managing member of BESCAR, LLC, and has disclosed the following health facility ownership interests:

Bay Park Center for Nursing and Rehab	12/2009 to present
Eastchester Rehabilitation and Healthcare Center	1/2013 to present
Golden Gate Rehabilitation and Health Care Center	1974-2001
The Hamptons Center for Rehabilitation and Nursing	05/2008 to present

Meryl Maybruch is employed as an acquisitions curator for the Kaufman Holocaust Education Center in Brooklyn. Ms. Maybruch has disclosed 3.8% membership interest in Eastchester Rehabilitation and Healthcare Center.

Abraham Fishoff is the owner of City Lights, a real estate company in Brooklyn. Mr. Fishoff has a 2.4% interest in Eastchester Rehabilitation and Healthcare Center.

Barbara Gold has no employment history. Ms. Gold has a 2.4% interest in Eastchester Rehabilitation and Healthcare Center.

Regina Weinstock is employed by Sentosa Care LLC as an accounts payable administrator. Ms. Weinstock has disclosed that she was previously employed by Split Rock Nursing and Rehabilitation Center, and that the company changed its name to Sentosa. Ms. Weinstock has disclosed the following health facility ownership interests:

Eastchester Rehabilitation and Healthcare Center (4.00%)	09/2002 to present
Split Rock Nursing and Rehabilitation Center (8.00%)	09/2002 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Bay Park Center for Nursing and Rehabilitation for the period identified above reveals:

- The facility was fined $4,000 pursuant to Stipulation and Order NH-11-009 for surveillance findings on December 18, 2009. Deficiencies were found under 10 NYCRR 415.12 – Provide Care/Services for Highest Well Being.
- The facility was fined $18,000 pursuant to Stipulation and Order NH-12-30 for surveillance findings on February 16, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Definition Free from abuse; 10NYCRR 415.4(b) Development of Abuse Policies; 10NYCRR

415.12(h)(2) Quality of Care Accidents; 10NYCRR 415.12(i)(1) and 415.26(c)(1)(iv) Nurse Aide Competency.
- The nursing home paid a CMP of $25,740 for Immediate Jeopardy on July 20, 2010.

A review of operations for Bay Park Center for Nursing and Rehabilitation for the time periods indicated above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of operations for Eastchester Rehabilitation and Healthcare Center for the period identified above reveals:
- The facility was fined $2,000 pursuant to Stipulation and Order NH-08-047 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.12 – Provide Care/Services for Highest Well Being.
- The facility was fined $2,000 pursuant to a Stipulation and Order for surveillance findings on August 20, 2012. Deficiencies were found under 10 NYCRR 415.13(h)(1)(v) Transfer and Discharge Requirements, Orientation for Transfer/Discharge.

A review of operations for Eastchester Rehabilitation and Healthcare Center for the time periods indicated above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of operations for Hopkins Center for Rehabilitation and Healthcare for the period identified above reveals:
- The facility was fined $4,000 pursuant to Stipulation and Order NH-12-037 issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR (h)(1)(2) – Quality of Care: Accidents and 10 NYCRR 415.26 – Administration.
- The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on February 29, 2012. Deficiencies were found under 10 NYCRR 415.3(c)(I)(ii) Right to Refuse; Formulate Advanced Directives.

A review of operations for Hopkins Center for Rehabilitation and Nursing for the time periods indicated above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of Nassau Extended Care Facility for the period identified above reveals the following:
- The facility was fined $6,000 pursuant to Stipulation and Order NH-14-007 issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined $2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of Split Rock Rehabilitation and Health Care Center for the period identified above revealed the following:
- The facility was fined $6,000 pursuant to Stipulation and Order NH-07-24 issued for surveillance findings on December 5, 2005. Deficiencies were found under 10 NYCRR 415.4(b) Resident Behavior and Faculty Practices: Staff Treatment of Residents, 10 NYCRR 415.11(c) Resident Assessment and Care Planning: Comprehensive Care Plans and 10 NYCRR 415.12(k)(6) Quality of Care: Special Needs.

A review of surveillance activity for Split Rock Rehabilitation and Health Care Center for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of The Hamptons Center for Rehabilitation and Nursing for the period identified above revealed the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order NH-10-065 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) – Quality of Care: Accidents and Supervision and 415.26 – Administration.
- The facility was fined $10,000 pursuant to a Stipulation and Order NH-11-031 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 – Provide Care/Services for Highest Well Being.
- The nursing home paid a CMP of $6,853.46 for Immediate Jeopardy on September 16, 2009.

A review of surveillance activity of The Hamptons Center for Rehabilitation and Nursing for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of operations Bensonhurst Center for Rehabilitation and Healthcare, Brooklyn Gardens Nursing and Rehabilitation Center, Dewitt Rehabilitation and Nursing Center, Hendon Garden Nursing and Rehabilitation Center, Hudson Pointe at Riverdale Center for Rehabilitation and Healthcare, Little Neck Nursing Home, Park Avenue Extended Care Facility, Peninsula Nursing and Rehabilitation Center, Seagate Rehabilitation and Health Care Center, Sapphire Center for Rehabilitation and Nursing of Central Queens, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, The Pavilion at Queens for Rehabilitation and Nursing, Townhouse Center for Rehabilitation and Nursing, The Citadel Rehab and Nursing Center, The Villages of Orleans Health and Rehabilitation Center and White Plains Center for Nursing for the time period indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care LLC (LHCSA) for the periods identified earlier, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements with Sentosa Care LLC or any other company. It is also noted that the proposed ownership includes family members of the principals of Sentosa Care LLC, and individuals who are directly employed by Sentosa Care. The purchase of Jewish Home will be made by Sentosa Care and conveyed to the respective operating and real estate entities.

The applicant has disclosed that Sentosa Care LLC contracts for administrative services with the following nursing homes, which are owned by the proposed members of The Plaza Rehab and Nursing Center:

Bay Park Center for Nursing and Rehabilitation;
Eastchester Rehabilitation and Health Care Center;
Nassau Extended Care Center;
Park Avenue Extended Care Facility;
Seagate Rehabilitation and Nursing Center;
The Hamptons Center for Rehabilitation and Nursing;
Throgs Neck Extended Care Facility;
Townhouse Center for Rehabilitation and Nursing;
White Plains Center for Nursing.

The members of TCPRNC Real Estate LLC, the proposed real estate owner are as follows, and listed for disclosure purposes only.

Bescar, LLC
Kennedy RH Holdings LLC
  Joel Edelstein
  Israel Fruend
  Bernard Fuchs
  Gerald Fuchs
  Tova Fuchs
Leopold Friedman

Benjamin Landa
Philipson Family, LLC
Bent Philipson
Deborah Philipson

The applicant has indicated that the existing Jewish Home adult day health care program will not be part of the sale agreement, with the ADHCP to be operated by New Jewish Home Lifecare, Bronx at the current site for up to 24 months. Subsequently an application will be filed to transfer the program to the operating certificate of New Jewish Home Lifecare Manhattan Division. The operator will then relocate the ADHCP to a new site in the Bronx.

The applicant has also indicated the New Jewish Home long term home health care program is not part of the sale, and a closure plan will be submitted shortly.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. Although the ownership structure does not appear to be transparent, the individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed Asset Purchase Agreement for the change in ownership of the operations and real estate related to JHL, Bronx. The agreement will be effectuated upon Public Health and Health Planning Council approval of this application. The terms of the agreement are summarized below:

Date:	July 7, 2015
Seller:	Jewish Home Lifecare, Harry and Jeanette Weingerg Campus, Bronx
Purchaser:	SentosaCare, LLC
Purchased Assets (operations):	All of Sellers' rights, title and interest in all assets owned by seller used in nursing home operations other than the excluded assets.
Excluded Assets (operations):	Cash and Cash equivalents as of the closing date, accounts receivable generated for services provided prior to the effective date, any litigation by sellers and proceeds relating to business prior to the effective date, seller's and nursing home's cash on hand at effective date (other than trust funds and residents' deposits), bank account, seller's minute books and records, tax records and tax returns, accounting records and general ledger or other books of account. All retroactive rate increases and/or lump sum payments resulting from services rendered before the effective date, all proceeds of any appeals (for rate revisions and PRI adjustments addressed to Medicare or Medicaid programs) relating to periods prior to the effective date. All tradenames, trademarks and service marks, copyrights, symbols, logos, domain names, email addresses and other business names that are proprietary to the seller, all goodwill associated with the facility name, all material bearing the current operator's name or trademark.

Liabilities Assumed (operations):	All liabilities for warranty obligations (express, implied or statutory) relating to any goods installed, sold leased or licensed or any services rendered or for returns of goods sold prior to closing.
Purchased Assets (real estate):	All seller's right, title and interest in and to the real property, buildings and improvements located at 100 West Kingsbridge Road, Bronx, New York
Liabilities Assumed (real estate):	None
Purchase Price:	$22,000,000 (Operations) $88,000,000 (Real Estate)
Payment of Purchase Price:	$110,000,000 Total Price Less: APA deposit of $5,250,00 and proposal deposit of $250,000 $104,500,000 Balance due at Closing

The purchase price inclusive of both the operations and real estate is proposed to be satisfied as follows:

Members' Equity (Cash)	$22,000,000
Operations Loan (10-year term, 25-year amortization, 5.5% interest)	$17,600,000
Real Estate Loan (10-year term, 25-year amortization, 5.5% interest)	$70,400,000
Total	$110,000,000

HHC Finance has provided letters of interest for the operations and real estate loans at the stated terms.

Applicant member Bernard Fuchs (operations/realty loans) and SentosaCare members Benjamin Landa and Bent Philipson (realty loan) have provided affidavits to fund the balloon payments for the respective operating and realty financings, if acceptable terms are not available at the time of refinancing.

BFA Attachment A is the net worth summary for the proposed members' of TCPRNC, LLC, which shows sufficient assets to cover the equity requirements overall. Bernard Fuchs has provided a disproportionate share affidavit to cover potential equity shortfalls of the other members.

BFA Attachment B is the net worth summary for the proposed members' of TCPRNC Real Estate, LLC, which shows sufficient assets to cover the equity requirements. Benjamin Landa has provided a disproportionate share affidavit to cover potential equity shortfalls of the other members.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid liabilities or assessments.

Assignment and Assumption Agreements

The applicant submitted executed Assignment and Assumption Agreements for the transfer of the Asset Purchase Agreement, as shown below:

Operations

Date:	September 10, 2015
Assignor:	SentosaCare, LLC
Assignee:	TCPRNC, LLC
Assets Transferred:	All rights and obligations under the Asset Purchase Agreement with Jewish Home Lifecare Effective July 7, 2015 in respect to the operating assets and a portion of the deposit in the amount of $1,000,000.
Liabilities Transferred:	All of the Assignor's liabilities and obligations related to the operating assets under the agreement.

Real Estate

Date:	September 10, 2015
Assignor:	SentosaCare, LLC
Assignee:	TCPRNC Real Estate LLC
Assets Transferred:	All rights and obligations under the Asset Purchase Agreement with Jewish Home Lifecare Effective July 7, 2015 in respect to the real estate assets and a portion of the deposit in the amount of $4,500,000.
Liabilities Transferred:	All of the Assignor's liabilities and obligations related to the real estate assets under the agreement.

Lease Agreement

The applicant submitted an executed lease agreement, as summarized below:

Date:	September 16, 2015
Premises:	A 744-bed RHCF located at 100 Kingsbridge Road, Bronx (438,000 sq. ft.)
Lessor:	TCPRNC Real Estate, LLC
Lessee:	TCPRNC, LLC
Term:	35 years
Rental:	$9,387,111 annually or ($782,259 per month or $21.43 per sq. ft.)
Provisions:	Lessee pays for all taxes, utilities, insurance and maintenance fees (Triple Net)

With the change from a voluntary to a proprietary facility, the capital reimbursement methodology will be changed to reflect interest and amortization. The facility however, does not have a mortgage as the facility is leased from a related entity, which is charging rent based on interest and amortization owed on the mortgage loan, plus an additional $4,200,000 per year based on the market value of the property.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between the landlord and tenant through common ownership. Letters from two NYS realtors have been provided attesting to the reasonableness of the per square foot rental.

Operating Budget

The applicant provided an operating budget, in 2015 dollars, for year one subsequent to acquisition, summarized below:

	Current Year		Year One	
	Per Diem	Total	Per Diem	Total
Revenues				
Medicaid (Inpatient)	$308.21	$75,206,000	$326.33	$76,941,000
Medicare Inpatient)	$549.20	$14,439,000	$577.81	$14,678,000
Private Pay/Other (Inpatient)	$347.71	$1,782,000	$376.41	$1,864,000
Other Operating Revenue*		$3,905,000		$3,905,000
Medicaid (Outpatient)		$6,740,000		$0
Total		$102,072,000		$97,388,000
Expenses				
Operating	$370.00	$101,907,000	$318.34	$84,719,000
Capital	$24.25	$6,680,000	$41.02	$10,916,000
Total	$394.25	$108,587,000	$359.36	$95,635,000
Net income/(loss)		($6,515,000)		$1,753,000
Utilization (patient days)		275,428		266,129
Occupancy		98%		98%

*Other revenue consists of $2,500,000 of dietary services provided to affiliated entities of the current operator, and $1,405,000 of miscellaneous revenue sources including vending machines, purchase discounts, cable TV and telephone income, rental income, and dividends.

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

- Revenue assumptions are based on the historical experience of the current operator.
  - ✓ The Medicaid rate for year one is based on the proposed 2016 operating rate and the estimated 2016 capital per diem. The capital per diem includes the 2014 costs plus estimates for real estate taxes and return on equity.
  - ✓ The increases in the Medicare and Private Pay rates is due to the inclusion of the Part D revenue prior period adjustment.
- Expense assumptions for year one are based on the historical experience of the current operator, with consideration of the following:
  - ✓ Property rental replaces real property and movable equipment depreciation and interest expense (an increase of $4.3 million dollars).
  - ✓ Parent Company Overhead has been reduced by $9.1 million dollars.
  - ✓ Operating expenses were adjusted to reflect 2014 bed reductions and trended 2% from the 2014 actual expenses (a decrease of $3.9 million dollars).
- Utilization assumptions are based on the 2014 historical experience of the facility (98%). The applicant has projected that the facility will maintain this occupancy rate.
- Utilization by payor source for Year One and Year Three is expected as follows:

	Current Year	Years One & Three
Medicaid	88.59%	88.59%
Medicare	9.55%	9.55%
Private Pay/Other	1.86%	1.86%
Total	100.00%	100.00

- Breakeven utilization in year one is projected at 96.24%.

Capability and Feasibility

There are no project costs associated with this application.

The total purchase price of $110,000,000 with be funded with $22,000,000 equity from the members of TCPRNC, LLC and TCPRNC Real Estate, LLC, a $17,600,000 loan for the operations and a $70,400,000 loan for the real estate at the above stated terms. Letters of interest for the financings have been provided.

Working capital requirements are estimated at $15,939,167 based on two months of Year One expenses. The applicant will provide $16,000,000 toward working capital, which is $60,833 over the estimated requirement to be funded, via $8,000,000 from members' equity with the remaining $8,000,000 to be financed via a loan at 5.5% interest for a three-year term. HHC finance has provided a letter of interest for the working capital financing. BFA Attachment A is the net worth summary for the proposed members of TCPRNC, LLC, which shows sufficient liquid assets overall to cover the equity requirements of the application. Bernard Fuchs has provided a disproportionate share affidavit to cover any potential equity shortfalls of the other members. BFA Attachment A shows that Mr. Fuchs has sufficient liquid resources available.

BFA Attachment B is the net worth summary for the proposed members of TCPRNC Real Estate, LLC, which shows sufficient liquid assets to cover all aspects of the application. Benjamin Landa has provided a disproportionate share affidavit to cover any potential equity shortfalls of the other members. BFA Attachment B shows that Mr. Landa has sufficient liquid resource available.

BFA Attachment C is the pro-forma balance sheet of TCPRNC, LLC, which indicates positive members' equity of $8,000,000. It is noted that assets include $17,600,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. If goodwill is eliminated, the net asset position is a negative members' equity of $9,600,000. The negative member's equity will be covered by the operator. As shown in BFA Attachment A, the operator has sufficient liquid resources available to cover this shortfall.

BFA Attachment D is the pro-forma balance sheet of TCPRNC Real Estate, LLC, which indicates positive members' equity of $17,600,000.

The submitted budget projects a net income of $1,753,000 for Year One. The budget is reasonable.

The applicant states that their business model does not include flexibility to transition to a Value Based Payment System, but noted that they are willing to participate in any future Value Based Payment initiatives. The current project's revenue assumptions are based on the facility's historical rate data for Medicare and Private Pay. While the Medicaid revenue assumptions are based on the facility's historical rate data plus the estimated real estate taxes and return of equity.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment E is the 2013-2014 certified and the internal financial statements for JHL, Bronx as of October 31, 2015, which shows the facility had an average positive net asset position, an average negative working capital position and generated an average net loss of $6,372,987 for the period. The negative work capital and net loss positions are due to inefficiencies in current operations, which included extremely high accounts payable, liabilities to third parties and salaries. The issues will be addressed and corrected by the proposed operators.

BFA Attachment G is the 2013-2014 certified and the 2015 internal financial summaries of the members' affiliated nursing homes. As shown, the facilities have maintained a positive net asset position, positive working capital and a positive income from operations for the period shown, with the exception of White Plains, Bay Park, The Hampton Center, Southshore Healthcare, Peninsula Nursing and Throgs Neck, which were due to vacation and sick time accrual, a prior year Medicaid adjustment, above average spending in the ancillary services and a reduction in the private pay census. In order to fix the ancillary spending the facilities moved to greater centralization of services to achieve better economies of scale and reduce the overall costs of operations. The facilities are following the current market trends related to the patient census and working on new strategies to attract other payors such as long-term care insurance.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth - Proposed Members of TCPRNC, LLC
BFA Attachment B	Net Worth - Proposed Members of TCPRNC Real Estate, LLC
BFA Attachment C	Pro-forma Balance Sheet of TCPRNC, LLC
BFA Attachment D	Pro-forma Balance Sheet of TCPRNC Real Estate, LLC
BFA Attachment E	2012-2014 certified and 2015 internal Financial Summary for Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx
BFA Attachment F	Affiliated RHCF Ownership of Proposed Members of TCPRNC, LLC
BFA Attachment G	2012-2014 certified and the 2015 internal financial summaries Proposed Members Affiliated Nursing Homes
BFA Attachment H	Ownership of the real estate before and after the requested change
LTC Attachment A	Quality Measures and Inspection Report

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 11th day of February, 2016 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 TCPRNC, LLC as the new operator of the 744-bed residential health care facility located at 100 West Kingsbridge Road, Bronx, currently operated as Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx, 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:
152177 E	TCPRNC, LLC d/b/a the Plaza Rehab and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment for a permanent mortgage for the real estate portion of the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of a commitment for a permanent mortgage for the operations portion of the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
    c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
6. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
    a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
    b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
    d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and

e. Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

7. Submission of a plan, acceptable to the Department, for the disposition of the Long Term Home Health Care Program (LTHHCP). The plan must demonstrate that the handling of the programs adheres to statutory requirements and results in a safe and orderly transition of any program participants. [LTC]
8. Submission of Articles of Organization of Bescar, LLC, acceptable to the Department. [CSL]
9. Submission of Articles of Organization of Kennedy RH Holdings, LLC, acceptable to the Department. [CSL]
10. Submission of Articles of Organization of Philipson Family, LLC, acceptable to the Department. [CSL]
11. Submission of an Operating Agreement of TCPRNC LLC, acceptable to the Department. [CSL]
12. Submission of an Operating Agreement of TCPRNC Real Estate LLC, acceptable to the Department. [CSL]
13. Submission of an Operating Agreement of Bescar LLC, acceptable to the Department. [CSL]
14. Clarification as to whether or not TCPRNC LLC will have a Shared Services Agreement with Sentosacare LLC. [CSL]
15. Submission of an executed copy of the Assignment and Asusmption Agreement between Jewish Home LifeCare, Harry and Jeanette Weinberg Campus, Bronx and Sentosacare LLC. [CSL]
16. Submission of a fully executed Title Affidavit, Limited Guarantee, and Bargain and Sale Deed. [CSL]
17. Submission of a Certificate of Assumed Name for TCPRNC, LLC, acceptable to the Department. [CSL]
18. Submission of Amended Articles of Organization of TCPRNC, LLC, acceptable to the Department. [CSL]

<u>APPROVAL CONDITIONAL UPON:</u>

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Changes in the membership of subsidiary LLCs require the prior approval of the New York State Department of Health [CSL]

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152218-E
Sheepshead Nursing & Rehabilitation Center

Program: **Residential Health Care Facility** ***County:*** **Kings**
Purpose: **Establishment** ***Acknowledged:*** **October 15, 2015**

Executive Summary

Description

Sheepshead Nursing and Rehabilitation Center, LLC d/b/a Sheepshead Nursing and Rehabilitation Center, requests approval to transfer 25% ownership interest from the estate of Adolf Wieder to Edith Weider. Sheepshead Nursing and Rehabilitation Center is a 200-bed Article 28 residential health care facility (RHCF) located at 2840 Knapp Street, Brooklyn (Kings County). The RHCF also operates a 50-slot offsite adult day health care program located at 3900 Shore Park in Brooklyn. The applicant has provided a copy of Mr. Wieder's Last Will and Testament transferring his ownership in the facility to his wife.

Ownership of the corporation resulting from the requested change is as follows:

Proposed Ownership	
Edith Wieder	25.00%
Elliot Lipschitz	12.00%
Howard Lipschitz	12.00%
Samuel Lipschitz	12.00%
Pearl Kahan	11.00%
Morton Paneth	8.33%
Thomas Paneth	8.34%
Leah Werner	8.33%
Olga Lipschitz	2.00%
Jerome Kahan	1.00%
Total	100.00%

There are no other changes to the current ownership of the facility.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation for this project.

Program Summary

The transaction is required to bring the facility into compliance with 10 NYCRR §401.3(b)(1).

No negative information has been received concerning the character and competence of the proposed applicant identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs or purchase price associated with this transaction. No budget analysis was necessary as this is a transfer of the decedent's 25% ownership interest in the RHCF to his spouse, the other current members are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the executed lease agreement between Lipkaw Realty and Sheepshead Nursing & Sheepshead Nursing & Rehabilitation Center that is in compliance with 10 NYCRR 600.2 (2) (d), acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed Operating Agreement, amending Article 2.2, that is in compliance with 10 NYCRR 600.11, acceptable to the Department. [CSL]
3. Submission of a fully completed Schedule 4B Medicaid Affidavit, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

February 11, 2016

Program Analysis

Facility Information

	Existing		Proposed	
Facility Name	Sheepshead Nursing and Rehabilitation Center		Same	
Address	2840 Knapp Street Brooklyn, NY 11235		Same	
RHCF Capacity	200		Same	
ADHC Program Capacity	N/A		Same	
Type of Operator	Limited Liability Company		Same	
Class of Operator	Proprietary		Same	
Operator	Sheepshead Nursing and Rehabilitation, LLC		Same	
	<u>Membership</u>:		<u>Membership:</u>	
	Estate of Adolf Wieder	25%	Edith Wieder	25%
	Elliot Lipschitz	12%	Elliot Lipschitz	12%
	Howard Lipschitz	12%	Howard Lipschitz	12%
	Samuel Lipschitz	12%	Samuel Lipschitz	12%
	Pearl Kahan	11%	Pearl Kahan	11%
	Morton Paneth	8.33%	Morton Paneth	8.33%
	Thomas Paneth	8.33%	Thomas Paneth	8.33%
	Leah Werner	8.33%	Leah Werner	8.33%
	Olga Lipschitz	2%	Olga Lipschitz	2%
	Jerome Kahan	1%	Jerome Kahan	1%

Character and Competence-Background

Edith Wieder is retired from the wholesale jewelry business, since 2000. Mrs. Wieder discloses no health facility interests.

Character and Competence Analysis

No negative information has been received concerning the character and competence for the new member.

Project Review

No changes in the program or physical environment are proposed in this application.

This application proposes to transfer 25% membership of the existing operating LLC to one new member. New member Edith Wieder is acquiring the 25% ownership interest from the estate of her deceased husband, Adolf Wieder, in order to bring the facility into compliance with Title 10 NYCRR § 401.3(b)(1). The transfer of ownership is consistent with the requirements outlined in the operating agreement for ownership LLC.

While Ms. Wieder has no health facility ownership experience, such experience exists within the current operating structure. Olga Lipschitz has been the general manager of the facility since the current ownership structure was legally established to operate this facility in 1986. Additionally, in July of 2014, the facility Administrator Jerome Kahan joined the membership structure at 1% interest as allowed under Public Health Law §2801-a(4) .

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. The individual background review indicates the applicant has met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3). Approval of this application will bring the ownership into compliance with 10 NYCRR § 401.3(b)(1).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Transfer per Last Will and Testament of Adolf Wieder

The applicant has submitted a copy of the Last Will and Testament of Mr. Adolf Wieder for the transfer of 25% membership interest in Sheepshead Nursing and Rehabilitation Center, LLC. The terms are summarized below:

Transferor:	Estate of Adolf Wieder
Transferee:	Edith Wieder
Assets Transferred:	25% membership interest and other interest in the company.
Purchase Price:	None

Capability and Feasibility

There are no project costs or purchase price associated with this transaction. BFA Attachment A is the personal net worth statement of Mrs. Edith Wieder, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is a transfer of the decedent's 25% ownership interest in the RHCF to his spouse, the other current members are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is the 2013-2014 audited financial summary of Sheepshead Nursing and Rehabilitation Center, LLC and the internal financials of the RHCF as of September 30, 2015. As shown, the facility had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average net income of $1,877,558 for the period shown.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of Proposed Member
BFA Attachment B	Financial Summary-Sheepshead Nursing and Rehabilitation Center, LLC for audited periods 2013-2014 and internals as of 9/30/2015
LTC Attachment A	Quality Measures Inspection Report

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 11th day of February, 2016 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 of 25% ownership interest in this RHCF from the estate of one (1) withdrawing member to one (1) 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:	FACILITY/APPLICANT:
152218 E	Sheepshead Nursing & Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the executed lease agreement between Lipkaw Realty and Sheepshead Nursing & Sheepshead Nursing & Rehabilitation Center that is in compliance with 10 NYCRR 600.2 (2) (d), acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed Operating Agreement, amending Article 2.2, that is in compliance with 10 NYCRR 600.11, acceptable to the Department. [CSL]
3. Submission of a fully completed Schedule 4B Medicaid Affidavit, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 152363-E
HealthAlliance Senior Living Corp.
d/b/a Woodland Pond at New Paltz

Program: **Residential Health Care Facility** ***County:*** **Ulster**
Purpose: **Establishment** ***Acknowledged:*** **January 6, 2016**

Executive Summary

Description
Woodland Pond at New Paltz is a 40-bed not-for-profit Article 28 skilled nursing facility (SNF) operated by HealthAlliance Senior Living Corp. The facility is located at 100 Woodland Pond Circle, New Paltz (Ulster County) and is part of an Article 46 Continuing Care Retirement Community (CCRC) that includes 201 independent living units and an enriched housing Adult Care Facility with a 60-bed assisted living unit. Effective November 29, 2012, HealthAlliance, Inc. was established as the active parent /co-operator of all elements of the CCRC. This application requests approval to disestablish HealthAlliance, Inc. as the active parent/co-operator and to change the corporate name of the remaining operator, HealthAlliance Senior Living Corp, to Woodland Pond, Inc. d/b/a Woodland Pond at New Paltz. Through separate applications, HealthAlliance, Inc. will be removed from the Article 46 Certificate of Authority and the Adult Care Facility license.

In 2015, the boards of HealthAlliance Senior Living Corp and HealthAlliance, Inc. approved resolutions to remove HealthAlliance, Inc. from the existing governance and ownership structure of the CCRC and SNF. It was jointly decided that a de-affiliation would be mutually beneficial, allowing HealthAlliance, Inc. to separate from the long-term care provider and focus on the acute care environment and its goals of expanding their acute care network. As a provider of long-term care services, HealthAlliance Senior Living Corp will be able to focus on senior living and other long-term care based affiliations with like organizations.

There are no costs associated with this application. The applicant will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in authorized services or the number of beds as a result of the proposed change in governance structure.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no Need review of this project.

Program Summary
This application is being filed to remove HealthAlliance, Inc as the active parent and co-operator of Woodland Pond at New Paltz. As part of this application the remaining operator, Health Alliance Senior Living Corp, is requesting approval to rename to Woodland Pond Inc. This Article 28 skilled nursing facility is part of an Article 46 Continuing Care Retirement Community (CCRC). Through separate applications HealthAlliance, Inc. will be removed from the Article 46 Certificate of Authority and the Adult Care Facility license.

Financial Summary
There are no costs associated with this application and no budgets are necessary, as this is a disestablishment of an active parent/co-operator. Woodland Pond at New Paltz

operates independently with no financial reliance on HealthAlliance, Inc. There has never been any type of obligated group created, and there is no cross collateralization or cross borrowing between the entities and the debt of Woodland Pond is strictly its own. The process of removing HealthAlliance, Inc. will have only nominal costs related to legal and filing fees, which have been budgeted.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval is contingent upon:

1. Submission of a photocopy of the amended Certificate of Incorporation of Kingston Regional Senior Living Corp., acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended bylaws of Kingston Regional Senior Living Corp., acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of HealthAlliance, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the Amended Certificate of Incorporation of Health Alliance, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's fully executed Medicaid Affidavit, as per schedule 4B, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Department approval of the disestablishment for the Article 46 Continuing Care Retirement Community and the Adult Care Facility. [LTC]

Council Action Date

February 11, 2016

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Woodland Pond at New Paltz	Same
Address	100 Woodland Pond Circle New Paltz, New York 1256	Same
RHCF Capacity	40	Same
ADHC Program Capacity	None	None
Type of Operator	Corporation	Same
Class of Operator	Voluntary / Not-for-profit	Same
Operator	HealthAlliance Senior Living Corp Active Parent/Co-operator HealthAlliance, Inc	Woodland Pond, Inc* *Renaming corporation currently named HealthAlliance Senior Living Corp

Character and Competence

Corporations Reviewed

HealthAlliance, Inc.
- HealthAlliance Hospital Broadway Campus
- HealthAlliance Hospital Mary's Avenue Campus
- Margaretville Hospital
- Woodland Pond at New Paltz CCRC
- Woodland Pond at New Paltz Skilled Nursing Facility
- Woodland Pond at New Paltz Adult Care Facility

HealthAlliance Senior Living Corp.
- Woodland Pond at New Paltz CCRC
- Woodland Pond at New Paltz Skilled Nursing Facility
- Woodland Pond at New Paltz Adult Care Facility

No negative information has been received concerning the character and competence of the above corporations. Facilities operated by both corporations were found to be in current compliance.

Project Review

This application is being filed to remove HealthAlliance, Inc as the active parent and co-operator of Woodland Pond at New Paltz Skilled Nursing Faciility. The nursing home is part of an Article 46 Continuing Care Retirement Community (CCRC). HealthAlliance, Inc is an active parent and co-operator of all elements of the CCRC. Through separate applications HealthAlliance, Inc. will be removed from the Article 46 Certificate of Authority and the Adult Care Facility license. The removal of the active parent and co-operator will leave HealthAlliance Senior Living Corp as the sole operator of the CCRC including the Adult Care Facility and the Skilled Nursing Facility. As part of this application HealthAlliance Senior Living Corp is requesting DOH approval to change the legal corporate name to Woodland Pond, Inc. The facility will continue to be operated under the assumed name Woodland Pond at New Paltz.

In 2015 the boards of HealthAlliance Senior Living Corp and HealthAlliance, Inc. approved resolutions to remove HealthAlliance, Inc as the active parent and co-operator of Woodland Pond CCRC and its health care facility elements. This decision was made to allow HealthAlliance, Inc. to focus on its acute care relationships and separate itself from the long term care entity. Financially Woodland Pond was operating independently with no financial reliance on HealthAlliance, Inc. and no collateralization or cross borrowing in existence. No services are being received or provided between the two entities with the exception of employee benefits. With approval of this change Woodland Pond will establish its own employee benefit coverage.

Since inception, HealthAlliance Senior Living Corp has maintained a distinct board with full membership and officers. This action will result in the need to replace only one member of the board.

Upon approval Woodland Pond will need to obtain approvals to the certificate of incorporations by The New York State Attorney General's Office and the Department of State. Bondholders Ulster County IDA and Capital Resources Corp will need to approve this transaction.

Conclusion

No negative information has been received concerning the character and competence of the Corporations. All health care facilities are in substantial compliance with all rules and regulations. Programmatically speaking the removal of the active parent and co-operator arrangement will have minimal impact on the operation of the CCRC and its associated Article 28 skilled nursing facility, which is the subject of this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs, working capital requirements or budgets associated with this application.

BFA Attachment A is the 2014 certified financial statements of Health Alliance Senior Living Corp. d/b/a Woodland Pond at New Paltz. As shown, the entity had a positive working capital position and a negative net asset position for the year 2014. The negative net asset position is the result of historical losses. Also, the entity incurred an operating loss of $6,398,986 in 2014. Although the facility incurred historical losses and negative net asset balances, it does project continued positive cash flows adequate to operate as a viable operation.

BFA Attachment B is the November 30, 2015 internal financial statements of Health Alliance Senior Living Corp. d/b/a Woodland Pond at New Paltz. As shown, the entity had a positive working capital position and a negative net asset position through November 31, 2015. Also, the entity incurred a loss from operations of $3,559,686 through November 30, 2015.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary- 2014 certified financial statements of Health Alliance Senior Living Corp. d/b/a Woodland Pond at New Paltz
BFA Attachment B	Financial Summary- November 30, 2015 internal financial statements of Health Alliance Senior Living Corp. d/b/a Woodland Pond at New Paltz
LTC Attachment A	Quality Measures Inspection Report

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 11th day of February, 2016 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 disestablish HealthAlliance, Inc. as the active parent/co-operator of this Continuing Care Retired Community and to change the corporate name of the remaining operator, HealthAlliance Senior Living Corp. to Woodland Pond, Inc. d/b/a Woodland Pond at New Paltz, 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:
152363 E	HealthAlliance Senior Living Corp. d/b/a Woodland Pond at New Paltz

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the amended Certificate of Incorporation of Kingston Regional Senior Living Corp., acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended bylaws of Kingston Regional Senior Living Corp., acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of HealthAlliance, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the Amended Certificate of Incorporation of Health Alliance, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's fully executed Medicaid Affidavit, as per schedule 4B, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Department approval of the disestablishment for the Article 46 Continuing Care Retirement Community and the Adult Care Facility. [LTC]

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 th*e Contingencies Tab in NYSE-CON.*

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency:	Blue Line Agency, LLC
Address:	Brooklyn
County:	Kings
Structure:	Limited Liability Company
Application Number:	2375-L

Description of Project:

Blue Line Agency, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Omega Care Services, Inc. d/b/a Living Waters Home Care Agency was previously approved as a home care services agency by the Public Health Council at its June 25, 2004 meeting and subsequently licensed as 1285L001. At that time, the following individuals each owned 100 shares in the proprietary corporation: Kwame Amoafo-Danquah; Phillip Kwaku Duah, and Emmanuel Opoku-Agyare.

Blue Line Agency, LLC and Omega Care Services, Inc. d/b/a Living Waters Home Care Agency entered into a management agreement which was approved on April 30, 2014.

The membership of Blue Line Agency, LLC comprises the following individuals:

Harold Weinstein – 50%
Vice President, Max Kahon, Inc.

Affiliations
St. James Rehabilitation & Healthcare Center (8/1/2012-present)
The Phoenix Rehabilitation and Nursing Center (1/20/2015-present)

Hanna Weinstein – 50%
Unemployed

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 514 Coney Island Avenue, Brooklyn, New York 11218:

Kings	Queens	Bronx
New York	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Housekeeper	Medical Social Services
Nutrition	Homemaker	

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

St. James Rehabilitation & Healthcare Center (8/1/2012-present)
The Phoenix Rehabilitation and Nursing Center (1/20/2015-present)

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety, and welfare, of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2016

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 11th day of February, 2016, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, 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 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:
152137 E	County of Orange (Orange County)
152298 E	Saratoga County (Saratoga County)
2250 L	Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)
2375 L	Blue Line Agency, LLC (Kings, New York, Queens, Richmond, Bronx and Westchester Counties)

2512 L	Evergreen Homecare Service of NY Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
2540 L	Aquinas LLC d/b/a Senior Helpers (New York, Queens, Bronx, Richmond, Kings, and Westchester Counties)
2628 L	Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare (Allegany, Monroe, Cattaraugus, Niagara, Chautauqua, Orleans, Erie, Wyoming and Genesee Counties)
152019 E	Serenity Health & Wellness, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
152224 E	Health Acquisition Corp. d/b/a Allen Health Care Services (Dutchess, Nassau, Orange, Queens, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties)

NEW YORK STATE OF OPPORTUNITY. Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 15, 2016

Subject: Beth Israel Ambulatory Care Services Corp.
Proposed Certificate of Amendment to Certificate of Incorporation
and Restated Certificate of Incorporation

Beth Israel Ambulatory Care Services Corp. ("BIACSC") is a not for profit corporation that operated a diagnostic and treatment center in association with Beth Israel Medical Center. Counsel for the corporation advises that the diagnostic and treatment center was closed during 2013 pursuant to approval from the Department. Thereafter, pursuant to a transaction that combined the former constituents of the Continuum Health Partners, which was the sole member of Beth Israel Medical Center, with The Mount Sinai Hospital and its affiliates, to form a single integrated group of affiliated healthcare providers and related legal entities, BIACSC became a wholly controlled affiliate of the Mount Sinai Health System.

BIACSC would like to amend its Certificate of Incorporation in order to accomplish the following:

A. Change its name to Mount Sinai Ambulatory Ventures, Inc.

B. Add the purpose that it shall be operated "exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code ...."

C. Remove the purpose of operating a diagnostic and treatment center.

Approval of these amendments by the Public Health and Health Planning Council is required by Public Health Law §2801-a, Not-for-Profit Corporation Law §804(a), and 10 NYCRR §600.11(a)(1).

Attached are the following with regard to this matter:

1. Proposed Certificate of Amendment of Certificate of Incorporation.

2. Proposed Restated Certificate of Incorporation, which sets forth the entire Certificate of Incorporation as revised by the proposed amendments.

3. A redlined version of the Restated Certificate which shows the currently proposed amendments.

2. Existing Certificate of Incorporation.

The proposed Certificate of Amendment and Restated Certificate are in legally acceptable form.

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL AMBULATORY CARE SERVICES CORP.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

The undersigned, Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is Beth Israel Ambulatory Care Services Corp.

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 under Section 402 of the NPCL.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Corporation's Certificate of Incorporation is hereby amended in accordance with Section 801 of the NPCL as follows:

   a. Paragraphs 1 through 8 are hereby amended to change the numerical paragraph references to "**FIRST**," "**SECOND**" "**THIRD**" "**FOURTH**" "**FIFTH**" "**SIXTH**" "**SEVENTH**" and "**EIGHTH**", respectively.

   b. Article FIRST (formerly Paragraph 1) of the Certificate of Incorporation, which sets forth the name of the Corporation, is amended to change the name of the Corporation to Mount Sinai Ambulatory Ventures, Inc. Accordingly, Article FIRST shall read in its entirety as follows:

      "**FIRST**. The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation")."

   c. Article THIRD (formerly Paragraph 3) of the Certificate of Incorporation, which sets forth the Corporation's purposes, is amended to change the purposes of the Corporation and update the language to reflect amendments to the NPCL pursuant

to the New York Not-for-Profit Revitalization Act of 2013. Accordingly, Article THIRD shall read in its entirety as follows:

"**THIRD**. (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

(b) This Corporation is not formed 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 member, director, trustee, officer or private individual, firm or corporation;

(c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) 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 (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(1) 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;

(2) prohibits the Corporation, its trustees or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code: and

(5) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(g) 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 hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law)."

d. Article FOURTH (formerly Paragraph 4) of the Certificate of Incorporation, which sets forth the Corporation's type as provided in Section, is amended to change the reference to "Type B" to charitable, pursuant to Section 201(c) of the NPCL. Accordingly, Article FOURTH shall read in its entirety as follows:

"**FOURTH**. The Corporation shall be a charitable corporation under Section 201(c) of the NPCL."

e. Article SIXTH (formerly Paragraph 6) of the Certificate of Incorporation, which sets forth the initial trustees of the Corporation, shall be amended in accordance with Section 805(c) of the NPCL to omit this text, and to insert a new Article SIXTH which states that the Corporation shall be a corporation with members. Accordingly, Article SIXTH shall read in its entirety as follows:

"**SIXTH**. The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation."

f. Article SEVENTH (formerly Paragraph 7) of the Certificate of Incorporation, which sets forth the address to which the Secretary of State shall forward copies of process accepted on behalf to the Corporation, is amended to change such address. Accordingly, Article SEVENTH shall read in its entirety as follows:

"**SEVENTH**. The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029."

g. Article EIGHTH (formerly Paragraph 8) of the Certificate of Incorporation, which describes the distribution of assets upon dissolution of the Corporation, is amended to (i) provide for the distribution of the Corporation's assets to Mount

Sinai Health System, Inc. and/or one or more affiliates or successors thereof, as are then in good standing and qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and (ii) to update the language to reflect amendments to the NPCL pursuant to the New York Not-for-Profit Revitalization Act of 2013. Accordingly, Article EIGHTH shall read in its entirety as follows:

> "**EIGHTH**. In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine."

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.

6. The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

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[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, this Certificate of Amendment has been signed and the statements made herein affirmed as true under penalties of perjury this 10TH day of November, 2015.

Jill Clayton

By: Jill Clayton
Title: Secretary

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL AMBULATORY CARE SERVICES CORP.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

Filed By:

Jay Gerzog, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015

RESTATED

CERTIFICATE OF INCORPORATION

PH-32

OF

~~CERTIFICATE OF INCORPORATION~~ ~~5 0 61 9 0 00~~

~~epi:/. OF~~

~~BETH ISRAEL~~MOUNT SINAI AMBULATORY ~~CARE SERVICES CORP~~VENTURES, INC.

~~(~~Under Section ~~402~~805 of the ~~Not for Profit~~ New York State Not-For-Profit Corporation Law~~)~~

The undersigned, ~~a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of~~ Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ~~and Article 28 of the New York Public Health Law hereby certifies~~("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is~~:~~ Mount Sinai Ambulatory Ventures, Inc. The name under which the Corporation was formed was Beth Israel Ambulatory Care Services Corp. ~~(hereafter~~

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 under Section 402 of the NPCL.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. This Restated Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.

5. The text of the Certificate of Incorporation of the Corporation is hereby restated to read in its entirety as follows:

FIRST: The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation").

~~2.~~ SECOND: The Corporation is a corporation as defined in Subparagraph (a)(5) of Section ~~10,1~~102 of the New York Not-for-Profit Corporation Law ("NPCL").

THIRD: (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of

~~3. The purposes for which it is to be formed are exclusively charitable purposes as follows:~~

~~(a) To operate, manage or otherwise administer, one or more diagnostic and treatment centers throughout the New York metropolitan area.~~

~~(b) To own, lease and purchase equipment and supplies necessary to operate, manage or otherwise administer diagnostic and treatment centers.~~

1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

~~(c) To provide or otherwise make available diagnostic and treatment services or other necessary services to individuals, provided, that all prior approvals required by law including, that of the Public Health Council, as appropriate, shall first be obtained.~~

~~(d) To operate exclusively for the benefit of, and in a manner consistent with the purposes of, the Beth Israel Medical Center.~~

~~(e) To conduct such other activities 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 under the Not-for-Profit Corporation Law.~~

~~(f) To receive and hold real and personal property in order to carry on the aims and purposes of this 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 charitable aims and purposes and to otherwise cooperate with and assist such other agencies, organizations and institutions in~~

~~order to further the charitable aims and purposes of this Corporation.~~

(~~a~~b) This Corporation is not formed 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 member, director, trustee, officer or private individual, firm or corporation~~.~~;

(~~b~~c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the ~~corporation~~Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(~~i~~d) The Corporation has been organized exclusively to serve a public purpose.

~~(j) Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law, Section 404(b)-(n), (p)-(s), and (u)-(v) or Social Services Law Section 460-a.~~

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(~~k~~f) 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 ~~Internal Revenue~~ Code ~~of 1986 (the "Code")~~ (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(~~i~~1) 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;

(~~ii~~2) 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;

(~~iii~~3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(~~iv~~4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(~~v~~5) prohibits the Corporation from making any

taxable expenditures which are subject to tax under Section 4945 of the Code.

(~~1~~g) 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 hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following ~~proposes~~purposes as more specifically described above: charitable, scientific, religious or

educational 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 income taxation under~~ Section 501(c)(3) of the Code (or the corresponding provision of any ~~further~~future United States Internal Revenue Law).

~~4.~~ FOURTH: The Corporation shall be a ~~Type B~~charitable corporation under Section 201(~~b~~c) of the ~~Not-for-Profit Corporation Law~~NPCL.

~~5.~~FIFTH: The office of the Corporation is to be located in the County of New York, State of New York.

~~6. The names and addresses of the initial Directors of the Corporation are as follows:~~

(Del)

SIXTH: The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation.

Names	Addresses
Morton P. Hyman, Esq.	16th Street and First Avenue New York, NY 10003
Robert G. Newman, M.D.	16th Street and First Avenue New York, NY 10003
Alfred Engleberg	90 Park Avenue New York, NY 10016
Joel I. Picket	8 Pleasant Ridge Road Harrison, NY 10528
Jane R. Crotty	3 Stuyvesant oval New York, NY 10009
Paul Ramos	111 St. Marks Avenue Brooklyn, NY 11217

~~7.~~ SEVENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: ~~16th Street and~~Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

EIGHTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.

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[SIGNATURE PAGE TO FOLLOW.]

First Avenue, New York, NY 10003, Attention: President.

8. In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed contingent on the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed and the statements made herein ~~are~~ affirmed as true under ~~the~~penalties of perjury this /Di'lday of

~~Sincerely,~~

~~K a r e~~

penalties of perjury this 7th Wnve$_{m}$ive day of , 19952015.

Kathryn C. Meyer, Esq.
Sole Incorporator
Beth Israel Medical Center
First Avenue at 16th Street

Jill Clayton

By: Jill Clayton

Sincerely,

Kane

~~New York, NY 10003~~

~~Sincerely,~~

~~Kate~~

PH-32

CERTIFICATE OF INCORPORATION F950619000042

OF

BETH ISRAEL AMBULATORY CARE SERVICES CORP.

PH-32

(Under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York and Article 28 of the New York Public Health Law hereby certifies as follows:

1. The name of the Corporation is: Beth Israel Ambulatory Care Services Corp. (hereafter called the "Corporation").

2. The Corporation is a corporation as defined in Subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

3. The purposes for which it is to be formed are exclusively charitable purposes as follows:

(a) To operate, manage or otherwise administer, one or more diagnostic and treatment centers throughout the New York metropolitan area.

(b) To own, lease and purchase equipment and supplies necessary to operate, manage or otherwise administer diagnostic and treatment centers.

(c) To provide or otherwise make available diagnostic and treatment services or other necessary services to individuals, provided, that all prior approvals required by law including, that of the Public Health Council, as appropriate, shall first be obtained.

(d) To operate exclusively for the benefit of, and in a manner consistent with the purposes of, the Beth Israel Medical Center.

(e) To conduct such other activities 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 under the Not-for-Profit Corporation Law.

(f) To receive and hold real and personal property in order to carry on the aims and purposes of this 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 charitable aims and purposes and to otherwise cooperate with and assist such other agencies, organizations and institutions in

order to further the charitable aims and purposes of this Corporation.

(g) This Corporation is not formed 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 member, director, officer or private individual, firm or corporation.

(h) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(i) The Corporation has been organized exclusively to serve a public purpose.

(j) Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law, Section 404(b)-(n), (p)-(s), and (u)-(v) or Social Services Law Section 460-a.

(k) 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 Internal Revenue Code of 1986 (the "Code") (or the corresponding provision of any future United States Internal Revenue Law) it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(i) 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;

(ii) prohibits the Corporation, its directors or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(l) 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 hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following proposes as more specifically described above: charitable, scientific, religious or educational 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 income taxation under Section 501(c)(3) of the Code (or the corresponding provision of any further United States Internal Revenue Law).

4. The Corporation shall be a Type B corporation under Section 201(b) of the Not-for-Profit Corporation Law.

5. The office of the Corporation is to be located in the County of New York, State of New York.

6. The names and addresses of the initial Directors of the Corporation are as follows:

Names	Addresses
Morton P. Hyman, Esq.	16th Street and First Avenue New York, NY 10003
Robert G. Newman, M.D.	16th Street and First Avenue New York, NY 10003
Alfred Engleberg	90 Park Avenue New York, NY 10016
Joel I. Picket	8 Pleasant Ridge Road Harrison, NY 10528
Jane R. Crotty	3 Stuyvesant Oval New York, NY 10009
Paul Ramos	111 St. Marks Avenue Brooklyn, NY 11217

7. The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: 16th Street and First Avenue, New York, NY 10003, Attention: President.

8. In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed contingent on the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein are affirmed as true under the penalties of perjury this 16 day of May, 1995.

Kathryn C. Meyer

Kathryn C. Meyer, Esq.
Sole Incorporator
Beth Israel Medical Center
First Avenue at 16th Street
New York, NY 10003

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

June 6, 1995

Mr. Peter A. Kelly
Executive VP/Operations
Beth Israel Medical Center
First Avenue at 16th Street
New York, NY 10003

Re: Certificate of Incorporation of Beth Israel Ambulatory Care Services Corp.

Dear Mr. Kelly:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 19th day of May, 1995, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Beth Israel Ambulatory Care Services Corp., dated May 16, 1995.

Sincerely,

Karen S. Westervelt
Executive Secretary

JUN 15 11:26 AM '95

PH-32

BILLED

(9)

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUN 19 1995
TAX $ ________
BY: SAC
New York

1CC

950619000465

CERTIFICATE OF

INCORPORATION
OF

BETH ISRAEL AMBULATORY CARE

SERVICES CORP.

PROSKAUER ROSE GOETZ & MENDELSOHN
COUNSELLORS AT LAW
1585 BROADWAY
BOROUGH OF MANHATTAN
NEW YORK CITY 10036

E.P. Green
212-969-3227

PH-32

F950619000426

4/27/95
S. Schwartz

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

June 6, 1995

Mr. Peter A. Kelly
Executive VP/Operations
Beth Israel Medical Center
First Avenue at 16th Street
New York, NY 10003

Re: Application No. 942669 - Beth Israel Ambulatory Care Services Corporation (Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Ambulatory Care Services Corporation is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of May 19, 1995.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4258, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt
Executive Secretary

Bern

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUN

June 6, 1995

RECEIVE

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EXECUTIVE VICE PRESIDENT, OPE
BETH ISRAEL MEDICAL CE

Mr. Peter A. Kelly
Executive VP/Operations
Beth Israel Medical Center
First Avenue at 16th Street
New York, NY 10003

Re: Application No. 942669 - Beth Israel Ambulatory Care Services Corporation (Kings Co.)

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I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Ambulatory Care Services Corporation is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of May 19, 1995.

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To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4258, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt
Executive Secretary

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

June 15, 1995

Mr. Peter A. Kelly
Executive Vice President
Operations
Beth Israel Medical Center
First Avenue at 16th Street
New York, New York 10003

Re: Application No. 942868 - Beth Israel Medical Center (Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Medical Center is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of May 19, 1995.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4900, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt
Executive Secretary

State of New York } ss:
Department of State }

I hereby certify that I have compared the annexed copy with the original documents filed by the Department of State and that the same is a correct transcript of said original.

Witness my hand and seal of the Department of State on JUN 19 1995

Alexander F. Treadwell

Secretary of State

Y. S. DEPARTMENT OF STATE
IVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVE
ALBANY, NY 12231

FILING RECEIPT

TY NAME : BETH ISRAEL AMBULATORY CARE SERVICES CORP.

DOCUMENT TYPE : DOMESTIC (NOT-FOR-PROFIT) CORPORATIO TYPE: B COUNTY: NEWY

SERVICE COMPANY : PRENTICE-HALL CORPORATION SYSTEM, INC. SERVICE CODE: 32

FILED: 06/19/1995 DURATION: PERPETUAL CASH #: 950619000465 FILM #: 950619000

ADDRESS FOR PROCESS

THE CORPORATION
ATTN: PRESIDENT
NEW YORK, NY 10003

REGISTERED AGENT

16TH STREET & FIRST AVENUE

FILER

PROSKAUER ROSE GOETZ & MENDELSOHN
COUNSELLORS AT LAW
1585 BROADWAY
NEW YORK, NY 10036

FEES	110.00	PAYMENTS	110
FILING :	75.00	CASH :	0
TAX :	0.00	CHECK :	0
CERT :	0.00	BILLED:	110
COPIES :	10.00		
HANDLING:	25.00		
		REFUND:	0

DOS-1025 (11/89)

RESTATED

CERTIFICATE OF INCORPORATION

OF

MOUNT SINAI AMBULATORY VENTURES, INC.

Under Section 805 of the
New York State Not-For-Profit Corporation Law

The undersigned, Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. The name under which the Corporation was formed was Beth Israel Ambulatory Care Services Corp.

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 under Section 402 of the NPCL.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. This Restated Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.

5. The text of the Certificate of Incorporation of the Corporation is hereby restated to read in its entirety as follows:

FIRST: The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called 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 ("NPCL").

THIRD: (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of

1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

(b) This Corporation is not formed 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 member, director, trustee, officer or private individual, firm or corporation;

(c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) 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 (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(1) 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;

(2) prohibits the Corporation, its trustees, or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(5) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(g) 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 hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

FOURTH: The Corporation shall be a charitable corporation under Section 201(c) of the NPCL.

FIFTH: The office of the Corporation is to be located in the County of New York, State of New York.

SIXTH: The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation.

SEVENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

EIGHTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 10th day of November, 2015.

Jill Clayton

By: Jill Clayton
Title: Secretary

RESTATED

CERTIFICATE OF INCORPORATION

OF

MOUNT SINAI AMBULATORY VENTURES, INC.

Under Section 805 of the
New York State Not-For-Profit Corporation Law

Filed By:

Jay Gerzog, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Beth Israel Ambulatory Care Services Corp., dated November 10, 2015.

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 15, 2016

Subject: Beth Israel Medical Center
Proposed Certificate of Amendment to Certificate of Incorporation
to amend purpose clause

Beth Israel Medical Center is a not for profit corporation that operates a school of nursing. The facility proposes to amend its purposes to add the ability to confer Bachelor of Science degrees in addition to Associate in Applied Science degrees. The consent of the State Education Department has been obtained. Approval of this amendment to the purposes clause of the Certificate of Incorporation by the Public Health and Health Planning Council is required by Not-for-Profit Corporation Law §804(a).

Attached are the following with regard to this matter:

1. Proposed Certificate of Amendment of Certificate of Incorporation with the consent of the State Education Department.

2. Existing Certificate of Incorporation and amendments thereto.

The proposed Certificate of Amendment is in legally acceptable form.

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairman of the Board of Trustees of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."

2. The Corporation was created pursuant to Section 50 of the New York Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law.

4. The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon the Secretary of State is: Attn: Legal Department, 150 E. 42nd Street, New York, NY 10177.

5. The Corporation's Certificate of Incorporation is hereby amended as follows:

Article THIRD of the Certificate of Incorporation of the Corporation, which specifies the purposes for which the Corporation is organized, is hereby amended by modifying paragraph (b) thereof, which provides for the conduct of certain training programs for nurses and other health care professionals, to include a reference to bachelor of science degrees in connection with nurse training programs, and said paragraph (b) shall, as so amended, read in its entirety as follows:

"(b) to operate a program for the training of nurses leading to associate in applied science (A.A.S.) and bachelor of science (B.S.) degrees at the Phillips Beth Israel School of Nursing; to engage, in conjunction with universities, colleges and professional schools, in programs related to the training of other health care professionals;"

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on October 21, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 6th day of December, 2013.

By _____
Name: Steven I. Hochberg
Title: Senior Vice Chairman

STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
Albany, New York

CONSENT TO FILING WITH THE DEPARTMENT OF STATE
(General Use)

Consent is hereby given to the filing of the annexed certificate of amendment

of Beth Israel Medical Center ,
[name of entity]

pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

MaryEllen Elia
Commissioner of Education

By: Richard L. Nabozny

Commissioner's authorized designee

12-03-2015
Date

THIS DOCUMENT IS NOT VALID WITHOUT THE SIGNATURE OF THE COMMISSIONER'S AUTHORIZED DESIGNEE AND THE OFFICIAL SEAL OF THE STATE EDUCATION DEPARTMENT.

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 October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

State of New York—Department of Social Welfare

State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the eighteenth *day of* June, 1946 *, due inquiry and investigation having been made,* the Board approved the consolidation of BETH ISRAEL HOSPITAL ASSOCIATION and JEWISH MATERNITY HOSPITAL forming the new corporation BETH ISRAEL HOSPITAL ASSOCIATION, pursuant to Section 60 of the Membership Corporations Law of the State of New York.

10c

In Witness Whereof, *the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this* twenty-seventh *day of* June *, in the year one thousand nine hundred and* forty-six.

Secretary

11699—10c-1

CERTIFICATE OF CONSOLIDATION FORMING BETH ISRAEL HOSPITAL ASSOCIATION, PURSUANT TO SECTION FIFTY OF THE MEMBERSHIP CORPORATIONS LAW.

WE, CHARLES H. SILVER, SAMUEL HAUSMAN, LOUIS SATENSTEIN and NATHAN RATNOFF, being respectively a Vice-President and the Secretary of BETH ISRAEL HOSPITAL ASSOCIATION, and the President and Secretary of JEWISH MATERNITY HOSPITAL, do CERTIFY:

1. BETH ISRAEL HOSPITAL ASSOCIATION, whose certificate of incorporation was filed in the office of the Secretary of State on the 28th day of May, 1890, and JEWISH MATERNITY HOSPITAL, whose certificate of incorporation was filed in the office of the Secretary of State on the 27th day of April, 1906, are the corporations to be included in this consolidation.

2. The name of the new corporation is BETH ISRAEL HOSPITAL ASSOCIATION.

3. The territory in which its operations are to be principally conducted is the City of New York, New York.

4. The office of the corporation shall be located in the City and County of New York, New York.

5. The number of its directors shall be not less than thirty-five (35) nor more than forty (40).

6. The names and residences of the directors of the corporation until the first annual meeting, with the street and number of the residence of each director residing in a city, are as follows:

NAMES	RESIDENCE ADDRESSES
Morris Asinof	1055 Park Avenue, New York City
Abraham Blumenkrantz	450 West End Avenue, New York City
Joseph H. Cohen	2 Sutton Place, New York City
Leo M. Cooper	Dorset Hotel, 30 West 54th Street, New York City
Harry Fischel	910 Park Avenue, New York City
Paul P. Gelles	77 Greenacres, Scarsdale, New York
Samuel H. Golding	5th Avenue Hotel, 5th Avenue & 9th Street, New York City
Samuel Hausman	460 E. Shore Road, Great Neck, Kings Pt., L.I.
Henry Homes	239 Central Park West, New York City
Isidor Kaplan	160 Central Park South, New York City
Irving D. Karpas	1 West 81st Street, New York City.
George Kletz	Essex House Hotel, 160 Central Park South, New York City
Abraham Krasne	115 Central Park West, New York City
Abraham Landau	45 East 82nd Street, New York City
Hon. Aaron J. Levy	4551 Livingston Avenue, Fieldston, New York
Joseph Levy	115 Central Park West, New York City
Hon. Samuel Levy	Waldorf Astoria, 50th Street & Park Avenue, New York City
Irving D. Lipkowitz	15 West 81st Street, New York City

Hon. Nathan D. Perlman	25 East 9th Street, New York City
Seymour J. Phillips	1185 Park Avenue, New York City
David L. Podell	1 East 88th Street, New York City
Louis M. Rabinowitz	1052 East 8th Street, Brooklyn, New York
Joseph Ravitch	230 Central Park West, New York City
Saul Ravitch	15 West 81st Street, New York City
Karl Robbins	300 Central Park West, New York City
Samuel Rosen	1185 Park Avenue, New York City
Arthur M. Rosenbloom	812 Park Avenue, New York City
Jonathan Rubin	25 Central Park West, New York City
Jack P. Sadowsky	14 East 75th Street, New York City
Louis Satenstein	115 Central Park West, New York City
Julius Schwartz	1016 - 5th Avenue, New York City
Charles H. Silver	101 Central Park West, New York City
Louis Surut	885 Park Avenue, New York City
Jerome I. Udell	300 Central Park West, New York City
Walter W. Weismann	180 East 79th Street, New York City

7. The terms and conditions of the consolidation are as follows:

(a) The name of the new corporation, the territory in which it is to operate, the office of the new corporation, the number of its directors and the names and residences of the directors

until the first annual meeting are as heretofore set forth.

~~(b) The purposes and objects of such new corporation shall be:~~

~~To support and maintain an institution known as Beth Israel Hospital and the maternity pavilion thereof known as Jewish Maternity Hospital.~~

~~To give medical and surgical aid, nursing and dispensary service and medical social service to the sick or disabled, to give pre-natal, obstetrical and post partum care to women, and to cooperate with health and welfare organizations in the prevention of disease, all toward the service of humanity in accord with the highest ideals of medical science.~~

~~To provide the services of this institution to poor people free of charge, regardless of race, creed or nationality.~~

~~In furtherance of the foregoing objects, to make the services of this institution available to persons who are able to pay therefor in order to help defray the cost of providing its services to the poor.~~

~~(c) Mr. Louis Satenstein, one of the directors above named, shall be appointed Chairman of a committee to be named by the President of Beth Israel Hospital for the ensuing year, to deal with matters relating to the Maternity Division of the hospital.~~

~~(d) The time of the annual election shall be the second Tuesday of December in each year.~~

IN WITNESS WHEREOF, we have made and subscribed this Certificate this 23rd day of April, 1946.

Vice-President of Beth Israel Hospital Association

Secretary of Beth Israel Hospital Association

President of Jewish Maternity Hospital

Secretary of Jewish Maternity Hospital

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this 23rd day of April, 1946, before me personally came CHARLES H. SILVER, SAMUEL HAUSMAN, LOUIS SATENSTEIN and NATHAN RATNOFF, to me known and known to me to be the individuals described in and who executed the foregoing Certificate of Consolidation, and they severally duly acknowledged to me that they executed the same.

Nathan D. Perlman
Justice Court of Special
Sessions of City of New York

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

CHARLES H. SILVER and SAMUEL HAUSMAN, being duly sworn, depose and say, and each for himself deposes and says:

That he, Charles H. Silver, is a Vice-President and he, Samuel Hausman, is the Secretary of Beth Israel Hospital Association, which has more than 500 members; that he was duly authorized to execute and file the foregoing Certificate of Consolidation by the votes cast by two-thirds of the members of said corporation present, in person or by proxy, at a meeting of such corporation held at 10/17 Livingston Place, in the Borough of Manhattan, New York City, New York, on the 23rd day of April, 1946, upon notice prescribed by Section Forty-Three of the Membership Corporations Law.

Chas H. Silver
Charles H. Silver

Sworn to before me this
23rd day of April, 1946.

Samuel Hausman
Samuel Hausman

Nathan D. Perlman
Justice Court of
Special Sessions
City of New York

X 4699-106-C

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

LOUIS SATENSTEIN and NATHAN RATNOFF, being duly sworn, depose and say, and each for himself deposes and says:

That he, Louis Satenstein, is the President and he, Nathan Ratnoff, is the Secretary of Jewish Maternity Hospital which has more than 500 members; that he was duly authorized to execute and file the foregoing Certificate of Consolidation by the votes cast by two-thirds of the members of said corporation present, in person or by proxy, at a meeting of such corporation, held at 10/17 Livingston Place, in the Borough of Manhattan, New York City, New York, on the 23rd day of April, 1946, upon notice prescribed by Section Forty-Three of the Membership Corporations Law.

Louis Satenstein

Nathan Ratnoff

Sworn to before me this
23rd day of April, 1946.

Nathan D. Perlman
Justice Court of
Special Sessions of
City of New York

4699-166-7

The State Department of Social Welfare of the State of New York does hereby consent to and approve the foregoing Certificate of Consolidation.

Dated, New York, 1946.

STATE DEPARTMENT OF SOCIAL WELFARE

By: _____

4698-106-8

Upon the foregoing Certificate of Consolidation, and the petition of BETH ISRAEL HOSPITAL ASSOCIATION and JEWISH MATERNITY HOSPITAL, duly verified April 23, 1946, I,

LOUIS A. VALENTE

a Justice of the Supreme Court of the First Judicial District of the State of New York, hereby approve the said Certificate of Consolidation.

Dated, New York, July 3rd 1946.

Louis A. Valente

JUSTICE OF THE SUPREME COURT

4696-46-9

469 C - 106

5/24/40 37P-163
my-Co

CERTIFICATE OF CONSOLIDATION FORMING BETH ISRAEL HOSPITAL ASSOCIATION, PURSUANT TO SECTION FIFTY OF THE MEMBERSHIP CORPORATIONS LAW. G.S.

4/-7/04 69g-142
my-Co

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 18 1946
TAX $ None
FILING FEE $ 75

BY

IRVING D. LIPKOWITZ
ATTORNEY AT LAW
270 BROADWAY
NEW YORK CITY

APR 1948
OFFICE OF THE SECRETARY

1946

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 October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

This is to inform you that

BETH ISRAEL HOSPITAL ASSOCIATION
(Name and Address of Corporation)

filed a "Certificate of Report of Existence" with the Secretary of State, Albany, N.Y. on _____
(Date)

-58-

BETH ISRAEL HOSPITAL ASSOCIATION
BY: [signature]
(For Signature and Title)
President

Please mail to:

New York State Department of Social Welfare
112 State Street
Albany, New York

6615 (b)

Certificate of Report of Existence
of

BETH ISAREL HOSPITAL ASSOCIATION
Exact Name of Corporation

Pursuant to Section 57 of the Membership Corporations Law

1. The name of the corporation is Beth Israel Hospital Association. The Name of Corporation

original name was Beth Israel Hospital Association and Jewish Maternity Hospital, which were consolidated into Beth Israel Hospital Association by certificate of Consolidation filed July 8, 1946.
If name has been changed, insert original name.

2. The certificate of incorporation was filed in the Department of State on July 8, 1946.
Date of Incorporation

3. The corporation was formed pursuant to the Membership Corporations Law.
Cite Incorporation Statute

4. The existence of the foregoing corporation is hereby continued.

BETH ISRAEL HOSPITAL ASSOCIATION

BY: Chas. H. Silver
President

To be signed by an officer, trustee, director or five members in good standing.

State of New York }
County of New York } SS.:

On this 28th day of December, 1950, before me personally appeared CHARLES H. SILVER to me personally known and known to me to be the person(s) described in and who executed the foregoing certificate, and (he) ~~(they)~~ thereupon acknowledged to me that (he) ~~(they)~~ executed the same for the uses and purposes therein mentioned.

Samuel Romanoff
Notary Public

County of New York

NOTE: If the foregoing acknowledgment is taken without the State of New York, the signature of the notary public should be authenticated by a certificate of the clerk of the county in which such notary has power to act, or other proper officer.

SAMUEL ROMANOFF
Notary Public, State of New York
No. 41-3336200
Qualified in Queens County
Certificate filed with
New York County
Commission Expires March 30,

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 October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

CERTIFICATE OF CHANGE TO PROVIDE THAT THE NUMBER OF DIRECTORS SHALL BE NOT LESS THAN 35 NOR MORE THAN 75, OF BETH ISRAEL HOSPITAL ASSOCIATION, PURSUANT TO SECTION 30 OF THE MEMBERSHIP CORPORATIONS LAW.

WE, CHARLES H. SILVER and IRVING D. KARPAS, being respectively the president and the secretary of BETH ISRAEL HOSPITAL ASSOCIATION, hereby certify:

1. The name of the corporation is BETH ISRAEL HOSPITAL ASSOCIATION.

188961

2. The certificate of incorporation was filed in the office of the secretary of state on the 8th day of July, 1946.

3. The statement as to the number of directors to be amended is:

The number of directors previously authorized is not less than 35 nor more than 40. The number of directors as increased by this certificate shall hereafter be not less than 35 nor more than 75.

Chas H. Silver
President

Secretary

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this 23rd day of November, 1959, before me personally came CHARLES H. SILVER and IRVING D. KARPAS, to me known and known to me to be the persons described in and who executed the foregoing certificate, and that they thereupon duly acknowledged that they executed the same.

IDA BUDER
Notary Public, State of New York
No. 03 [illegible]
Qualified in [illegible] County
Certificate filed [illegible]
Commission expires [illegible]

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

CHARLES H. SILVER and IRVING D. KARPAS, being duly sworn depose and say, and each for himself deposes and says, that he, CHARLES H. SILVER, is the president of BETH ISRAEL HOSPITAL ASSOCIATION, and he, IRVING D. KARPAS, is the secretary thereof; that they have been duly authorized to execute and file the foregoing certificate of increase in number of directors by the concurring vote of a majority of the members of the corporation present at a special meeting held on the 23rd day of November 1959, upon notice pursuant to Section 43 of the Membership Corporations Law.

Subscribed to and sworn to before me this 23rd day of November, 1959.

RDA BERGER
Notary Public, State of New York
No. 03-5260900
Qualified in Bronx County
Certificate filed in New York County
Commission expires March 30, [illegible]

188961

CERTIFICATE OF CHANGE TO PROVIDE THAT THE NUMBER OF DIRECTORS SHALL BE NOT LESS THAN 35 NOR MORE THAN 75, OF BETH ISRAEL HOSPITAL ASSOCIATION, PURSUANT TO SECTION 30 OF THE MEMBERSHIP CORPORATIONS LAW

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 2 - 1959
TAX $ none
FILING FEE $ 25.00

Secretary of State

By

LIPKOWITZ & PLAUT
ATTORNEYS AT LAW
16 WEST 46TH STREET
NEW YORK 36 N. Y.

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

CERTIFICATE OF CHANGE OF NAME OF
BETH ISRAEL HOSPITAL ASSOCIATION

-to-

BETH ISRAEL MEDICAL CENTER

(Pursuant to Section 40 of the
General Corporation Law)

WE, CHARLES H. SILVER and IRVING D. KARPAS, being respectively the President and Secretary of BETH ISRAEL HOSPITAL ASSOCIATION, certify:

1. The name of this corporation is BETH ISRAEL HOSPITAL ASSOCIATION.

339543

2. The Certificate of Incorporation of BETH ISRAEL HOSPITAL ASSOCIATION was filed in the Office of the Secretary of State on the 28th day of May, 1890, and thereafter by Certificate of Consolidation filed in the Office of the Secretary of State on August 8, 1946 the said BETH ISRAEL HOSPITAL ASSOCIATION was consolidated with JEWISH MATERNITY HOSPITAL, whose Certificate of Incorporation was filed in the Office of the Secretary of State on the 27th day of April, 1906, and the name of the corporations as consolidated was BETH ISRAEL HOSPITAL ASSOCIATION.

3. The new name to be assumed by this corporation is BETH ISRAEL MEDICAL CENTER.

IN WITNESS WHEREOF, we have made and subscribed this Certificate this 24 day of February, 1965.

Chas. H. Silver
President

Secretary

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 24 day of February, 1965 before me personally came CHARLES H. SILVER and IRVING D. KARPAS, to me known and known to me to be the persons subscribed in and who executed the foregoing Certificate of Change of Name, and they thereupon severally duly acknowledged to me that they executed the same.

Notary Public

IRVING SCHAEFFER
Notary Public
Term Expires

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CHARLES H. SILVER and IRVING D. KARPAS, being duly sworn, depose and says, and each for himself deposes and says:

That he, CHARLES H. SILVER, is President of BETH-ISRAEL HOSPITAL ASSOCIATION, and he, IRVING D. KARPAS, is Secretary thereof; that they were duly authorized to execute and file the foregoing Certificate of Change of Name of said corporation by votes of a majority of the Board of Trustees of record of the corporation who are entitled to vote, and that such votes were cast at a meeting called for that purpose, which meeting was held on the 24 day of February, 1965, at 10 Nathan D. Perlman Place, Borough of Manhattan, City of New York, the said Board of Trustees constitute all of the members of said corporation.

Sworn to before me
this 24 day
of February, 1965.

Irving Schaeffer
Notary Public

IRVING SCHAEFFER
Notary Public, State of New York
No. 24-[illegible]
Qualified in [illegible]

Term Expires [illegible] 65

Chas H Silver
Charles H. Silver

Irving D Karpas
Irving D. Karpas

2.

46 Pg - 106

48954

CERTIFICATE OF CHANGE OF
NAME OF BETH ISRAEL
HOSPITAL ASSOCIATION

-to-

BETH ISRAEL MEDICAL CENTER

(Pursuant to Section 40
of the General Corporation
Law)

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAR 31 1965
TAX $ none
FILING FEE $ 3 P

John P. Lomenzo
Secretary of State

SIDNEY SCHUTZ
Attorney at law
110 West 57th Street
New York 19, New York

By

Do not send
S 3/22
3/30

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 October 21, 2015.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

State of New York

A101776

Department of State

DIVISION OF CORPORATIONS AND STATE RECORDS
162 Washington Avenue, Albany 12225

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION OF

BETH ISRAEL MEDICAL CENTER

Exact Name of Corporation

Under Section 113 of the Not-for-Profit Corporation Law

The name of the corporation is BETH ISRAEL MEDICAL CENTER

The original name was BETH ISRAEL HOSPITAL ASSOCIATION

The certificate of incorporation was filed by the Department of State on July 8, 1946
Date of Incorporation

The corporation was formed pursuant to An Act for the Incorporation of Benevolent, Charitable, Scientific and Missionary Societies
Cite Incorporation Statute

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 10 Nathan D. Perlman Place, New York, N.Y.

That under Section 201, it is a Type B (Insert A, B, C or D) Not-for-Profit Corporation as defined in this chapter.

IN WITNESS WHEREOF, this certificate has been subscribed this 30 day of August 1973 at the County of by the undersigned who affirm(s) that the statements made herein are true under the penalties of perjury.

To be signed pursuant to Section 104(d) of the N-PCL

Jack A. Rothenstein, Secretary

Seymour J. Phillips Vice President

NOTE: The fee for filing the foregoing certificate is $10 payable to the Department of State by certified check or money order. Every corporation required to file under Paragraph (a) of Section 113 of the N-PCL will be considered a Type B corporation until it has filed a certificate of type.

CO-109

- 2 -

A101776

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION OF

BETH ISRAEL MEDICAL CENTER

Exact Name of Corporation

Under Section 113
of the
NOT-FOR-PROFIT CORPORATION LAW

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 18 1973

TAX $ None
FILING FEE $ 10

John P. Lomenzo
Secretary of State
By [illegible]

BETH ISRAEL MEDICAL CENTER

Name and address of filer
10 Nathan D. Perlman Place
New York, New York

2

1

Incorporated 3-31-65
Formerly Consolidated
Beth Israel Hospital
Association

7-8-76

NFP

4690-106

Non Profit
Corporation

I

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 October 21, 2015.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

A2926634

CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION

- of -

BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the
Not-For-Profit Corporation Law)

WE, the undersigned, hereby certify:

1. The name of the corporation is BETH ISRAEL MEDICAL CENTER. It was formed under the name of BETH ISRAEL HOSPITAL ASSOCIATION, and its name was changed from that name to BETH ISRAEL MEDICAL CENTER by Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965.

2. The Certificate of Incorporation of said corporation was filed by the Department of State on the 28th day of May, 1890 and thereafter by Certificate of Consolidation pursuant to the Membership Corporation Law filed by the Department of State on ~~August~~ July 8, 1946 the said BETH ISRAEL HOSPITAL ASSOCIATION was consolidated with JEWISH MATERNITY HOSPITAL, whose Certificate of Incorporation was filed by the Secretary of State on the 27th day of April, 1906, and the name of the corporation as consolidated was BETH ISRAEL HOSPITAL ASSOCIATION, and thereafter the name was changed to BETH ISRAEL MEDICAL CENTER as aforestated.

3. The corporation is a corporation as defined under sub-paragraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law, and is a Type B corporation under Section 201, and shall continue to be a Type B corporation;

4. The post office address to which the Secretary of State shall mail a copy of any notice required by law is:

Beth Israel Medical Center, 10 Nathan D. Perlman Place, New York, New York 10003.

5. The corporate powers of the corporation are restated to include the following;

To provide on a non-profit basis, hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical care and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

6. The Certificate of Incorporation is amended so that the corporation is empowered:

(a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in paragraph 5 hereof.

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the corporation's property.

(c) To do and perform all acts necessary to accomplish the purposes of the corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the corporation, its successors and assigns, so long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development.

7. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the entire Board of Directors, voting in person, at a meeting of the Board of Directors duly called for that purpose upon due notice to all Directors of record given in the manner required for a regular meeting of the corporation; said meeting was held at the office of the corporation, 10 Nathan D. Perlman Place, New York, New York, at 2:00 P.M. on December 17, 1975; a majority of the entire Board of Directors was present; the Certificate of Incorporation of the corporation does not require the consent of more than a majority of the entire Board of Directors to amend the corporate powers of the corporation. There are no members entitled to vote.

8. The following approvals or consents were endorsed on or annexed to the aforementioned Certificate of Incorporation and the aforementioned Certificate of Consolidation at the time they were filed with the Department of State:

(a) A Justice of the Supreme Court of the State of New York, First Judicial Department; and

(b) The State Board of Social Welfare approving the consolidation of Beth Israel Hospital Association and Jewish Maternity Hospital, under the designation of Beth Israel Hospital Association.

No other approvals were required at the time of filing of said Certificate of Incorporation and Certificate of Consolidation.

The following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State:

(c) A Justice of the Supreme Court of the State of New York, First Judicial Department; and

(d) Public Health Council of the State of New York.

IN WITNESS WHEREOF, we have executed this Certificate this 18th day of December, 1975.

Chas. N. Silver
President

Secretary

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CHARLES H. SILVER and JACK A. ROTHENSTEIN, being severally, duly sworn, depose and say that they are the President and Secretary, respectively of BETH ISRAEL MEDICAL CENTER, and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of BETH ISRAEL MEDICAL CENTER, and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

CHARLES H. SILVER

JACK A. ROTHENSTEIN

Subscribed and sworn to
before me this 18th
day of December, 1975.

Notary Public

RHEA L. DAVIDSON
[illegible] York
No. [illegible]
[illegible]
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CHARLES H. SILVER and JACK A. ROTHENSTEIN, being severally, duly sworn, depose and say:

1. That CHARLES H. SILVER is the President of BETH ISRAEL MEDICAL CENTER mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to amend the corporate powers of the corporation.

2. That JACK A. ROTHENSTEIN is the Secretary of BETH ISRAEL MEDICAL CENTER mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein to amend the corporate powers of the corporation.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the entire Board of Directors at a regular meeting.

4. Such consent was given by affirmative votes cast in person by a majority of the entire Board of Directors at a meeting of the Directors duly called for that purpose after due notice to the entire Board of Directors of the corporation given in the manner required for a regular meeting of the corporation; said meeting was held at 10 Nathan D. Perlman Place, New York, New York on December 17, 1975, at 2:00 P.M.; a majority of the entire Board of Directors was present. There are no members entitled to vote.

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5. That the Certificate of Incorporation of this corporation does not require the consent of more than amajority of the entire Board of Directors to amend the corporate powers of the corporation.

CHARLES H. SILVER

JACK A. ROTHENSTEIN

Sworn to before me this
18th day of December, 1975.

Notary Public

RHEA L. DAVIDSON
Notary Public, State of New York
No. [illegible] 17291
Qualified in [illegible]
Commission Expires March 30, 1977

CONSENT BY COMMISSIONER OF HEALTH
TO FILING OF CERTIFICATE TO AMEND
CORPORATE POWERS

I, ROBERT P. WHALEN, M.D., Commissioner of Health of the State of New York, do this 26th day of January, 1976 pursuant to Section 804 of the Not-For-Profit Corporation Law, hereby certify that I consent to the filing with the Secretary of State of the State of New York of the foregoing Certificate.

ROBERT P. WHALEN, M.D.
COMMISSIONER OF HEALTH

By Emil T. Reese M.D.
Deputy Commissioner

WAIVER OF NOTICE OF APPLICATION
BY ATTORNEY GENERAL

Notice of application waived. (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated:)_____

LOUIS J. LEFKOWITZ,
ATTORNEY GENERAL

9

CONSENT BY A RESIDENT SUPREME COURT JUSTICE TO FILING OF CERTIFICATE TO AMEND CORPORATE POWERS

I, HYMAN KORN, Justice of the Supreme Court of the State of New York for the First Judicial District, hereby approve the within Certificate of amend the corporate powers of the corporation, Beth Israel Medical Center.

Dated: NEW YORK, N.Y.

FEB 3 - 1976

Justice of the Supreme Court

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated: JANUARY 30, 1976

LOUIS J. LEFKOWITZ
Attorney General

By Peter H. Berkowitz
Assistant Attorney General

10

STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

January 26, 1976

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 23rd day of January, 1976, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS
Secretary

Sent to: Sidney Schutz, Esq.
55 Fifth Avenue
New York, New York 10003

cc: Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION

- of -

BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the
Not-For-Profit Corporation Law)

STATE OF NEW YORK
DEPARTMENT OF STATE
TAX $ none
FILING FEE $ 30
FILED FEB 10 1976
Secretary of State
By

SIDNEY SCHUTZ
Attorney at Law
55 Fifth Avenue
New York, New York 10003
(212) 929-0400

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 October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

HSC

The University of the State of New York

STATE OF NEW YORK :
: ss.:
COUNTY OF ALBANY :

627256

627256

Pursuant to the provisions of section 804 of the Not-for-profit Corporation Law, consent is hereby given to the restatement and amendment of the text of the certificate of incorporation of BETH ISRAEL MEDICAL CENTER as set forth in the annexed restated and amended certificate of incorporation.

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 6th day of September, 1985.

Gordon M. Ambach
Commissioner of Education

By:

Robert D. Stone
Counsel and Deputy Commissioner
for Legal Affairs

USC

RESTATED CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL MEDICAL CENTER

(Under Section 805 of the Not-for-Profit Corporation Law)

USC

We, the undersigned, being the President and Secretary of BETH ISRAEL MEDICAL CENTER, do hereby certify that:

(1) The name of the corporation is: BETH ISRAEL MEDICAL CENTER (the "Corporation").

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965.

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(3) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of said law.

(4) The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The Post Office address to which the Secretary shall mail a copy of any process against the corporation served him is:

Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

(5) The Restated Certificate of Incorporation amends or changes the Certificate of Consolidation filed July 8, 1946 and all amendments thereto as follows:

(a) The purposes and powers of the constituent corporations that were parties to the Certificate of Consolidation are hereby amended to read as set forth in Article THIRD of the Restated Certificate of Incorporation.

(b) Paragraph 5 of the Certificate of Consolidation (relating to the number of directors) is hereby amended to read as set forth in Article SIXTH of the Restated Certificate of Incorporation.

(c) To make clear that the Corporation shall have no members, as set forth in Article SIXTH of the Restated Certificate of Incorporation.

(d) Provisions relating to the duration of the Corporation's existence, post office address and by-laws, all as continued by the Certificate of Consolidation, are amended to read as set forth in Articles SEVENTH, EIGHTH and NINTH, respectively, of the Restated Certificate of Incorporation.

(6) The Restated Certificate of Incorporation was authorized by a majority of the votes cast at a meeting of members by the members entitled to vote thereon, such majority having been at least equal to the quorum required at such meeting.

FIRST: The name of the corporation is: BETH ISRAEL MEDICAL CENTER (hereinafter referred to as the "Corporation").

SECOND: (a) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.

(b) The Corporation shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

THIRD: The Corporation is organized exclusively for charitable and educational purposes, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and the corresponding provisions of any future United States Internal Revenue Law (collectively, the "Code"), which purposes shall include, but are not limited to, the following:

(a) to establish, maintain and/or operate an institution or institutions with facilities which include inpatient beds and a broad range of medical services, including dental services, for the diagnosis and treatment of patients, and associated services, including, but not limited to, outpatient care, home care, and extended care provided that the Corporation has obtained all approvals and consents as required by law prior to the provision of any such services;

(b) to operate a program for the training of nurses leading to the degree of associate in applied science (A.A.S.); to engage, in conjunction with universities, colleges and professional schools, in programs related to the training of other health care professionals;

(c) to promote and carry on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases, sickness, injuries and disabilities;

(d) to engage in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(e) to provide, on a non-profit basis, hospital facilities and services for the care and treatment of

SB 6

persons who are acutely ill who otherwise require medical care and related services of a kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

In furtherance of these objects and purposes, the Corporation is authorized:

(a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in this Article;

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property; and

(c) To do and perform all acts necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Cor-

poration, its successors and assigns, so long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development.

Notwithstanding any other provision of this Article Third, the Corporation may not exercise any power, either express or implied, in such a manner as to disqualify the Corporation from exemption from Federal income tax under sections 501(a) and 501(c)(3) of the Code. It is the intention of the Corporation at all times to qualify and remain qualified as exempt from Federal income tax under sections 501(a) and 501(c)(3) of the Code. Accordingly:

(1) The Corporation shall receive, administer, maintain, use and employ its funds, net earnings, and real and personal property exclusively for charitable and educational purposes, within the meaning of section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Code;

(2) No part of the net earnings of the Corporation shall inure to the benefit of any officer, trustee, director, member, employee or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation and to make

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payments and distributions in furtherance of one or more of its purposes). No officer, trustee, director, member or employee of the Corporation or any private individual shall be entitled to share in the distribution of any corporate assets upon dissolution of the Corporation or in any other event;

(3) The Corporation shall not carry on propaganda or otherwise attempt to influence legislation to an extent that would disqualify it from exemption from Federal income tax under section 501(a) of the Code by reason of attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements or otherwise) in any political campaign on behalf of or in opposition to any candidate for public office;

(4) In the event of liquidation, dissolution or winding up of the business and affairs of the Corporation upon approval of a Justice of the Supreme Court of the State of New York, whether voluntary or involuntary or by operation of law, the Board of Trustees shall, after paying or making provision for payment of all liabilities of the Corporation, dispose of all assets exclusively for the purposes of the Corporation or to one or more corporations or organizations located in the United States as shall at

the time qualify as exempt under section 501(a) of the Code pursuant to section 501(c)(3) of the Code, or to one or more corporations or other organizations, contributions to which are deductible under section 170(c)(1) of the Code, in such manner as the Board of Trustees shall determine. Any assets not so distributed shall be distributed by a court of competent jurisdiction exclusively for such purposes or to such corporations or other organizations as said court shall determine are organized and operated solely for such purposes; and

(5) If the Corporation shall at any time be a private foundation within the meaning of section 509 of the Code, the Corporation, so long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to subject it to the tax on undistributed income imposed by section 4942 of the Code, and, so long as it shall be such a private foundation, the Corporation shall not (i) engage in any act of self-dealing as defined in section 4941(d) of the Code; (ii) retain any excess business holdings as defined in section 4943(c) of the Code; (iii) make any investments in such manner as to subject it to tax under section 4944 of

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the Code; or (iv) make any taxable expenditures as defined in section 4945(d) of the Code.

FOURTH: The principal office of the Corporation is to be located in the County and City of New York, State of New York.

FIFTH: The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-laws of the Corporation, and in any case shall be not less than thirty-five (35) nor more than seventy-five (75). The Corporation shall have no members.

SIXTH: The existence of the Corporation shall be perpetual.

SEVENTH: The Corporation hereby designates the Secretary of State as agent of the Corporation upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon him is: 10 Nathan D. Perlman Place, New York, New York 10003.

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EIGHTH: By-laws of the Corporation may be adopted or amended by an affirmative vote of two-thirds of the Trustees present at any regular meeting, or at any special meeting called for that purpose, at which a quorum of trustees is present so long as the by-laws are not inconsistent with the provisions of this Certificate or the laws of the State of New York.

IN WITNESS WHEREOF, we hereunto sign our names and affirm that the statements made herein are true under the penalties of perjury, this 29th day of May, 1985, at New York, New York.

President - Robert Newman

Secretary - Robert L. Gibsberg

12

I, THOMAS J. HUGHES Justice of the Supreme Court of the State of New York, First Judicial District, do hereby approve the foregoing Restated Certificate of Incorporation of Beth Israel Medical Center, and consent that the same be filed.

Thomas J. Hughes
Justice of the Supreme Court
of the State of New York

Dated: SEP 19 1985

THOMAS J. HUGHES

NEW YORK COUNTY

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREIN AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

LAURA WERNER
Assistant Attorney General

3

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 30, 1985

KNOW ALL MEN BY THESE PRESENTS:

After inquiry and investigation and in accordance with action taken at a meeting of the Public Health Council held on the 26th day of July, 1985, I hereby certify that the Restated Certificate of Incorporation of Beth Israel Medical Center dated May 29, 1985 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Nancy A. Massaroni
NANCY A. MASSARONI
Executive Secretary

Sent to: Robert G. Newman, M.D., President
Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

RECEIVED
AUG 2 1985
PRESIDENT
Beth Israel Medical Center

15

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USC

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED OCT 1 - 1985
CHK. OR CHECK $ 49.50
FILING FEE $ 30.-
TAX $
COUNTY FEE $ 9.50
CERT $
COPY $
REFUND $ 1.00
SPEC HANDLE $
BY:

RESTATED CERTIFICATE OF
INCORPORATION OF
BETH ISRAEL MEDICAL CENTER

(Under Section 805 of the
Not-For-Profit Corporation
Law)

Paul, Weiss, Rifkind, Wharton & Garrison
ATTORNEYS AT LAW
345 PARK AVENUE, NEW YORK, N. Y. 10154

USC

FILED
SEP 27 9 AM '85
OCT 1 9 AM '85

BILLED

SEP 12 1985

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

P H

CERTIFICATE OF AMENDMENT OF THE

RESTATED CERTIFICATE OF INCORPORATION OF

BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the Not-For-Profit Corporation Law)

P H

We, the undersigned, being the President and Secretary of BETH ISRAEL MEDICAL CENTER, do hereby certify that:

(1) The name of the corporation is: BETH ISRAEL MEDICAL CENTER (the "Corporation").

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965, and filed by the Secretary of State on March 31, 1965. A restated certificate of

incorporation was filed by the Department of State on October 1, 1985.

(3) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.

(4) The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The Post Office address to which the Secretary of State shall mail a copy of any process served upon him is as follows:

Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

(5) The restated certificate of incorporation is amended to permit the Corporation to have members. Article FIFTH of the restated certificate is amended by deleting therefrom the sentence, "The Corporation shall have no members." Article FIFTH shall state as follows:

> The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-Laws of the Corporation, and in any case shall not be less than thirty-five (35) nor more than seventy-five (75).

(6) The above amendment to the restated certificate of incorporation was authorized by a vote of the majority of the entire Board of Trustees.

IN WITNESS WHEREOF, we have signed this certificate this 16th date of December, 1987.

President - Robert Newman

Secretary - Stephen A. Hochman

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ROBERT NEWMAN, being duly sworn, deposes and say:

1. I am the President of Beth Israel Medical Center.

2. I have read the annexed Certificate of Amendment and know the contents thereof to be true.

Robert Newman

Sworn to before me this
16th day of DECEMBER, 1987

Notary Public

JOCELYN M. GATON
NOTARY PUBLIC, State of New York
No. 60 4821964
Qualified in Westchester County
Commission Expires Feb. 28, 1989

~~The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.~~

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

By: _____

Date: _____

I, JAWN A. SANDIFER, a Justice of the Supreme Court of the State of New York for the FIRST Judicial District do hereby approve the foregoing Certificate of Amendment of the RESTATED Certificate of Incorporation of Beth Israel Medical Center, and consent that the same be filed.

Date: FEB 24 1988
New York, New York

J.S.C.
JAWN A. SANDIFER
OF THE STATE OF NEW YORK
First Judicial District

FEB 16 1988
THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.
ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK
By

5

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

Morton P. Hyman
Chairman

January , 1987

Robert M. Kaufman, Esq.
Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Re: Proposed Certificate of Amendment of the Restated Certificate of Incorporation: Beth Israel Medical Center

Dear Mr. Kaufman:

The proposed Certificate of Amendment to the Restated Certificate of Incorporation of Beth Israel Medical Center, as executed on the 16th day of December, 1987, does not, pursuant to §804(a) of the Not-for-Profit Corporation Law, require the formal approval of the Public Health Council, as the amendment neither adds, changes or eliminates a purpose, power or provision the inclusion of which requires the approval of the Council, nor changes the name of the corporation.

Sincerely,

Karen Westervelt

Karen Westervelt
Acting Executive Secretary
Public Health Council

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P H

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 02 1988

AMT. OF CHECK $ 80
FILING FEE $ 30
TAX $
COUNTY FEE $
COPY $ 40
CERT $
REFUND $
SPEC HANDLE $ 10

BY:

4

New
TYPE B

BETH ISRAEL MEDICAL CENTER

Certificate of Amendment
of Restated
Certificate of Incorporation

(Under Section 803 of the
Not-For-Profit
Corporation Law)

a

FILED

PROSKAUER ROSE GOETZ & MENDELSOHN
COUNSELLORS AT LAW
300 PARK AVENUE
BOROUGH OF MANHATTAN,
NEW YORK CITY 10022

NFP Type
Used 3/31/10
type B

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on October 21, 2015.

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

F990702000684 CSC 45

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the Not-For-Profit Corporation Law)

The undersigned, the sole member of Beth Israel Medical Center, a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York (the "Corporation") does hereby certify as follows:

(1) The name of the corporation is: **BETH ISRAEL MEDICAL CENTER**

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965, and filed by the Secretary of State on March 31, 1965. A restated certificate of incorporation was filed by the Department of State of October 1, 1985. A certificate of amendment of the restated certificate of incorporation was filed by the Department of State on March 2, 1988.

(3) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.

(4) The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The Post office address to which the Secretary of State shall mail a copy of any process served upon him is as follows:

Beth Israel Medical Center
10 Nathan D. Perlman Place
New York, New York 10003

(5) The certificate is amended to delete therefrom the fixed number of trustees of the Corporation and permit the number of trustees of the Corporation to be fixed by, or determined in accordance with, the by-laws of the Corporation. Article FIFTH of the certificate of incorporation is amended to delete from the last clause of the sentence the language, "and in any case shall not be less than thirty-five (35) nor more than seventy-five (75)." Article FIFTH is hereby amended to read as follows:

> The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-laws of the Corporation

(6) The foregoing amendment to the certificate of incorporation of the Corporation was authorized by a majority of the votes cast at a meeting of the sole member of the Corporation, held on June 7, 1999, the affirmative votes cast in favor of the amendment being at least equal to the quorum, blank votes and abstentions not being counted in the number of votes cast.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 15 day of June, 1999 and affirms the statements made herein are true under penalties of perjury.

CONTINUUM HEALTH PARTNERS, INC.

By: _____
Robert G. Newman, M.D., President
Continuum Health Partners, Inc.
555 West 57th Street
New York, New York 10019

By: _____
Kathryn Meyer, Assistant Secretary
Continuum Health Partners, Inc.
555 West 57th Street
New York, New York 10019

/h:conteen

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CSC 45

STATE OF NEW YORK
DEPARTMENT OF STATE
JUL 0 2 1999
FILED
TAX $
BY:

CERTIFICATE OF AMENDMENT

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the No-For-Profit Corporation Law

JUL 2 7 36 PM '99

JUL 2 1 35 PM '99

FILED BY: Anna L. Brown, Esq
BETH ISRAEL MEDICAL CENTER
555 West 57th Street
18th Floor-legal Dept
New York, NY 10019
Cust. Ref#295963MPJ

DRAWDOWN

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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 October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

F020927000245

Exhibit A

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BETH ISRAEL MEDICAL CENTER
Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Chief Executive Officer and the Assistant Secretary of Continuum Health Partners, Inc , the sole member of Beth Israel Medical Center, a New York State not-for profit corporation (the "Corporation"), do hereby certify and set forth:

1 The name of the Corporation is "Beth Israel Medical Center". The Corporation was formed under the name "Beth Israel Hospital Association"

2 The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946 (the "Certificate of Incorporation") The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association The name was changed from that name to Beth Israel Medical Center by a Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965 A Restated Certificate of Incorporation was filed by the Department of State on October 1, 1985 A Certificate of Amendment of the Restated Certificate of Incorporation was filed by the Department of State on March 2, 1988 A Certificate of Incorporation was filed by the Department of State on July 2, 1999.

3 The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B Corporation under section 201 of said law and shall remain a Type B Corporation after this amendment to the Certificate of Incorporation becomes effective.

4. The Corporation's Certificate of Incorporation is hereby amended by adding the following language to the end of paragraph (4) of Article THIRD

> " Notwithstanding any other provisions of this paragraph (4), the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development or his nominee, subject to approval of a Justice of the

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Supreme Court of the State of New York pursuant to New York State Law,"

5 Article EIGHTH of the Corporation's Certificate of Incorporation is hereby amended to delete the language, ["EIGHTH: By-laws of the Corporation may be adopted or amended by an affirmative vote of two-thirds of the Trustees present at any regular meeting, or at any special meeting called for that purpose, at which a quorum of trustees is present so long as the by-laws are not inconsistent with the provisions of this Certificate or the laws of the State of New York "] and insert the following language in its place.

"EIGHTH So long as a mortgage on the Corporation's property is insured or held by the United States Secretary of Housing and Urban Development, the Corporation shall not amend its bylaws to be inconsistent with this Certificate of Incorporation or any Regulatory Agreement between the Corporation and the said Secretary."

6 A new Article NINTH is added following Article EIGHTH as follows.

"NINTH So long as a mortgage on the Corporation's property is insured or held by the United States Secretary of Housing and Urban Development, this Certificate of Incorporation may not be amended without the prior written approval of said Secretary "

7 The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is

Beth Israel Medical Center
c/o Continuum Health Partners, Inc
555 West 57th Street, 18th Floor
New York, New York 10019
Attn. General Counsel

8. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting held on July 17, 2002.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment this 18th day of July, 2002 and affirmed the contents to be true under the penalty of perjury.

CONTINUUM HEALTH PARTNERS, INC.

By: _____
Peter A. Kelly
President and Chief Executive Officer

By: Kathryn C. Meyer
Kathryn C. Meyer
Assistant Secretary

The undersigned has no objection to the granting of Judicial approval

hereon and waives statutory notice

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

by Laura Werner DATE August 5 2002
ASSISTANT ATTORNEY GENERAL

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

by: _____

Date: _____

PHYLLIS GANGEL-JACOB

I, _____, a Justice of the Supreme Court of the State of New York for the First Judicial District do hereby approve of the foregoing Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

and consent that the same be filed

Date: August 23, 2002

Phyllis Gangel-Jacob
J.S.C.

PHYLLIS GANGEL-JACOB

4

STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M D , M P H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 16, 2002

Frederick B. Martinez
Sidley Austin Brown & Wood LLP
787 Seventh Avenue
New York, NY 10019

Re: Certificate of Amendment of the Restated Certificate of Incorporation of Beth Israel Medical Center

Dear Mr. Martinez:

The Certificate of Amendment of the Restated Certificate of Incorporation of Beth Israel Medical Center, dated July 18, 2002, does not require the formal approval of the Public Health Council or Commissioner of Health, since the Certificate of Amendment neither changes the corporation's name nor makes any substantive change to the corporation's purposes which would require such approval under either the Public Health Law or Not-for-Profit Corporation law.

The Department has no objection to the subject Certificate of Amendment being filed with the Department of State.

Sincerely,

Frank Barry
Attorney
Bureau of House Counsel

FB/mem

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CERTIFICATE OF AMENDMENT

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP. 27 2002
TAX $
BY:

FILED BY:

Sidley Austin Brown & Wood LLP
Attn: Erik F. Remmler, Esq.
787 Seventh Avenue
New York, NY 10019
(212) 839-5796

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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 October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

090723000212

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Chief Executive Officer and the Assistant Secretary of Continuum Health Partners, Inc., the sole member of Beth Israel Medical Center, a New York State not-for-profit corporation (the "Corporation"), do hereby certify and set forth:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."

2. The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation"). The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certification of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by a Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965. A Restated Certificate of Incorporation was filed by the Department of State on October 1, 1985. A Certificate of Amendment of the Certificate of Incorporation was filed by the Department of State on March 2, 1988. A Certificate of Amendment was filed by the Department of State on July 2, 1999. A Certificate of Amendment of the Certificate of Incorporation was filed by the Department of State pursuant to Section 803 of the Not-for-Profit Corporation Law on September 27, 2002.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B Corporation under section 201 of said law and shall remain a Type B Corporation after this amendment to the Certificate of Incorporation becomes effective.

4. The Corporation's Certificate of Incorporation is hereby amended. A new Article TENTH is added following article NINTH as follows:

> "TENTH. The Corporation, The New York Eye and Ear Infirmary and The St. Luke's-Roosevelt Hospital Center (these three hospitals are collectively referred to herein as the "Affiliated Hospitals"), among others, have a common passive parent corporation, Continuum Health Partners, Inc. The Corporation may institute a joint application process to the medical staffs of the Affiliated Hospitals and share credentialing and quality assurance

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information concerning medical staff members and applicants with the other Affiliated Hospitals, provided that the Corporation shall make a separate decision concerning admission of each applicant to its medical staff according to its medical staff bylaws."

5. The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is:

Beth Israel Medical Center
c/o Continuum Health Partners, Inc.
555 West 57th Street, 18th Floor
New York, New York 10019
Attn: General Counsel

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting on January 30, 2008.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment this 11 day of June, 2009, and affirmed the contents to be true under the penalty of perjury.

Stanley Brezenoff
President and Chief Executive Officer

Kathryn Meyer
Assistant Secretary

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

May 18, 2009

Ms. Nina Brodsky
Senior Associate General Counsel
Continuum Services
555 West 57th Street, 18th Floor
New York, New York 10019

Re: Certificate of Amendment of the Certificate of Incorporation of
Beth Israel Medical Center

Dear Ms. Brodsky:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 8th day of May 2009, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, dated January 30, 2008.

Sincerely,

Colleen M. Frost

Colleen M. Frost
Executive Secretary

/cf

I, EDWARD H. LEHNER, a Justice of the Supreme Court of the State of New York for the First Judicial District do hereby approve of the foregoing Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center and consent that the same be filed.

Date: JUL 16 2009

J.S.C.

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 60 DAYS HEREAFTER.

by Laura Werner
ASSISTANT ATTORNEY GENERAL DATE

June 25, 2009

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CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

Beth Israel Medical Center

Under Section 803 of the Not-for-Profit Corporation
Law of the State of New York

2009 JUL 23 AM 10:16

PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036-8299

ICC

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 23 2009
TAX $
BY:

NY

2009 JUL 23 AM 9:07 2009 JUL 22 PM 12:03

RECEIVED RECEIVED

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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 October 21, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/13

ACR-41

130920000650

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairman of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."

2. The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL, and is a Type B corporation as defined in Section 201 of the NPCL.

4. The Corporation's Certificate of Incorporation is hereby amended as follows:

   (a) Article TENTH of the Certificate of Incorporation, which specifies the identity of the sole member of the Corporation and certain affiliates of the Corporation and provides for certain processes relating to the medical staffs of the Corporation and such affiliates, is hereby deleted and replaced in its entirety with a new Article TENTH which shall read in its entirety as follows:

   "TENTH: Notwithstanding anything in this Certificate of Incorporation to the contrary, the Corporation shall be a

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corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the By-Laws of the Corporation."

(b) Article SEVENTH of the Certificate of Incorporation, which designates the Secretary of State as the agent of the Corporation upon whom process against the Corporation may be served and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is amended to change the post office address to which Secretary of State shall mail a copy of any process against the Corporation to:

Beth Israel Medical Center
c/o Mount Sinai Hospitals Group
One Gustave L. Levy Place
New York, New York 10029
Attention: General Counsel

5. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on July 16, 2013.

6. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him/her is:

Beth Israel Medical Center
c/o Mount Sinai Hospitals Group
One Gustave L. Levy Place
New York, New York 10029
Attention: General Counsel

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 12th day of September, 2013.

By _____
Name: Steven I. Hochberg
Title: Chairman

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

September 17, 2013

Kenneth L. Davis, MD
President and CEO
The Mount Sinai Medical Center
One Gustave L. Levy Place
Box 1220
New York, New York 10029

Re: Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

Dear Dr. Davis:

The above referenced Certificate of Amendment of the Certificate of Incorporation, dated September 12, 2013 and signed by Stephen I. Hochberg, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law, since the certificate neither changes the corporation's name nor changes substantively a purpose the inclusion of which requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the certificate being filed with the Department of State.

Sincerely,

Michael M. Stone
Assistant Counsel
Bureau of House Counsel

cc: Michael MacDonald, Mount Sinai Legal Counsel
Beth Essig, Continuum Health Partners Legal Counsel
Brad Beckstrom, Director, Government Affairs

ACR-41

130920000650

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

FILED
2013 SEP 20 PM 12: 29

Epstein, Becker & Green, P.C.
250 Park Avenue
New York, NY 10177

lcc

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 20 2013
TAX $ _____
BY: lmc
NM

RDS-ok

RECEIVED
2013 SEP 20 AM 11: 55

Drawdown

699

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Beth Israel Medical Center, dated December 6, 2013.

NEW YORK STATE OF OPPORTUNITY. Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 15, 2016

Subject: Beth Israel Ambulatory Care Services Corp.
Proposed Certificate of Amendment to Certificate of Incorporation
and Restated Certificate of Incorporation

Beth Israel Ambulatory Care Services Corp. ("BIACSC") is a not for profit corporation that operated a diagnostic and treatment center in association with Beth Israel Medical Center. Counsel for the corporation advises that the diagnostic and treatment center was closed during 2013 pursuant to approval from the Department. Thereafter, pursuant to a transaction that combined the former constituents of the Continuum Health Partners, which was the sole member of Beth Israel Medical Center, with The Mount Sinai Hospital and its affiliates, to form a single integrated group of affiliated healthcare providers and related legal entities, BIACSC became a wholly controlled affiliate of the Mount Sinai Health System.

BIACSC would like to amend its Certificate of Incorporation in order to accomplish the following:

A. Change its name to Mount Sinai Ambulatory Ventures, Inc.

B. Add the purpose that it shall be operated "exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code ...."

C. Remove the purpose of operating a diagnostic and treatment center.

Approval of these amendments by the Public Health and Health Planning Council is required by Public Health Law §2801-a, Not-for-Profit Corporation Law §804(a), and 10 NYCRR §600.11(a)(1).

Attached are the following with regard to this matter:

1. Proposed Certificate of Amendment of Certificate of Incorporation.

2. Proposed Restated Certificate of Incorporation, which sets forth the entire Certificate of Incorporation as revised by the proposed amendments.

3. A redlined version of the Restated Certificate which shows the currently proposed amendments.

2. Existing Certificate of Incorporation.

The proposed Certificate of Amendment and Restated Certificate are in legally acceptable form.

RESTATED

CERTIFICATE OF INCORPORATION

OF

MOUNT SINAI AMBULATORY VENTURES, INC.

Under Section 805 of the
New York State Not-For-Profit Corporation Law

The undersigned, Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. The name under which the Corporation was formed was Beth Israel Ambulatory Care Services Corp.

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 under Section 402 of the NPCL.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. This Restated Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.

5. The text of the Certificate of Incorporation of the Corporation is hereby restated to read in its entirety as follows:

FIRST: The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called 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 ("NPCL").

THIRD: (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of

1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

(b) This Corporation is not formed 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 member, director, trustee, officer or private individual, firm or corporation;

(c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) 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 (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(1) 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;

(2) prohibits the Corporation, its trustees, or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(5) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(g) 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 hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

FOURTH: The Corporation shall be a charitable corporation under Section 201(c) of the NPCL.

FIFTH: The office of the Corporation is to be located in the County of New York, State of New York.

SIXTH: The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation.

SEVENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

EIGHTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 10th day of November, 2015.

Jill Clayton

By: Jill Clayton
Title: Secretary

RESTATED

CERTIFICATE OF INCORPORATION

OF

MOUNT SINAI AMBULATORY VENTURES, INC.

Under Section 805 of the
New York State Not-For-Profit Corporation Law

Filed By:

Jay Gerzog, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015

RESTATED

CERTIFICATE OF INCORPORATION

OF

~~CERTIFICATE OF INCORPORATION~~ ~~5 0 61 9 0 00~~

~~epi:/. OF~~

~~PH-32~~

~~BETH ISRAEL~~MOUNT SINAI AMBULATORY ~~CARE SERVICES CORP~~VENTURES, INC.

~~(~~Under Section ~~402~~805 of the ~~Not for Profit~~ New York State Not-For-Profit Corporation Law~~)~~

The undersigned, ~~a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of~~ Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ~~and Article 28 of the New York Public Health Law hereby certifies~~("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is~~:~~ Mount Sinai Ambulatory Ventures, Inc. The name under which the Corporation was formed was Beth Israel Ambulatory Care Services Corp. ~~(hereafter~~

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 under Section 402 of the NPCL.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. This Restated Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.

5. The text of the Certificate of Incorporation of the Corporation is hereby restated to read in its entirety as follows:

FIRST: The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation").

~~2.~~ SECOND: The Corporation is a corporation as defined in Subparagraph (a)(5) of Section ~~10, 1~~102 of the New York Not-for-Profit Corporation Law ("NPCL").

THIRD: (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of

~~3. The purposes for which it is to be formed are exclusively charitable purposes as follows:~~

~~(a) To operate, manage or otherwise administer, one or more diagnostic and treatment centers throughout the New York metropolitan area.~~

~~(b) To own, lease and purchase equipment and supplies necessary to operate, manage or otherwise administer diagnostic and treatment centers.~~

1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

~~(c) To provide or otherwise make available diagnostic and treatment services or other necessary services to individuals, provided, that all prior approvals required by law including, that of the Public Health Council, as appropriate, shall first be obtained.~~

~~(d) To operate exclusively for the benefit of, and in a manner consistent with the purposes of, the Beth Israel Medical Center.~~

~~(e) To conduct such other activities 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 under the Not-for-Profit Corporation Law.~~

~~(f) To receive and hold real and personal property in order to carry on the aims and purposes of this 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 charitable aims and purposes and to otherwise cooperate with and assist such other agencies, organizations and institutions in~~

~~order to further the charitable aims and purposes of this Corporation.~~

(~~a~~b) This Corporation is not formed 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 member, director, trustee, officer or private individual, firm or corporation~~.~~;

(~~b~~c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the ~~corporation~~Corporation shall not participate or intervene (including the publishing or distributing of

statements) in any political campaign on behalf of any candidate for public office.

(~~i~~d) The Corporation has been organized exclusively to serve a public purpose.

~~(j) Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not for Profit Corporation Law, Section 404(b) (n), (p) (s), and (u) (v) or Social Services Law Section 460 a.~~

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(~~k~~f) 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 ~~Internal Revenue~~ Code ~~of 1986 (the "Code")~~ (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(~~i~~1) 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;

(~~ii~~2) 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;

(~~iii~~3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(~~iv~~4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(~~v~~5) prohibits the Corporation from making any

taxable expenditures which are subject to tax under Section 4945 of the Code.

(~~1~~g) 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 hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following ~~proposes~~purposes as more specifically described above: charitable, scientific, religious or

educational 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 income taxation under~~ Section 501(c)(3) of the Code (or the corresponding provision of any ~~further~~future United States Internal Revenue Law).

~~4.~~ FOURTH: The Corporation shall be a ~~Type B~~charitable corporation under Section 201(~~b~~c) of the ~~Not-for-Profit Corporation Law~~NPCL.

~~5.~~FIFTH: The office of the Corporation is to be located in the County of New York, State of New York.

~~6. The names and addresses of the initial Directors of the Corporation are as follows:~~

SIXTH: The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation.

~~Names~~	~~Addresses~~
~~Morton P. Hyman, Esq.~~	~~16th Street and First Avenue New York, NY 10003~~
~~Robert C. Newman, M.D.~~	~~16th Street and First Avenue New York, NY 10003~~
~~Alfred Engleberg~~	~~90 Park Avenue New York, NY 10016~~
~~Joel I. Picket~~	~~8 Pleasant Ridge Road Harrison, NY 10528~~
~~Jane R. Crotty~~	~~3 Stuyvesant oval New York, NY 10009~~
~~Paul Ramos~~	~~111 St. Marks Avenue Brooklyn, NY 11217~~

~~7.~~ SEVENTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: ~~16th Street and~~Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

EIGHTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

First Avenue, New York, NY 10003, Attention: President.

8. In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed contingent on the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed and the statements made herein ~~are~~ affirmed as true under ~~the~~penalties of perjury this /Di'lday of

~~Sincerely,~~

~~Kate~~

penalties of perjury this 7th Wnve_m ive day of , 1995 2015.

Kathryn C. Meyer, Esq.
Sole Incorporator
Beth Israel Medical Center
First Avenue at 16th Street

Jill Clayton

By: Jill Clayton

Sincerely,

Kaye

~~New York, NY 10003~~

~~Sincerely,~~

~~Kate~~

PH-32

CERTIFICATE OF INCORPORATION F950619000042

OF

BETH ISRAEL AMBULATORY CARE SERVICES CORP.

PH-32

(Under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York and Article 28 of the New York Public Health Law hereby certifies as follows:

1. The name of the Corporation is: Beth Israel Ambulatory Care Services Corp. (hereafter called the "Corporation").

2. The Corporation is a corporation as defined in Subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

3. The purposes for which it is to be formed are exclusively charitable purposes as follows:

(a) To operate, manage or otherwise administer, one or more diagnostic and treatment centers throughout the New York metropolitan area.

(b) To own, lease and purchase equipment and supplies necessary to operate, manage or otherwise administer diagnostic and treatment centers.

(c) To provide or otherwise make available diagnostic and treatment services or other necessary services to individuals, provided, that all prior approvals required by law including, that of the Public Health Council, as appropriate, shall first be obtained.

(d) To operate exclusively for the benefit of, and in a manner consistent with the purposes of, the Beth Israel Medical Center.

(e) To conduct such other activities 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 under the Not-for-Profit Corporation Law.

(f) To receive and hold real and personal property in order to carry on the aims and purposes of this 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 charitable aims and purposes and to otherwise cooperate with and assist such other agencies, organizations and institutions in

order to further the charitable aims and purposes of this Corporation.

(g) This Corporation is not formed 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 member, director, officer or private individual, firm or corporation.

(h) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(i) The Corporation has been organized exclusively to serve a public purpose.

(j) Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law, Section 404(b)-(n), (p)-(s), and (u)-(v) or Social Services Law Section 460-a.

(k) 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 Internal Revenue Code of 1986 (the "Code") (or the corresponding provision of any future United States Internal Revenue Law) it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(i) 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;

(ii) prohibits the Corporation, its directors or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(l) 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 hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following proposes as more specifically described above: charitable, scientific, religious or educational 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 income taxation under Section 501(c)(3) of the Code (or the corresponding provision of any further United States Internal Revenue Law).

4. The Corporation shall be a Type B corporation under Section 201(b) of the Not-for-Profit Corporation Law.

5. The office of the Corporation is to be located in the County of New York, State of New York.

6. The names and addresses of the initial Directors of the Corporation are as follows:

Names	Addresses
Morton P. Hyman, Esq.	16th Street and First Avenue New York, NY 10003
Robert G. Newman, M.D.	16th Street and First Avenue New York, NY 10003
Alfred Engleberg	90 Park Avenue New York, NY 10016
Joel I. Picket	8 Pleasant Ridge Road Harrison, NY 10528
Jane R. Crotty	3 Stuyvesant Oval New York, NY 10009
Paul Ramos	111 St. Marks Avenue Brooklyn, NY 11217

7. The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: 16th Street and First Avenue, New York, NY 10003, Attention: President.

8. In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed contingent on the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein are affirmed as true under the penalties of perjury this 16 day of May, 1995.

Kathryn C. Meyer

Kathryn C. Meyer, Esq.
Sole Incorporator
Beth Israel Medical Center
First Avenue at 16th Street
New York, NY 10003

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

June 6, 1995

Mr. Peter A. Kelly
Executive VP/Operations
Beth Israel Medical Center
First Avenue at 16th Street
New York, NY 10003

Re: Certificate of Incorporation of Beth Israel Ambulatory Care Services Corp.

Dear Mr. Kelly:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 19th day of May, 1995, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Beth Israel Ambulatory Care Services Corp., dated May 16, 1995.

Sincerely,

Karen S. Westervelt
Executive Secretary

F 950619000426

PH-32

CERTIFICATE OF

INCORPORATION

OF

BETH ISRAEL AMBULATORY CARE

SERVICES CORP.

PROSKAUER ROSE GOETZ & MENDELSOHN
COUNSELLORS AT LAW
1585 BROADWAY
BOROUGH OF MANHATTAN
NEW YORK CITY 10036
E.P. Green
212-969-3227

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUN 19 1995
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BY: SAC

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

June 6, 1995

Mr. Peter A. Kelly
Executive VP/Operations
Beth Israel Medical Center
First Avenue at 16th Street
New York, NY 10003

Re: Application No. 942669 - Beth Israel Ambulatory Care Services Corporation (Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Ambulatory Care Services Corporation is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of May 19, 1995.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4258, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt
Executive Secretary

Bern

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUN

June 6, 1995

Mr. Peter A. Kelly
Executive VP/Operations
Beth Israel Medical Center
First Avenue at 16th Street
New York, NY 10003

Re: Application No. 942669 - Beth Israel Ambulatory Care Services Corporation (Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Ambulatory Care Services Corporation is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of May 19, 1995.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4258, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt
Executive Secretary

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

June 15, 1995

Mr. Peter A. Kelly
Executive Vice President
Operations
Beth Israel Medical Center
First Avenue at 16th Street
New York, New York 10003

Re: Application No. 942668 - Beth Israel Medical Center (Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Medical Center is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of May 19, 1995.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4900, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt
Executive Secretary

State of New York } *ss:*
Department of State }

I hereby certify that I have compared the annexed copy with the original documents filed by the Department of State and that the same is a correct transcript of said original.

Witness my hand and seal of the Department of State on JUN 19 1995

Alexander F. Treadwell

Secretary of State

Y. S. DEPARTMENT OF STATE
IVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVE
ALBANY, NY 12231

FILING RECEIPT

TY NAME : BETH ISRAEL AMBULATORY CARE SERVICES CORP.

DOCUMENT TYPE : DOMESTIC (NOT-FOR-PROFIT) CORPORATIO TYPE: B COUNTY: NEWY

SERVICE COMPANY : PRENTICE-HALL CORPORATION SYSTEM, INC. SERVICE CODE: 32

FILED: 06/19/1995 DURATION: PERPETUAL CASH #: 950619000465 FILM #: 950619000

ADDRESS FOR PROCESS

THE CORPORATION
ATTN: PRESIDENT
NEW YORK, NY 10003

REGISTERED AGENT

16TH STREET & FIRST AVENUE

FILER

PROSKAUER ROSE GOETZ & MENDELSOHN
COUNSELLORS AT LAW
1585 BROADWAY
NEW YORK, NY 10036

FEES		110.00	PAYMENTS	110
FILING	:	75.00	CASH	0
TAX	:	0.00	CHECK	0
CERT	:	0.00	BILLED:	110
COPIES	:	10.00		
HANDLING	:	25.00		
			REFUND:	0

DOS-1025 (11/89)

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL AMBULATORY CARE SERVICES CORP.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

The undersigned, Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is Beth Israel Ambulatory Care Services Corp.

2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 under Section 402 of the NPCL.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Corporation's Certificate of Incorporation is hereby amended in accordance with Section 801 of the NPCL as follows:

   a. Paragraphs 1 through 8 are hereby amended to change the numerical paragraph references to "**FIRST**," "**SECOND**" "**THIRD**" "**FOURTH**" "**FIFTH**" "**SIXTH**" "**SEVENTH**" and "**EIGHTH**", respectively.

   b. Article FIRST (formerly Paragraph 1) of the Certificate of Incorporation, which sets forth the name of the Corporation, is amended to change the name of the Corporation to Mount Sinai Ambulatory Ventures, Inc. Accordingly, Article FIRST shall read in its entirety as follows:

      "**FIRST**. The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation")."

   c. Article THIRD (formerly Paragraph 3) of the Certificate of Incorporation, which sets forth the Corporation's purposes, is amended to change the purposes of the Corporation and update the language to reflect amendments to the NPCL pursuant

to the New York Not-for-Profit Revitalization Act of 2013. Accordingly, Article THIRD shall read in its entirety as follows:

"**THIRD**. (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

(b) This Corporation is not formed 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 member, director, trustee, officer or private individual, firm or corporation;

(c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) 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 (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(1) 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;

(2) prohibits the Corporation, its trustees or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(5) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(g) 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 hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law)."

d. Article FOURTH (formerly Paragraph 4) of the Certificate of Incorporation, which sets forth the Corporation's type as provided in Section, is amended to change the reference to "Type B" to charitable, pursuant to Section 201(c) of the NPCL. Accordingly, Article FOURTH shall read in its entirety as follows:

"**FOURTH**. The Corporation shall be a charitable corporation under Section 201(c) of the NPCL."

e. Article SIXTH (formerly Paragraph 6) of the Certificate of Incorporation, which sets forth the initial trustees of the Corporation, shall be amended in accordance with Section 805(c) of the NPCL to omit this text, and to insert a new Article SIXTH which states that the Corporation shall be a corporation with members. Accordingly, Article SIXTH shall read in its entirety as follows:

"**SIXTH**. The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation."

f. Article SEVENTH (formerly Paragraph 7) of the Certificate of Incorporation, which sets forth the address to which the Secretary of State shall forward copies of process accepted on behalf to the Corporation, is amended to change such address. Accordingly, Article SEVENTH shall read in its entirety as follows:

"**SEVENTH**. The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029."

g. Article EIGHTH (formerly Paragraph 8) of the Certificate of Incorporation, which describes the distribution of assets upon dissolution of the Corporation, is amended to (i) provide for the distribution of the Corporation's assets to Mount

Sinai Health System, Inc. and/or one or more affiliates or successors thereof, as are then in good standing and qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and (ii) to update the language to reflect amendments to the NPCL pursuant to the New York Not-for-Profit Revitalization Act of 2013. Accordingly, Article EIGHTH shall read in its entirety as follows:

> "**EIGHTH**. In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine."

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.

6. The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, this Certificate of Amendment has been signed and the statements made herein affirmed as true under penalties of perjury this 10th day of November, 2015.

Jill Clayton

By: Jill Clayton
Title: Secretary

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL AMBULATORY CARE SERVICES CORP.

Under Section 803 of the
New York State Not-For-Profit Corporation Law

Filed By:

Jay Gerzog, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of February, 2016, approves the filing of the Restated Certificate of Incorporation of Mount Sinai Ambulatory Ventures, Inc., dated November 10, 2016.