

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

**AGENDA**

*June 9, 2016*

*Immediately following the Committee on Codes, Regulations and Legislation  
(which is scheduled to begin at 9:30 a.m.)*

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

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chair

**II. APPROVAL OF MINUTES**

April 14, 2016

**Exhibit #1**

**III. ADOPTION OF THE 2017 PUBLIC HEALTH AND HEALTH PLANNING COUNCIL MEETING DATES**

2017 Public Health and Health Planning Council Meeting Dates

**Exhibit #2**

**IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

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

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

**B. Report of the Office of Health Insurance Programs Activities**

Peggy Chan, M.P.H., DSRIP Program Director, 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**

Brad Hutton, Deputy Commissioner, Office of Public Health

**V. REGULATION**

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

**Exhibit #3**

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

**Department Update**

Laboratory Test Result Access

15-01 Amendment of Section 700.2 and Parts 717, 793 and 794 of Title 10 NYCRR (Hospice Operational Rules)

**Emergency Adoption**

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

**For Adoption**

15-14 Addition of Part 4 to Title 10 NYCRR (Protection Against Legionella)  
**TO BE DISTRIBUTED UNDER SEPARATE COVER**

**VI. 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

**Acute Care Services - Construction**

**Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	161121 C	New York Methodist Hospital (Kings County)	Contingent Approval

**Residential Health Care Facility - Construction**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	152138 C	St Marys Hospital for Children Inc (Queens County)	Contingent Approval

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

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

**CON Applications**

**Acute Care Services - Construction**

**Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	152343 C	Long Island Jewish Medical Center (Queens County) Mr. Kraut – Recusal Dr. Martin - Recusal	Contingent Approval
2.	161080 C	Phelps Memorial Hospital Assn (Westchester 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**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #7**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	161083 E	Gastroenterology Care, Inc. (Kings County)	Contingent Approval
2.	161138 B	JTL Consulting, LLC t/b/k/a Gastroenterology of Westchester (Westchester County)	Contingent Approval
3.	152294 B	S.F. Nassau d/b/a East Hills Surgery (Nassau County)	Contingent Approval

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

**Exhibit #8**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	152111 E	CCRNC, LLC d/b/a Crown Park Rehabilitation and Nursing Center (Cortland County)	Contingent Approval
2.	161091 E	YRNC Operating, LLC d/b/a Yorktown Rehabilitation & Nursing Center (Westchester County)	Contingent Approval
3.	161223 E	St Margaret’s Center (Albany County)	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #9**

**Changes of Ownership**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
	2322 L	Hamilton Home Care, LLC d/b/a Hamilton Home Care (Madison and Onondaga Counties)	Contingent Approval

2322 A	Hamilton Home Care, LLC d/b/a Hamilton Limited Home Care Services Agency (Madison County)	Contingent Approval
2509 L	Senior Solutions Worldwide, Inc. d/b/a Wesley Senior Solutions (Saratoga County)	Contingent Approval
152199 E	111 Ensminger Road Operating Company, LLC d/b/a Elderwood Home Care at Tonawanda (Erie County)	Contingent Approval
152285 E	Helping U Homecare, Inc. (New York, Richmond, Kings, Bronx, Queens, and Nassau Counties)	Contingent Approval
152367 E	Focus RX Pharmacy Services, Inc. (Suffolk, Putnam, Westchester, Nassau, Rockland, Queens, Orange, and Ulster Counties)	Contingent Approval
161126 E	New Broadview Manor Home for Adults, LLC d/b/a New Broadview Manor Home for Adults LHCSA (Richmond County)	

**Certificates**

**Exhibit #10**

**Restated Certificate of Incorporation**

**Applicant**

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

Housing Works Health Services III, Inc.

Approval

Planned Parenthood of Nassau County, 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**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #11**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	152302 B	UES d/b/a Upper East Side ASC (New York County) Dr. Martin - Recusal	Contingent Approval

**Diagnostic and Treatment Center – Establish/Construct**

**Exhibit #12**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	152384 E	Suffolk Primary Health, LLC (Suffolk County) Ms. Carver-Cheney - 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 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

**Acute Care Services – Establish/Construct**

**Exhibit #13**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1. 161077 E	Woman’s Christian Association (Chautauqua County) Mr. Holt - Recusal	Presented at the 5/19/16 and 6/9/16 Establishment/Project Review Committee No Recommendation

**VII. NEXT MEETING**

July 21, 2016 - ALBANY  
August 4, 2016 – ALBANY

**VIII. ADJOURNMENT**

**State of New York**  
**Public Health and Health Planning Council**

**Minutes**  
**April 14, 2016**

The meeting of the Public Health and Health Planning Council was held on Thursday, April 14, 2016 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany.

**COUNCIL MEMBERS PRESENT**

Dr. Howard Berliner	Dr. Gary Kalkut
Dr. Jo Ivey Boufford	Mr. Jeffrey Kraut
Dr. Lawrence Brown	Mr. Peter Robinson
Ms. Kathleen Carver-Cheney	Dr. John Ruge
Mr. Michael Fassler	Dr. Theodore Strange
Ms. Kim Fine	Dr. Anderson Torres
Dr. Angel Gutierrez	Dr. Patsy Yang
Ms. Victoria Hines	Dr. Howard Zucker
Mr. Thomas Holt	

**DEPARTMENT OF HEALTH STAFF PRESENT**

Mr. Charles Abel	Ms. Colleen Leonard
Mr. Udo Ammon	Ms. Ruth Leslie
Ms. Heather Dacus	Mr. George Macko
Ms. Barbara DelCogliano	Ms. Karen Madden
Ms. Alejandra Diaz	Ms. Lisa McMurdo
Ms. Sally Dreslin	Mr. Jahnhoj Smith
Mr. Ken Evans	Ms. Sylvia Pirani
Ms. Deb Fox	Ms. Tracy Raleigh
Mr. Mark Furnish	Ms. Linda Rush
Ms. Shelly Glock	Mr. Daniel Sheppard
Mr. Nathan Graber	Ms. Lisa Thomson
Ms. Rebecca Gray	Ms. Lisa Ullman
Mr. Brad Hutton	Mr. Richard Zahnleuter
Ms. Yvonne Lavoie	

**INTRODUCTION**

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

**RESOLUTION OF APPRECIATION FOR ARTHUR LEVIN**

Mr. Kraut announced that Mr. Arthur Levin had resigned from the Council. He noted for the record that on behalf of the Council, Dr. Boufford and he signed a Resolution of Appreciation for Mr. Levin thanking him for service on the Council. Please see pages 2 and 3 of the transcript.



## **APPROVAL OF THE MINUTES OF FEBRUARY 11, 2016**

Mr. Kraut asked for a motion to approve the February 11, 2016 Minutes of the Public Health and Health Planning Council meeting. Ms. Fine motioned for approval which was seconded by Dr. Boufford. The minutes were unanimously adopted. Please refer to pages 4 and 5 of the attached transcript.

## **REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

Mr. Kraut introduced Dr. Zucker who was participating via video to give the Report of Department of Health Activities.

Dr. Zucker began his report by announcing Brad Hutton was appointed to serve as the Department's Deputy Commissioner in the Office of Public Health. Mr. Hutton brings a tremendous amount of experience to the role as Deputy Commissioner and has 20 plus years in the Department.

### **Water Quality**

Dr. Zucker spoke on the topic of water quality issues in the town of Hoosick Falls and Hoosick and Petersburg. In particular the water contamination by PFOA. The State has implemented an aggressive plan to address PFOA contamination in the Hoosick Falls area, and the plan includes overseeing the installation of a temporary municipal filtration system, approving the plans for a new full capacity filtration system, committing up to \$10 million to install hundreds of private residential water filtration systems and testing hundreds and hundreds of water samples from private as well as public wells. The Department has been conducting a comprehensive blood testing program for residents, and working to identify a permanent water source for the community there. The State has also identified Performance Plastics and Honeywell International as the parties potentially responsible for the PFOA contamination in the village of Hoosick Falls and the town of Hoosick as well. The Department is holding the firms accountable for the costs of providing water, drinking water. On March 30, 2016, the Department reported that the water in Hoosick Falls may be used for all purposes including drinking and cooking, and the temporary filtration system effectively removed PFOA from the village drinking water and PFOA is at a non-detectable level. Non-detectable would be less than two parts per trillion.

Dr. Zucker stated that in Petersburg, the State has reached an agreement with Taconic Plastics Incorporated to install a carbon filtration system to address PFOA in that communities water supply. Initial tests found that PFOA levels in the town water supply were just below the EPA guidance levels, and that is when the Department together with Department of Environmental Conservation, the town of Petersburg, Rensselaer County, and Taconic Plastics began to address the contamination and supply bottled water to all the residents in the town. Subsequent tests found PFOA levels just above the EPA guidance levels. All parties agree that a carbon system was necessary. The Department is strongly committed to ensuring that New York's communities have the best water supply, water quality, and obviously supply, possible.

## E-prescribing

Dr. Zucker announced that unless prescriber has a waiver for the electronic prescribing, the Department has moved forward with an e-prescribing system and if you have a waiver that would be an exception covered under the Public Health Law under circumstance sited in the blanket waiver letter. Prescribers can no longer otherwise write or fax a prescription on paper pads. Other exceptions include certain special circumstances such as obviously natural disaster, electronic or technological failures that may exist. This requirement is part of the ISTOP program which was enacted to guard against prescription drug abuse. The e-prescribing protects patients from errors and it also makes it more difficult for people to obtain controlled substances, illegally using prescription pads with handwritten instructions. E-prescribing uses a secure closed system to transmit prescriptions to the patient's preferred pharmacy. Before this law went into effect, more than 70,000 New York prescribers were already using an electronic prescribing system.

## Opioids

Dr. Zucker stated that in March, the Department released its opioid poisoning overdose and prevention report to the Governor and to the Legislature. The State not unlike the rest of the country in talking about they have had this problem as well, is in the midst of epidemic of opioid abuse. The number of people dying of opioid overdose is on the rise. In New York alone we lost 2,175 people to drug related deaths in 2013 and that was up 40 percent from 2009. Heroin has emerged as a deadly drug of choice. In fact, the number of heroin related deaths rose 163 percent between 2009 and 2013, while the deaths related to opioid analgesics rose 30 percent. New York has responded on several fronts on this including e-prescribing. The Department has also expanded the opioid overdose prevention program. There is now have more than 300 opioid overdose programs throughout the State. The Department has trained and placed naloxone in the hands of more than 100,000 non-medical responders. Naloxone is an antidote that reverses the potential of fatal overdose effects from heroin or other opioid analgesics. In 2015 alone, the Department's trained respondents administered naloxone 1,600 times and obviously saved the lives of all those individuals at that moment. The Department has made naloxone available in pharmacies such as Walgreens, CVS, and Duane Read as well as independent drug store throughout the State. You do not need to have a prescription for naloxone you can still go to the pharmacy and you can get it using a non-patient specific order.

Dr. Zucker further noted that the CDC's opioid grants is another weapon in our fight against opioids. The CDC has awarded the Department a \$2.9 million grant. The funds will be used to develop a unified and systematic approach to the growing problem of deadly prescription drug overdose and the project which will be lead by the Department will involve multiple groups including obviously providers and local health departments and the trained respondents. The funds will also be used to enhance provider use of the prescription monitoring program, or as we call, PNP, and the Bureau of Narcotic Enforcement will work with the Office of Information Technology services to integrate the PNP directly with the patient electronic health records. They will also work to develop an app like function for providers using portable devices such as tablets or smartphones. They will use data collected from the PNP to conduct public health surveillance to help improve outreach efforts. The CDC grant will also improve the use of evidence-based opioid prescribing guidelines and increase the use of naloxone to prevent deadly overdoses. Ultimately the goal is to reduce the rate of opioid abuse to increase the substance abuse treatment, and to lower the overdose rate for both opioids and heroin.

## Hepatitis C

Dr. Zucker reported that two years ago, New York became the first state in the nation to require providers to offer a Hepatitis C virus testing to all baby boomer born between 1945 and 1965. A new report finds that the number of people being tested has gone up since the law went into effect. Among Medicaid members between the ages of 50 and 70, 53 percent of the people who have a positive HCV screening went on to have the diagnostic test while in New York City, 28 percent did so. Hepatitis C is the most common blood-borne infection in the United States. It is causing chronic disease in approximately 2.7 million individuals. It is believed to effect approximately 200,000 workers with  $\frac{3}{4}$  of them born between the years of 1945 and 1965. Getting diagnosed is the first step towards receiving regular care and treatment.

## Public Health Week

Lastly, Dr. Zucker announced that New York recently celebrated public health week. Public health week is an opportunity to recognize all our partners in public health who have helped work with the Department to protect the health and safety of all New Yorkers. As part of the week's events, we commemorated the 30<sup>th</sup> anniversary of the School of Public Health partnership with the Department. This was a celebration at the School of Public Health and we celebrated our first ever Gus Birkhead Day and our first scholarship in his honor. The Department also recognized the Seneca County Department of Health for its hard work during the outbreak of Hepatitis A that occurred last fall. Dr. Zucker also stated he especially enjoyed participating in the American Heart Association's National Walking Day event in the South End of Albany, where he learned about Albany's history and what the community is doing to address the issues of health in that area. The Department was joined by the Albany County Department of Health as well as local hospitals, the YMCA and other organizations in local Albany County prevention agenda coalition. Public health week is truly a reminder of all the work everyone is doing to make all of New Yorkers healthy, even though we celebrate one week a year

Mr. Kraut thanked Dr. Zucker for his report. To see the complete report and questions and comments from the members, please see pages 5 through 15 of the attached transcript.

Mr. Kraut motioned to go into executive session for the members to have a conversation and seek advice of their counsel. The motion was seconded. The public portion of the meeting was suspended.

The members returned to the meeting room and Mr. Kraut reconvened the public meeting.

## **Report of the Office of Public Health Activities**

Mr. Kraut introduced Mr. Hutton to give an update on the activities of the Office of Public Health.

Mr. Hutton began his report on the topic of the Departments response to Zika. The New York State Department of Health's Wadsworth Center for Laboratories and Research and the Office of Public Health is uniquely positioned to offer testing. New York State has the most expansive testing criteria in the nation for the Zika virus. As of April 6, 2016, the Wadsworth tested approximately 3,000 patients and even assisting a few other states with testing. As a result

of those 3,000 tests, the Department has identified 69 patients who have been infected with Zika virus. All but one of those have been associated with travel to the effected region in Central and South America. There is one case who is suspected to have had sexual transmission, a partner who traveled to the region. The Department is still working on that investigation. As a result of that expanded testing criteria, New York has the second most cases of Zika virus in the nation second only to Florida which is primarily due to the fact that New York has a diverse population and also a population that travels frequently to the Caribbean, Central, and South America. New York is also performing real time PCR testing on both serum and urine. The Department believes we are the only testing in the nation going on in urine right now, and as a result, finding some cases that are only positive in urine. 35 of New York's 69 cases have only been positive in urine. The Department is seeing that the virus is detectable for longer periods of time in serum.

The Department's main concern is we move into mosquito season that is protecting New Yorkers from the prospect of infection from mosquitos locally. Fortunately the mosquito that is believed to be the responsible for the majority of infections in the affected region is a mosquito known as *Aedes Aegypti*, which has not been present in New York to date. New York has an extensive amount of mosquito trapping in prior years primarily for West Nile Virus and other mosquito borne diseases. New York does have another species of related *Aedes* mosquito that is present in parts of New York, it is known as *Aedes Albopictus*, which is found in New York City, Long Island, and the counties at the very lower end of the Hudson Valley region. The main concern is making sure that we do not have instances where there is local transmission of the Zika virus as a result of that mosquito. We do not believe that that mosquito species is as effective at transmitting Zika as the *Aegypti* mosquito, but there really is not conclusive lab evidence at this point to rule that out.

Mr. Hutton stated that Governor Cuomo and Commissioner Zucker announced an aggressive six point plan. The first aspect of that plan is mosquito surveillance, the Department will be bolstering existing mosquito surveillance activities in that downstate region to purchase specific traps that are designed to better collect that *Aedes* mosquito. They happen to be daytime fliers and have some different traits and habits that warrant us to have different surveillance techniques. The Department will focus on three surveillance efforts. One is to monitor for the presence of the mosquito, the second is to monitor the northward migration. There is a slow migration northward right around the area of Westchester, Orange, and Rockland Counties as temperatures warm with climate change. Thirdly is to test the mosquitos that we do find for the Zika virus.

Mr. Hutton explained a second aspect to the plan is mosquito control. The control activities are going to change because this is a daytime flier that stays very in it is lifetime within a 200 yard radius. The Department will be working with counties in the downstate area to hold mosquito control days to work to remove reservoirs where this mosquito can breed to limit the numbers of mosquitos that are present. They do breed in smaller containers, so there will be a little bit of educational activities going on to alert people that it is not the same kind of reservoirs that we typically would think of for the West Nile virus.

Mr. Hutton described the third aspect of the plan is public awareness. The Department will be rolling out a media campaign that will focus primarily on pregnant women who may travel to the effected region to alert them to ways that they can protect themselves if they are unable to heed the travel recommendations to refrain from traveling to effected countries. The

fourth aspect of the plan are Zika protection kits which contains mosquito repellent, condoms, larvacide, and educational materials.

Mr. Hutton noted that the fifth aspect of the plan is to put in place emergency regulations requiring local health departments statewide to submit to us a Zika action plan outside of the region where we have the Aedes Albopictus mosquito counties need to focus their plans on how they will be educating their population about Zika because of the prospect of travel associated cases, and also their surveillance activities for those travel associated cases, and then the counties in the areas that have albopictus will have many other aspects of their plan that they need to submit to us. Finally, the Department is putting in place rapid response teams that will be comprised of state and local officials in the event that we do have evidence of local mosquito transmission which would be either mosquito pool that has evidence of the Zika virus, or a human case that has not traveled and is not associated with a traveler. That would trigger the deployment of these rapid response teams that would work to aggressively inspect the areas in and around where that case has spent time to remove mosquito reservoirs, potentially consider larvacide and application of (adulticiding) to kill mosquitos and essentially limit the possibility that we could have local mosquito transmission in that area.

Mr. Hutton noted that over the past several months the Office of Public Health has continued to work on issues surround Legionella discussions and water quality. The AIDS Institute has led the nation with its bold plan on ending the epidemic, as well as expanding beyond their core mission to consider issues like Hepatitis C and drug user health. The Wadsworth Center is an incredible gem that has the capability to test and incredible research that really other state public health labs do not have the capacity for. The Emergency Health Preparedness group are always working to develop plans and train on them and then drill on them. Lastly, the Public Health Practice recently had a great meeting on the Prevention Agenda.

Mr. Hutton concluded his report. Please see pages 15 through 24 of the attached transcript.

## **PUBLIC HEALTH SERVICES**

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

Mr. Kraut introduced Dr. Boufford to give her Report of the Committee on Public Health.

Dr. Boufford stated that on March 24, 2016 there was a meeting held in Albany entitled Prevention Agenda: Translating Data into Action. Several Department of Health employees attended. The meeting was cosponsored by HANYS and NYSECHO and Robert Wood Johnson Foundation and the University of Wisconsin Population Health Institute through one of their community development grant, and Dr. Boufford thanked them for their sponsorship. There were 40 reps from 44 hospitals, 50 local health departments, approximately almost 2/3 maybe a half of our Ad Hoc Leadership Group members came which was great including the North East Business Group on Health, and we had eight of the Public Health Improvement Plans represented. It was one of our first effort to bring people together in person to talk to each other and learn from each other. Those attending received an update on the prevention agenda and how it links to the other healthcare reforms in the State. Bronx gave a presentation about their creative program they have called 'not 62', they are 62 out of 64 counties in terms of health

status in New York and they had a fabulous marketing plan involving a lot of young people in the Bronx pushing this broader issue around health and wellness. From Schenectady a very well organized coalition, local coalition in the Schenectady area working on asthma and a whole bunch of different ways. Dr. Boufford described the afternoon breakout sessions. Everybody had two rounds and they were structured around issues that they are concerned about that they are working on to hear from each other and were very well attended. The general feedback was very positive. Dr. Boufford noted that they are working very hard and productively with the DSRIP colleagues on how they can bring attention to the population health agenda in their reviews and domain three and four activities of the PPSs.

Dr. Boufford concluded her report. To see the complete report and comments from members, please see pages 24 through 27 of the attached transcript.

## **HEALTH POLICY**

Next, Mr. Kraut moved to the Health Policy portion of the agenda and introduced Dr. Rugge to give the report of the Activities of the Committee on Health Planning.

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

#### **Recommendations for revisions to the Residential Health Care Facility bed need methodology, as follows:**

1. Revise the Methodology for Five Years
2. Collect Data and Reevaluate During the Interval
3. Revise the Base Year and Trend Use Data
4. Revise the Planning Areas
5. Revise the Use of Migration Data
6. Revise the Occupancy Rate Threshold

Dr. Rugge stated that members of the Health Planning Committee have been deliberating almost over a year for the required update to the long term care bed need methodologies and also part of the meetings were shareholders. Dr. Rugge presented a power point presentation along with Ms. Ullman and Ms. Raleigh giving in detail each recommendation for adoption.

Dr. Boufford inquired about adult daycare programs and use of technology and telemedicine relative to homecare. She also commented on revising the planning areas while looking at maximizing care coordination and utilizing the PPSs in those planning areas and how the various long term care facilities and programs are linked to the PPSs because when a lot of the PPSs submitted their DSRIP applications there.

Dr. Rugge stated that the adoption of the recommendations will be integrated into a regulation that will be adopted by the Council and implemented by January 1, 2017.

Dr. Boufford motioned to adopt the below recommendations with Dr. Rugge seconding the motion.

1. Revise the Methodology for Five Years
2. Collect Data and Reevaluate during the Interval
3. Revise the Base Year and Trend Use Data
4. Revise the Planning Areas
5. Revise the Use of Migration Data
6. Revise the Occupancy Rate Threshold

Mr. Kraut thanked Dr. Rugge, Ms. Ullman and Ms. Madden and other staff members as well as the public who worked hard on the recommendations. Mr. Kraut called the motion. The motion to adopt the recommendations carried. Please see pages 27 through 44 of the transcript.

## **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. Gutierrez described for emergency adoption Addition of Part 4 to Title 10 NYCRR (Protection Against Legionella) and motioned for adoption, Mr. Fassler seconded the motion. Dr. Kalkut had some questions pertaining to the proposed regulation and staff answered. The motion carried. Please see page 44 through 47 of the attached transcript.

#### **For Information**

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

Dr. Gutierrez described for information Addition of Part 4 to Title 10 NYCRR (Protection Against Legionella). Please see pages 47 and 48 of the attached transcript.

#### **For Adoption**

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

15-01 Amendment of Section 700.2 and Parts 717, 793 and 794 of  
Title 10 NYCRR (Hospice Operational Rules)

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

12-15 Amendment of Sections 22.3 and 22.9 of Title 10 NYCRR  
(Supplementary Reports of Certain Birth Defects for Epidemiological  
Surveillance; Filing)

Dr. Gutierrez introduced Addition of Section 405.33 to Title 10 NYCRR (Extended Mammography Hours for General Hospitals and Hospital Extension Clinics) and motioned for adoption, Dr. Torres seconded the motion. The motion carried. Please see page 48 of the transcript.

Dr. Gutiérrez called Amendment of Section 700.2 and Parts 717, 793 and 794 of Title 10 NYCRR (Hospice Operational Rules) and motioned for adoption. Mr. Fassler seconded the motion. The motion carried. Please see page 49 of the attached transcript.

Dr. Gutiérrez described Amendment of Sections 763.7 and 766.4 of Title 10 NYCRR (Home Care Agencies to Obtain Written Medical Orders from Physicians) and motioned for adoption. Dr. Kalkut seconded the motion. Please see pages 49 and 50 of the attached transcript.

Next, Dr. Gutiérrez introduced 12-15 Amendment of Sections 22.3 and 22.9 of Title 10 NYCRR (Supplementary Reports of Certain Birth Defects for Epidemiological Surveillance; Filing) and motioned for adoption, Dr. Torres seconded the motion. The motion carried. Please see page 50 of the attached transcript.

**For Discussion.**

16-05 Addition of Section 415.41 to Title 10 NYCRR (Specialized Programs for Residents with Neurodegenerative Diseases)

Lastly, Dr. Gutiérrez described for information Addition of Section 415.41 to Title 10 NYCRR (Specialized Programs for Residents with Neurodegenerative Diseases). See pages 50 and 51 of the transcript.

Dr. Gutiérrez concluded his report. Mr. Kraut thanked Dr. Gutiérrez and moved to the next item on the agenda the Report of the Committee on Establishment and Project Review and introduced Mr. Holt to give the report.

**PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

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

Thomas Holt, Member, 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



**CON Applications**

**Acute Care Services - Construction**

**Exhibit #3**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1. 161022 C	St. Josephs Hospital Health Center (Onondaga County) Ms. Hines – Recusal Mr. Robinson - Recusal	Contingent Approval

Mr. Holt called application 161022 and noted for the record that Ms. Hines and Mr. Robinson have conflicts and have exited the meeting room. Mr. Holt motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Ms. Hines and Mr. Robinson’s recusal. Ms. Hines and Mr. Robinson returned to the meeting room. Please see page 52 of the attached transcript.

2. 161031 C	Samaritan Medical Center (Jefferson County)	Contingent Approval
3. 161037 C	Southampton Hospital (Suffolk County)	Contingent Approval

Mr. Holt called applications 161031 and 161037 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. Please see page 53 of the transcript.

**Transitional Care Units - Construction**

**Exhibit #4**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1. 161059 T	Olean General Hospital (Cattaraugus County) Mr. Robinson – Interest	Contingent Approval
2. 161061 T	Helen Hayes Hospital (Rockland County)	Contingent Approval
3. 161068 T	Good Samaritan Hospital Medical Center (Suffolk County)	Contingent Approval
4. 161069 T	Nyack Hospital (Rockland County)	Contingent Approval

Mr. Holt calls applications 161059, 161061, 161068, and 161069 and notes for the record that Mr. Robinson has declared an interest on application 161059. Mr. Holt motions for approval, Mr. Fassler seconds the motion. The motion to approve carried. Please see pages 53 and 54 of the attached transcript.

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

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

**Cardiac Services - Construction**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	152231 C	Niagara Falls Memorial Medical Center (Niagara County) Dr. Kalkut – Recusal Mr. Kraut – Recusal Dr. Rugge – Recusal	Contingent Approval
2.	152232 C	Mercy Hospital of Buffalo (Niagara County) Dr. Kalkut – Recusal Mr. Kraut – Recusal Dr. Rugge – Recusal	Contingent Approval
3.	152234 C	Erie Medical Center (Niagara County) Dr. Kalkut – Recusal Mr. Kraut – Recusal Dr. Rugge – Recusal	Contingent Approval
4.	152245 C	Buffalo General Medical Center (Erie County) Dr. Kalkut – Recusal Mr. Kraut – Recusal Dr. Rugge – Recusal	Contingent Approval

Mr. Holt introduced application 152231, 152232, 152234, and 152245 and noting for the record that Dr. Kalkut, Mr. Kraut, and Dr. Rugge have a conflict on all four applications and has exited the meeting room. Mr. Holt makes a motion to approve. Dr. Berliner seconds the motion. The motion to approve carries with Dr. Kalkut, Mr. Kraut, and Dr. Rugge’s recusal. Dr. Kalkut, Mr. Kraut, and Dr. Rugge returns to the meeting room. Please see pages 55 and 56 of the transcript.

**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**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	152356 E	Advanced Surgery Center (Rockland County)	Contingent Approval
2.	152289 E	Digestive Disease Center of Central New York, LLC (Onondaga County)	Contingent Approval
3.	161009 B	Star Surgical Suites (Nassau County)	Contingent Approval

Mr. Holt called applications 152356, 152289, and 161009 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 57 and 58 of the attached transcript.

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

**Exhibit #7**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	161001 B	Northern Medical Center, Inc. (Orange County)	Contingent Approval

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

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	152263 B	USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis (Erie County)	Contingent Approval
2.	152313 B	Queens Boulevard Extended Care Dialysis Center (Queens County)	Contingent Approval

Mr. Holt called applications 161001, 152263, and 152313 and motioned for approval. Mr. Fassler seconded the motion. The motion to approve passed. Please see pages 58 and 59 if the attached transcript.

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

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	142145 E	Ross Acquisition, LLC d/b/a Ross Center for Health and Rehabilitation (Suffolk County)	Contingent Approval
2.	151054 E	River Valley Operating Associates, LLC d/b/a The Grand Rehabilitation and Nursing at River Valley (Dutchess County)	Contingent Approval
3.	151090 E	Guilderland Operator, LLC d/b/a The Grand Rehabilitation and Nursing at Guilderland (Albany County)	Contingent Approval
4.	152227 E	Pine Haven Operating, LLC d/b/a Pine Haven Home (Columbia County)	Contingent Approval
5.	152265 E	Highland Care Center (Queens County)	Contingent Approval
6.	152380 E	Genesee Center Operating, LLC d/b/a Genesee Center for Nursing and Rehabilitation (Genesee County)	Contingent Approval

7.	152381 E	Silver Lake Specialized Rehabilitation and Care Center (Richmond County)	Contingent Approval
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Mr. Holt introduced applications 142145, 151054, 151090, 152227, 152265, 152380, and 152381 and motioned for approval. Mr. Fassler seconded the motion. The motion to approve carried. Please see pages 59 through 61 of the attached transcript.

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #10**

**Changes in Ownership**

2412 L	Sarene Services, Inc. d/b/a Sarene Home Nursing Agency (Nassau and Suffolk Counties)	Contingent Approval
151322 E	Concepts of Health Care, Inc. (Albany, Saratoga, Washington, Fulton, Schenectady, Columbia, Montgomery, Schoharie, Greene, Rensselaer and Warren Counties)	Contingent Approval
152082 E	Marks Homecare Agency Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties)	Contingent Approval
152162 E	Interim Healthcare of Syracuse, Inc. (Onondaga, Jefferson, Oswego, Cayuga, Madison, Tompkins, Cortland and Oneida Counties)	Contingent Approval
152168 E	Interim Healthcare of Binghamton, Inc. (Broome, Cortland, Chemung, Tioga, Chenango and Tompkins Counties)	Contingent Approval

Next, Mr. Holt introduced LHCSA application number 2412, 151322, 152082, 152162, and 152168 and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 61 and 62 of the transcript.

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

**Applicant**

New York Hospital Queens Foundation, Inc.  
 Forme Rehabilitation, Inc.

**Council Action**

Approval  
 Approval

**Certificate of Dissolution**

**Applicant**

McAuley Living Services, Inc.

**Council Action**

Approval

Mr. Holt introduced New York Hospital Queens Foundation, Inc.,  
 Forme Rehabilitation, Inc., and McAuley Living Services, Inc. requesting consent to file  
 approval. Mr. Holt motioned for approval for consent to file. Ms. Fine seconded the motion.  
 The motion carried. Please see page 62 of the attached transcript.

**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**

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

**Exhibit #12**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	151260 E	North Manor Operations Associates LLC d/b/a Nanuet Center for Rehabilitation and Nursing (Rockland County) Mr. Fassler – Recusal	Contingent Approval
2.	152295 E	North River Operations Associates LLC d/b/a Haverstraw Center for Rehabilitation and Nursing (Rockland County) Mr. Fassler - Recusal	Contingent Approval
3.	152296 E	North Met Operations Associates LLC d/b/a Monsey Center for Rehabilitation and Nursing (Rockland County) Mr. Fassler – Recusal	Contingent Approval

- |    |          |  |                     |
|----|----------|--|---------------------|
| 4. | 161109 E | Abraham Operations Associates LLC<br>d/b/a Allerton Center for Rehabilitation and Nursing<br>(Bronx County)<br>Mr. Fassler – Recusal     | Contingent Approval |
| 5. | 161110 E | Schnur Operations Associates LLC<br>d/b/a Tibbits Center for Rehabilitation and Nursing<br>(Westchester County)<br>Mr. Fassler - Recusal | Contingent Approval |

Mr. Holt called applications 151260, 152295, 152296, 161109, and 161110 and noted for the record that Mr. Fassler has a conflict on the applications and has exited the meeting room. Mr. Holt motioned for approval and Ms. Fine seconded the motion. The motion carried with Mr. Fassler’s noted recusals. Mr. Fassler returned to the meeting room. Please see pages 62 through 64 of the attached transcript.

**Certificates**

**Exhibit #13**

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

**Applicant**

North Shore-Long Island Jewish Health System  
Laboratories  
Mr. Kraut – Recusal

**Council Action**

Approval

Lastly Mr. Holt introduced North Shore-Long Island Jewish Health System Laboratories and noted for the record that Mr. Kraut and Dr. Strange have conflicts and have exited the meeting room. Mr. Holt motioned for approval. Dr. Berliner seconded the motion. The motion carried with Mr. Kraut and Dr. Strange’s recusal. Mr. Kraut and Dr. Strange returned to the meeting room. Please see pages 64 and 65 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 HAS

**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**

**ADJOURNMENT:**

Dr. Boufford thanked Mr. Holt for his report. Mr. Kraut announced the upcoming PHHPC meetings and adjourned the meeting.



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

APRIL 14, 2016

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JEFF KRAUT: Thank you Dr. Gutierrez. I'm not going to call to order the April 14 meeting of the Public Health and Health Planning Council. I'm Jeff Kraut, chair of the council and I have the privilege to call the meeting to order. Welcome members. Dr. Zucker who will be participating in a moment with us via video, participants and observers.

I'd like to remind the council members, staff, and the audience that this meeting is subject to the open meeting law and as such is broadcast over the internet. The webcast may be accessed through the Department of Health website at NYHealth.gov. The on-demand webcasts are going to be available no later than seven days after the meeting, upwards for 30 days and then a copy will be retained in the Department for approximately four months. Now, there's some suggestion of ground rules to make this more successful as a meeting. Because we have synchronized captioning it's important that people do not speak over each other. We can't do the captioning when two people are speaking at the same time. And the first time you speak, particularly if you could state your name and briefly identify yourself as a council member or DOH staff, this will

1 also be helpful to the company that's broadcasting and recording  
2 the meeting. Again, please remember that all the microphones  
3 are hot, they pick up every sound. Please try to avoid the  
4 rustling of papers and be very sensitive about side  
5 conversations as they may be picked up and broadcast out when  
6 you're not necessarily aware that it is.

7 As a reminder for our audience there's a form that needs to  
8 be filled out before you enter the meeting room which records  
9 your attendance at our meetings. It's required by the Joint  
10 Commission on Public Ethics in accordance with executive law  
11 section 166 and the form is also posted on the Department of  
12 Health's website at NYHealth.gov under Certificate of Need. So  
13 in the future you could fill out this form prior to your  
14 attendance at the council meetings, and we really appreciate  
15 your cooperation in fulfilling our duties as prescribed by law.

16 Before we start, it's with great reluctance and significant  
17 sadness that I announce Mr. Art Levin has made a very difficult  
18 personal decision to resign from the Council and you know, we as  
19 is the case, we will prepare a resolution that Dr. Boufford and  
20 I will sign on behalf of the Council, but I want to just take a  
21 moment and make a few remarks.

22 Art joined the predecessor council back in 2009, the SHRPC  
23 and has been a very dedicated member of this council during his  
24 seven year tenure. He was the consumer representative on our

1 council, and he took that job very, very seriously. Art was  
 2 clearly a voice of New York. Very informed, very educated, very  
 3 thoughtful. I think it was a absolute you know, his point of  
 4 views actually just helped out conversations better. It just  
 5 made our job that more focused. I think we learned from his  
 6 perspective. I think how he constantly tried to bring the  
 7 notion of quality and quality data and analytics into this room  
 8 and into these conversations, and you'll see that somewhat  
 9 manifested when Dr. Rugge talks a little today about the long  
 10 term care bed need methodology and the use of available data.  
 11 What could we say about the content of his character, the  
 12 integrity he came with this job, the focus, the homework he did,  
 13 and he was an absolute unwavering advocate for the citizens of  
 14 New York, and he really was one of the individuals who didn't  
 15 let us forget that this is the PUBLIC Health Council, as well as  
 16 health planning, and I think on behalf of all of us, we want to  
 17 convey our gratitude and esteem to Mr. Levin. Our admiration  
 18 and appreciation for his instrumental role in enhancing the work  
 19 of the Council, the well-being of all of New Yorkers and what  
 20 could I say, it was a pleasure. I think he's going to be  
 21 missed, and I would encourage every one of you who feel likewise  
 22 to please reach out to him and express your own sentiments. So  
 23 as we said on behalf of the Council, we kind of what I just  
 24 said, we kind of put it in a resolution. Maybe not as

1 articulate, but I can't say enough kind words on him. So  
2 please, let's thank him again for his activity. And even though  
3 he's not here, I'm sure you're watching, Art, so [applause.]

4 Just to remind people regarding conflicts, members of the  
5 Council and most of our guests who regularly attend the meetings  
6 are now familiar with the reorganization of the agenda by topics  
7 or categories which captures the roles and responsibility of the  
8 Council. This reorganization will include the batching of the  
9 certificate of need applications during the presentation of the  
10 Establishment and Project Review Committee, and I'm going to ask  
11 all of the members if they haven't done so by now, please take  
12 the time to review how we're batching the applications and the  
13 agenda which is at your seat, and if you believe a project needs  
14 to be moved out of a specific category or there is an issue that  
15 you were not aware of that now puts you in a conflict, please  
16 notify us and please forward the request for that change to  
17 Colleen prior to the beginning of that committee report.

18 Our next agenda item is the adoption of the minutes, and I  
19 have a motion for the adoption of the February 11, 2016 PHHPC  
20 minutes. I have, Dr. Brown second; Dr. Kalkut. All those in  
21 favor, aye.

22

23 [Aye]

1           Opposed? You're not going to opposed. Thank you.

2 Carried.

3           Alright. Collect minutes. What am I looking for trouble?

4           Dr. Zucker, as you notice on the screen to my right is  
5 going to join us via televideo and Dr. Zucker will update us on  
6 the Council about the Department's activities since our last  
7 meeting. Dr. Zucker.

8

9           HOWARD ZUCKER: There we go. Thank you very much and good  
10 morning. Sorry I'm not up there. There aren't any flights  
11 directly from Albany to Buffalo any more and I have to be in  
12 Buffalo, so I'm down here in the city.

13           We've had a very busy few months at the Department  
14 influenced by events here in New York as well as events in other  
15 parts of the world. Obviously we live in a state that has the  
16 potential for local transmission, as a result, Governor Cuomo  
17 has developed a six strategy plan for dealing with Zika which  
18 we've read about in the news. I'm going to have Brad speak a  
19 lot about this at a high level. We will be distributing  
20 larvacide tablets, we'll be aggressively monitoring mosquito  
21 populations and will provide Zika protection kits to pregnant  
22 women. We'll also be deploying rapid response teams and we will  
23 also have working with local health departments and have their

1 plans as well as the public health campaign. But as I  
2 mentioned, Brad Hutton is going to give you the details.

3 But before I go on, I want to take a moment to actually  
4 introduce Brad. Many of you already know him. He is our new  
5 Deputy Commissioner in the Office of Public Health. Brad was  
6 previously the Director of our Center for Community Health and  
7 one of his current tasks is now overseeing the State's response  
8 to Zika. Brad brings in a tremendous amount of experience to the  
9 role as Deputy Commissioner and has 20 plus years in the  
10 Department. He really understands all the nuances of what we  
11 do. He takes over for Dr. Gus Birkhead who retired in August of  
12 this past year and will continue to oversee the Center for  
13 Community Health as well as the Center for Environmental Health,  
14 the AIDS Institute, and our Wadsworth Center laboratory. He  
15 will oversee the Office of Public Health Practice and the Office  
16 of Health Emergency Preparedness. Brad, we are extremely  
17 grateful for you to take on this critical role and particularly  
18 at a time when we have to confront the Zika virus. So, more on  
19 that issue when Brad speaks in a little while.

20 Another issue Zika has not been our only challenge. As we  
21 know, we've been dealing with water quality issues in the town  
22 of Hoosick Falls and Hoosick and Petersburg. In particular the  
23 water contamination by PFOA. The State has implemented an  
24 aggressive plan to address PFOA contamination in the Hoosick

1 Falls area, and the plan includes overseeing the installation of  
 2 a temporary municipal filtration system, approving the plans for  
 3 a new full capacity filtration system, committing up to \$10  
 4 million to install hundreds of private residential water  
 5 filtration systems and testing hundreds and hundreds of water  
 6 samples from private as well as public wells. We've been  
 7 conducting a comprehensive blood testing program for residents,  
 8 and we're working to identify a permanent water source for the  
 9 community there. the staffing information sessions in Hoosick  
 10 Falls where residents can get inpatient information has been  
 11 taking place and we've answered a lot of questions that have  
 12 been brought to our attention. And we are establishing a local  
 13 command center that we've had there.

14 The State has also identified Performance Plastics and  
 15 Honeywell International as the parties potentially responsible  
 16 for the PFOA contamination in the village of Hoosick Falls and  
 17 the town of Hoosick as well. We are holding the firms  
 18 accountable for the costs of providing water, drinking water.  
 19 That means all of the applicable guidelines, the rules and the  
 20 regulations to the residents and for the mediating contamination  
 21 in the water system. On March 30 we reported that the water in  
 22 Hoosick Falls may be used for all purposes including drinking  
 23 and cooking, and the temporary filtration system effectively  
 24 removed PFOA from the village drinking water and PFOA is at a

1 non-detectable level. Non-detectable would be less than two  
 2 parts per trillion with a T. In Petersburg the State has  
 3 reached an agreement with Taconic Plastics Incorporated to  
 4 install a carbon filtration system to address PFOA in that  
 5 communities water supply. Our initial test found that PFOA  
 6 levels in the town water supply were just below the EPA guidance  
 7 levels, and that's when our Department together with DEC, the  
 8 town of Petersburg, Rensselaer County, and Taconic Plastics  
 9 began to address the contamination and supply bottled water to  
 10 all the residents in the town. Subsequent tests found PFOA  
 11 levels just above the EPA guidance levels. All parties agree  
 12 that a carbon system was necessary. The Department is strongly  
 13 committed to ensuring that New York's communities have the best  
 14 water supply, water quality, and obviously supply, possible. We  
 15 will continue to assist both communities as well as the others  
 16 that have concerns as well.

17 Another issue, unless prescriber has a waiver for the  
 18 electronic prescribing we have moved forward with an e-  
 19 prescribing system and if you have a waiver that would be an  
 20 exception covered under the public health law under circumstance  
 21 sited in the blanket waiver letter which we recently issued.  
 22 Prescribers can no longer otherwise write or fax a prescription  
 23 on paper pads. Other exceptions include certain special  
 24 circumstances such as obviously natural disaster, electronic or



1 technological failures that may exist. So this requirement is  
2 part of our ISTOP program which was enacted to guard against  
3 prescription drug abuse. The e-prescribing protects patients  
4 from errors. Cause by bad handwriting and as we know as a doctor  
5 we don't have the best handwriting, and misunderstood oral  
6 prescriptions that sometimes are called in. It also makes it  
7 more difficult for people to obtain controlled substances,  
8 illegally using prescription pads with handwritten instructions.  
9 E-prescribing uses a secure closed system to transmit  
10 prescriptions to the patient's preferred pharmacy. For many  
11 prescribers this new law was not a major change. Even actually  
12 before it went into effect, more than 70,000 New York  
13 prescribers were already using an electronic prescribing system.  
14 So, this is just another strategy that was combating the opioid  
15 epidemic which we read about all that time.

16 So on that matter let's talk a little bit about opioid  
17 overdose report that we have. This is a critical report. Last  
18 month the Department released its opioid poisoning overdose and  
19 prevention report to the Governor and to the Legislature. The  
20 State not unlike the rest of the country in talking about  
21 they have had this problem as well, is in the midst of epidemic  
22 of opioid abuse. The number of people dying of opioid overdose  
23 is on the rise. In New York alone we lost 2175 people to drug  
24 related deaths in 2013 and that was up 40 percent from 2009.

1 And heroine, obviously a cheaper more available opioid has  
 2 emerged as a deadly drug of choice. In fact, the number of  
 3 heroine related deaths rose 163 percent between 2009 and 2013,  
 4 while the deaths related to opioid analgesics rose 30 percent.  
 5 So New York has responded on several fronts on this including  
 6 eprescribing as I mentioned. But we have also expanded our  
 7 opioid overdose prevention program, and just last week we held a  
 8 multi agency gathering to discuss strategies on how to deal with  
 9 this epidemic. We now have more than 300 opioid overdose  
 10 programs throughout the State. WE have trained and placed  
 11 naloxone in the hands of more than 100,000 non-medical  
 12 responders. Naloxone is an antidote that reverses the potential  
 13 of fatal overdose effects from heroine or other opioid  
 14 analgesics. In 2015 alone we trained respondents naloxone more  
 15 than 1600 times. So all those respondents that we had out  
 16 there, 1600 times they administered this and obviously saved the  
 17 lives of all those individuals at that moment. We have made  
 18 naloxone available in pharmacies such as Walgreens, CVS, and  
 19 Duane Read as well as independent drug store throughout the  
 20 State. This means that you don't have a prescription for  
 21 naloxone you can still go to the pharmacy and you can get it  
 22 using a non-patient specific order.

23       Regarding CDCs opioid grants, this is another weapon in our  
 24 fight against opioids and this comes obviously from the federal

1 government, from the CDC which awarded the Department a \$2.9  
2 million grant. The funds will be used to develop a unified and  
3 systematic approach to the growing problem of deadly  
4 prescription drug overdose and the project which will be lead by  
5 the Department will involve multiple groups including obviously  
6 providers and local health departments and the trained  
7 respondents. The funds will also be used to enhance provider  
8 use of the prescription monitoring program, or as we call, PNP,  
9 and the bureau of narcotic enforcement BNE will work with the  
10 office of information technology services to integrate the PNP  
11 directly with the patient electronic health records. They will  
12 also work to develop an app like function for providers using  
13 portable devices such as tablets or smartphones. And they will  
14 use data collected from the PNP to conduct public health  
15 surveillance to help improve outreach efforts. The CDC grant  
16 will also improve the use of evidence-based opioid prescribing  
17 guidelines and increase the use of naloxone to prevent deadly  
18 overdoses. Ultimately the goal is to reduce the rate of opioid  
19 abuse to increase the substance abuse treatment, and to lower  
20 the overdose rate for both opioids and heroine. We must remain  
21 committed to stopping this deadly epidemic. As I mentioned,  
22 this is a huge issue.

23 Switching gears, we have some good news to report on  
24 hepatitis C. Two years ago New York became the first state in

1 the nation to require providers to offer a Hepatitis C virus  
2 testing to all baby boomer born between 1945 and 1965. A new  
3 report finds that the number of people being tested has gone up  
4 since the law went into effect. Among Medicaid members between  
5 the ages of 50 and 70, 53 percent of the people who have a  
6 positive HCV screening went on to have the diagnostic test while  
7 in New York City, 28 percent did so. Hepatitis C is the most  
8 common blood-borne infection in the United States. It's causing  
9 chronic disease in approximately 2.7 million individuals. It's  
10 believed to affect approximately 200,000 workers with  $\frac{3}{4}$  of them  
11 born between the years of 1945 and 1965. So it's getting  
12 diagnosed is the first step towards receiving regular care and  
13 treatment and in many cases this treatment definitely does save  
14 many lives. So I'm pleased to see a positive impact of this  
15 law.

16 And finally I'm happy to announce that we celebrated public  
17 health week last week. Public health week is an opportunity to  
18 recognize all our partners in public health who have helped work  
19 with us to protect the health and safety of all New Yorkers. As  
20 part of the weeks events, we commemorated the 30<sup>th</sup> anniversary of  
21 the School of Public Health partnership with the Department.  
22 This was a celebration at the school of public health and we  
23 celebrate our first ever Gus Burkhead day and our first  
24 scholarship in his honor. We also recognize the Seneca County

1 Department of Health for it's hard work during the outbreak of  
2 Hepatitis C, sorry Hepatitis A that occurred last fall. I  
3 especially enjoyed participating in the American Heart  
4 Association's National Walking Day, event here, well, in Albany,  
5 the south end of Albany where I learned a lot about Albany's  
6 history and what the community is doing to address the issues of  
7 health in that area. We were joined by the Albany County  
8 Department of Health as well as local hospitals, the YMCA and  
9 other organizations in local Albany County prevention agenda  
10 coalition. Public health week is truly a reminder of all the  
11 work everyone is doing to make all of New Yorkers healthy, even  
12 though we celebrate one week a year, it truly is something that  
13 we tackle every day of the year, 24/7 and as you've heard from  
14 the presentation, there's so many areas that we take on to make  
15 sure that everyone is as healthy as they can be to prove their  
16 health to the best that we can and to make New York the  
17 healthiest state in the nation. So I thank you for listening,  
18 and happy to answer any questions.

19

20 JEFF KRAUT: Question, Dr. Strange.

21

22 DR. STRANGE: Thank you Commissioner for your extensive  
23 report. just two comments or questions and one is on the ISTOP  
24 e-prescribing program which I truly believe are both excellent

1 programs as it relates to safety, quality, oversight, and  
2 compliance. If there was some way we could figure out how to  
3 connect the two, it is a little bit burdensome for the  
4 practitioners in the community to have to go into two databases  
5 and sometimes maybe forgetting to put one into the database of  
6 ISTOP. So, I'm not a techy guy but I would think there should  
7 be some sort of communications that eventually could be set up  
8 here and that would make it even more robust and maybe even more  
9 compliant in terms of connecting the e-prescribing to the ISTOP.  
10 That would be my first. And my second, and then I'll let you  
11 answer both, on the Hepatitis C issue, which again, excellent  
12 program. As a practitioner in the Staten Island community I  
13 think it's done very well. However, what we have seen in terms  
14 of some managed Medicaid programs is the delay in getting  
15 treatment to prove by the Medicaid programs on some of these new  
16 medications. Up to the time of recently as one patient of mine  
17 six month having gone through many hoops and hurdles to get the  
18 treatment. Can we see if there's something that could be done to  
19 expedite this.

20

21       HOWARD ZUCKER: Sure. Regarding the Hepatitis C, we are  
22 looking into this issue, and I know it's a costly treatment and  
23 we've had multiple conversations about this so we will work on  
24 that for you. And regarding ISTOP, absolutely, as a matter of

1 fact, you're the second physician who's brought this to my  
2 attention in the last couple days because I was talking to a  
3 doctor about something else completely unrelated, and this was  
4 the issue that he brought up about exactly what you mentioned.  
5 So let me look into it with the IT people.

6

7 JEFF KRAUT: Excuse me. Any other questions for the  
8 Commissioner? With that, Commissioner, I thank you very much  
9 for your report and appreciate your joining us this morning.  
10 Thanks very much.

11 So, next, what we're going to do is I want to suspend the  
12 meeting for a moment as we've promised occasionally it's helpful  
13 to go into an executive session. There's an issue that's come  
14 up that I think merits a conversation and advice of our counsel  
15 and I'm going to suspend the meeting. we're going to retreat to  
16 another room right down the hall here. have an executive  
17 session and then return back into the room to continue with the  
18 agenda. So, we - I have a motion to adjourn-I'm not adjourning  
19 the meeting, what do I do? It's called at ease? So I have a  
20 motion to go at ease. So moved. Second. All those in favor.  
21 Aye. OK, we are at ease. Please discontinue the recording and  
22 we'll be back.

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24 [BREAK for ES]

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JEFF KRAUT: Hello. We're going to restart, continue with the agenda of the public health and health planning council. I'd like to call and welcome Mr. Brad Hutton and welcome you and look forward to your continued participation.

BRAD HUTTON: Thank you. All of you who know, Dr. Birkhead know I have some big shoes to fill, but I observed quite a bit over the years how Gus handled himself and understand in this council that he was the public health voice, and I know if he were here he would ask me to make sure that I spent plenty of time reporting on the office of public health activities. I'm going to focus my comments today on the Departments response to Zika. Just to share some of the details, fortunately for New York the Wadsworth Center for laboratories and research and the Office of Public Health is uniquely positioned to offer testing. Really rivaled only by the Centers for Disease Control in its capacity in many aspects of public health laboratory activities. And so as a result of that, New York State has the most expansive testing criteria in the nation for the Zika virus. As of yesterday we tested approximately 3000 patients. we're even assisting a few other states with testing and who are interested in working with us. As a result of those 3000 tests, we've identified 69 patients who have been infected with Zika virus to



1 date. All but one of those have been associated with travel to  
2 the effected region in Central and South America. There's one  
3 case who is suspected to have had sexual transmission, a partner  
4 who traveled to the region. We're still working on that  
5 investigation. And so as a result of that expanded testing  
6 criteria we actually have the second most cases of Zika virus in  
7 the nation second only to Florida. That's primarily due to the  
8 fact that we have a diverse population and also a population  
9 that travels frequently to the Caribbean, Central, and South  
10 America.

11 New York is performing real time PCR testing on both serum  
12 and urine. We're believe we're the only testing in the nation  
13 going on in urine right now, and we're actually, as a result,  
14 finding some cases that are only positive in urine. Actually 35  
15 of our 69 cases have only been positive in urine. Where we're  
16 seeing that the virus is detectable for longer periods of time  
17 in serum. So that's in finding. We are preparing to share  
18 nationally in hopes that we can find better solutions for  
19 testing.

20 So our main concern is we move into mosquito season that's  
21 protecting New Yorkers from the prospect of infection from  
22 mosquitos locally. Fortunately the mosquito that is believed to  
23 be the responsible for the majority of infections in the  
24 affected region is a mosquito known as Aedes Aegypti. That's a

1 mosquito that has not been present in New York to date. We do  
2 have had an extensive amount of mosquito trapping in prior years  
3 primarily for West Nile Virus and other mosquito borne diseases.  
4 We do have another species of related Aedes mosquito that is  
5 present in parts of New York. It's known as Aedes Albopictus.  
6 And that is mosquito that we have found in New York City, Long  
7 Island, and the counties at the very lower end of the Hudson  
8 Valley region. And so the main concern is making sure that we  
9 don't have instances where there's local transmission of the  
10 Zika virus as a result of that mosquito. We don't believe that  
11 that mosquito species is as effective at transmitting Zika as  
12 the Aegypti mosquito, but there really is not conclusive lab  
13 evidence at this point to rule that out. So we really need to  
14 be prudent and prepare for the possibility that it can transmit  
15 Zika.

16 So Governor Cuomo and Commissioner Zucker did announce an  
17 aggressive six point plan several weeks ago that I just wanted  
18 to share briefly. The first aspect of that plan is mosquito  
19 surveillance. We will be bolstering our existing mosquito  
20 surveillance activities in that downstate region to purchase  
21 specific traps that are designed to better collect that Aedes  
22 mosquito. They happen to be daytime fliers and have some  
23 different traits and habits that warrant us to have different  
24 surveillance techniques. They're really three focuses of that

1 surveillance effort. One is to just monitor for the presence of  
2 the mosquito. The second is to monitor the northward migration.  
3 There is a slow migration northward right around the area of  
4 Westchester, Orange, and Rockland Counties as temperatures warm  
5 with climate change. And then the final aspect of that mosquito  
6 surveillance is to test the mosquitos that we do find for the  
7 Zika virus, and Wadsworth does already have an assay that  
8 they'll be using to test mosquitos for the virus.

9 A second aspect to the plan is mosquito control. This is  
10 something we have a lot of experience with West Nile virus in  
11 the downstate region. However the control activities are going  
12 to change because this is a daytime flier that stays very in  
13 it's lifetime within a 200 yard radius. So we will be working  
14 with counties in the downstate area to hold mosquito control  
15 days to work to remove reservoirs where this mosquito can breed  
16 to limit the numbers of mosquitos that are present. They do  
17 breed in smaller containers, so there'll be a little bit of  
18 educational activities going on to alert people that it's not  
19 the same kind of reservoirs that we typically would think of for  
20 the West Nile virus.

21 Third aspect of the plan is public awareness. We'll be  
22 rolling out a media campaign that will focus primarily on  
23 pregnant women who may travel to the effected region to alert  
24 them to ways that they can protect themselves if they are unable

1 to heed the travel recommendations to refrain from traveling to  
2 effected countries.

3       The fourth aspect of the plan are Zika protection kits.  
4 You may have seen in the media that the Centers for Disease  
5 Control provided kits to residents of Puerto Rico that had  
6 different items in them, so we do have a New York specific Zika  
7 protection kit we're providing that will include mosquito  
8 repellent, condoms, larvacide, and educational materials. It's  
9 not intended to be a summer long supply but instead just a  
10 started supply. Really as a way to raise education about the  
11 different ways that pregnant women should be reducing the risk  
12 for Zika if they do travel.

13       The fifth aspect of the plan that we put in place emergency  
14 regulations requiring local health departments statewide to  
15 submit to us a Zika action plan outside of the region where we  
16 have the Aedes Albopictus mosquito counties need to focus their  
17 plans on how they'll be educating their population about Zika  
18 because of the prospect of travel associated cases, and also  
19 their surveillence activities for those travel associated cases,  
20 and then the counties in the areas that have albopictus will  
21 have many other aspects of their plan that they need to submit  
22 to us. Those plans are preliminarily due to us on April 15.

23       Finally we are putting in place rapid response teams that  
24 will be comprised of state and local officials in the event that

1 we do have evidence of local mosquito transmission which would  
2 be either mosquito pool that has evidence of the Zika virus, or  
3 a human case that has not traveled and is not associated with a  
4 traveler. That would trigger the deployment of these rapid  
5 response teams that would work to aggressively inspect the areas  
6 in and around where that case has spent time to remove mosquito  
7 reservoirs, potentially consider larvacide and application of  
8 (adulticiding) to kill mosquitos and essentially limit the  
9 possibility that we could have local mosquito transmission in  
10 that area.

11 So, while I've been fully engaged in Zika response  
12 activities for the last several months since January when the  
13 World Health Organization declared this a public health  
14 emergency of concern, I've really enjoyed for the last three  
15 weeks spending time getting to know the great activities going  
16 on in the rest of the office of public health. Where fortunately  
17 we have a management team that's really comprised of leaders in  
18 the field nationally. I think you're really aware of a lot  
19 that's been going on environmental health through Legionella  
20 discussions and water quality. Our AIDS institute has led the  
21 nation with its bold plant and the epidemic. As if that wasn't  
22 enough they've expanded beyond their core mission to consider  
23 issues like Hepatitis C and drug user health and been fascinated  
24 to learn more about that. Our Wadsworth Center really is an

1 incredible gem that provides a lot of comfort to me because they  
2 have the capability to test and incredible research that really  
3 other state public health labs don't have the capacity for. And  
4 most recently as an example there's been a recall nationally of  
5 newborn screening tests related to cystic fibrosis and of course  
6 Wadsworth is positioned to do its own testing and even assist  
7 other states in the sort of time of need until a new assay gets  
8 released. So just one example.

9 And then finally our emergency help preparedness folks are  
10 always working to develop plans and train on them and then drill  
11 on them, so that's also been something that I've spent a fair  
12 amount of time in my past positions, and I'm getting up to speed  
13 on other stuff. And then finally our Office of Public Health  
14 Practice - I was going to say preparedness, sorry Sylvia -  
15 recently had a great meeting of our Prevention Agenda and I'm  
16 going to just conclude by handing the baton off to Dr. Boufford  
17 to just talk a little bit about the Prevention Agenda activities  
18 in that meeting.

19

20 JEFF KRAUT: Thanks very much Brad. Before I do, if  
21 there's any questions from council members? Yes, Dr. Berliner.  
22 Grab a mic please.

23

24 HOWARD BERLINER: Yeah, Zika question if you will. The -

1

2           JEFF KRAUT:       Get a little closer, we can't hear you.

3

4           HOWARD BERLINER:       The funds for mosquito control are  
5 county-based?

6

7           BRAD HUTTON:       So, counties, mosquito control is an  
8 allowable activity under the general public health works and so  
9 I should've mentioned that we have, the Commissioner has issued  
10 an eminent threat to public health declaration for Zika virus  
11 response activities which does make it so that local health  
12 department expenditures that go above and beyond their budgeted  
13 amount for the year will be eligible for reimbursement at an  
14 enhanced rate. So, instead of the typical 36 percent, it is 50  
15 percent reimbursement. So it is a blend of local and state  
16 dollars.

17

18           JEFF KRAUT: Brad, I would also add the, we're aware of  
19 the proud history of the Department of Health and particularly  
20 the Wadsworth Laboratory and cutting edge of public health and  
21 advocacy, so, it's a great history and in light of that one of  
22 the things, you might want to consider in discussion with the  
23 commissioner is given the amount of travel of New Yorkers, maybe  
24 talking to the cruise industry and the airline industry that

1 they could voluntarily provide those destinations that are at  
2 high risk the Zika prevention packets as a kind of a  
3 public/private partnership to get them to voluntarily interpret  
4 that. I think that would be something we should be calling for,  
5 because it may have some very practical advantages. So if maybe  
6 you would take that under - it's my thought to do that.

7

8 BRAD HUTTON: I think that's an excellent suggestion. I  
9 will add that we are working with port authority to focus that  
10 public awareness campaign that I mentioned on ports including  
11 airports and cruise destinations to really focus on those  
12 individuals at the point that they're departing and returning to  
13 provide that education. But I think considering that as a venue  
14 to distribute kits would be a good idea too.

15

16 JEFF KRAUT: Thank you. Dr. Boufford.

17

18 JO BOUFFORD: Thank you. Just to - first of all, let me  
19 congratulate Brad for his position. We're delighted to have him  
20 in that role and you can tell from his presentation that he's  
21 already on top of it, so this is great. And I wanted to talk  
22 just briefly about the meeting that was held on March 24 in  
23 Albany and to thank in absentia at least First Deputy  
24 Commissioner Dreslin who was there. And also Peggy Chan from



1 DSRIP attended and spoke at the group which was really helpful.  
2 You have a one pager at your site. We wanted you to have a  
3 sense especially those of you from communities that have been  
4 particularly active in presenting what they're doing and sharing  
5 their learning with us just so you would know about it. Just  
6 briefly, the meeting was held around the Prevention Agenda, sort  
7 of an update on it. It was cosponsored by HANYS and NYSECHO and  
8 Robert Wood Johnson Foundation and the University of Wisconsin  
9 Population Health Institute through one of their community  
10 development grant, so I just want to thank them for their  
11 sponsorship. We had a little under 200 participants. It was  
12 really really active day. We had 40 reps from 44 hospitals, 50  
13 local health departments, about I think almost 2/3 maybe a half  
14 of our ad hoc leadership group members came which was great  
15 including the North East Business Group on Health, and we had  
16 eight of the (PHIPS) represented so it was a really, a chance  
17 and I think one we need to do more of. It was one of our first  
18 effort to bring people together in person to talk to each other  
19 and learn from each other. The meeting objectives are laid out  
20 on the paper that you received. Just in the morning I think we  
21 gave people an update on the prevention agenda and how it links  
22 to the other healthcare reforms in the State which was really  
23 valuable and I think increasingly the groups responsible for the  
24 areas like DSRIP and others are really seeing that there is an

1 important connection around the population health agenda with  
2 the Prevention Agenda, and we heard from the Bronx about a very  
3 creative program they have called 'not 62', they are 62 out of  
4 64 counties in terms of health status in New York and they had a  
5 fabulous marketing plan involving a lot of young people in the  
6 Bronx pushing this broader issue around health and wellness  
7 which was really exiting to hear about, and then from  
8 Schenectady a very well organized coalition, local coalition in  
9 the Schenectady area working on asthma and a whole bunch of  
10 different ways. And then the presentation over lunch, there was  
11 no rest for the weary on this day. The presentation over lunch  
12 was on new data systems which are really trying to help  
13 communities get under a little more deeply into the source of  
14 health disparities. This has been the small area data is always  
15 hard to come by and I just want to congratulate the Department  
16 on their work to pull this together. The afternoon breakout  
17 sessions are outlined, mainly all structured. Everybody had two  
18 rounds and they were structured around issues that they are  
19 concerned about that they are working on to hear from each other  
20 and were very well attended. The general feedback was very  
21 positive. I think you see the need for venues to bring these  
22 various partners together to learn from each other and we would  
23 hope that in terms of next steps we would be able to find ways  
24 and perhaps I invite PPSs to consider this when they cross

1 county boundaries, perhaps using it as an opportunity to bring  
2 together multicounty areas working on issues to speak to each  
3 other. I think the link with SPARCS data is important. Bringing  
4 elected officials in, we've talked about, this is really an  
5 issue when you work locally and do presentations on the  
6 Prevention Agenda. A lot of the assembly representatives show  
7 up or send representatives. They're locally very aware of what  
8 local health departments and hospitals are doing with other  
9 stakeholders, and we haven't really sort of engaged the sort of  
10 the assembly or the senate in these conversations, so I think we  
11 want to think about that a little bit in the non-lobbying way.  
12 And then we're working very hard and I think very productively  
13 with the DSRIP colleagues on how they can bring attention to the  
14 population health agenda in their reviews and domain three and  
15 four activities of the PPSs. So, again, looking for creative  
16 ideas, sponsors who'd like to support convening activities and  
17 webinars and continue the learning process, because it's a very  
18 fire up group and really good local activities going on. Thanks.

19

20 JEFF KRAUT: Thanks Dr. Boufford. Are there any  
21 questions?

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23 JO BOUFFORD: And thanks to Sylvia and her team from the  
24 Office of Public Health.

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JEFF KRAUT: OK. Are there any questions? Thank you very much, Dr. Boufford. I'll now turn to Dr. Ruggie who present the report on the planning committee.

JOHN RUGGE: As members of the council are well aware for almost a year the planning committee has been deliberating over the required update for long term care bed need methodologies, and just in time we are prepared on the strength of a number of meetings including shareholders, dedicated days, have a series of recommendations to report. I will be giving a bit of the background and the policy context as we have come to understand it, and then turning over to Lisa Ulman and her colleagues regarding the recommendations so that tomatoes and (burk backs) can be saved for DOH staff instead of being directed toward me.

By way of background on slide two, there is indeed law in regulation in place which stipulates a current methodology that expires at the end of this year. The original intent is listed in bullet three regarding the assuring access and local considerations, and the rest, I think our shared understanding is several decades ago this was really about capping the number of beds, thereby capping Medicaid expenditures. Issues which become much more tangential are potentially irrelevant in a vast dynamic environment. Going on to number three, that current

1 environment includes changing demographics. We all know about  
2 the aging of the population, although a closer look over the  
3 next five years shows actually a decrease in the number of  
4 people in New York living at age 85 or over. There is a dip for  
5 a short period of time, until baby boomers can catch up to the  
6 octogenarian decade. There is, as I think we're all aware, an  
7 increasing reliance and ability to perform community-based  
8 services and therefor indeed depopulate the skilled nursing  
9 environment with people now able to be managed at home through  
10 availability of expanded nursing services, telemonitoring, and  
11 the rest. As a contrary factor, we know that DSRIP will be  
12 rewarding the demands of the costs of the health system and  
13 reducing those costs are incenting all providers to reduce  
14 hospitalization and acute care expenditures as much as possible,  
15 which translates in some substantial part toward moving people  
16 from hospital beds to the nursing home beds. And perhaps most  
17 significantly the ultimate outcome of DSRIP hopefully will be  
18 transferring to a value-based reimbursement and payment system  
19 so that we are really looking at providing the best value by  
20 having people in the least restrictive settings possible but at  
21 the same time getting all the care they need so that we are  
22 averting undue illness or and undue expenses.  
23 All this leads to a series of confounding factors making  
24 accurate or even sensible predictions of bed need impossible.

1           Just to further create an evidence based approach, we as a  
2 committee did take a look at recent trends that include  
3 declining utilization of beds with a decrease from 93.7 percent  
4 occupancy statewide to 92.9 percent. Not by itself a dramatic  
5 shift, but it is dramatic for those facilities which have  
6 dropped below their threshold and therefore achieving lower  
7 reimbursement on the basis of being unable to fill the beds to  
8 the required limit. Likewise, there is an even more impressive  
9 decline in the number of beds in place across the State. A six  
10 percent decline from 116,000 beds to 109,000 beds. Due to  
11 closures, due to lack of need. By the same tone we feel a need  
12 for this council and for state government to look to be sure  
13 that as reductions occur they're occurring fairly and based on  
14 considerations of quality and equitable distribution across the  
15 State and across payer groups. Likewise, there has been a  
16 significant conversion from municipal status and not for profit  
17 status to for-profit ownership and operation of this part of the  
18 healthcare industry. A trend which we see to be only  
19 accelerating as time goes by.

20           And maybe not finally, but lastly on this list a  
21 continuation of Medicaid as the predominant if you will,  
22 monopsony payer for the skilled nursing home beds and their  
23 occupancy. The shift is remarkable. In 2006, 78.7 percent of  
24 all patients were using Medicaid as of 2014 78.7 percent. Not

1 even a variation of a 10<sup>th</sup> of a percent in terms of distribution  
2 over time.

3       So with that moving to slide five; we have identified five  
4 predominant principles or considerations for revisiting and  
5 revising and tweaking the current methodology for the next  
6 period of time. As a continued concern, the need of course, the  
7 real need is not the number of beds but the assurance of  
8 appropriate access to care, and I would add care in their local  
9 community so we're not asking families to move dozens or hundred  
10 miles away to visit somebody, and the family may be placed there  
11 for a period of years. In addition, as we consider bed need  
12 methodology, we must also be cognizant of the need and  
13 availability of services across the continuum. the availability  
14 of alternatives to skilled beds is a key consideration as we  
15 look at the bed need itself. Thirdly, we understand that New  
16 York is a very diverse state and local needs trump statewide  
17 statistics every time. People do not like just in New York,  
18 they live in their local community and are dependent upon local  
19 resources and we need to be very, very sensitive to local  
20 circumstance, local variations, and the need to be responsive to  
21 those needs community by community, family by family.

22       Given the fact that we are living in such a confounding  
23 environment with so many changes going on in terms of  
24 healthcare, financing, and services, not to mention

1 demographics, by no means is the promulgation of a bed need  
 2 methodology equate to a prediction of bed need. We are not  
 3 trying to predict how many beds will be needed, but instead to  
 4 offer guidelines for adjusting the quantity of beds over time in  
 5 response to all these considerations which we've been trying to  
 6 clarify and . And just to be clear, there is  
 7 certainly a broad range of opinion among and from professionals  
 8 in terms of how useful indeed it is to have a bed need  
 9 methodology at all. And the sense of the committee has been that  
 10 given the complexity environment, given the rapidity of change,  
 11 we need to have a measure of continuity in terms of existing  
 12 regulation, but also need to promulgate such a methodology only  
 13 for such period of time as we hope to have more clarity about  
 14 where the future goes, and how in effect there may be a more  
 15 self-regulating system if we are really in a value-based  
 16 environment in which families and professionals providing care  
 17 can modulate the placement of patients much better than this  
 18 council by stipulating which beds go in which community and how  
 19 many. So we are looking at a time limited proposal that also as  
 20 you will see, will require continued surveillance by this  
 21 council so that some few years from now we may be prepared for a  
 22 much more substantial shift in how we understand methodology  
 23 going forward.



1           With that as background, any questions are very welcome and  
2 most, if they're difficult, I refer them on to Lisa, but glad to  
3 discuss just how we have tried to understand our environment,  
4 characterize changes we're dealing with, and out of that context  
5 develop revisions in the current methodology so we have a system  
6 that is both sustainable but responsive to change. Was it that  
7 good? Wow. Lisa, if we can turn to you.

8

9           LISA ULMAN:       Thank you Dr. Rugge. As you noted, the  
10 committee did have multiple sessions and I think we at the  
11 Department found them incredibly useful in helping us really  
12 identify the issues and help us develop these very specific  
13 recommendations which with the councils agreement we look  
14 forward to incorporating into regulations and department  
15 practice. So the first one, as Dr. Rugge had mentioned, the idea  
16 is to revise the methodology for a period of time that is  
17 limited in nature, that's long enough for us to really assess  
18 what's going on in the world and figure out how it intersects  
19 with long term care and how should make sure everything is  
20 aligned. So the idea is that the methodology as revised would  
21 be in effect for the five year period which means the planning  
22 target year is currently 2016 and it would become 2012 and  
23 again, the idea is that this avoids us using data that's too far  
24 in the past and making projections that's too far in the future.

1 And like I said, this will allow us to really look at what else  
 2 is going on in the world. As Dr. Rugge mentioned, DSRIP, value-  
 3 based purchasing, the idea that we're seeing that trend toward  
 4 community-based settings as opposed to institutional settings,  
 5 the demographics, all those factors that are happening in the  
 6 environment and they're ongoing and we want to make sure that we  
 7 are thinking about them, seeing how they're going and aligning.  
 8 So the five year period will give us time to do that, but as Dr.  
 9 Rugge mentioned it's not going to be something that we, you  
 10 know, set aside and don't come back to. Our idea is that we  
 11 want to make sure we're looking at information in the interim  
 12 and that we are looking at the right information and that we're  
 13 discussing that on an ongoing basis so that we can really be  
 14 thinking about what's happening and how we should be dealing  
 15 with that.

16 So turning to the next slide, so as I mentioned, we really  
 17 want to make sure we're looking at information and data that  
 18 will collect during the five year period. And I think it had  
 19 been helpful for us, particularly in the last session where we  
 20 met with the committee and stakeholders to sort of hear about  
 21 the things we should be thinking about so you can see some of  
 22 them here. The idea is we really want to make sure we're  
 23 getting information about the managed long term care population  
 24 and the penetration rate in the nursing homes. We certainly want

1 to make sure we're looking at how many managed long term care  
2 plans are in each of the planning areas, look at enrollment, we  
3 want to make sure we're really looking at what are the networks  
4 for long term care and post-acute provider networks that are  
5 happening across the State. Want to make sure we're looking at  
6 the growth in supply of community-based providers, so that would  
7 be item such, providers such as homecare and assisted living.  
8 Really want to look at that while we're thinking about the  
9 nursing home bed supply. We want to look at occupancy trends,  
10 think about the payer mix, think about the case mix index, see  
11 what we're seeing about how long residents are staying in the  
12 nursing homes. I think some good ideas came out of our previous  
13 sessions about wanting to try to understand the source or  
14 referrals to nursing homes and see how the nursing home care is  
15 being utilized particularly for example, we talked about short  
16 term rehabilitative stays, ventilator stays, care for dementia,  
17 traumatic brain injury, and really see what information we can  
18 get. And I should point out too if we, we're going to sort of  
19 keep this inquiry ongoing so if there's other information that  
20 surfaces that looks like it would be useful for us to collect,  
21 we will do that as well.

22 And let me just turn to Tracy and others to see if I'm  
23 forgetting anything that we wanted to highlight?

24

1 TRACY RALEIGH: I think you're doing a great job.

2

3 LISA ULLMAN: Excellent. Covered it all. And again, the  
4 idea as I mentioned, this isn't something that we're going to  
5 come back in five years and talk about what happened then, we're  
6 going to come back to the committee at the end of the second,  
7 third, and fourth years and really talk about what we're seeing  
8 in the data, see if there's additional data that we should be  
9 looking at, so that we can sort of continue this dialog so that  
10 we're prepared for the end of the five year period.

11 So, as I mentioned, we're moving forward for a five year  
12 period, so the base year which is currently 2006 should be  
13 updated to 2014 and that would give us the most recent of the  
14 data that's available to us. And the idea too is that we're  
15 going to use trended use rates for the planning area which is  
16 not something that we do now, and we also just want to make sure  
17 that again, to be looking at the most useful data and really get  
18 a better profile of the individual planning areas, we're going  
19 to revise the methodology so that the planning area bed  
20 estimates aren't going to be blended anymore with statewide  
21 figures which is something that we do now. I'm just trying to  
22 see, anybody want to add anything?

23

1 TRACY RALEIGH: I think we found that the stateside  
 2 adjustment was causing - sorry, apologize, -- we found that the  
 3 statewide adjustment which is applied in the current methodology  
 4 was causing some skewing of data, so ok, hows that? Third  
 5 time's a charm. So the statewide adjustment which is in the  
 6 current methodology, we found was causing skewing of results.  
 7 So we believe eliminating that will result in more accurate  
 8 estimates of bed need.

9

10 LISA ULLMAN: Thanks Tracy. We also talked a bit about the  
 11 planning areas. So currently when we look at a planning area we  
 12 are also allowing consideration of the adjacent areas, but  
 13 primarily we use the county as the planning area, except New  
 14 York City, all the counties are considered to be one planning  
 15 area, and Long Island, both counties are considered to be a  
 16 planning area. We think that actually looking at each  
 17 individual county is actually a good starting point, but we're  
 18 thinking that it doesn't reflect the full range of  
 19 considerations which really should be taken into account when  
 20 we're thinking about how do we estimate the bed need. So I  
 21 think what we were thinking is that we'd like to do a better job  
 22 maybe of reflecting for example, sparsely populated area in a  
 23 rural area of the state. Or also for more of an urban area it  
 24 may be densely populated and have natural boundaries with

1 defined communities, and I think we want to have a little more  
2 flexibility so that we can treat that as a planning area. So  
3 again, the idea is we'd start with each individual county, but  
4 then we would reflect these different range of considerations  
5 and have a little bit of flexibility and how we draw what ends  
6 up looking like the planning area. So, I think that's the idea,  
7 and really when we're doing that we would be taking into account  
8 certain factors such as population density and travel time, so  
9 we'd really be looking at what's the transportation options  
10 available so there may be mass transit or there may not be mass  
11 transit. What are the different geographical situations that  
12 would help factor into what a definition of an area should look  
13 like, weather factors particularly in more rural areas may also  
14 weigh in and be something that we should take into account.

15 We also identified as a recommendation the idea that we  
16 should revise how we use migration data. So currently we do  
17 take into account migration of individuals from their home  
18 counties and they're going to nursing homes in other counties.  
19 We use a universal migration adjustment for that. We are  
20 thinking that we could do something that is a little more  
21 flexible and appropriate to the specific areas. Let me just  
22 jump in and see if - see if anyone else wants to jump in and add  
23 any detail to that? So getting away from the universal  
24 adjustment and really just looking at the individual region and

1 seeing if what we should be looking at for migration in that  
2 area.

3 And we have another, I think, final recommendation  
4 regarding the occupancy rate threshold. So currently we look at  
5 the occupancy rate in a planning area and if it's less than 97  
6 percent in the instance of a renovation or ownership transfer  
7 application, we determine, as a department, we determine whether  
8 to decertify beds and in doing so we do take into account local  
9 factors. We are finding that the 97 percent threshold is high  
10 compared to what the actual experience is, and in large part  
11 that may be because it doesn't differentiate the short stay  
12 rehabilitation utilization for example. So we'd like to see some  
13 more flexibility in this analysis. So we would like to revise  
14 the threshold to 95 percent for major renovations and ownership  
15 transfers, but very significantly we would keep taking into  
16 account the local factors. And local factors, I think we would  
17 expand upon even further than we currently use, so we would want  
18 to take into account a variety of things that you can see  
19 spelled out on the slide, so we'd be thinking about how big is  
20 the facility, how close it is to other facilities, how is it  
21 structured internally in terms of how it's units are set up,  
22 what are the special needs of it's population and in part this  
23 can include behavioral health. We would want to look at the  
24 percentage of Medicaid admissions relative to other admissions.

1 And we want to look at the quality of the nursing home in the  
2 planning area and we would be using the CMS quality measures in  
3 order to do that. We would keep the 97 percent threshold for  
4 net new beds, but again, for major renovations or ownership  
5 transfers we want to use this 95 percent threshold and again,  
6 expand upon those local factors to really address the need for  
7 flexibility.

8 And I think that that is the end of the recommendations.

9

10 JOHN RUGGE: Questions, suggestions, edits, improvements  
11 are welcome. Dr. Boufford.

12

13 JO BOUFFORD: I have a couple of questions or comments on  
14 the collect data and reevaluate slide. I wonder the degree to  
15 which instead of assessing what we have, a couple of things are  
16 included or might be included. One of them would be day  
17 programs. Adult daycare programs because I think increasingly  
18 people are trying to use them to keep people at home and give  
19 respite to families, etc. The second one would be the use of  
20 technology and telemedicine relative to homecare because I think  
21 there's still some legal and financial issues there, both, in  
22 both that should be perhaps looked at and might increase the  
23 efficiency or the likelihood of people being able to stay at  
24 home and connect in. And then the other one is on the revise the



1 planning areas, which seems fine. I think the question I would  
 2 have is maybe looking at in the spirit of maximizing care  
 3 coordination, the PPSs in those planning areas and how the  
 4 various long term care facilities and programs are linked to the  
 5 PPSs because when a lot of the PPSs submitted their DSRIP  
 6 applications there. They list virtually every post-hospital  
 7 entity that moves in their area, and I think as this kind of  
 8 shakeout is occurring and people are actually developing their  
 9 systems, there should be pretty robust ability to identify that  
 10 because it may have implications for bed need and for systems,  
 11 transfer systems and other kinds of things. So, those were two  
 12 suggestions.

13

14 JOHN RUGGE: With regard to your first point, Jo, as we  
 15 tried to look at the data and understand utilization of services  
 16 other than skilled beds, there are clear gaps in terms of what  
 17 we know and don't. I think one of the values of coming back  
 18 year after year with more data is looking how to close those  
 19 gaps so we have a better understanding of how the system is  
 20 being used and how it is changing.

21

22 JO BOUFFORD: We just haven't - we've talked a lot about  
 23 the CHHAs and the other things, but I was just interested in  
 24 this, maybe it's in the city it's more frequent, but this role

1 of adult daycare, because it just doesn't get discussed very  
2 much, and I think there's potential there.

3

4 JOHN RUGGE: Absolutely.

5

6 LISA ULLMAN: Yeah, I think those all sound like things -  
7 that's a great point, thank you.

8

9 JOHN RUGGE: The comments I'm pleased to say that every  
10 member of the committee in attendance voted to approve these  
11 recommendations. With Dr. Boufford's absence and perhaps others  
12 we were one vote shy of the necessary affirmative to bring to  
13 formal committee recommendation, but if the council were to  
14 proceed today, the Department will go to work in terms of  
15 turning these conceptual understandings into code which as I  
16 understand will then come back to the codes committee for final  
17 review and approval by the council, so they can be implemented  
18 and ready to go by January 1, of 2017.

19

20 JO BOUFFORD: May I so move to remove guilt from myself?

21

22 JEFF KRAUT: So we have a motion to accept the  
23 recommendations for revision of the residential healthcare  
24 facility bed need methodology as recommended by the planning

1 committee without vote, and we have a motion that's seconded.

2 Is there going to be any discussion? Any other questions? Yes,

3 Ms. Hines.

4

5 VICKY HINES: I think that Dr. Boufford's point about  
6 other telemedicine, etc., are good ones so are we approving with  
7 that specific—

8

9 JEFF KRAUT: With the comments of the committee because  
10 they'll accept the report, they'll go back, listen to the  
11 discussion, and this has to be reflected in code. This doesn't  
12 become the code. And any other questions? Just before I call  
13 the vote I just wanted to thank Dr. Rugge and Lisa and Karen and  
14 everybody else who worked so hard on this and particularly the  
15 public, if you were present to last week's committee meeting  
16 which we had for a couple of hours, it was a great conversation.  
17 It really showed the industry interested parties, all  
18 participated in it, and it actually added significant value I  
19 think to the final product and Dr. Rugge, I know how difficult  
20 it is to do the need methodology because I had to do it last  
21 time on SHRPC, it's a yeoman's job and you did it wonderfully  
22 and admirably with the Department staff. I can't thank you  
23 enough. I know how challenging that is. So thank you.

24 With that I'll call the vote. All those in favor?

1 [Aye]

2           Opposed? Abstentions? The motion carries. We'll accept  
3 the report and direct the Department to amend the code in  
4 conformance with the recommendations and conversations. Is  
5 there anything else Dr. Ruge? What's your next step?

6

7           JOHN RUGGE:       We'll discuss that in the future.

8

9           JEFF KRAUT:       Take a few days off, alright. Thank you Dr.  
10 Ruge. Appreciate it very much. And now I'm going to turn to  
11 Dr. Gutierrez to give the report on the Codes, Regulations,  
12 Legislation Committee.

13

14           ANGEL GUTIERREZ:    Good afternoon. Today's meeting of the  
15 Codes, Regulations, and Legislation the committee reviewed seven  
16 proposals for emergency adoption, the protection against  
17 Legionella. This proposal will continue the emergency  
18 regulations related to cooling towers which recirculate on  
19 aerosolized water. When not properly monitored and maintained  
20 and disinfected, aerosols might contain Legionella bacteria.  
21 The emergent regulations establish requirements for the  
22 registration, testing, cleaning and disinfection, maintenance,  
23 inspection, certification, record keeping and reporting of  
24 results and actions in order to control the growth of Legionella

1 bacteria. Without this action the emergency regulations which  
2 are set forth in part four of Title 10 New York Codes Rules and  
3 Regulations would expire on March 10, 2016. The committee voted  
4 to recommend adoption to the full council and I so move.

5

6 JEFF KRAUT: I have a motion by Dr. Gutierrez. I have a  
7 second by Mr. Fassler. Are there any comments or questions from  
8 the Council? Dr. Kalkut.

9

10 GARY KALKUT: I wasn't here for the committee's  
11 presentation, but was there a discussion of the information that  
12 was presented in that letter in terms of the -

13

14 ANGEL GUTIERREZ: Yes, there was, and - well, you will  
15 see in the next section which is for information only, there are  
16 further developments in this particular area and the Health  
17 Department is taking care of listening to all the customers  
18 interested in the outcome of this.

19

20 JEFF KRAUT: So, Dr. Kalkut, when we had discussed  
21 someone this morning was to move forward with adoption of this  
22 but it didn't preclude continuing the review and see where we  
23 need to appropriately amend the code to reflect some of the

1 other concerns that were raise. That'll be discussed in the  
2 next item.

3

4 ANGEL GUTIERREZ: I should say for this particular part  
5 of my presentation as for all the other six members of the  
6 Health Department are still present to answer questions.

7

8 JEFF KRAUT: If you have specific questions, we do have  
9 the Department of Health staff responsible that could respond to  
10 those issues.

11

12 GARY KALKUT: So the main issue that was raised, and I'm  
13 not familiar with the science is about evaluation of potable  
14 water sources, and how that would be incorporated into the regs,  
15 I guess.

16

17 JEFF KRAUT: OK, should we -

18

19 GARY KALKUT: I mean, if that's going to come back here or  
20 will inform subsequent revisions -

21

22 JEFF KRAUT: That's fine. No, it's a valid question.

23

1           BRAD HUTTON:    So I think Dr. Graber earlier just responded  
2 that in two ways. One, to say that our assessment of public  
3 comments will specifically address that issue, and then second  
4 that the way that the reg package, the new proposed rulemaking  
5 is structured is to separately address cooling towers and then  
6 potable water systems among healthcare facilities, and the  
7 intention is that the Department would reserve the right to  
8 continue to expand further upon evidence at a later date that  
9 there's additional sources that warrant concern through a  
10 regulatory response.

11

12           JEFF KRAUT:     So we have a motion seconded. Is there any  
13 other questions? Call the motion, all those in favor, aye.

14

15 [Aye]

16           Opposed? Abstentions? Motion carries.

17

18           ANGEL GUTIERREZ:    Related but only for information is the  
19 next part of this report, the proposal will create a new part  
20 four of Title 10 related to cooling towers. The proposed  
21 regulation will establish requirements for the registration,  
22 testing, cleaning and disinfection, maintenance, inspection,  
23 certification, record keeping and reporting of results and

1 actions in order to control the growth of Legionella. There was  
2 no vote in this particular part.

3 For adoption, mammography services. This proposal will  
4 amend part 405 of Title 10 to require mammography providers to  
5 offer extended hours of operation. The committee voted to  
6 recommend adoption to the full council and I so move.

7

8 JEFF KRAUT: I have a motion. Do I have a second? I have  
9 a second, Dr. Torres. Any questions from the Council? I would  
10 just point out for those of you who weren't here, the Department  
11 of Health staff kind of went through a whole kind of Q&A of a  
12 lot of questions that were asked and they answered in a very,  
13 you know, very focused way about the details of how do you  
14 operationalize this and the availability of consideration if  
15 there's hardship or unusual circumstances so they could modify  
16 the requirement in light of whatever they find. So it had a  
17 flexibility built in, but it had clarity as well. Any other  
18 questions? Hearing none, I'll call for a vote. All those in  
19 favor aye?

20

21 [Aye]

22 Opposed? Abstentions? Motion carries.

23



1           ANGEL GUTIERREZ:       For adoption is hospice operational  
2 rules. The proposed amendments to part 700, 717, 793 and 794 of  
3 Title 10 pertain to hospice regulations. The proposed  
4 amendments would make state operational rules for hospice  
5 consistent with federal regulations among other provisions. The  
6 committee voted to recommend adoption to the full council and I  
7 so move.

8

9           JEFF KRAUT:       I have a motion, do I have a second? Mr.  
10 Fassler. Any questions from the council? Hearing none, I'll  
11 call for a vote. All those in favor, aye.

12

13 [aye]

14           Opposed? Abstentions? The motion carries.

15

16           ANGEL GUTIERREZ:       For adoption also homecare services.  
17 This proposal will amend part 63 and 766 of title 10 pertaining  
18 to the clinical records, rules for certified home health  
19 agencies and licensed home care service agencies. The proposed  
20 amendments will make state regulation for certified home health  
21 agencies consistent with federal regulations. And make state  
22 regulations for LHCSAs with the regard to the timeframe for  
23 obtaining signed physician orders consistent with regulations

1 for certified home health agencies. The committee voted to  
2 recommend adoption to the full council, and I so move.

3

4 JEFF KRAUT: I have a motion, do I have a second. Dr.  
5 Kalkut. Are there any questions about this item? Hearing none,  
6 I'll call for a vote. All those in favor aye.

7

8 [Aye]

9 Opposed? Abstentions? The motion carries.

10

11 ANGEL GUTIERREZ: For adoption also supplementary reports  
12 of certain birth defects. Next on the agenda are proposed  
13 amendments to section 22.3 and 22.9 of Title 10 NYCRR which  
14 defined when and how individuals are reported to the New York  
15 Birth Defects Monitoring Program formerly known as the  
16 Congenital Malformation Registry. The committee voted to  
17 recommend adoption to the full council, and I so move.

18

19 JEFF KRAUT: I have a motion by Dr. Gutierrez. Do I have  
20 a second? Second Dr. Torrez. Any questions? Hearing none,  
21 I'll call for a vote. All those in favor aye?

22

23 [Aye]

24 Opposed? Abstentions? The motion carries.

1

2           ANGEL GUTIERREZ:       Last and for discussion only is the  
3 specialized program for residents with neurodegenerative  
4 diseases. The proposed regulation would add section 415.41 to  
5 Title 10 to establish criteria to nursing homes specialty units  
6 that offer services and facilities for individuals with  
7 neurodegenerative diseases meaning Huntingtons Disease and  
8 Amyotrophic Lateral Sclerosis. Since this was only for  
9 discussion there was no vote. That concludes my report, Mr.  
10 Chairman.

11

12           JEFF KRAUT:       OK. Any questions? Thank you very much Dr.  
13 Gutierrez, and this is as many, this is a large agenda for this  
14 committee, and you saw the large number of folks from the  
15 Department of Health who were here participating, and these are  
16 very complex things to write and shepherd through an approval  
17 process, so even though they're not here I want to thank the  
18 Department staff who worked on it because it's quite a bit and a  
19 lot of it is very positive and helpful, so thank you so much,  
20 and thank you Dr. Gutierrez. I now ask Mr. Holt to provide the  
21 Establishment and Project Review Committee report.

22

23           TOM HOLT: Thank you Mr. Kraut. Hopefully the members who  
24 were not at project review had an opportunity to take a look at

1 the webcast. Staff encouraged you to do that. There were a  
2 number of presentations given, particularly as it related to the  
3 TCUs we'll be talking about in a little bit that provided some  
4 additional context for what we're going to be talking about  
5 today. we are going to be batching these applications as best we  
6 can. The first application is our applications for acute care  
7 services construction. Mr. Robinson and Ms. Hines have declared  
8 a conflict and let the record reflect that they're leaving the  
9 room.

10 This is application 161022C, St. Joseph's Hospital Center,  
11 Onondaga County. To certify 20 net new intensive care unit beds  
12 that are currently operating under an emergency approval and  
13 perform requisite renovations and the project review committee  
14 recommends approval with conditions and contingencies, and I so  
15 move.

16

17 JEFF KRAUT: I have a second by Dr. Berliner. Are there  
18 any questions on these items? Anything from the Department of  
19 Health? Hearing none, I'll call for a vote. All those in favor,  
20 aye.

21

22 [Aye]

23 Opposed? Abstentions? The motion carries.

24

1 TOM HOLT: If we could have Mr. Robinson and Ms. Hines  
2 return to the room. We're going to be batching the next three  
3 applications. Application 161031C, Samaritan Medical Center of  
4 Jefferson County, to perform renovations and expansions to  
5 several units of the hospital and convert seven pediatric beds  
6 to five maternity and two psychiatric beds.

7 161037C, South Hampton Hospital of Suffolk County; to  
8 construct and certify cancer center extension clinic to be  
9 located at 740 County Road 39 A South Hampton. And those are the  
10 two. Excuse me. Project Review Committee recommends approval  
11 with conditions and contingencies, and I so move.

12

13 JEFF KRAUT: I have a motion, I have a second by Dr.  
14 Berliner. The Department wishes to comment? Any member of the  
15 council has a question about these applications? Hearing none,  
16 I'll call for a vote. All those in favor, aye.

17

18 [Aye]

19 Opposed? Abstentions? The motion carries.

20

21 TOM HOLT: Next applications relate to transitional care  
22 units. The first application, 161059T. Mr. Robinson has  
23 declared an interest and it's to create 16 TCU beds by

1 converting one med-surg bed and 15 swing beds to transitional  
2 care beds and perform the requisite renovations.

3 Application 161061T, Helen Hayes Hospital of Rockland  
4 County. To create a 24 bed TCU by converting 18 med-surg beds  
5 and six physical medicine and rehabilitation beds to  
6 transitional care beds and perform the requisite renovations.

7 161068T, Good Samaritan Hospital Medical Center in Suffolk  
8 County; to create a 22 bed transitional care unit by converting  
9 22 med-surg beds to transitional care beds and perform the  
10 requisite renovations. And the last of these, number 161069T,  
11 Nyack Hospital of Rockland County; to certify 16 transitional  
12 care beds for new transitional care units by converting 16 med-  
13 surg beds and perform the requisite renovations. The committee  
14 recommends approval with conditions and contingencies, and I so  
15 move.

16

17 JEFF KRAUT: I have a motion. I have a second, Mr.  
18 Fassler. Department want to comment on these? Anybody have any  
19 questions about this batch of applications? Hearing none, I'll  
20 call for a vote. All those in favor, aye.

21

22 [Aye]

23 Opposed? Abstentions? The motion carries.

24

1 TOM HOLT: The next grouping are applications recommended  
 2 for approval for cardiac services, construction, and we have a  
 3 number of conflicts that have been declared. Dr. Kalkut, Mr.  
 4 Kraut, and Dr. Rugge have all declared conflicts and are leaving  
 5 the room. The first of these projects is 152231C, Niagara Falls  
 6 Memorial Medical Center of Niagara County; to certify cardiac  
 7 PCI cath lab located in Niagara Falls Memorial Medical Center,  
 8 to jointly be operated by Mercy Hospital, Niagara Falls Memorial  
 9 Medical Center, Buffalo General Hospital, and the Erie County  
 10 Medical Center.

11 152232C, Mercy Hospital of Buffalo, Niagara County. And  
 12 again, conflicts were declared by Dr. Kalkut, Mr. Kraut, and Dr.  
 13 Rugge. It's to certify cardiac PCI cath lab located at Niagara  
 14 Falls Memorial Medical Center to be jointly operated by Mercy  
 15 Hospital, Buffalo General, Niagara Falls, and Erie County  
 16 Medical Center.

17 Next is 152234C, Erie County Medical Center. Again, same  
 18 conflicts are in place and the same summary of that project. And  
 19 the last of those applications is 152245C, Buffalo General  
 20 Medical Center. Same conflicts apply as does the same  
 21 explanation. Committee is recommending approval with conditions  
 22 and contingencies, and I so move.

23

1           JO BOUFFORD:    Second? Second, Dr. Berliner. Any  
2 conversation, question, concerns? All in favor, say aye.

3  
4 [Aye]

5           Opposed? Thank you.

6  
7           TOM HOLT: If we could have the gentlemen come back to the  
8 room. I think we're close on quorum today. We'll give them a  
9 second to get back in there then.

10  
11          HOWARD BERLINER:    Can I ask a question of Charlie?  
12 Charlie, in the transitional care applications, the fact that  
13 there were some applications missing from this batch, does that  
14 mean we'll be seeing other ones in the future?

15  
16          CHARLIE ABEL: When we did the solicitation we were  
17 soliciting for up to eight available slots in the demonstration.  
18 We had only four applications. These are the four that are in  
19 front of you. They are all separately approvable. There were  
20 none that we have pending nor recommending disapproval.

21  
22          HOWARD BERLINER:    So why is there a gap in the numbers?

23



1 CHARLIE ABEL: It's just that we don't have additional  
2 interested candidates at this point. Oh, the gap in the - the  
3 CON numbers are sequential depending upon when the application  
4 was submitted electronically. So there was an application or  
5 two in between.

6

7 TOM HOLT: Thank you. The next applications are  
8 applications for ambulatory surgery centers for establishment  
9 and construction. I'll be batching these three applications.  
10 First one being 152356E, Advanced Surgery Center of Rockland  
11 County. The committee recommends approval with an expiration of  
12 the operating certificate two years from the Public Health and  
13 Health Planning Council's recommendation letter with the  
14 conditions and contingencies was recommended.

15 Next application is 152289E, Digestive Disease Center of  
16 Central New York, LLC, Onondaga County. It's a transfer of 25  
17 percent ownership to one new member from the two existing  
18 members. Again, the project review committee is recommending  
19 approval with conditions and contingencies.

20 And lastly, 161009B, Star Surgical Suites of Nassau County;  
21 to establish and construct a single specialty freestanding  
22 ambulatory surgery center specializing in gastroenterology to be  
23 located at 623 Stewart Avenue in Garden City. The Project Review  
24 Committee is making recommendation for approval with expiration

1 of the operating certificate five years from the Public Health  
2 and Health Planning Council's recommendation letter with  
3 conditions and contingencies was recommended and I so move.

4

5 JEFF KRAUT: I have a motion for recommendation. Do I  
6 have a second? Dr. Berliner. The Department of Health wishes to  
7 comment? Are there any questions about these applications?  
8 Hearing none, I'll call for a vote. All those in favor, aye.

9

10 [Aye]

11 Opposed? Abstentions? The motion carries.

12

13 TOM HOLT: Next we'll be batching the applications for  
14 diagnostic and treatment centers for diagnostic and treatment  
15 centers for establishment and construction. First one being  
16 161001B. Northern Medical Center Inc., of Orange County; to  
17 establish and construct a diagnostic and treatment center to be  
18 located at 14 Jason Place, Middletown.

19 Next are the applications for dialysis services. That  
20 application is 152263B, USRC West Cheektowaga, LLC, d/b/a US  
21 Renal Care West Cheektowaga Dialysis, Erie County; to establish  
22 and construct a 13 station chronic renal dialysis center to be  
23 located at 2861 Harlem Road in Cheektowaga.

1           Next application is 152313B, Queens Boulevard Extended Care  
2 Dialysis Center of Queens County; to establish and construct a  
3 15 station chronic renal dialysis center to be located at 61-11  
4 Queens Boulevard, Woodside, inside the Queens Boulevard extended  
5 care facility, and the committee is recommending approval with  
6 conditions and contingencies, and I so move.

7

8           JEFF KRAUT:     I have a motion, may I have a second, Mr.  
9 Fassler. Any comment by the Department? Any question from the  
10 Council? All those in favor, aye.

11

12 [Aye]

13           Opposed? Abstentions? The motion carries.

14

15           TOM HOLT: Next we have several applications for residential  
16 health care facilities. First being 142145E, Ross Acquisition,  
17 LLC, d/b/a Ross Center for Health and Rehabilitation of Suffolk  
18 County. It's to establish Ross acquisition LLC as the new  
19 operator of the Ross Healthcare Center, a 135 bed facility  
20 located at 839 Suffolk Avenue, Brentwood and to decertify 15  
21 RHCf beds at the facility.

22           Next is 151054E, River Valley Operating Associates, LLC,  
23 d/b/a the Grand Rehabilitation and Nursing Center at River  
24 Valley in Dutchess County. It's to establish River Valley

1 Operating Associates LLC, as the new operator of the 160 bed  
2 facility located at 140 Main Street, Poughkeepsie, that's  
3 currently operated as the River Valley Care Center.

4 Application number 151090E, Guilderland Operator, LLC,  
5 d/b/a the Grand Rehabilitation and Nursing at Guilderland in  
6 Albany County. To establish Guilderland Operator, LLC as the  
7 new operator of Guilderland Center for Rehabilitation and  
8 extended care facility, a 127 bed facility located at 428, Rt.  
9 146 in Guilderland.

10 Next application is 152227E, Pine Haven Operating, LLC,  
11 d/b/a Pine Haven Home of Columbia County. It's to establish  
12 Pine Haven Operating, LLC, as the new operator of the Pine Haven  
13 Home a 120 bed RHCF located on New York Rt. 217 in Philmont.

14 Next application is 152265E, Highland Care Center of Queens  
15 County. It's to transfer 76 percent of the ownership interest  
16 to seven new stockholders from one existing stockholder.

17 Application number 152380E, Genesee Center Operating LLC,  
18 d/b/a Genesee Center for Nursing and Rehabilitation, Genesee  
19 County. It's to establish Genesee Center Operating LLC as the  
20 new operator of the 160 bed RHCF located at 278 Bank Street,  
21 Batavia which is currently operated as the Genesee County  
22 Nursing Home.

23 Last of these applications is 152381E, Silver Lake  
24 Specialized Rehabilitation and Care Center of Richmond County.

1 To transfer 41 percent of the ownership interest from one  
2 existing member to one new member. Project Review Committee is  
3 recommending approval with conditions and contingencies, and I  
4 so move.

5

6 JEFF KRAUT: May I have a second? Mr. Fassler. Any  
7 comment by the Department? Any questions from the Council? All  
8 those in favor, aye.

9

10 [Aye]

11 Opposed? Abstentions? The motion carries.

12

13 TOM HOLT: Next we have the LHCSAs. I'm just going to read  
14 the numbers of these into the record.

15 Number 2412L, 151322E, 152082E, 152162E, and 152168E. The  
16 Project Review Committee is recommending approval with  
17 contingencies and conditions, and I so move.

18

19 JEFF KRAUT: I have a motion. Do I have a second?  
20 Second Dr. Berliner. Department wishes to comment? Vicky you'll  
21 note this is a small number of applications. What? And they're  
22 only change in ownership. I just want to make sure that did not  
23 escape your attention. Any questions from the Council? All  
24 those in favor, aye.

1

2 [Aye]

3 Opposed? Abstentions? The motion carries.

4

5 TOM HOLT: Next we have certificates of amendment of the  
6 certificates of incorporation. We have New York Hospital, Queens  
7 Foundation Inc. A name change. Form Rehabilitation Inc. as a  
8 name change. And McCauley Living Services Inc. is a certificate  
9 of dissolution. And the committee is recommending approval, and  
10 I so move.

11

12 JEFF KRAUT: I have a motion, may I have a second?  
13 Second, Ms. Fine. Department doesn't want to comment? Is there  
14 any questions about these? All those in favor, aye.

15

16 [Aye]

17 Opposed? Abstentions? The motion carries.

18

19 TOM HOLT: Next grouping are applications where we have some  
20 recusals from the committee. Let the record show that Mr.  
21 Fassler is leaving the room. First application is 151260E,  
22 North Manor Operations Associates, LLC, d/b/a Nanuet Center for  
23 Rehabilitation and Nursing in Rockland County. It's to establish  
24 North Manor Operations Associates LLC as the new operator of a

1 231 bed RHCF located at 139 North Middleton Road, Nanuet,  
2 currently operated by Northern Manor Geriatric Center.

3 152295E, North River Operations Association LLC, d/b/a  
4 Haverstraw Center for Rehabilitation and Nursing in Rockland  
5 County. To establish the North River Operations Associates as  
6 the new operator of 180 bed RHCF located at 87 South Rt. 9, West  
7 Haverstraw which is currently operated at the Northern Riverview  
8 Healthcare Center.

9 152296E, North Med Operations LLC, d/b/a Muncie Center for  
10 Rehabilitation and Nursing of Rockland County. It's to establish  
11 the North Med Operations Associates LLC as the new operator of  
12 the 120 bed RHCF located at 225 Maple Avenue, Muncie, currently  
13 operated as the Northern Metropolitan Healthcare Facility.

14 And the last of these applications that will be batched is  
15 161109E, Abraham Operations Associates LLC d/b/a Ellerton Center  
16 for Rehabilitation and Nursing in Bronx County. That's to  
17 establish Abraham Operations Associates LLC d/b/a Ellerton  
18 Center for Rehabilitation and Nursing as the new operator of  
19 Beth Abraham Health Services, a 448 Bed RHCF not-for-profit  
20 located in Bronx County. The Project Review Committee is  
21 recommending approval with conditions and contingencies and I so  
22 move.

23 OK. I will add to that batch then 161110E, Schnur  
24 Operations Associates LLC d/b/a Tibbets Center for

1 Rehabilitation and Nursing in Westchester County. To establish  
2 Schner Operations Associates LLC d/b/a Tibbets for  
3 Rehabilitation and Nursing as the new operator of the  
4 Schnermacher Center for Rehabilitation and Nursing, a 200 bed  
5 voluntary not-for-profit RHCF located in Westchester County.  
6 Again, committee recommends approval with conditions and  
7 contingencies and I so move.

8

9 JEFF KRAUT: So I have a motion. I have a second by Ms.  
10 Fine. Is there any comments by the Department? Any questions  
11 from the Council members? Discussion? Hearing none All those  
12 in favor, aye.

13

14 [Aye]

15 Opposed? Abstentions? The motion carries.

16

17 TOM HOLT: OK. Dr. Strange and Mr. Kraut have declared a  
18 conflict on the next application which is a name change. This is  
19 a name change. North Shore Long Island Jewish Health Systems  
20 Laboratory. And again, conflict by Mr. Kraut and Dr. Strange.  
21 The committee is recommending approval and I so move.

22

23 JO BOUFFORD: Second from Dr. Berliner. Any discussion?

24 All in favor?



1

2 [Aye]

3 Opposed? Thank you. Passes.

4

5 TOM HOLT: Thank you. That concludes the report.

6

7 JO BOUFFORD: Thank you very much. Well done.

8

9 JEFF KRAUT: Thank you very much Mr. Holt. Appreciate  
10 it. The next meeting of the committee day of the Public Health  
11 and Health Planning Council will be May 19, 2016 to be held in  
12 New York City, followed by June 9, 2016 the Full Council meeting  
13 in New York City. With that I have a motion to adjourn. So  
14 moved, Dr. Berliner. All those in favor Aye.

15

16 [Aye]

17 We are adjourned. Thank you very much.

## Public Health and Health Planning Council

### 2017 Timeline

<b>PHHPC Mailing #1 (Committee Day Mailing)</b>	<b>PHHPC Committee Meeting</b>	<b>PHHPC Mailing #2 (Full Council Mailing)</b>	<b>PHHPC Full Council Meeting</b>	<b>PHHPC Meeting Location</b>
<b>01/17/17</b>	<b>01/26/17</b>	<b>02/02/17</b>	<b>02/09/17</b>	<b>NYC</b>
<b>03/14/17</b>	<b>03/23/17</b>	<b>03/30/17</b>	<b>04/06/17</b>	<b>Albany</b>
<b>05/09/17</b>	<b>05/18/17</b>	<b>06/01/17</b>	<b>06/08/17</b>	<b>NYC</b>
<b>07/11/17</b>	<b>07/20/17</b>	<b>07/27/17</b>	<b>08/03/17</b>	<b>Albany</b>
<b>09/12/17</b>	<b>*09/20/17</b>	<b>10/04/17</b>	<b>*10/11/17</b>	<b>NYC</b>
<b>11/07/17</b>	<b>11/16/17</b>	<b>11/30/17</b>	<b>12/07/17</b>	<b>Albany</b>

*PHHPC meetings begin @ 10:00 a.m.*

*Albany Location – Empire State Plaza, Concourse Level, Meeting Room 6, Albany*

*NYC Location - 90 Church Street, Meeting Rooms A/B, 4<sup>th</sup> Floor, New York, NY*

**\*PLEASE NOTE THE MEETING WILL BE HELD ON WEDNESDAY\***

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225(5)(a) of the Public Health Law, Part 4 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 filing with the Secretary of State, to read as follows:

#### 4.1 Scope.

All owners of cooling towers, and all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law, shall comply with this Part.

#### 4.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) Building. The term “building” means any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase “structure, premises, lot or part thereof” unless otherwise indicated by the text.

(b) Commissioner. The term “commissioner” means the New York State Commissioner of Health.

(c) Cooling Tower. The term “cooling tower” means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building’s cooling, industrial process, refrigeration or energy production system.

(d) Owner. The term “owner” means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises.

#### 4.3 Registration.

All owners of cooling towers shall register such towers with the department within 30 days after the effective date of this Part. Thereafter, all owners of cooling towers shall register such towers with the department prior to initial operation, and whenever any owner of the cooling tower changes. Such registration shall be in a form and manner as required by the commissioner and shall include, at a minimum, the following information:

- (a) street address of the building at which the cooling tower is located, with building identification number, if any;
- (b) intended use of the cooling tower;
- (c) name(s), address(es), telephone number(s), and email address(es) of all owner(s) of the building;
- (d) name of the manufacturer of the cooling tower;
- (e) model number of the cooling tower;
- (f) specific unit serial number of the cooling tower;
- (g) cooling capacity (tonnage) of the cooling tower;
- (h) basin capacity of the cooling tower;
- (i) whether systematic disinfection is maintained manually, through timed injection, or through continuous delivery;
- (j) the contractor or employee engaged to inspect and certify the cooling tower; and
- (k) commissioning date of the cooling tower.

#### 4.4 Culture sample collection and testing; cleaning and disinfection.

- (a) All owners of cooling towers shall collect samples and obtain culture testing:

(1) within 30 days of the effective date of this Part, unless such culture testing has been obtained within 30 days prior to the effective date of this Part, and shall take immediate actions in response to such testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(2) in accordance with the maintenance program and plan, and shall take immediate actions in response to such testing as specified in the plan, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that if a maintenance program and plan has not yet been obtained in accordance with section 4.6 of this Part, bacteriological culture samples and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity shall be obtained, at intervals not exceeding 90 days while the tower is in use, and any immediate action in response to such testing shall be taken, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(b) Any person who performs cleaning and disinfection shall be a commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower and certified in accordance with the requirements of Article 33 of the Environmental Conservation Law and 6 NYCRR Part 325, or a pesticide apprentice under the supervision of a certified applicator.

(c) Only biocide products registered by the New York State Department of Environmental Conservation may be used in disinfection.

(d) All owners shall ensure that all cooling towers are cleaned and disinfected when shut down for more than five days.

#### 4.5 Inspection and certification.

(a) Inspection. All owners of cooling towers shall inspect such towers within 30 days of the effective date of this Part, unless such tower has been inspected within 30 days prior to the effective date of this Part. Thereafter, owners shall ensure that all cooling towers are inspected at intervals not exceeding every 90 days while in use. All inspections shall be performed by a New York State licensed professional engineer; certified industrial hygienist; certified water technologist; or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, as incorporated by section 4.6 of this Part.

(1) Each inspection shall include an evaluation of:

- (i) the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;
- (ii) the general condition of the cooling tower, basin, packing material, and drift eliminator;
- (iii) water make-up connections and control;
- (iv) proper functioning of the conductivity control; and
- (v) proper functioning of all dosing equipment (pumps, strain gauges).

(2) Any deficiencies found during inspection will be reported to the owner for immediate corrective action. A person qualified to inspect pursuant to paragraph (a) of this section shall document all deficiencies, and all completed corrective actions.

(3) All inspection findings, deficiencies, and corrective actions shall be reported to the owner, recorded, and retained in accordance with this Part, and shall also be reported to the department in accordance with section 4.10 of this Part.

(b) Certification. Each year, the owner of a cooling tower shall obtain a certification from a person identified in paragraph (a) of this section, that such cooling tower was inspected, tested, cleaned, and disinfected in compliance with this Part, that the condition of the cooling tower is appropriate for its intended use, and that a maintenance program and plan has been developed and implemented as required by this Part. Such certification shall be obtained by November 1, 2016, and by November 1 of each year thereafter. Such certification shall be reported to the department.

#### 4.6 Maintenance program and plan.

(a) By March 1, 2016, and thereafter prior to initial operation, owners shall obtain and implement a maintenance program and plan developed in accordance with section 7.2 of Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015), 2015 edition with final approval date of June 26, 2015, at pages 7-8, incorporated herein by reference. The latest edition of ASHRAE 188-2015 may be purchased from the ASHRAE website ([www.ashrae.org](http://www.ashrae.org)) or from ASHRAE Customer Service, 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. E-mail: [orders@ashrae.org](mailto:orders@ashrae.org). Fax: 678-539-2129. Telephone: 404-636-8400, or toll free 1-800-527-4723. Copies are available for inspection and copying at: Center for Environmental Health, Corning Tower Room 1619, Empire State Plaza, Albany, NY 12237.

(b) In addition, the program and plan shall include the following elements:

- (1) a schedule for routine bacteriological sampling and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity and a schedule for Legionella sampling and culture analysis; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health

Law, routine testing shall be performed at a frequency in accordance with the direction of the department.

(2) emergency sample collection and submission of samples for Legionella culture testing to be conducted in the case of events including, but not limited to:

- (i) power failure of sufficient duration to allow for the growth of bacteria;
- (ii) loss of biocide treatment sufficient to allow for the growth of bacteria;
- (iii) failure of conductivity control to maintain proper cycles of concentration;
- (iv) a determination by the commissioner that one or more cases of legionellosis is or may be associated with the cooling tower, based upon epidemiologic data or laboratory testing; and
- (v) any other conditions specified by the commissioner.

(3) immediate action in response to culture testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, the provisions shall additionally require immediately contacting the department for further guidance, but without any delay in taking any action specified in Appendix 4-A.

(c) An owner shall maintain a copy of the plan required by this subdivision on the premises where a cooling tower is located. Such plan shall be made available to the department or local health department immediately upon request.

#### 4.7 Recordkeeping.



An owner shall keep and maintain records of all inspection findings, deficiencies, corrective actions, cleaning and disinfection, and tests performed pursuant to this Part, and certifications, for at least three years. An owner shall maintain a copy of the maintenance program and plan required by this Part on the premises where a cooling tower is located. Such records and plan shall be made available to the department or local health department immediately upon request.

#### 4.8 Discontinued use.

The owner of a cooling tower shall notify the department within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been disinfected and drained in accordance with the same procedures as set forth in the shutdown plan, as specified in the maintenance program and plan required pursuant to this Part.

#### 4.9 Enforcement.

(a) An officer, employee or agent of the department or local health department may enter onto any property to inspect the cooling tower for compliance with the requirements of this Part, in accordance with applicable law.

(b) Where an owner does not register, obtain certification, clean or disinfect, culture test or inspect a cooling tower within the time and manner set forth in this Part, the department or local health department may determine that such condition constitutes a nuisance and may take such action as authorized by law. The department or local health department may also take any other action authorized by law.

(c) A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

#### 4.10 Electronic registration and reporting.

(a) (1) Within 30 days of the effective date of this Part, and thereafter within 10 days after any action required by this Part, owners shall electronically input the following information in a statewide electronic system designated by the commissioner:

- (i) registration information;
- (ii) date of last routine culture sample collection, sample results, and date of any required remedial action;
- (iii) date of any legionella sample collection, sample results, and date of any required remedial action;
- (iv) date of last cleaning and disinfection;
- (v) dates of start and end of any shutdown for more than five days;
- (vi) date of last certification and date when it was due;
- (vii) date of last inspection and date when it was due;
- (viii) date of discontinued use; and
- (ix) such other information as shall be determined by the department.

(2) The commissioner may suspend this requirement in the event that the electronic system is not available.

(b) The data in the system referenced in paragraph (a) shall be made publicly available, and shall be made fully accessible and searchable to any local health department. Nothing in this Part shall

preclude a local health department from requiring registration and reporting with a local system or collecting fees associated with the administration of such system.

#### 4.11 Health care facilities

(a) All general hospitals and residential health care facilities, as defined in Article 28 of the Public Health Law, shall, as the department may determine appropriate:

- (1) adopt a Legionella sampling plan for its facilities' potable water distribution system;
- (2) report the results of such sampling; and
- (3) take necessary responsive actions.

(b) With respect to such general hospitals and residential health care facilities, the department shall investigate to what extent, if any, requirements more stringent than those set forth in this Part are warranted.

#### 4.12 Severability.

If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

### Appendix 4-A

<b>Interpretation of Legionella Culture Results from Cooling Towers</b>	
Legionella Test	Approach
Results in CFU <sup>1</sup> /ml	

<p>No detection (&lt; 10 CFU /ml)</p>	<p>Maintain treatment program and <i>Legionella</i> monitoring.</p>
<p>For levels at <math>\geq 10</math> CFU /ml but &lt; 1000 CFU /ml perform the following:</p>	<ul style="list-style-type: none"> <li>○ Review treatment program.</li> <li>○ Institute immediate <u>online disinfection</u><sup>2</sup> to help with control</li> <li>○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> <li>▪ Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy.</li> <li>▪ If &lt; 100 CFU /ml repeat <u>online disinfection</u><sup>2</sup> and retest.</li> <li>▪ If <math>\geq 100</math> CFU /ml but &lt; 1000 CFU /ml further investigate the water treatment program and immediately perform <u>online disinfection</u>.<sup>2</sup> Retest and repeat attempts at control strategy.</li> </ul> </li> <li>○ If <math>\geq 1000</math> CFU /ml undertake control strategy as noted below.</li> </ul>
<p>For levels <math>\geq 1000</math> CFU /ml perform the following:</p>	<ul style="list-style-type: none"> <li>○ Review the treatment program</li> <li>○ Institute immediate <u>online decontamination</u><sup>3</sup> to help with control</li> <li>○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> <li>▪ Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy.</li> <li>▪ If &lt; 100 CFU /ml repeat <u>online disinfection</u><sup>2</sup> and retest;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>▪ If <math>\geq 100</math> CFU /ml but <math>&lt; 1000</math> CFU /ml further investigate the water treatment program and immediately perform <u>online disinfection</u>.<sup>2</sup> Re-test and repeat attempts at control strategy.</li> <li>▪ If <math>\geq 1000</math> CFU /ml carry out <u>system decontamination</u><sup>4</sup></li> </ul>
--	---

<sup>1</sup> Colony forming units.

<sup>2</sup> Online disinfection means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.

<sup>3</sup> Online decontamination means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.

<sup>4</sup> System decontamination means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.

## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 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. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in the state of New York.

### **Legislative Objectives:**

This rulemaking is in accordance with the legislative objective of PHL Section 225 authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Specifically, these regulations establish requirements for cooling towers relating to: registration, reporting and recordkeeping; testing; cleaning and disinfection; maintenance; inspection; and certification of compliance. Additionally, these regulations require general hospitals and nursing homes to implement a *Legionella* sampling plan and take necessary responsive actions, as the department may deem appropriate.

### **Needs and Benefits:**

Improper maintenance of cooling towers can contribute to the growth and dissemination of *Legionella* bacteria, the causative agent of legionellosis. Optimal conditions for growth of *Legionella* include warm water that is high in nutrients and protected from light. People are exposed to *Legionella* through inhalation of aerosolized water containing the bacteria. Person-

to-person transmission has not been demonstrated. Symptoms of legionellosis may include cough, shortness of breath, high fever, muscle aches, and headaches, and can result in pneumonia. Hospitalization is often required and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older; current or former smokers; those with chronic lung diseases; those with weakened immune systems from diseases like cancer, diabetes, or kidney failure; and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require disinfectants—chemicals that kill or inhibit bacteria (including *Legionella*)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing *Legionella*.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation

found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an “urban cooling tower” effect. The “urban cooling tower” effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.



The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to: seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; set cycles of operations that determine when fresh water is needed; and shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled *Legionellosis: Risk Management for Building Water Systems* (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures, and other requirements.

However, none of the guidance is obligatory. Consequently, maintenance deficiencies such as poor practice in operation and management can result in bacterial overgrowth, increases in *Legionella*, and mist emissions that contain pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations requires that all owners of cooling towers ensure proper maintenance of the cooling tower *Legionella* sampling plan for their potable water system, report the results, and take necessary actions to protect the safety of their patients or residents, as the Department may deem appropriate. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well

as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems, and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of *Legionella* and to determine appropriate response actions in advance of any environmental sampling for *Legionella*. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge, and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control, Physical Facilities Management, Engineering, Clinicians, Laboratory, and Hospital Management.

**Costs:**

**Costs to Private Regulated Parties:**

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to their cooling tower maintenance program and plan. The cost per dip

slide test is \$3.50. Assuming that some plans may require tests be performed twice a week, this could result in an annual cost of \$364. If heterotrophic plate count analysis is used the cost per sample on average is \$25.

- Emergency *Legionella* Culture Testing – Owners of cooling towers are required to conduct additional testing for Legionella in the event of disruption of normal operations or process control, or when indicated by epidemiological evidence. The average cost of each sample analysis is estimated to be approximately \$125.00.
- Maintenance Program and Plan Development – The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at \$150 per hour (\$600 to \$1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, for inspection of the cooling towers at intervals not exceeding 90 days while in use. The cost of such services is estimated to be approximately \$150.00 per hour and estimated to take approximately eight (8) hours.
- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The certification can follow one of the required inspections and requires some additional evaluation and considerations. The cost of such services is estimated to be approximately \$150.00 per hour and is estimated to take approximately four (4) hours.

- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately \$5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- Health Care Facilities – The cost of adopting a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing record keeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at \$150 per hour (\$975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at \$150 per hour (\$1950). It is anticipated that facilities may develop the plan using existing staff.

**Costs to State Government and Local Government:**

State and local governments will incur costs for administration, implementation, and enforcement. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset further by a reduction in the need to respond to community legionellosis outbreaks.

**Local Government Mandates:**

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

**Paperwork:**

The regulation imposes new registration, reporting and recordkeeping requirements for owners of cooling towers.

**Duplication:**

This regulation does not duplicate any state requirements.

**Alternatives:**

The no action alternative was considered. Promulgating this regulation was determined to be necessary to address this public health threat.

**Federal Standards:**

There are no federal standards or regulations pertaining to registration, maintenance, operation, testing, and inspection for cooling towers.

**Compliance Schedule:**

On August 17, 2015, when this regulation first became effective, owners were given until September 16, 2015, to register their cooling towers and perform bacteriological sampling. Now that the deadline has past, all owners should have registered their cooling towers, and any owners that have not registered their cooling towers must come into compliance immediately. All owners must register such towers prior to initial operation.

By March 1, 2016, all owners of existing cooling towers must obtain and implement a maintenance program and plan. Until such plan is obtained, culture testing must be performed every 90 days, while the tower is in use.

All owners must inspect their cooling towers at least every 90 days while in use. All owners of cooling towers shall obtain a certification that regulatory requirements have been met by November 1, 2016, with subsequent annual certifications by November 1<sup>st</sup> of each year.

Owners must register cooling towers and report certain actions, using a statewide electronic system. Reportable events include date of sample collections; date of cleaning and disinfection; start and end dates of any shutdown lasting more than five days; dates of last inspection and when due; dates of last certification and when due; and date of discontinued use. These events must be reported to the statewide electronic system within 10 days of occurrence.

**Contact Person:**

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## **Regulatory Flexibility Analysis for Small Business and Local Governments**

### **Effect of Rule:**

The rule will affect the owner of any building with a cooling tower, as those terms are defined in the regulation. This could include small businesses. At this time, it is not possible to determine the number of small businesses so affected. This regulation affects local governments by establishing requirements for implementing, administering, and enforcing elements of this Part. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

### **Compliance Requirements:**

Small businesses that are also owners of cooling towers must comply with all provisions of this Part. A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

### **Professional Services:**

To comply with inspection and certification requirements, small businesses will need to obtain services of a P.E., C.I.H., certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015. Small businesses will need to secure laboratory services for routine culture sample testing and, if certain events occur, emergency *Legionella* culture testing.



To comply with disinfection requirements, small businesses will need to obtain the services of a commercial pesticide applicator or pesticide technician, or pesticide apprentice under supervision of a commercial pesticide applicator. These qualifications are already required for the properly handling of biocides that destroy *Legionella*.

### **Compliance Costs:**

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

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to industry standards. The cost per test is \$3.50. Assuming tests are performed twice a week, this would result in an annual cost of \$364.
- Emergency *Legionella* Culture Testing – Owners of cooling towers are required to conduct additional testing for *Legionella* in the event of disruption of normal operations. The average cost of each sample analysis is estimated to be approximately \$125.00.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015; for inspection of the cooling towers at intervals not exceeding once every 90 days while the cooling towers are in use. The cost of such services is estimated to be approximately \$150.00 per hour and estimated to take approximately eight (8)

hours.

- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The cost of such services is estimated to be approximately \$150.00 per hour and is estimated to take approximately four (4) hours.
- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately \$5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at \$150 per hour (\$600 to \$1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Formulation of a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing record keeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at \$150 per hour (\$975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at \$150 per hour (\$1950). It is anticipated that facilities may develop the plan using existing staff.

**Costs to State Government and Local Government:**

State and local governments possess authority to enforce compliance with these regulations. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset by a reduction in the need to respond to community legionellosis outbreaks.

**Economic and Technological Feasibility:**

Although there will be an impact of building owners, including small businesses, compliance with the requirements of this regulation is considered economically and technologically feasible as it enhances and enforces existing industry best practices. The benefits to public health are anticipated to outweigh any costs. This regulation is necessary to protect public health.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local governments by providing a cooling tower registry and access to the database, technical consultation, coordination, and information and updates.

**Small Business and Local Government Participation:**

Development of this regulation has been coordinated with New York City.

**Cure Period:**

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by the improper maintenance and testing of cooling towers, the risk that some small businesses will not comply with regulations justifies the absence of a cure period.

## **Rural Area Flexibility Analysis**

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, record keeping or other compliance requirements on public or private entities in rural areas.

## **Job Impact Statement**

### **Nature of the Impact:**

The Department of Health expects there to be a positive impact on jobs or employment opportunities. The requirements in the regulation generally coincide with industry standards and manufacturers specification for the operation and maintenance of cooling towers. However, it is expected that a subset of owners have not adequately followed industry standards and will now hire firms or individuals to assist them with compliance and to perform inspections and certifications.

### **Categories and Numbers Affected:**

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

### **Regions of Adverse Impact:**

The Department anticipates no negative impact on jobs or employments opportunities in any particular region of the state.

### **Minimizing Adverse Impact:**

Not applicable.

## Emergency Justification

Improper maintenance of cooling towers can contribute to the growth and dissemination of *Legionella* bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older, current or former smokers, those with chronic lung diseases, those with weakened immune systems from diseases like cancer, diabetes, or kidney failure, and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including *Legionella*)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing *Legionella*.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the

manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an “urban cooling tower” effect. The “urban cooling tower” effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of



compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; and set cycles of operations that determine when fresh water is needed; and how to shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled *Legionellosis: Risk Management for Building Water Systems* (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures and other requirement.

However, none of the guidance is obligatory. Consequently, poor practice in operation and management can result in bacterial overgrowth, increases in legionellae, and mist emissions that contain a significant dose of pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations require all general hospitals and residential health care facilities (i.e., nursing homes) to develop a sampling plan, report the results, and take necessary actions to protect the safety of their patients or residents. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the

population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of *Legionella* spp. and to determine appropriate response actions in advance of any environmental sampling for *Legionella*. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control; Physical Facilities Management; Engineering; Clinicians; Laboratory; and Hospital Management.

These regulations, which originally became effective on August 17, 2015, implemented important requirements that protect the public from the threat posed by *Legionella*. To ensure that protection is maintained, the Commissioner of Health and the Public Health and Health

Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6) empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

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

**TO BE DISTRIBUTED UNDER SEPARATE COVER**



Project # 161121-C
New York Methodist Hospital

Program: Hospital
Purpose: Construction

County: Kings
Acknowledged: March 23, 2016

Executive Summary

Description

New York Methodist Hospital (NYM), a 591-bed, voluntary not-for-profit, Article 28 teaching hospital in Brooklyn, requests approval to construct a new ambulatory care center at 515 6th Street, Brooklyn, (Kings County). The proposed facility, the NYM Center for Community Health (CCH), will be an extension clinic located across the street from the hospital. The proposed building has two levels of below ground parking and six levels of above ground clinical space. The proposed CCH will include the following services: Multispecialty Ambulatory Surgery; Special Procedure Suite for endoscopy, bronchoscopy and pain management; Pre-admission testing; Imaging Center with digital x-ray, Magnetic Resonance Imaging, Ultrasound, and PET-CT; Orthopedics; Cardiology; GI; and a Cancer Center that includes an infusion center. Additionally, in response to the changing healthcare environment, approximately 53,600 square feet will be reserved for future programmatic needs.

The applicant is building the CCH to relocate certain existing programs in a more patient-centered environment to improve patient experience, promote operational efficiencies and increase care coordination. Ambulatory surgery and special procedures are currently done in the same space as the inpatients. With the CCH, inpatients will no longer be comingled with lower acuity outpatients, which will improve patient experience and free up procedure capacity so inpatients can receive treatments in a more timely manner. Other clinical programs are

being moved into the CCH because their current spaces are overcrowded and cannot accommodate the existing volume in a patient centered environment.

Founded in 1881, New York Methodist Hospital is affiliated with the Weill Cornell Medical College and is a member of the New York Presbyterian Regional Hospital Network. NYM's active parent is NYHP, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary
Proposed services are: Medical Services- Other Medical Specialties and Multi-Specialty Ambulatory Surgery services. 5,729 visits are projected in Year 1.

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) of the New York State Public Health Law.

Financial Summary
The total project cost is \$444,904,571 including the cost of the fit out space and shell space construction. The project cost is broken down as follows: \$417,030,348 for Article 28 space and \$27,874,323 for non-Article 28 space. Reimbursement is limited to the Article 28 portion. Financing for the Article 28 component is as follows:

Equity of \$89,511,989 and \$327,518,359 bond financing at 4.34% interest rate for a 30-year term. The applicant has submitted a letter of interest in regard to the financing. The applicant will provide equity to meet the total project cost for the non-Article 28.

Enterprise Budget (Third Year):

Revenues	\$917,992,204
Expenses	<u>848,006,638</u>
Gain	\$69,985,566

Incremental Budget (Third Year):

Revenues	\$11,229,204
Expenses	<u>42,608,638</u>
Gain/(Loss)	(\$31,379,434)

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution, acceptable to the Department of Health. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. The state hospital code drawings must address all issues noted in the March 29, 2016 request for additional information sent by the Bureau of Architectural and Engineering Review, including ensuring that there are direct sightlines from the nurse stations to all recovery bays in the PACU's. [AER]

**Approval conditional upon:**

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFR Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
3. Construction must start on or before August 1, 2016 and construction must be completed by July 31, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]
8. All devices producing ionizing radiation must be licensed by the New York State Department of Health - Bureau of Environmental Radiation Protection. [HSP]
9. To provide Clinical Laboratory Services, licensure by the New York State Department of Health - Wadsworth Center is required. [HSP]

Council Action Date

**June 9, 2016**

# Need Analysis

## Background and Analysis

The service area is Kings County. The population of Kings County in 2010 was 2,504,700 with 877,822 individuals (35%) age 45 and over, which is the primary population group utilizing Ambulatory surgery services. Per projection data from the Cornell Program on Applied Demographics (PAD), this population group (45 and over) is estimated to grow to 941,703 by 2025, representing 36.5% of the projected population of 2,583,413.

New York Methodist is looking to accommodate the increased demand for outpatient services and to relocate existing programs in a more patient-centered environment that will improve the patient experience and increase care coordination. The proposed clinic will offer the following services: Multispecialty ambulatory surgery; Pre-admission testing; Imaging center with digital X-Ray, MRI, Ultrasound, and CT-Scan; Orthopedics; Cardiology; GI; and a Cancer Center that includes an infusion center. The hours of operation will be Monday through Friday from 7:30 am to 6:00 pm.

## Prevention Quality Indicators-PQIs

PQIs are rates of admission to the hospital for conditions that can be prevented with good outpatient care, or for which early intervention can prevent complications or conditions of greater severity.

The table below shows the overall PQI rates for Kings County and New York State. The overall PQI rate is higher for Kings County than for New York State as a whole.

## Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates-2014	Kings County	New York State
All PQIs	1,514	1,387

Source: DOH Health data, 2015

5,729 visits are projected in Year 1 and 9,891 in Year 3.

The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

## Conclusion

Approval of the proposed extension clinic will allow for continued access to a variety of medical and surgery services for the population of Kings County and the surrounding areas.

## Recommendation

**From a need perspective, approval is recommended.**



## Program Analysis

### Project Proposal

New York Methodist Hospital (NYM), an existing 591-bed not-for-profit teaching hospital, located at 506 6<sup>th</sup> Street in Brooklyn, seeks approval to establish and construct a new ambulatory care center. The proposed facility, the NYM Center for Community Health (CCH), will be an extension clinic across the street from NYM at 515 6<sup>th</sup> Street, Brooklyn.

The proposed building has two levels of below ground parking and six levels of above ground clinical space. The proposed CCH will include the following services: Multispecialty Ambulatory Surgery (for endocrinology, gynecology, head and neck, neurosurgery, obstetrics, oral surgery, orthopedics, otolaryngology, podiatry, plastic surgery, general surgery, urology, and vascular surgery); Special Procedures Suite (for endoscopy, bronchoscopy, and pain management); Pre-admission testing; Imaging Center with digital x-ray, Magnetic Resonance Imaging, ultrasound, and PET-CT; Orthopedics, Cardiology and Gastrointestinal Services; and a Cancer Center that includes an infusion center. In addition, approximately 53,000 square feet will be reserved for future programmatic needs.

The CCH will relocate certain existing programs into a more patient-centered environment which is expected to improve patient experience, operational efficiencies and care coordination. Currently, ambulatory surgery and special procedures are done in the same space as the inpatients. With the CCH, the Hospital will no longer commingle inpatients and lower acuity outpatients with the aim of improving both the patient experience and freeing up procedure capacity so that inpatients can receive their treatments in a more timely manner. Other clinical programs in the building are being moved to the CCH due to volume and overcrowding in their current space.

NYM is affiliated with the Weill Cornell Medical College and is a member of the New York-Presbyterian Regional Hospital Network. NYM's active parent is NYHB, Inc.

Upon completion of the project, the hospital anticipates adding 63.0 FTEs by the end of year one and it will 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, rule 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 investigation of reported incidents and complaints.

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

The total project cost for the Article 28 space and the Non-Article 28 space is \$444,904,671, detailed as follows:

	<u>Article 28</u>	<u>Non-Article 28</u>	<u>Total Project Cost</u>
New Construction	\$244,538,428	\$24,579,047	\$269,117,475
Site Development	3,878,608	0	3,878,608
Temporary Utilities	1,300,000	0	1,300,000
Design Contingency	20,265,883	2,066,324	22,332,207
Construction Contingency	12,728,678	1,228,952	13,957,630
Planning Consultant Fees	2,555,000	0	2,555,000
Architect/Engineering Fees	20,024,330	0	20,024,330
Construction Manager Fees	6,638,835	0	6,638,835
Other Fees (Consultant)	11,833,498	0	11,833,498
Moveable Equipment	29,038,373	0	29,038,373
Telecommunications	9,445,605	0	9,445,605
Financing Costs	5,600,000	0	5,600,000
Interim Interest Expense	46,900,000	0	46,900,000
CON Fee	2,000	0	2,000
Additional Processing Fee	<u>2,281,110</u>	<u>0</u>	<u>2,281,110</u>
Total Project Cost	<u>\$417,030,348</u>	<u>\$27,874,323</u>	<u>\$444,904,671</u>

**Reimbursement is limited to project costs associated with Article 28: \$417,030,348.**

Project costs are based on a construction start date of August 1, 2016, and a 30-month construction period.

The applicant's financing plan appears as follows:

Equity	\$117,386,312
Bond Financing (4.34% interest rate for a 30-year term)	<u>327,518,359</u>
Total	<u>\$444,904,671</u>

The applicant has submitted a letter of interest from Goldman, Sachs & Co. in regard to underwriting the Bond Financing.

### Operating Budget

The applicant has submitted an incremental operating budget, in 2016 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues (Outpatient)*		
Medicaid Fee-For-Service	\$49,988	\$85,729
Medicaid Managed Care	627,428	1,076,037
Medicare Fee-For-Service	498,564	855,036
Medicare Managed Care	369,971	634,499
Commercial Managed Care	2,136,305	3,663,759
Private Pay	62,363	106,954
Other Operating Revenues**	1,307,190	1,307,190
Medicaid Capital Reimbursement	<u>3,500,000</u>	<u>3,500,000</u>
Total Revenues	<u>\$8,553,809</u>	<u>\$11,229,204</u>

Expenses		
Operating	\$9,663,638	\$9,663,638
Capital	<u>33,539,000</u>	<u>32,945,000</u>
Total Expenses	\$43,202,638	\$42,608,638
Excess of Revenues over Expenses	(\$34,648,829)	(\$31,379,434)
Utilization (Visits)	5,729	9,891
Utilization: (Visits-Enterprise) ***	119,629	133,198

\* Revenue by payor is estimated based on net patient revenue by payor per the 2014 ICR- Exhibit 46.

\*\*Other operating revenues consists of Parking and Retail revenues.

\*\*\* NYM will relocate certain existing outpatient programs into the newly constructed CCH. Total outpatient visits projected for the proposed new CCH, inclusive of existing program utilization and projected incremental visits, are 119,629 and 133,198 during the first and third years, respectively.

Medicaid capital reimbursement revenues are based on the portion of the capital costs that will be reimbursed via capital pass through.

The applicant has submitted a letter indicating that the hospital will offset any incremental losses from operations. Expense and utilization assumptions are based on the applicant's historical experience. The applicant indicated that they do not anticipate taking away visits from any other facility.

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	4%	4%
Medicaid Managed Care	23%	23%
Medicare Fee-For-Service	15%	15%
Medicare Managed Care	15%	15%
Commercial Managed Care	33%	33%
Private Pay	11%	11%
Charity Care	2%	2%

#### Capability and Feasibility

Total project cost of \$444,904,571 includes the cost of the fit out space and the shell space. The project cost is broken down as follows: \$417,030,348 for Article 28 space and \$27,874,323 for non-Article 28 space. Financing for the Article 28 component is as follows: Equity of \$89,511,989 and \$327,518,359 Bond Financing at 4.34% interest rate for a 30-year term. The applicant submitted a letter of interest from Goldman, Sachs & Co. to underwrite the Bond Financing, which states that NYM currently has a Bond rating of Baa1 and A- from Moody's Investors Services and Fitch Ratings, respectively. The applicant will provide equity to meet the total project cost for the Non-Article 28 space.

Working capital requirements are estimated at \$28,465,883 based on two months of third year expenses. The applicant will fund working capital from operations. BFA Attachment A is New York Methodist Hospital's 2014 certified and internal financial statements as of November 30, 2015, which indicates the availability of sufficient funds for the equity contribution for the total project cost and the working capital requirements.

The submitted budget indicates an incremental excess of expenses over revenues of \$34,648,829 and \$31,379,434 during the first and third years, respectively. The applicant has submitted a letter of interest stating that the hospital will absorb the incremental losses. Revenues are based on the hospital's current reimbursement rates. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had a positive working capital position and a positive net asset position for the period. Also, the entity achieved income from operations for the period shown.

BFA Attachment B is the 2013 and 2014 certified financial statements of New York Methodist Hospital. As shown, the entity had an average positive working capital position and an average positive net asset position for the period. Also, the entity achieved an average excess of revenues over expenses of \$92,830,500 from 2013 through 2014.

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.**

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## Attachments

- |                  |   |
|------------------|---|
| BFA Attachment A | Financial Summary- November 30, 2015 internal financial statements and the 2014 certified financial statements of New York Methodist Hospital |
| BFA Attachment B | Financial Summary- 2013 and 2014 certified financial statements of New York Methodist Hospital  |



**Project # 152138-C  
St Marys Hospital for Children Inc**

**Program:** Residential Health Care Facility  
**Purpose:** Construction

**County:** Queens  
**Acknowledged:** September 1, 2015

**Executive Summary**

**Description**

St. Mary's Hospital for Children, Inc. (St. Mary's) is a not-for-profit, Article 28 pediatric residential health care facility (RHCF) located at 29-01 216<sup>th</sup> Street, Bayside (Queens County), currently certified for 95 beds and a two-bed respite service. The facility is requesting approval to increase their pediatric bed capacity by 29 net new beds, convert 13 specialty pediatric RHCF beds to general purpose pediatric RHCF beds and decertify respite services. Upon completion of this project, the final bed count will be 124 pediatric RHCF beds. The facility also operates a 31-slot pediatric day health care program at the same location.

The proposed bed increase will be accomplished as follows:

- Six single-bedded rooms located in the new building on the St. Mary's campus will be converted to six double-bedded rooms, with minimal renovations required.
- The two single-bedded respite beds, also located in the new facility, will be converted to two pediatric RHCF beds.
- Four Coma Recovery and Nine Traumatic Brain Injury specialty-designated beds will be converted to 13 generic pediatric beds.
- The remaining 21 new pediatric beds will be housed in a unit to be constructed on the 2<sup>nd</sup> floor of the former St. Mary's residence building, which is connected to the new facility. The space is currently being used as administrative office and conference room space.

These operations will be relocated prior to the project's construction start date.

Although St. Mary's has a traumatic brain injury (TBI) and coma recovery program, there is no specialty reimbursement rate, thus no need for separate designation. After conversion to general purpose pediatric RHCF beds, the facility will continue to care for coma recovery and TBI residents.

St. Mary's Healthcare System for Children, Inc. (St. Mary's Healthcare System) is the sole corporate member of St. Mary's Hospital for Children, Inc.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The facility is requesting approval to increase their certified bed capacity by 29 beds. St. Mary's occupancy from 2011-2014 was 100.0%, 95.5%, 99.5%, and 98.9%, respectively. Current occupancy for this facility as of April 13, 2016 is 98.9%.

**Program Summary**

The renovated space will be equivalent to the current RHCF space. The additional beds will have the same staffing ratios, programs, and access to the same enriched services as the existing beds.

### Financial Summary

Total project cost of \$15,092,197 will be met through fundraising in the amount of \$2,130,049, two NYC Funding grants for capital equipment for a total of \$1,643,000, and a bank loan for \$11,319,148 at an interest rate of 4.25% for a ten-year term and 25-year amortization period.

Revenues	\$84,532,247
Expenses	<u>\$84,434,244</u>
Gain/(Loss)	\$98,003

## 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 and approval of the program to serve ventilator dependent children in the proposed beds. [LTC]
3. Submission of and programmatic review and approval of the final floor plans. [LTC]
4. Submission of an executed permanent mortgage for the project provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. (BFA)
5. Submission of the FY 2015 and FY 2016 New York City Funding grant award approval letters to be used as a source of financing, acceptable to the Department of Health. (BFA)
6. Submission of a letter of credit acceptable to the Department of Health, documenting receipt of and conversion of pledges, to be submitted either within 15 months from date of approval or before approval to start construction, whichever is earlier. (BFA)
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04.

**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. Adherence to standards put forth by the Department regarding services to ventilator dependent children. [LTC]
3. The effective date for the certification of the additional beds will be determined by the Metropolitan Area Regional Office. [LTC]
4. 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)
5. Construction must start on or before August 1, 2016 and construction must be completed by July 31, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**June 9, 2016**

# Need Analysis

## Background

St. Mary's Hospital for Children (St. Mary's) is an existing 95-bed Article 28 residential health care facility (RHCF), located at 29-01 216th Street, Bayside, 11360, in Queens County. St. Mary's seeks approval to increase the certified bed capacity from 95 pediatric RHCF beds plus a two-bed respite service to 124 pediatric RHCF beds with no respite services.

St. Mary's is the only New York City-based, free-standing pediatric nursing facility serving the general pediatric population. St. Mary's provides intensive rehabilitation, specialized care and education to children with special needs and life-limiting conditions. St. Mary's Healthcare System operates various long-term and short-term home and community programs, a licensed home care services agency, a certified home health agency, a specialized AIDS home care program, and comprehensive case-management through Care At Home and Medicaid Service Coordination. Additional services include Pediatric Day Health Care Program (a New York State-certified Adult Day Health Care Program for pediatric patients), Center for Pediatric Feeding Disorders, St. Mary's Early Education Program, and St. Mary's Kids at Roslyn, a therapy center and sensory integration facility.

St. Mary's has formally partnered with ten Performing Provider Systems (PPSs) and submitted a Capital Restructuring Financing Program (CRFP) application through its partnership with New York Hospital Queens PPS to request support for this project.

## Project Proposal

The proposed project has the following components:

### Phase One:

- Conversion of six single-bedded rooms in the new building on the St. Mary's campus into double-bedded rooms; and
- Conversion of two single-bedded respite beds (not counted in current certified capacity) in the new building on the St. Mary's campus to certified pediatric RHCF beds and will remain in place; and
- Conversion of four Coma Recover and nine TBI specialty-designation beds to 13 generic pediatric beds.

### Phase Two:

- 21 beds will be constructed in a state-of-the-art unit within the connected building that once served as the residential area of St. Mary's before the construction of the new building. The 21-bed unit will be located on the 2<sup>nd</sup> floor in space currently occupied by administration and the conference center. A separate construction notice will be submitted to DOH to relocate the administrative suite from the 2<sup>nd</sup> floor to the 4<sup>th</sup> floor and relocate the conference center to adjacent space on the 2<sup>nd</sup> floor.

**Table 1: Proposed Bed Changes**

<b>Bed Type</b>	<b>Current</b>	<b>Proposed</b>	<b>Upon Completion</b>
RHCF (Pediatric)	82	+42	124
Coma Recovery	4	-4	0
Traumatic Brain Injury	9	-9	0
<b>Total Beds</b>	<b>95</b>	<b>+29</b>	<b>124</b>

The pediatric residents who will be admitted to the new, 21-bed unit are expected to include both short-term and long-stay residents. Approximately 40% of St. Mary's residents are short-term residents while the remaining 60% are long-stay residents. The approval of this additional capacity will help St. Mary's deal more readily with the constant struggle to balance the placement of hospital patients with short-term care needs with placement of patients, usually sought by home health agencies and families, with long-term care needs. The current situation leads to a considerable waiting list.



The proposed 21-bed unit in the original St. Mary's building will be constructed to allow service to ventilator-dependent children in any of the new beds, as is the case in the existing and proposed beds in the new building. The children admitted to the facility are becoming more medically complex, and a larger percentage are requiring some type of respiratory assistance upon admission. An analysis of admissions to St. Mary's, based upon primary diagnosis, shows that in 2013, 47.1% of admitted patients had conditions that likely required some level of respiratory assistance. By 2014, this percentage grew to 67.9%, and indications are that this percentage was even greater in 2015. Although St. Mary's will not be seeking to certify a discrete ventilator-dependent unit through this project, the facility already cares for a large number of ventilator-dependent, medically complex children (approximately 30%). The facility must currently turn away two to three ventilator-dependent children each week, many of whom are referred to New Jersey facilities due to lack of capacity in New York City.

#### Analysis

At the July 2014 meeting of the Committee on Establishment and Project Review of the Public Health and Health Planning Council (PHHPC), three projects were approved to add pediatric RHCF beds in Westchester County. While the pediatric RHCFs in Westchester County draw residents from a wide geographic area, there appears to be a need for additional pediatric beds in the southern part of New York State, particularly in Queens and Kings Counties and Long Island. The following table demonstrates the current geographic distribution of pediatric RHCF beds:

**Table 2: Statewide Pediatric Facilities**

Name of Facility	Certified Beds	Additional Beds Approved	Vent Beds	County
Sunshine Children's Home	54	68		Westchester
Elizabeth Seton Pediatric Center	136	32		Westchester
Blythedale Children's Hospital	24	24		Westchester
St. Margaret's Center <sup>1</sup>	58		6	Albany
Pathways Nursing & Rehab Ctr	36			Schenectady
Highpointe on Michigan HCF	13		7	Erie
Monroe Community Hospital	10		5	Monroe
Rutland Nursing Home	32			Kings
Coler Nursing Facility <sup>2</sup>	25			New York
St. Mary's Hospital for Children	95			Queens
<b>Total</b>	<b>611</b>	<b>124</b>	<b>18</b>	

<sup>1</sup>Under CON 141219, St. Margaret's was approved to convert 20 pediatric RHCF beds to 20 pediatric ventilator-dependent beds. This will not change the Center's pediatric capacity of 74 beds.

<sup>2</sup>Coler relocated in 2013, per CON 102253, and indicates it is not accepting pediatric patients in its new location.

Note 1: Avalon Gardens Rehab & Health Center (Suffolk) has temporary approval for 36 pediatric RHCF beds.

Note 2: Table does not include 21 specialty pediatric AIDS RHCF beds operated at Incarnation Children's Center in Manhattan.

St. Mary's has experienced consistently high occupancy over the past several years. The facility currently has a wait list of about 67 children, with approximately 85% located in Kings, Queens, and Long Island areas. St. Mary's, is the closest pediatric facility to these children, which is a convenience to their families. The wait list provided by St. Mary's includes about 35 children who do not appear on any other pediatric facilities' wait list. This unduplicated wait list includes a few of out-of-state residents that would return to New York if beds were available at St. Mary's.

Table 3 below shows the New York State 2015 hospital discharges for pediatric patients to a nursing home between the ages of Newborn and 21.

**Table 3: 2012-2015 Pediatric Discharges from all New York State Hospitals to RHCs**

Age Group	2012 Patients	2013 Patients	2014 Patients	2015 Patients
Newborn	27	47	36	31
00 -> 02	221	195	190	165
03 -> 05	42	72	81	67
06 -> 14	187	193	160	163
15 -> 19	172	200	216	206
20 -> 21	167	147	109	122
<b>Total</b>	<b>816</b>	<b>854</b>	<b>792</b>	<b>754</b>

Source: SPARCS, 2016

Focusing specifically on St. Mary's geographic region, and taking into account location of the remaining pediatric RHCs, Table 4 below shows a separation of discharged patients statewide between downstate (NYC Region, Long Island Region, and Westchester County) hospitals and hospitals in the rest of the State during 2012-2015.

**Table 4: 2012 - 2015 Downstate vs. Rest of State Hospital Discharges to RHCs**

Ages 0-21	2012 Patients	2013 Patients	2014 Patients	2015 Patients
Downstate	582	612	545	464
Rest of State	234	242	247	290
<b>Total</b>	<b>816</b>	<b>854</b>	<b>792</b>	<b>754</b>

Source: SPARCS, 2016

Table 5 shows the 2015 discharges of patients from 29 of the 34 hospitals in the New York City, Long Island, and Westchester County area with NICU/PICU/Pediatric units. The data was compiled with the cooperation of the listed facilities.

**Table 5: 2015 Discharges - Hospital Pediatric Patients in NYC & Long Island Regions, and Westchester County**

Hospital <sup>1</sup>	2015 Discharges To					
	Downstate SNFs <sup>2</sup>	Blythedale	Hospitals	RHCs	Out of State RHCs/ Hospital	Other Facility Type (excl. home)
Bellevue Hospital Center	2	6	0	0	0	0
Brookdale Hospital Medical Center	0	1	42	1	0	2
Brooklyn Hospital - Downtown Campus	8	9	0	0	0	0
Elmhurst Hospital	3	2	2	0	0	1
Flushing Hospital	1	0	0	0	0	0
Good Samaritan Hospital Medical Center	0	0	3	0	0	0
Harlem Hospital	1	2	0	0	0	0
Jacobi Medical Center	0	0	0	0	0	0
Jamaica Hospital Medical Center	0	0	0	0	0	0
Kings County Hospital Center	1	0	0	0	0	24
Lenox Hill Hospital	0	2	0	0	0	0
Long Island Jewish Medical Center <sup>3</sup>	69	57	51	17	17	34
Maimonides Medical Center	6	9	9	0	1	0
Montefiore Medical Center - 3 Campuses	20	85	12	0	5	0
Mount Sinai Beth Israel	4	5	0	0	0	0
Mount Sinai Hospital	0	0	0	0	0	0

Hospital <sup>1</sup>	2015 Discharges To					
	Downstate SNFs <sup>2</sup>	Blythedale	Hospitals	RHCFs	Out of State RHCFs/ Hospital	Other Facility Type (excl. home)
Nassau University Medical Center	0	0	2	0	0	0
New York Methodist Hospital	0	0	0	0	0	0
New York Presbyterian - Columbia	59	43	44	42	41	59
New York Presbyterian - Weill Cornell	64	15	16	14	14	17
NYU Medical Center	11	7	23	1	0	0
North Shore University Hospital	2	5	0	0	0	0
Northern Westchester Hospital	0	0	0	0	0	0
Queens Hospital Center	0	0	0	0	0	0
Richmond University Medical Center	0	0	0	0	0	0
Staten Island University Hospital - North	0	0	0	0	0	0
University Hospital of Brooklyn	5	0	0	5	0	0
University Hospital Stony Brook	44	1	20	0	1	11
Winthrop-University Hospital	1	0	5	0	0	0
<b>Total</b>	<b>301</b>	<b>249</b>	<b>229</b>	<b>80</b>	<b>79</b>	<b>148</b>

<sup>1</sup>Hospitals that did not respond: Bronx-Lebanon Hospital Center, Lincoln Medical & Mental Health Center, North Central Bronx Hospital, St. Francis Hospital, Westchester Medical Center

<sup>2</sup>St. Mary's, Sunshine Children's Home, Elizabeth Seton Pediatric Center, or Avalon Gardens

<sup>3</sup>Long Island Jewish Medical Center did not provide specific information as to where patients were discharged. Therefore, the data was pro-rated across categories.

Of the 301 discharges to downstate pediatric facilities, 115 were to St. Mary's<sup>1</sup>. The hospitals were asked how many pediatric patients were currently in their facility and of that number, how many were awaiting placement to a pediatric RHCF facility or a post-acute care facility. At the time of the request, 32 children were awaiting placement to a pediatric RHCF facility or post-acute care facility.

Elizabeth Seton and Sunshine Children's Home reported that the average age of their residents is approximately nine years old, and the average length of stay is approximately three years. For St. Mary's, it is most representative to consider two distinct sub-sets, with: short-term residents' average length of stay in 2015 at 63 days, and long-term residents' average length of stay in 2015 at approximately seven years. A conservative model based on historical data from 2011 - 2015 from St. Mary's cost reports and the Minimum Data Set (MDS) supports a sustained need for additional beds. When considering discharge and admissions numbers and average length of stay (ALOS), the result shows a perpetual need without additional factors, such as repatriation or the afore-detailed hospital discharge numbers, being considered. St. Mary's added capacity will allow them the flexibility to adjust the mix between long and short term patients to further pare down its waiting list.

Finally, according to Medicaid Salient data, there were 62 pediatric residents from the downstate region in out-of-state facilities in 2015. Therefore, although not the primary impetus for this project, approval of this application will support the Medicaid Redesign Team's (MRT) effort, including under MRT Goal #68, to repatriate beneficiaries from out-of-state nursing facilities, and to prevent such placements in the future.

#### Conclusion

Based on analysis of hospital discharge data, waiting lists, and out-of-state placements, and the consideration that approval of this CON application is not expected to negatively impact the three pediatric facilities in Westchester County for which the 124 pediatric beds were previously approved, approval of the beds is recommended.

#### Recommendation

**From a need perspective, approval is recommended.**

<sup>1</sup> The 115 discharges to St. Mary's is out of 232 patient discharges with specific facility data. The 232 is derived by subtracting LIJ's Discharges to Downstate SNFs number from the column total.

## Program Analysis

### Facility Information

	<b>Existing</b>	<b>Proposed</b>
<b>Facility Name</b>	St Mary's Hospital for Children Inc.	Same
<b>Address</b>	29-01 216 Street Bayside, NY 11360	Same
<b>RHCF Capacity</b>	82 Pediatric RHCF 9 Pediatric TBI 4 Pediatric Coma Recovery 95 Total Pediatric Beds +2 Pediatric Respite Beds	124 Pediatric RHCF 0 Pediatric TBI 0 Pediatric Coma Recovery 124 Total Pediatric Beds +0 Pediatric Respite Beds
<b>ADHCP Capacity</b>	31	Same
<b>Type Of Operator</b>	Corporation	Same
<b>Class Of Operator</b>	Voluntary/ Not for Profit	Same
<b>Operator</b>	St Mary's Hospital for Children Inc  <u>Active Parent/Co-Operator</u> St. Mary's Healthcare System for Children, Inc.	Same

### Program Review

St. Mary's Hospital for Children (St. Mary's) is a 95 bed pediatric residential health care facility located in Bayside, Queens. St. Mary's currently serves both long term and short term pediatric RHCF residents. In 2012 St. Mary's built a state-of-the art replacement facility which fostered the development of a program serving high acuity children who previously required care in a hospital. The existing nursing home building, built in the 1950s, was converted into administrative offices when the new adjoining facility went on-line. St. Mary's also operates a Special Needs Certified Home Health Agency (CHHA) and Licensed Home Care Services Agency (LHCSA). The CHHA and LHCSA work with the nursing home to place children into the community once it is clinically appropriate to do so.

St. Mary's Early Education School provides a pre-school program to children aged 3-6, and PS 23Q, located on campus, offers educational services in grades K-12. Both programs provide classroom services as well as customized Specialized Education Itinerant Teacher (SEIT) services for residents who cannot attend the classroom.

St. Mary's is currently licensed for 95 total pediatric RHCF beds and a two-bed respite service. It is currently licensed for specialized pediatric beds, TBI (9 beds) and Coma (4 beds), within its 95 total pediatric beds. Approximately ten years ago St. Mary's modified its program to be able to serve TBI and Coma Recovery residents throughout the replacement facility without having to operate specialized beds within physical space dedicated to these residents. Children are now cohorted by age and sex instead of by specialized treatment needs. This change in program eliminated the need to have specialized rates to pay for TBI and Coma Recovery in addition to the pediatric RHCF rate. Through this application St. Mary's is requesting to convert the designation for the TBI and Coma Recovery beds to generic pediatric RHCF beds. This change will not increase the overall number of children served by St. Mary's and the RHCF will continue to serve children who require TBI and Coma Recovery services.

Through this application St. Mary's is requesting to increase its certified generic pediatric RHCF beds from 82 to 124. It requests to accomplish this through the following actions:

- Convert the nine pediatric TBI and four Coma Recovery beds to thirteen generic pediatric RHCF beds
- Convert six single-bedded rooms in the current facility to double-bedded rooms
- Add two beds by utilizing the two beds used for respite and decertifying respite services

- Add 21 pediatric RHCf beds by renovating space in the vacated RHCf that is currently being used as administrative space. This space is on the same campus as the existing RHCf program and adjoins the existing RHCf building

St. Mary's intends to operate the additional beds with the same program and staffing ratios that are in place at the existing facility. St. Mary's has transitioned from a long term care facility to a licensed RHCf that specializes in the treatment of children with complex medical needs who require shorter term rehabilitation before placement back into the community. The additional beds will allow St. Mary's to serve either the long term pediatric RHCf population or the shorter term rehabilitation pediatric population. This flexibility can be a valuable resource to the State should the demand for pediatric skilled nursing services change over time.

#### Physical Environment

The conversion of TBI, Coma Recovery and respite beds will not result in a change in physical environment. The two respite beds are currently single bedded rooms on a residential unit and will remain as single bedded rooms that are comparable to the size of other resident rooms on the unit. The respite rooms are adjacent to one another and share a common toilet and bath.

The conversion of six single bedded rooms to double bedded rooms will occur with one room converted on Floors 1 and 2 and two rooms on Floors 3 and 4. Each room converted has adequate space to accommodate the additional bed and has its own toilet and bath. The facility will remain in compliance with the requirement for 10% single bedded rooms after the conversions occur in conjunction with the request for 124 certified beds.

The 21 additional beds will be added by creating a new unit in space that was previously certified as pediatric RHCf space prior to the construction of the existing pediatric RHCf space. St. Mary's will conduct construction to bring this unit up to current requirements and create an environment that is equivalent to the current RHCf space. The unit will be located on the second floor in a building that is adjacent and physically connected to the current RHCf. The building shares a common lobby and main entrance with the current RHCf. Access to the second floor unit will be via a hospital sized elevator and through a corridor with exterior views. The unit will be secure with access only through a secure card reader from the outside or by staff from the inside.

The unit itself is linear with double loaded corridors. In order to minimize the institutional feel of the unit the center of the unit was opened up to create a communication center, nourishment station, dining area and recreational area. This open central core creates an environment that is similar to the great room that exists in the current RHCf pediatric units. St. Mary's will also arrange the unit so that single bedded rooms are on one side and double bedded rooms on the other. Resident room doors for each room are staggered so that for the most part they will not be directly across from each other. Each wing of the unit has "perch space" that allows children to congregate outside of their rooms. The unit contains a large multi-purpose room that can be used by residents in addition to the common area in the central core. The unit also contains a large storage room and an exam room. These rooms are located at the end of the corridor to minimize disruptions to the resident rooms.

The rooms in general will operate with the same amenities and clinical capability/staffing ratios as the existing RHCf beds. The eight double bedded rooms are approximately 350 square feet with a proposed toe to toe placement of resident beds. While the placement of the beds is not optimal, the size of the double bedded rooms are equitable to the double bedded rooms in the current RHCf building. The five single bedded rooms are just under 200 square feet. One of the single bedded rooms has its own toilet and shower while other single rooms share a toilet and shower with another single bedded room. All resident rooms will have piped-in medical gases at the head of the each bed and piped-in medical gas connections will be available in the main dining and recreation area on the unit.

The proximity of the children in the new unit to the services at St. Mary's will be no different than the children in the existing RHCf units. As with the existing units, off-unit therapies will be a short elevator ride from the unit. Ground floor recreational areas at the existing RHCf building are also in close proximity to the new unit. In some cases, such as school services, the new unit will actually be closer to

support services than the existing pediatric units. It is the full intent of St. Mary's to operate this unit as a fully integrated part of the existing campus and the location and layout of the unit appears to support that they will be able to do so in practice.

Compliance & Quality Review

St. Mary's Hospital for Children is currently in substantial compliance with all applicable codes, rules and regulations.

Provider Name	Overall	Health Inspection	MDS Quality Measures
ST MARYS HOSPITAL FOR CHILDREN INC	*****	*****	*****

*Above ratings are based on CMS Provider Rating dated 3/1/2016*

Conclusion

St. Mary's Hospital for Children has the flexibility to serve a wide array of children in need of skilled nursing care. Their program focuses on rehabilitating children and, when possible, using other elements of its care system to aide in returning children to the community. Its ability to serve children with complex medical needs, including ventilator care, make a compelling case for allowing expansion of the existing program. The 29 additional pediatric beds will have the flexibility to match an increase in demand for children requiring complex medical services. St. Mary's has committed to rehabilitating the to-be-renovated space in a way that will make it equitable to the space in the current RHCF. The additional beds will have the same staffing ratios, programs, and access to the same enriched services as the existing beds.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

**Financial Analysis**

Total Project Cost and Financing

Total project cost is estimated at \$15,092,197, broken down as follows:

Renovation & Demolition	\$6,766,923
Temporary Utilities	\$64,602
Asbestos Abatement or Removal	\$543,456
Design Contingency	\$676,693
Construction Contingency	\$676,693
Planning Consultant Fees	\$244,410
Architect/Engineering Fees	\$879,875
Construction Manager Fees	\$586,584
Other Fees	\$484,515
Movable Equipment	\$2,558,913
Telecommunications	\$1,083,936
Financing Costs	\$145,665
Interim Interest Expense	\$295,390
Application Fees	\$2,000
Additional Processing Fees	<u>\$82,542</u>
Total Project Cost	\$15,092,197

Project costs are based on a construction start date of August 1, 2016, and a 12-month construction period.

The applicant's financing plan appears as follows:

Fundraising	\$2,130,049
NYC Funding grant awards for capital equipment	1,643,000
Bank Loan (4.25% interest, ten-year term, 25-year amortization)	<u>\$11,319,148</u>
Total	\$15,092,197

The equity requirement will be covered through a fundraising campaign and FY 2015 and FY 2016 NYC Funding grants. The applicant has started a fundraising campaign and received draft grant award letters in support of their required equity contributions. Roosevelt & Cross Inc. has provided a letter of interest for the loan at the above stated terms. It is noted that the applicant has filed a Capital Restructuring Finance Program (CRFP) grant application with the Department related to this project and will revise their financing proposal to reflect any CRFP funds awarded.

#### Operating Budget

The applicant has provided an operating budget for the Current Year (2014) and Year One, as summarized below:

<b>Inpatient</b>	<u>Current Year (2014)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<b>Revenues</b>				
Medicaid FFS	\$1,682.90	44,610,359	\$1,573.29	\$54,214,054
Medicaid MC	\$1,736.09	\$11,508,535	\$1,626.02	\$13,616,251
Commercial FFS	\$913.73	\$1,048,054	\$913.73	\$1,048,054
Private Pay	\$2,123.08	\$27,600	\$2,123.08	\$27,600
Other Operating Revenue		5,190,153		\$5,190,153
Non-Operating Revenue		<u>\$195,021</u>		<u>\$195,021</u>
Total		\$62,579,722		\$74,291,133
<b>Expenses</b>				
Operating	\$1,419.81	\$48,695,077	\$1334.60	\$58,712,914
Capital	<u>\$389.65</u>	<u>13,363,864</u>	<u>\$336.00</u>	<u>\$14,781,680</u>
Total	\$1,809.46	\$62,058,941	\$1,670.60	\$73,494,594
Net Income/ (Loss) Inpt.		\$520,781		\$796,539
<b>Outpatient</b>				
<b>Revenues</b>				
Medicaid FFS	\$741.46	<u>\$10,241,114</u>	\$741.46	<u>\$10,241,114</u>
Total		\$10,241,114		\$10,241,114
<b>Expenses</b>				
Operating	\$771.58	\$10,657,013	\$771.58	\$10,657,013
Capital	<u>\$20.46</u>	<u>\$282,637</u>	<u>\$20.46</u>	<u>\$282,637</u>
Total	\$792.04	\$10,939,650	\$792.04	\$10,939,650
Net Income/(Loss) Outpt.		(\$698,536)		(\$698,536)
Net Income/(Loss) Total		<u>(\$177,755)</u>		<u>\$98,003</u>
Utilization - Patient Days		34,297		43,993
Occupancy % - Pt Days		98.91%		97.20%
Utilization - Visits		13,812		13,812

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current Medicaid of rate for pediatric inpatient and outpatient day care services.

- Expense assumptions are based on the operator’s historical experience, plus the projected increased staffing and additional capital costs (equipment and telecommunications) associated with the new beds.
- Utilization assumptions are based on the facility’s list of children waiting to be placed in St. Mary’s facility. This addition will bring the overall occupancy rate for the facility down to 97.2%, which is in line with the Department’s planning guideline of 97% occupancy for the planning region.
- Outpatient utilization by payor source is 100% Medicaid Fee-For Service.
- Inpatient utilization by payor source for the Current Year and Year One is shown below:

	<u>Current Year</u>	<u>Year One</u>
Medicaid Fee-For-Service	77.29%	78.33%
Medicaid Managed Care	19.33%	19.03%
Commercial Fee-For-Service	3.34%	2.61%
Private Pay	.04%	.03%

The budget appears reasonable.

#### Capability and Feasibility

Project costs of \$15,092,197 will be met via equity of \$3,773,049 and a bank loan for \$11,319,148 at the above stated terms. The equity requirement associated with the project cost will be covered by the fundraising campaign and the NYC Funding grants.

Working capital requirements are estimated at \$1,905,942 based on two months of Year One incremental expenses, which will be satisfied from the facility’s operations. BFA Attachment A is the 2013-2014 certified and internal financial statements as of December 31, 2015, for St. Mary’s Hospital for Children, Inc. and Foundation, which shows the entity has sufficient resources to cover the working capital equity requirements for this project. BFA Attachment B is the 2013-2014 certified and internal financial statements as of December 31, 2015, for St. Mary’s Healthcare System for Children, Inc. (Parent Entity). As shown, the parent entity has sufficient resources to cover any additional shortfalls.

The applicant’s revenue assumptions are based on the historical rate data of the facility. The majority of the pediatric population to be served by the facility is expected to be exempt from value based reimbursement. A transition of nursing home (NH) residents to Medicaid managed care is 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 A, the 2013-2014 certified and year ending 2015 internal financial statements for St. Mary’s Hospital For Children, Inc., indicate the facility generated an average negative working capital position, a positive net asset positions, and an average net loss of \$10,094,237 for the period. The negative working capital was caused by the applicant reflecting items that are typically considered long term liabilities as current liabilities, including items such as accrued vacation, workers compensation reserves and third party payer liabilities. For 2014, the amount that was misclassified totaled \$6,368,168. If this had been classified correctly, the applicant would have had \$328,663 in positive working capital for 2014. The net loss in 2013 was caused by inefficiencies in home care and rehabilitation program operations, revenue cycle management processes, issues with operating expenses being too high, and an unprofitable Early Intervention program. In order to resolve these issues the facility did the following: restructured home care operations by implementing a new care delivery model, new technology, and reduced infrastructure to support a lower census; consolidated the centralized rehabilitation program to make coordination of services more efficient; closed the unprofitable Early Intervention program in May 2014; implemented expense reductions including corporate restructuring, workers compensation, health benefits, departmental reductions in staff and other expense savings initiatives; restricted the licensed home care program transferring of certain services to outside providers as of January 1, 2015; and



implemented improved revenue cycle management processes. The loss in 2015 was due to a significant shortfall in the projected philanthropy, due to the resignation of the vice president of the foundation and limited year end giving due to financial constraints of several of the foundation's board members.

BFA Attachment B is 2013-2014 certified and the year ending 2015 internal financial statements for St. Mary's Healthcare System for Children, Inc. The entity generated an average negative working capital position, a positive net asset positions, and an average net loss of \$5,476,426 for the period. The reasons for the negative working capital and the net loss are the same as above.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	2013-2014 certified and 1/1/2015-12/31/2015 internal financial statements for St. Mary's Hospital for Children, Inc.
BFA Attachment B	2013-2014 certified and 1/1/2015-12/31/2015 internal financial statements for St. Mary's Health Care System for Children, Inc.



Project # 152343-C
Long Island Jewish Medical Center

Program: Hospital
Purpose: Construction

County: Queens
Acknowledged: December 15, 2015

Executive Summary

Description

Long Island Jewish Medical Center (LIJMC), a 1,025-bed hospital located at 270-05 75th Avenue, New Hyde Park (Queens County), requests approval to certify a pediatric kidney transplantation program within its Cohen Children's Medical Center (CCMC), a 206-bed pediatric specialty unit of LIJMC. LIJMC is a hospital entity of Northwell Health, Inc., formerly known as North Shore-Long Island Jewish Health System, Inc.

LIJMC and North Shore University Hospital (NSUH) are two of the clinical and academic hubs of Northwell. In August 2007, the NYSDOH certified NSUH as an Adult Kidney Transplant Program. Development of a pediatric kidney transplant program at CCMC is intended to improve care for patients in CCMC's pediatric nephrology division. Professional staff will be jointly credentialed at NSUH and CCMC. The inpatient components of the pediatric kidney transplant program will utilize the resources of CCMC, enhanced by the experience from the adult transplant program. The outpatient center will be housed in the current outpatient nephrology clinic. The facility has dedicated examination rooms, a phlebotomy lab, nurse's station, urinalysis point of care testing, microscope, patient restrooms and reception/waiting area, and a proximate conference area for family meetings and transplant conferences.

The applicant indicated that CCMC currently provides pre- and post-kidney transplant services to approximately 100 children with or recovering from end-stage kidney disease, including those receiving hemodialysis and

peritoneal dialysis and 40 to 50 post-transplant patients. CCMC patients receive transplants elsewhere and return for follow-up as early as several weeks after transplant surgery. CCMC's nephrologists have vast experience caring for the problems of the pre- and post-transplant patient and having a Pediatric Transplant Program at CCMC will enable the patients to maintain continuity of care with their physicians, result in better access and convenience for patients and their families, and improve compliance for better long-term outcomes.

LIJMC is a member of Northwell, a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the communities it serves, and to achieve economies of scale through consolidation, cooperation and joint planning among its members. LIJMC is a member of the Northwell Obligated Group, formed to provide its members an enhanced credit position and expanded access to capital markets.

OPCHSM Recommendation
Contingent Approval

Need Summary

The new transplant department will be integrated with North Shore University Hospital's existing kidney transplant services, which was approved in October 2007 for adult services only. Data from the Organ Procurement Transplantation Network (OPTN) shows that Northshore performed 31 adult transplants in 2015 (12 from deceased donors and 19 from

living donors). LIJMC's Cohen Children's Medical Center is the largest provider of inpatient services to pediatric patients in the state.

#### Program Summary

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

#### Financial Summary

Project costs of \$259,911 will be met with accumulated funds. The incremental budget is as follows:

Revenues:	\$790,800
Expenses:	<u>2,128,000</u>
Gain(Loss):	(\$1,337,200)

LIJMC has submitted a letter from the Chief Financial Officer stating that they will absorb the operational losses of the Pediatric Kidney Transplant Program.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

**Approval conditional upon:**

1. 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

**June 9, 2016**

## Need Analysis

### Project Description

Long Island Jewish Medical Center, a 1,025 bed Hospital located at 270-05 76<sup>th</sup> Ave, New Hyde Park, Queens County, is seeking CON approval to certify a kidney transplant program within its Cohen Children's Medical Center. Cohen Children's Medical Center currently operates a Pediatric Nephrology Division and kidney transplant services are certified at North Shore University Hospital, within the Northwell Health system.

### Analysis

Long Island Jewish Medical Center had an overall utilization rate of 84.3% and a pediatric utilization rate of 54.1% in 2014. A bed chart is provided below.

<b>Table 1: Long Island Jewish Medical Center Bed Chart</b>			
<b>Source: HFIS, 2015</b>			
<b>Bed Category</b>	<b>Certified Beds</b>	<b>Requested Action</b>	<b>Certified Capacity upon Completion</b>
Bone Marrow Transplant	4	0	4
Coronary Care	10	0	10
Intensive Care	62	0	62
Maternity	76	0	76
Medical/Surgical	435	0	435
Neonatal Continuing Care	4	0	4
Neonatal Intensive Care	24	0	24
Neonatal Intermediate Care	29	0	29
Pediatric	108	0	108
Pediatric ICU	37	0	37
Psychiatric	236	0	236
<b>Total</b>	<b>1,025</b>	<b>0</b>	<b>1,025</b>

A list of the currently certified services provided by Long Island Jewish Medical Center is given below. This project would add Transplant - Kidney services to the Hospital's operating certificate.

- Ambulance
- Ambulatory Surgery - Multi Specialty
- Audiology O/P
- Cardiac Catheterization - Adult Diagnostic
- Cardiac Catheterization - Electrophysiology (EP)
- Cardiac Catheterization - Pediatric Diagnostic
- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)
- Cardiac Surgery - Adult
- Cardiac Surgery - Pediatric
- Certified Mental Health Services O/P
- Chemical Dependence - Rehabilitation O/P
- Clinic Part Time Services
- Clinical Laboratory Service
- Coronary Care
- Dental O/P
- Emergency Department
- Epilepsy Comprehensive Services
- Intensive Care
- Linear Accelerator
- Lithotripsy
- Maternity
- Medical Services - Other Medical Specialties
- Medical Services - Primary Care
- Medical Social Services
- Medical/Surgical
- Methadone Maintenance O/P
- Neonatal Continuing Care
- Neonatal Intensive Care
- Neonatal Intermediate Care
- Nuclear Medicine - Diagnostic
- Nuclear Medicine - Therapeutic
- Pediatric
- Pediatric Intensive Care
- Podiatry O/P

- Poison Control Center
- Psychiatric
- Radiology - Diagnostic
- Radiology-Therapeutic
- Renal Dialysis - Acute
- Renal Dialysis - Chronic
- Therapy - Occupational O/P
- Therapy - Physical O/P
- Therapy - Speech Language Pathology
- Therapy - Vocational Rehabilitation O/P
- Transplant - Bone Marrow

Statewide pediatric kidney transplant volumes are provided in Table 2 below. The applicant estimates that 11 patients in Year 1 and 15 patients in Year 3 of this project would receive a kidney transplant at the Hospital. If successful, these volumes would make the applicant the largest provider of this service to children in the state and the only provider dedicated to pediatric care. While Section 708.5(d)(3) requires that a renal transplant center perform at least 15 procedures annually, the requirement does not differentiate adult and pediatric transplants. Most CON approvals do not specify adult versus pediatric services, but the 2007 approval of Northshore's kidney transplant program was restricted to adult services. The applicant predicts it will meet the volume requirement by Year 3 of operations. While the Department finds this prediction ambitious, considering current statewide pediatric kidney transplant volumes, (Table 2) and given that the adult program performed 31 transplants in 2015, the Department is satisfied volume requirement can be met.

<b>Table 2: STATEWIDE PEDIATRIC KIDNEY TRANSPLANT VOLUMES</b>							
<b>Source: United Network for Organ Sharing/Organ Procurement and Transplantation Network</b>							
<b>Facility</b>	<b>County</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
NYP - Columbia	New York	9	7	6	3	5	5
NYP-Weill Cornell Center	New York	9	8	8	2	8	5
SUNY Downstate/ University Hospital	Kings	0	1	0	3	0	1
Montefiore Medical Center	Bronx	11	6	6	7	8	6
Mt Sinai	New York	10	16	13	11	13	13
University Hospital of SUNY/ Stony Brook	Suffolk	3	1	6	1	4	0
Westchester Medical Center	Westchester	3	5	3	0	6	2
Albany Medical Center	Albany	0	0	0	2	1	1
Strong Memorial Hospital	Monroe	5	2	5	4	5	2
SUNY Upstate Medical Center/University Hospital SUNY Health Science Center	Onondaga	3	5	3	0	6	2
<b>TOTAL</b>		<b>53</b>	<b>51</b>	<b>50</b>	<b>33</b>	<b>56</b>	<b>37</b>
<b>TOTAL DECEASED DONOR</b>		<b>26</b>	<b>22</b>	<b>29</b>	<b>22</b>	<b>29</b>	<b>20</b>
<b>TOTAL LIVING DONOR</b>		<b>27</b>	<b>29</b>	<b>21</b>	<b>11</b>	<b>27</b>	<b>17</b>

North Shore University Hospital provided 31 Adult kidney transplants in 2015. The proposed pediatric program would be the responsibility of the Transplant Surgical Director at NSUH, the same person overseeing the existing successful Adult program. Furthermore, CCMC is a dedicated pediatric hospital which currently runs a Pediatric Nephology division. A pediatric kidney transplant program would complement this division and allow the Hospital to provide continuity of care for its patients.

Northshore University Hospital Adult kidney transplant statistics are provided in Table 3 below.

<b>Table 3: North Shore University Hospital Adult Kidney Transplant Volume</b>						
<b>Source: United Network for Organ Sharing/Organ Procurement and Transplantation Network</b>						
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Deceased donor</b>	1	3	7	17	14	12
<b>Living donor</b>	34	40	9	13	16	19
<b>Total</b>	<b>35</b>	<b>43</b>	<b>16</b>	<b>30</b>	<b>30</b>	<b>31</b>

## Conclusion

The applicant runs a large quaternary pediatric Hospital with a well-utilized Pediatric Nephrology division. Children who receive nephrology services (including inpatient and outpatient renal hemodialysis) at the hospital are currently required to receive kidney transplants from another provider within the applicant's health network. This can cause disruptions in care and, particularly for children, can make an already traumatizing experience even more difficult. Certifying kidney transplantation services at this location will provide a safer, more efficient and more convenient experience for children at the Hospital.

## Recommendation

**From a need perspective, approval is recommended.**

# Program Analysis

## Project Proposal

Long Island Jewish Medical Center, an existing not-for-profit Article 28 hospital located at 270-05 76<sup>th</sup> Avenue in New Hyde Park (Queens County), seeks approval to certify a kidney transplant program within its Cohen Children's Medical Center. Cohen Children's Medical Center (CCMC; Cohen's) operates a Pediatric Nephrology Division as well as a Level I Pediatric Trauma Center.

The pediatric transplant application is an extension of the adult kidney transplant program at North Shore University Hospital (NSUH) which will expand its expertise, quality and infrastructure to the pediatric transplant program. NSUH is located less than two miles from CCMC and is also a member of Northwell Health (formerly known as North Shore-LIJ Health System, Inc.).

Pediatric transplant services are an extension in the development of a pediatric end-stage renal disease program at CCMC as Cohen's nephrologists have extensive experience in caring for patients who are pre/post kidney transplant or recovering from end-stage kidney disease (including those receiving hemo- or peritoneal dialysis) and post-transplant patients. The creation of a pediatric transplant center at CCMC will afford patients with better continuity of care, access and convenience potentially leading to better long-term outcomes.

Staffing is expected to increase by 3.5 FTEs in year one of the completed project, and to increase by a total of 4.0 FTEs by the third year of operation.

## Kidney Transplant Program Review

Staff review of the proposed project included a review of the United Network for Organ Sharing/Organ Procurement and Transplantation Network (UNOS/OPTN) and the Scientific Registry of Transplant Recipients (SRTR) data on kidney transplant volumes and outcomes at Northshore University Hospital (NSUH) and volumes at all other hospitals that perform pediatric kidney transplants. Data from UNOS/OPTN demonstrated that NSUH performed 31 transplants in 2015 (12 living, 19 deceased); 30 transplants in 2014; and 30 in 2013.

More recent mortality data was requested from the applicant as the SRTR website had not been recently updated and the data provided with the application referenced 2011. The applicant provided the following:

<b>SRTR Outcomes for Mortality and Graft Survival at North Shore University Hospital 1-Year Post-transplant Outcomes (07/01/2012-12/31/2014)</b>	<b>Observed</b>	<b>Expected</b>	<b>Statistical Significance of Difference</b>
Adult graft survival (based on 57 transplants) (%)	95.85	96.10	Not Significantly Different
Adult patient survival (based on 52 transplants) (%)	95.35	98.00	Not Significantly Different

Cohen Children’s Medical Center was approved as a Level I Pediatric Trauma Center by the American College of Surgeons on November 7, 2014.

On January 8, 2016, interim approval from the Membership and Professional Standards Committee of the UNOS/OPTN was granted to the proposed pediatric transplant program. The program received final approval on March 16, 2016.

Department staff reached out to LiveOnNY, the New York City Metro-area organ procurement agency (OPO), concerning their experience partnering with Northwell Health. According to LiveOnNY, Northwell has been an excellent partner and has worked very well with them in an effort to improve donor consent rates. LiveOnNY reported that Northwell has already been in contact with them regarding the prospective addition of a pediatric kidney transplant program at Cohen Children’s Medical Center.

Department staff also sought the input of several members of the NYS Transplant Council pertaining to this application’s strengths and weaknesses. The members were provided with the following for review: the CON application; UNOS/OPTN and SRTR data for volumes at existing pediatric transplant centers and volumes and mortality at the Northshore adult transplant program; the UNOS/OPTN application to initiate a pediatric kidney transplant program; existing and pending UNOS/OPTN bylaws for transplant centers (in particular pediatric transplant training/experience requirements for physicians and surgeons); a letter from an existing pediatric transplant center opposing the application; and organ donation education and promotion efforts.

The group acknowledged that, according to information provided by the applicant, Cohen Children’s Medical Center has robust inpatient and outpatient dialysis services. Overall, the members opined that the application was sound and that adding transplantation to the comprehensive nephrology service is consistent with the mission of a children’s hospital and with the needs of the community.

Further, the members strongly suggested that the new kidney transplant program be integrated into the organ donation efforts of Northwell Health and that Cohen’s reinforce its commitment to pediatric organ donation by integrating its efforts within Northwell Health’s activities and through working with LiveOnNY.

Of note, UNOS/OPTN has proposed new pediatric physician/surgeon experience requirements. However, while it has been an area of discussion at UNOS/OPTN for many years, the requirements are not yet effective. Members of the Transplant Council reviewed the proposed experience prerequisites and concurred that the Applicant would meet the new conditions.

The Department staff review included an evaluation of the pediatric kidney transplant volumes at other transplant centers. Generally, pediatric transplant is a low volume service. For this reason, CMS, NYSDOH and UNOS/OPTN do not have minimum operational pediatric transplant volume requirements. The review determined that the impact on other programs would be limited and that the benefit of a comprehensive pediatric nephrology center, which includes transplantation, outweighs any potential negative impact on other programs.



In addition, the Department solicited comment on the application from the other pediatric transplant centers in New York State. A single NYC metro area hospital responded by letter expressing that families and children in metropolitan New York (already) have access to full services and noted a limiting factor to be the lack of deceased donor organ supply. While this point is valid, the application included a proposal to use living donation (as is consistent with other pediatric transplant programs) as a key component of its services, so the impact on deceased donor organs is limited. In addition, since Cohen Children's Medical Center provides comprehensive pediatric nephrology care (including dialysis), including transplantation as a service will eliminate the need for families to travel and be evaluated and transplanted by an entirely different medical team. The benefit of this outweighs the seemingly minimal impact on existing low volume pediatric centers.

The Applicant's submitted written plan demonstrates an ability to comply with all the standards for a kidney transplant program and the Applicant has assured the Department that their program will meet all of the requirements of 10 NYCRR 405.30 and 405.31 as well as be in compliance with the relevant CMS Conditions of Participation for Transplant Centers.

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

The adult kidney transplant program at North Shore University Hospital received Center for Medicare and Medicaid Services (CMS) approval on April 4, 2008. A Medicare transplant program re-approval survey was conducted on August 11-12, 2016 and no deficiencies were identified.

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.

North Shore University Hospital was fined \$18,000 in a Stipulation and Order issued by the Department on December 11, 2008. The issues noted were based on a complaint regarding post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient fell out of bed resulting in a dislocated femur and developed multiple decubiti and renal failure. Investigation determined that follow-up care was delayed or inadequately administered.

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total cost of the project is anticipated to be \$259,911, broken down as follows:

Architect and Engineering Fees	\$6,500
Telecommunications	250,000
CON Application Fee	2,000
Additional CON Fees	<u>1,411</u>
<b>Total Project Cost</b>	<b>\$ 259,911</b>

Total Project Cost will be met with accumulated funds.

### Operating Budget

The applicant has submitted an incremental operating budget for the first and third years of operation of the service. The budget includes revenue and expense associated with the hospital stay for living kidney donors as well as for the recipients. The budget is summarized below:

	<u>First Year</u>	<u>Third Year</u>
<b>Inpatient Revenue</b>		
Medicaid	\$479,600	\$654,000
Medicare	<u>0</u>	<u>74,100</u>
<b>Total Inpatient Revenue</b>	<b>\$479,600</b>	<b>\$728,100</b>
<b>Outpatient Revenue</b>		
Medicaid	\$26,700	\$44,200
Medicare	<u>11,200</u>	<u>18,500</u>
<b>Total Outpatient Revenue</b>	<b>\$37,900</b>	<b>\$62,700</b>
<b>Total Revenue</b>	<b>\$517,500</b>	<b>\$790,800</b>
<b>Inpatient Expense</b>		
Operating	\$1,594,800	\$2,086,500
Capital	<u>36,400</u>	<u>36,400</u>
<b>Total Inpatient Expense</b>	<b>\$1,631,200</b>	<b>\$2,122,900</b>
<b>Outpatient Expense</b>		
Operating	<u>\$3,100</u>	<u>\$5,100</u>
<b>Total Outpatient Expense</b>	<b>\$3,100</b>	<b>\$5,100</b>
<b>Total Expense</b>	<b>\$1,634,300</b>	<b>\$2,128,000</b>
<b>Net Income (Loss)</b>	<b><u>(\$1,116,800)</u></b>	<b><u>(\$1,337,200)</u></b>
<b>Transplants</b>	11	15
<b>Cost per Procedure</b>	\$148,290.91	\$141,526.67
<b>Outpatient Visits</b>	330	546
<b>Cost per Visit</b>	\$9.39	\$9.34

The budget is based on the following assumptions:

- Inpatient expenses apply to the actual transplant procedure and full inpatient stay.
- The clinical program assumes organs will come from both live and deceased donors. All related live donor expenses as well as the costs related to deceased donor organ acquisition are included in inpatient expenses.
- Fees for the United Network for Organ Sharing and New York Organ Donor Network are included as part of the inpatient expenses.
- Outpatient volume represents post-transplant office visits which will result in minimal incremental supply expense.
- The projected outpatient utilization can be accommodated by existing hospital staff, requiring no additional FTEs to be hired.
- The projected payor mix was based on the pediatric patients currently seen at LIJMC that are referred outside of Northwell Health (NS-LIJ Health System, Inc.) for kidney transplant services.

Utilization by payor source is anticipated as follows:

	<u>Year One</u>	<u>Year Three</u>	<u>Year One and Three</u>
	<u>Inpatient</u>	<u>Inpatient</u>	<u>Outpatient</u>
Medicare	0.0%	13.3%	30%
Medicaid	72.7%	66.7%	70%
Other	27.3%	20.0%	---

The budget is based on NYS DRG 440 (Medicaid) and MS DRG 652 (Medicare) for kidney transplants for reimbursement of costs. Reimbursement for other payors is anticipated to approximate Medicaid. Revenues and expenses are based on the existing adult kidney transplant program at NSUH, adjusted to projected pediatric volume and patient utilization at Long Island Jewish Medical Center.

#### Capability and Feasibility

The total project cost of \$259,911 will be provided from accumulated funds. Based on BFA Attachment B, the financial summary for Long Island Jewish Medical Center, adequate funds are available.

The submitted budget indicates that a net incremental loss of \$1,116,800 and \$1,337,200 will be generated for the first and third years, respectively. Long Island Jewish Medical Center has submitted a letter from the CFO stating that they will absorb the operational losses of the Pediatric Kidney Transplant program. The budget is based on existing reimbursement methodologies, including reimbursement for both donors and recipients. The budget appears reasonable.

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

- BFA Attachment A Organizational Chart of the Northwell Health, Inc.
- BFA Attachment B Financial Summary- Long Island Jewish Medical Center



**Project # 161080-C  
Phelps Memorial Hospital Assn**

**Program: Hospital  
Purpose: Construction**

**County: Westchester  
Acknowledged: February 23, 2016**

**Executive Summary**

**Description**

Phelps Memorial Hospital Association (Phelps), a 238-bed, not-for-profit, Article 28 acute care hospital located at 701 North Broadway, Sleepy Hollow (Westchester County), seeks approval to add Therapeutic Radiology Services and construct a Linear Accelerator (LINAC) Radiation Oncology Unit. Additionally, the hospital seeks to revise their operating certificate by removing the hospital outpatient building located at 777 North Broadway as a separate location (currently listed as an extension clinic, but actually part of the hospital campus) and replacing Primary Medical Care O/P with the current licensure categories of Medical Services-Primary Care and Medical Services-Other Medical Specialties. Adding Therapeutic Radiology and operationalizing the above services will allow Phelps to continue to provide medical oncology, outpatient chemotherapy infusion and outpatient radiation therapy (radiation oncology) services to the residents of Westchester County. The services are currently being provided by Memorial Sloan Kettering Hospital (MSKH) at the 777 North Broadway Outpatient Hospital Building location in space MSKH leases from Phelps. MSKH will be vacating the building as of August 2016, thereby closing its oncology clinic program at this location. Phelps will re-occupy this space and intends to continue providing the oncology services at the vacated site under its own licensure.

The proposed therapeutic radiology program will include ten infusion bays, one linear accelerator, a chemotherapy mixing pharmacy and a specialized oncology laboratory. The proposed space will encompass 26,806 square feet

located in the existing space being vacated by MSKH.

In January 2015, Phelps became a member of the former North Shore-LIJ Health System, now called Northwell Health. Northwell Health, Inc. is the sole member and passive parent of Phelps. Per the applicant, a CON to establish Northwell Health Care, Inc. as active parent and co-operator of Phelps is pending submission. BFA Attachment A is an organizational chart of Northwell Health, Inc. and its member facilities.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Phelps Memorial Hospital Association is within the Hudson Valley planning region, which currently has 19 approved or existing Article 28 LINAC machines and has a determined need for 31 LINAC machines. Approval of this project will help meet the remaining need for LINAC machines in the Hudson Valley region.

The applicant projects that 5,000 radiation treatments will be provided annually, starting from Year 1 and continuing through Year 5. This is the minimum number of treatments required by regulation. The applicant projects that the outpatient chemotherapy program will treat 780 patients in Year 1, 2,600 patients in Year 3, and 5,200 patients in Year 5.

### Program Summary

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

### Financial Summary

Project costs of \$7,122,890 will be met with \$712,290 in accumulated funds and issuance of a tax-exempt bond for \$6,410,600 at a fixed interest rate of 6.5% for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest for the financing.

The incremental budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,153,800	\$5,970,100
Expenses	<u>\$6,888,800</u>	<u>\$8,112,200</u>
Net Income	(\$2,735,000)	(\$2,142,100)

The Chief Financial Officer (CFO) of Northwell Health, Inc. has provided a letter stating Northwell is committed to supporting the program and will provide financial support to absorb budgeted operating losses related to this program.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]

**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 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. [AER]
3. Construction must start on or before 08/15/2016 and construction must be completed by 09/15/2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
4. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]

Council Action Date

**June 9, 2016**

## Need Analysis

### Background

Memorial Sloan Kettering (MSK) leases space from Phelps Memorial Hospital to operate an oncology clinic there with 2 Linear Accelerators (LINACS). When the lease expires in August 2016, MSK will relocate all services there, including both LINACS, to the extension clinic it operates at 500 Westchester Avenue, Harrison, Westchester County. This relocation was contingently approved by the Department in CON 152139 and will result in no net change in the number of approved LINACS in the county. The Applicant for this project, Phelps Memorial Hospital Association, is proposing to continue providing the oncology services at the vacated site under its own license with one LINAC.

### Analysis

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. Department regulations require that at least ninety-five percent of the total population of the Hudson Valley region live within one hour's driving time of a LINAC. Furthermore, the need for LINAC machines is determined by assuming that 60% of the cancer cases in a planning region will be candidates for radiological therapy. Of these, half will require 15 treatments a year and half will require 35. Each LINAC machine can provide 6,500 treatments per year.

The table below shows need for 11 additional LINAC machines in the Hudson Valley health planning region after approval of this project:

	<b>LINAC Need in Hudson Valley Region</b>	<b>Total</b>
1	# of Cancer Cases/Year	13,044
2	60% will be Candidates for Radiation Therapy	7,827
3	50% of (2) will be Curative Patients	3,914
4	50% of (2) will be Palliative Patients	3,914
5	Course of Treatment for Curative Patients is 35 Treatments	136,990
6	Course of Treatment for Palliative patients is 15 Treatments	58,710
7	The Total Number of Treatments [(5)+(6)]	195,700
8	Need for LINAC Machines <sup>1</sup> [(7)/6,500]	31
9	Existing/Approved Resources (Upon Approval of CON 161080)	20
10	Remaining Need for LINAC Machines [(8)-(9)]	11

<sup>1</sup>Each LINAC Machine has capacity for 6,500 Treatments

The Hudson Valley health planning region currently has a total of 15 facilities - 10 hospitals and 5 hospital extension clinics - providing linear accelerator services as follows:

Current Resources	# Facilities With LINAC Services			# LINAC Machines		
	Hospitals	Hospital Clinics	Total	In Hospitals	In Hospital Clinics	Total
Hudson Valley Region						
Dutchess	1	1	2	2	1	3
Orange	3	1	4	3	1	4
Putnam	1	0	1	1	0	1
Rockland	0	0	0	0	0	0
Sullivan	0	0	0	0	0	0
Ulster	0	1	1	0	1	1
Westchester	5	2	7	6	4	10
<b>Total Hudson Valley Region</b>	<b>10</b>	<b>5</b>	<b>15</b>	<b>12</b>	<b>7</b>	<b>19</b>

This project will not change the number of residents who live within one hour driving time of a LINAC, because therapeutic radiology is already provided at the proposed location.

## Conclusion

There is still a need for 11 additional LINAC machines in the Hudson Valley planning region. This project would allow for the continuation of services for the community who choose to receive oncology treatment at this facility after MSK relocates its operations. Approval of this project will ensure continuity of care for cancer patients in the region and maintain geographic coverage.

## Recommendation

**From a need perspective, approval is recommended.**

# Program Analysis

## Project Proposal

Phelps Memorial Hospital, an existing not-for-profit 238-bed Article 28 community hospital located at 701 North Broadway in Sleepy Hollow (Westchester County), requests approval to add a Linear Accelerator and Therapeutic Radiology Services. By adding/operationalizing these services, Phelps plans to provide medical oncology services, outpatient chemotherapy infusion and outpatient radiation therapy (radiation oncology) services to residents of Westchester County. Phelps is a member of Northwell Health, Inc. (formerly North Shore-LIJ Health System, Inc.), which is currently the passive parent of Phelps.

Additionally, the hospital seeks to revise its operating certificate by removing the hospital outpatient building at 777 North Broadway as a separate location (currently listed as an extension clinic but actually a part of the hospital campus and physically attached to the main hospital building by a short pedestrian bridge) and replacing Primary Care-O/P with the categories of Medical Services-Primary Care and Medical Services - Other Medical Specialties.

The services have been provided at Phelps at the 777 North Broadway Outpatient Hospital Building by Memorial Sloan Kettering Hospital (MSK) in leased space, however, MSK will be vacating as of August 2016 and, with approval of this project, Phelps intends on re-occupying this space to provide the exact same services to the community.

First year staffing will consist of 30.5 FTEs which will expand to 33.0 FTEs by 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

### Financial Analysis

Total project cost for new construction and equipment is estimated at \$7,122,890, broken down as follows:

Renovation & Demolition	\$269,500
Design Contingency	26,950
Construction Contingency	26,000
Architect/Engineering Fees	21,000
Movable Equipment	3,629,100
Telecommunications	2,769,220
Financing Costs	340,169
Application Fee	2,000
Processing Fee	<u>38,951</u>
Total Project Cost	\$7,122,890

Total costs are based on a construction start date of August 15, 2016, and a completion date of September 15, 2016.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$712,290
Bond Financing (30 years at 6.5% interest)	<u>\$6,410,600</u>
Total	\$7,122,890

### Operating Budget

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first and third years, summarized below:

	<u>Per Visit</u>	<u>Year One</u>	<u>Per Visit</u>	<u>Year Three</u>
<u>Revenues</u>				
Commercial Managed Care	\$1,417.46	\$1,851,200	\$1,501.40	2,576,400
Medicare Fee-For-Service	\$516.93	1,755,500	\$572.18	2,552,500
Medicare Managed Care	\$668.40	412,400	\$799.63	648,500
Medicaid Managed Care	\$391.84	115,200	\$445.85	172,100
Private Pay/Other	\$104.28	<u>19,500</u>	\$83.74	<u>20,600</u>
Total Revenue		\$4,153,800		\$5,970,100
<u>Expenses</u>				
Operating		4,521,900		5,687,200
Capital		<u>2,366,900</u>		<u>2,425,000</u>
Total		\$6,888,800		\$8,112,200
Net Income/(Loss)		(\$2,735,000)		(\$2,142,100)
Total Visits		5,800		7,620

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

	<u>Year One</u>	<u>Year Three</u>
Commercial Managed Care	22.52%	22.52%
Medicare Fee-For-Service	58.55%	58.54%
Medicare Managed Care	10.64%	10.64%
Medicaid Managed Care	5.07%	5.07%
Private Pay/Other	3.22%	3.23%

The following is noted with respect to the submitted budget:

- Revenue and expense assumptions are estimated based on the experience of existing comprehensive cancer center programs within Northwell Health, and have been adjusted for the projected Phelps volume and patient utilization.
- Utilization assumptions are based on the services currently being provided at the proposed location. MSKH leases this space from Phelps and provides outpatient chemotherapy and radiation medicine. Effective August 2016, MSKH will vacate the leased space and close its oncology clinic program at the 777 North Broadway location.
- Breakeven utilization is projected at 9,619 visits and 10,354 visits for Year One and Year Three, respectively.

The applicant indicated that the service will break even on a contribution margin basis starting in year five, but the net income will still be at a loss. Northwell Health, Inc.'s CFO has provided a letter stating that Northwell is committed to supporting the program to serve the needs of the community, and will provide financial support to absorb budgeted losses related to this program.

#### Capability and Feasibility

Project costs of \$7,122,890 will be met with \$712,290 in accumulated funds and the issuance of a tax-exempt bond for \$6,410,600 at a fixed interest rate of 6.5% for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bond financing based on their review of Northwell Health Obligated Group's financial statements. BFA Attachments B and C are a summary of the draft 2015 consolidated financial statements of Northwell Health Inc. (includes Phelps Memorial Hospital Association) and the 2014 consolidated financials of Phelps Memorial Hospital Association, respectively, which indicate sufficient resources to fund the project.

Working capital requirements are estimated at \$1,352,033 based on two months of third year expenses. The applicant will provide the full amount from its operations. As shown in BFA Attachments B and C, the hospital has sufficient resources to fund working capital.

The submitted incremental budget indicates a deficit of revenues over expenses of \$2,735,000 and \$2,142,100 during the first and third years, respectively. Revenues reflect current outpatient reimbursement methodologies for ambulatory payment classification services. The budget appears reasonable. The CFO of Northwell Health, Inc. has provided a letter stating Northwell is committed to financially supporting the program and will absorb budgeted losses. Also, the applicant states that Management continues to focus on various initiatives such as revenue cycle improvement, supply chain savings and productivity and efficiency initiatives to counteract programmatic losses.

As shown on BFA Attachments B and C, the hospital maintained positive working capital, positive net asset positions, and operations had an excess of revenues over expenses of \$3,995,000 and \$1,006,000 for 2015 and 2014, respectively.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

- BFA Attachment A Organizational Chart - Northwell Health, Inc.
- BFA Attachment B Financial Summary - Northwell Health Inc., (includes Phelps Memorial Hospital Association, draft 2015 consolidated)
- BFA Attachment C Financial Summary of Phelps Memorial Hospital Association - 2014 certified financial statements



**Project # 161083-E  
Gastroenterology Care, Inc**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment    **Acknowledged:** February 23, 2016

**Executive Summary**

**Description**

Gastroenterology Care, Inc. (the Center), an existing proprietary Article 28 diagnostic and treatment center (D&TC) located at 8622 Bay Parkway, Brooklyn (Kings County), is requesting indefinite life status. The D&TC is certified as a single specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology services. The Center obtained Public Health Council approval with a five-year limited life under CON 071061 and began operations effective March 17, 2011. The applicant submitted this application to the Department prior to the limited life expiration date (March 17, 2016). The FASC continues to operate under the original lease, which expires in July 2024. There will be no change in services provided.

The initial and current sole shareholder of Gastroenterology Care, Inc. is Alexander Brodsky, M.D., who is Board Certified in Gastroenterology.

**OPCHSM Recommendation  
Approval**

**Need Summary**

Data submission by the applicant, as a contingency of CON 071061, is completed. Based on CON 071061, Gastroenterology Care, Inc. projected 1,875 procedures in Year 1 (2011)

and 1,935 Year 3 (2013). Charity care was projected at two percent and Medicaid was projected at four percent. Based on the annual reports submitted by the applicant, the actual number of procedures was 205 in Year 1 and 3,771 in Year 3. Actual charity care in Year 3 (2013) was 2.1%, and Medicaid was 30.4%.

Upon approval of this project, the applicant projects the number of visits to be 3,845 in Years 1 and 3 with Medicaid at 35.5% and charity care at 1.6%. 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. The operating budget is as follows:

Revenues	\$2,458,792
Expenses	<u>2,158,250</u>
Net	
Income	\$300,542

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval conditional upon:**

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

Council Action Date

**June 9, 2016**

## Need Analysis

### Analysis

The primary service area is Kings County.

The table below provides information on projections and utilization for Year 1 (2011) and Year 3 (2013) based on CON 071061.

CON 071061 - Visits	Projections		Actual	
	Year 1	Year 3	Year 1	Year 3
Gastroenterology Care, Inc.				
Total	1,875	1,935	205	3,771

The table below provides Year 3 utilization (projections and actual) by payor under CON 071061; actual data for 2014; and projections for Years 1 and 3 following approval of this project.

Payor	CON 071061 Projected Year 3 (2013)	Actual Year 3 (2013)	Actual 2014	CON 161083 Projections Years 1 & 3
Commercial FFS/MC	60.0%	25.2%	24.2%	24.2%
Medicare FFS/MC	32.0%	35.9%	33.0%	33.0%
Medicaid FFS/MC	4.0%	30.4%	35.5%	35.5%
Charity Care	2.0%	2.1%	1.6%	1.6%
All Other	2.0%	6.4%	5.7%	5.7%
Total	100%	100%	100%	100%

Since the passage of the Affordable Care Act (ACA), access to healthcare coverage has improved in New York State, which means fewer people needing traditional charity care. As a reflection of the passage of the ACA, Gastroenterology Care, Inc. has seen a drop in charity care over the limited life period. During the limited life period, charity care has been 2.9% in 2011, 1.8% in 2012, 2.1% in 2013, 1.6% in 2014 and 0.9% in 2015. Conversely, there has been a significant, continual increase in Medicaid visits; 23.3% in 2011, 25.3% in 2012, 30.4% in 2013, 35.5% in 2014, and 40.6% in 2015.

In order to provide service to the underinsured the center has taken the following steps:

- Staff members, led by Dr. Brodsky, provide consultation at six (6) separate clinic locations in Brooklyn and Staten Island for the express purpose of providing free cancer screening and evaluations for patients of those clinics free of charge.
- Staff members provide free evaluations, Q&A and education on the importance and availability of screening colonoscopies, financial (payor) information, and assist patients in setting up formal screening appointments. The center estimates that over 250 patients have received free colorectal screenings through their outreach efforts.
- Dr. Brodsky provides educational information to potentially thousands of Russian-speaking residents of the five boroughs through television spots purchased on all six (6) Russian language television stations serving this area.

Gastroenterology Care, Inc. is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

### Conclusion

Although Gastroenterology Care's charity care has declined slightly, this has occurred in the midst of a major decline in the number of uninsured in Kings County. Staff members of this center provide consultation at six separate clinics in Kings County. Moreover, Gastroenterology Care's volume of service to Medicaid clients has reached over 7 times the facility's original projections. These circumstances indicate a reasonable and sustained effort to provide services to the underserved in Kings county area, and indefinite life appears warranted.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Proposal

Gastroenterology Care, Inc., an existing Article 28 diagnostic and treatment center that is certified as a single-specialty freestanding ambulatory surgical center (FASC) specializing in gastroenterology, located at 8622 Bay Parkway in Brooklyn (Kings County), is requesting permission to convert to indefinite life following a five year conditional, limited life approval (initially approved in CON #071061).

In keeping with the directives and conditions of its limited life approval, the Center submitted Annual Reports prepared by a third party to the Department for 2011 through 2015 in which the center experienced nearly 15,000 cases in that span. During that period, the Center surpassed by a substantial amount its original approved commitment to serve the underserved. The Center is proud of its record during its limited life and is committed to continuing to enhance the community's access to high-quality medical care in the future.

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center. Staffing is expected to remain at 12.0 FTEs and Alexander Brodsky, M.D., Ph.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 complaint.

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, for the current year (2014) and the first and third years subsequent to receiving indefinite life, as summarized below:

	<u>Current Year (2014)</u>	<u>Year One and Three</u>
Revenues		
Medicaid-FFS	\$113,795	\$113,795
Medicaid-MC	659,979	659,979
Medicare-FFS	363,665	363,665
Medicare-MC	63,523	63,523
Commercial-FFS	447,200	447,200
Commercial-MC	623,393	623,393
Private Pay / All Other	<u>187,237</u>	<u>187,237</u>
Total Revenues	\$2,458,792	\$2,458,792
Expenses		
Operating	\$1,907,164	\$1,907,164
Capital	<u>251,086</u>	<u>251,086</u>
Total Expenses	\$2,158,250	\$2,158,250
Net Income or (Loss)	<u>\$300,542</u>	<u>\$300,542</u>
Utilization (procedures)	3,845	3,845
Cost per Procedure	\$561.13	\$561.13

Revenue, expense and utilization assumptions for Years One and Three are projected based upon a continuation of the Center's current operations.

During the review process for this application, the applicant discovered that the statistics they reported to the Statewide Planning & Research Cooperative System (SPARCS) incorrectly classified procedures as "Self-Pay" due to a systems error. The applicant is in the process of correcting this error, and will continue to be in touch with the Department throughout this process. The Center has been compliant with their 2013 and 2014 AHCF cost report submissions to the Department, and with filing the Annual Reports (utilization statistics) prepared by a third party vendor for years 2011 through 2015.

### Capability and Feasibility

There are no project costs associated with this application.

Gastroenterology Care, Inc. projects an operating excess of \$300,542 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on experience. The budget appears reasonable.

BFA Attachments A and B are Gastroenterology Care, Inc.'s 2014 certified financial statements and their internal financial summary as of November 30, 2015, which shows the facility maintained positive working capital, positive equity, and positive net income for the periods shown.

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

### Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

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- BFA Attachment A 2014 Certified Financial Statement for Gastroenterology Care, Inc.  
BFA Attachment B November 30, 2015 Internal Financial Summary for Gastroenterology Care, Inc.



## 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 9th day of June, 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 request for an indefinite life for CON # 071061, 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:

161083 E

FACILITY/APPLICANT:

Gastroenterology Care, Inc.

APPROVAL CONTINGENT UPON:

N/A

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 the *Contingencies Tab in NYSE-CON*.



Project # 161138-B  
JTL Consulting, LLC t/b/k/a  
Gastroenterology of Westchester, LLC

**Program:** Diagnostic and Treatment Center      **County:** Westchester  
**Purpose:** Establishment and Construction      **Acknowledged:** March 16, 2016

**Executive Summary**

**Description**

JTL Consulting, LLC (JTL), an existing New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a freestanding ambulatory surgery center (FASC) specializing in gastroenterology services. The applicant will lease 4,812 square feet of an existing building located at 1086 North Broadway, Yonkers (Westchester County). The FASC will include two procedure rooms, a pre-operating area and two recovery bays, along with the requisite support areas. Upon approval, the name of the D&TC will be Gastroenterology of Westchester, LLC.

The sole member of JTL Consulting, LLC is Jose Lantin, M.D. Dr. Lantin, who is Board Certified in Internal Medicine and Gastroenterology, will be a practicing physician at the Center and will serve as Medical Director. Upon opening there will be one additional practicing physician, Dr. Frederick Fallick, who has no ownership interest in the FASC. The physicians currently perform gastroenterology procedures in an existing private, office-based practice within the proposed FASC's service area. Both physicians have provided letters of interest demonstrating their commitment to transfer 3,120 procedures, currently performed

in their private practice, to the Center in the first year of operation.

**OPCHSM Recommendation**

Contingent approval with an expiration of the operating certificate five years from the date of its issuance

**Need Summary**

3,120 procedures are projected for Year 1 with Medicaid at 25.0% 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 \$1,820,510 will be met through member's equity of \$182,051 and the remaining balance of \$1,638,459 to be financed via a bank loan for a ten-year term at 3.25% interest. The projected budget is:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,538,467	\$1,674,625
Expenses	<u>\$1,407,545</u>	<u>\$1,435,842</u>
Gain	\$130,922	\$238,783

## 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 (5) 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 an executed loan commitment, 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 building lease, acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
  - a. Actual utilization including procedures;
  - b. Breakdown of visits by payor source;
  - c. Percentage of charity care provided by visits;
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - e. Number of emergency transfers to a hospital;
  - f. Number of nosocomial infections recorded;
  - g. A brief list of all efforts made to secure charity cases; and
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans.[RNR]
8. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
9. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]

10. Submission of a lease agreement between the applicant and the property owner, which is acceptable to the department. [CSL]
11. Submission of an operating agreement of Gastroenterology of Westchester, LLC which 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 submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. Construction must start on or before October 1, 2016 and construction must be completed by February 1, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**June 9, 2016**

## Need Analysis

### Project Description

The applicant is seeking approval to establish and construct a freestanding ambulatory surgery center providing single specialty gastroenterology surgery services to be located at 1086 North Broadway, Yonkers, 10701, in Westchester County.

### Analysis

The service area consists of Westchester County. Westchester County has a total of seven freestanding ambulatory surgery centers: four multi-specialty ASC's and three single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in Westchester County for 2013 and 2014.

ASC Type	Facility Name	Total Patients	
		2013	2014
Multi	The Rye ASC	4,251	4,046
Multi	The Ambulatory Surgery Center of Westchester	4,873	4,615
Single	Eye Surgery Center of Westchester	4,812	4,884
Multi	White Plains Ambulatory Surgery Center	1,323	938
Single	Hudson Valley Center for Digestive Health	2,478	2,769
Single	New York Endoscopy Center	1,556	1,763
Multi	Surgical Specialty Center of Westchester	2,451	2,571
Total		21,744	21,586

Source: SPARCS-2015

In Westchester County, the total number of patient visits was 21,744 in 2013 and 21,586 in 2014. For the single gastroenterology specialty ASC's, the number of patient visits was 4,034 in 2013 and 4,532 in 2014. This represents a 12.3% year-to-year increase in the number of patients served by gastroenterology specialty ASC's in Westchester County.

The population of Westchester County in 2010 was 949,113 with 403,129 individuals (43.3%) 45 years and over, which is the primary population group utilizing Gastroenterology services. Per PAD projection data from the Cornell Program on Applied Demographics, this population group (45 and over) is estimated to grow to 417,129 by 2025 and represent 43.1% of the projected population of 967,407.

The number of projected procedures is 3,120 in Year 1 and 3,408 in Year 3. These projections are based on the current experience of the participating surgeons. The table below shows the projected payer utilization for Years 1 and 3.

	Year 1 Volume	Year 1 %	Year 3 Volume	Year 3 %
Commercial Ins	1,030	33.0%	1,125	33.0%
Medicare	1,092	35.0%	1,193	35.0%
Medicaid	780	25.0%	852	25.0%
Private Pay	156	5.0%	170	5.0%
Charity Care	62	2.0%	68	2.0%
Total	3,120	100.0%	3,408	100.0%

### Underserved Populations

The center intends to obtain contracts with the following Medicaid Managed Care plans: MVP, Affinity, HIP Medicaid and Healthfirst.

The center will seek to partner with local community organizations and Federally Qualified Health Centers (FQHCs) that can refer qualified uninsured patients to the center. The center will reach out to two FQHC's: Mount Vernon Neighborhood Health Center and Hudson River Healthcare in order to identify and serve underinsured patients. Included with this application is a letter from Hudson River Healthcare expressing their interest in establishing a formal, written agreement to work collaboratively with the applicant to refer underserved patients to the center.

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 office-based surgical procedures into an Article 28 ambulatory surgery center setting and will provide continued access to gastroenterology services for the communities of Westchester County.

### Recommendation

**From a need perspective, contingent approval for a limited period of five (5) years is recommended.**

## Program Analysis

### Project Proposal

JTL Consulting, LLC, an existing New York State limited liability company, seeks approval to establish and construct an Article 28 diagnostic and treatment center that will also be certified as a single-specialty (gastroenterology) freestanding ambulatory surgical center at 1086 North Broadway in Yonkers (Westchester County). This project effectively converts the participating physicians' private practice into a regulated Article 28 service. Upon approval, the center will be known as Gastroenterology of Westchester, LLC.

<b>Proposed Operator</b>	JTL Consulting, LLC
<b>To Be Known As</b>	Gastroenterology of Westchester, LLC
<b>Site Address</b>	1086 North Broadway Yonkers, NY 10707 (Westchester County)
<b>Surgical Specialties</b>	Single-Specialty: Gastroenterology
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	2
<b>Hours of Operation</b>	Monday through Friday from 8:00 am to 5:00 pm (Expanded operating schedule and weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling issues.)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	8.0 FTEs / 8.0 FTEs
<b>Medical Director(s)</b>	Jose Lantin, M.D
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by St. John's Riverside Hospital 0.3 miles / 1 minute
<b>On-call service</b>	Patients will be provided with a number for the facility's 24/7 on-call service.

### Character and Competence

The sole member of JTL Consulting, LLC is Jose Lantin, M.D.

Dr. Jose Lantin is a practicing physician who is board-certified in Internal Medicine and Gastroenterology with over 30 years of experience, the last 20 years of which as the medical director of an office-based surgery center. Dr. Lantin will be a practicing physician at the Center and will serve as its Medical Director. There will be one other physician performing gastroenterologic procedures, Frederick Fallick, M.D., however, he has no ownership interest in the 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.

### Integration with Community Resources

The applicant is committed to the development of a formal outreach program and plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers, including the broad array of services offered by St. John's Riverside Hospital, the Center's emergency back-up hospital.

The Center is committed to service all persons in need without regard to source of payment, ability to pay, or other personal characteristics. Charity care will be provided, as well as reduced compensation or uncompensated care. The center intends on utilizing electronic medical records and plans to fully integrate and exchange information with an established regional health information organization (RHIO) with the capability for clinical referral and event notification.

### Compliance with Applicable Codes, Rules and Regulations

The medical staff will 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.

### Recommendation

**From a programmatic perspective, contingent approval is recommended.**



## Financial Analysis

### Total Project Cost and Financing

Total project costs, estimated at \$1,820,510, are as follows:

Renovation & Demolition	\$1,234,000
Design Contingency	123,400
Construction Contingency	123,400
Architect/Engineering Fees	82,267
Other Fees	51,417
Movable Equipment	128,542
Financing Costs	24,577
Interim Interest Expense	40,961
CON Application Fee	2,000
CON Processing Fee	<u>9,947</u>
Total Project Cost	\$1,820,510

Project costs are based on a construction start date of October 1, 2016, with a four-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$182,051
Bank Loan (3.25% for a 10-year term)	<u>\$1,638,459</u>
Total	\$1,820,510

JP Morgan Chase Bank has provided a letter of interest at the stated terms.

### Lease Rental Agreement

The applicant submitted a draft lease for the proposed site. The terms are summarized below:

Premises:	Approximately 4,812 rentable square feet in an existing building located at 1086 North Broadway, Yonkers, (Westchester County), NY
Landlord:	Boyce Thompson Center, LLC
Lessee:	Gastroenterology if Westchester, LLC
Term:	10 years
Rental:	\$221,352 annually (\$18,446 monthly or \$ 46 per square foot.)
Provisions:	Water and maintenance services are included in the rent

The applicant provided an affidavit stating that the lease is an arm's length arrangement. The applicant submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

### Operating Budget

The applicant submitted their first and third year operating budgets, in 2016 dollars, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues				
Medicaid MC	\$446.78	\$348,490	\$439.33	\$374,305
Medicare FFS	\$448.18	\$279,665	\$448.09	\$305,598
Medicare MC	\$380.96	\$178,287	\$381.25	\$194,819
Commercial FFS	\$717.09	\$447,465	\$716.95	\$488,957
Commercial MC	\$649.22	\$263,585	\$650.17	\$288,026
Private Pay/Other	\$134.46	<u>\$20,975</u>	\$134.82	<u>\$22,920</u>
Total Revenues		\$1,538,467		\$1,674,625

Expenses				
Operating	\$318.97	\$995,201	\$300.36	\$1,023,620
Capital	<u>\$132.16</u>	<u>\$412,344</u>	<u>\$120.96</u>	<u>\$412,222</u>
Total Expenses	\$451.14	\$1,407,545	\$421.32	\$1,435,842
Net Income or (Loss)		\$130,922		\$238,783
Utilization (procedures)		3,120		3,408

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

Medicaid MC	25%
Medicare FFS	20%
Medicare MC	15%
Commercial FFS	20%
Commercial MC	13%
Private Pay/ Other	5%
Charity	<u>2%</u>
Total	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current and projected Federal and State government reimbursement rates, with commercial payor rates reflecting adjustments based on experience in the region.
- Utilization projections are based on the current caseloads of Drs. Lantin and Fallick, both are board-certified gastroenterologists. The applicant indicated that none of the projected procedures will come from any other hospital. The procedures are currently being performed in the physicians' office-based practices, which are located in the same community that the FASC will serve. Each physician has submitted letters in support of their utilization projections.
- Expense assumptions are based upon staffing, operating and capital costs as determined based on the experience of the participating physicians, as well as the experience of other FASCs in New York State in providing similar service patient care.
- The breakeven point based on the projected utilization is approximately 91.51% or 2,855 procedures in Year One, and 85.77% or 2,923 procedures in Year Three.

#### Capability and Feasibility

The total project cost of \$1,820,510 will be satisfied by the proposed member's equity contribution of \$182,051 with the balance of \$1,638,459 to be financed by JP Morgan Chase Bank at the above stated terms.

Working capital requirements are estimated at \$239,307 based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase Bank to finance \$119,653 of the working capital for a five-year term at Prime plus 2% interest, currently estimated 5.5% (Prime rate is 3.5% as of 3/22/16). The remaining \$119,654 in working capital will be provided from the sole owner's financial resources. BFA Attachment A presents the net worth statement of the Dr. Jose Lantin, which indicates sufficient liquid resources to meet the equity and working capital requirements.

BFA Attachment B provides the pro-forma balance sheet of Gastroenterology of Westchester, LLC that shows operations will start with \$301,705 in equity.

Gastroenterology of Westchester, LLC projects an operating excess of \$130,922 and \$238,783 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected reimbursement rates for the respective payors. The payment rates for commercial payors were determined by the applicant based on contacts made with various similar service providers to obtain their current rate schedules. The budgets are reasonable.

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

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.

**Facility:** St. John's Riverside Hospital --- **No Response**  
St. John's Division  
967 North Broadway  
Yonkers, New York 10701

**Facility:** St. John's Riverside Hospital --- **No Response**  
Park Care Pavilion  
Two Park Avenue  
Yonkers, New York 10703

**Facility:** St. John's Riverside Hospital --- **No Response**  
Dobbs Ferry Pavilion  
128 Ashford Avenue  
Dobbs Ferry, New York 10522

**Facility:** St. Joseph's Medical Center --- **No Response**  
127 South Broadway  
Yonkers, New York 10701

**Facility:** New York Presbyterian Hospital/Lawrence Hospital --- **No Response**  
55 Palmer Avenue  
Bronxville, New York 10708

### 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

BFA Attachment A Personal Net Worth Statement of sole member of JTL Consulting, LLC  
BFA Attachment B Pro Forma Balance Sheet of Gastroenterology of Westchester, LLC  
BPNR Attachment Map

## 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 9th day of June, 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 freestanding ambulatory surgery center specializing in gastroenterology services to be located at 1086 North Broadway, Yonkers, 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:

161138 B

FACILITY/APPLICANT:

JTL Consulting, LLC  
t/b/k/a Gastroenterology of Westchester

APPROVAL CONTINGENT UPON:

**Approval with an expiration of the operating certificate five (5) 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 an executed loan commitment, 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 building lease, acceptable to the Department of Health. [BFA]
5. 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]
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  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

8. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
9. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
10. Submission of a lease agreement between the applicant and the property owner, which is acceptable to the department. [CSL]
11. Submission of an operating agreement of Gastroenterology of Westchester, LLC which 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 submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. Construction must start on or before October 1, 2016 and construction must be completed by February 1, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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Project # 152294-B
S.F. Nassau ASC, LLC d/b/a East Hills Surgery Center

Program: Diagnostic and Treatment Center County: Nassau
Purpose: Establishment and Construction Acknowledged: November 18, 2015

Executive Summary

Description

S.F. Nassau ASC, LLC d/b/a East Hills Surgery Center (EHSC), a New York limited liability corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a multi-specialty, freestanding ambulatory surgery center (FASC) specializing in orthopedic, otolaryngology, vascular, neurosurgery (spine), plastic surgery and pain management services. The FASC will have five operating rooms and will be located in leased space on the first floor of a multi-purpose building at 2200 Northern Boulevard, East Hills (Nassau County). EHSC's primary service area will be Nassau County. This application has been developed with the cooperation and support of St. Francis Hospital, which is a member of the applicant, and Catholic Health Services of Long Island, the active parent of St. Francis Hospital.

The proposed ownership structure of the FASC is as follows:

- 34 individual physicians with membership interests range from 0.5621% to 1.9928%, and collectively owning 49.9% Class A membership interests;
S.F. Nassau ASC Investments, LLC, a Delaware limited liability corporation with two individual members, Thomas Mallon (50%) and Jeffrey Simons (50%), owning 9.8% Class B membership interests; and
St. Francis Hospital, a 364-bed, not-for-profit, Article 28 acute care hospital located at 100 Port Washington Blvd., Roslyn, owning 40.3% Class C membership interest.

The proposed FASC is a collaborative venture between St. Francis Hospital and local physicians to create a multi-specialty FASC in the community. The FASC will consolidate community-based physicians, bringing them together into the regulatory environment of an Article 28 D&TC. The applicant indicated that 80% of the projected FASC procedures are currently being performed at the Hospital. The remaining 20% will come from the physician practices.

EHSC will enter into an administrative services agreement with Regent Surgical Management, LLC (RSM) who will provide development, consulting, and administrative support to the proposed FASC. RSM is 100% owned by Regent Surgical Health, LLC (RSH). S.F. Nassau ASC Investments, LLC members Thomas Mellon and Jeffrey Simmons have ownership interest in RSH.

OPCHSM Recommendation
Contingent Approval

Need Summary

The number of projected procedures is 3,669 in Year 1 with Medicaid at 2.8% 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

Project costs of \$9,087,484 will be met with \$908,748 in cash and a bank loan for \$8,178,736 at 5% interest and a seven-year term. TD Bank, N.A. has provided a letter of interest for the financing. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,183,730	\$6,817,496
Expenses	<u>\$6,153,756</u>	<u>\$6,555,907</u>
Net Income	\$29,974	\$261,589



## 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 NYSECON. [PMU]
2. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
7. Submission of a photocopy of an amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended and completed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed facility contract of sale, deed or lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of completed, amended and executed Articles of Organization and Operating Agreement of S.F. Nassau Investments ASC, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the Application of Authority of S.F. Nassau ASC, LLC that, acceptable to the Department. [CSL]
12. Submission of a photocopy of the amended and executed Certificate of Incorporation and By-laws of St. Francis Hospital [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. Construction must start on or before September 1, 2016 and construction must be completed by April 30, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**June 9, 2016**

## Need Analysis

### Project Description

S.F. Nassau ASC, LLC d/b/a East Hills Surgery Center is seeking approval to establish and construct a freestanding ambulatory surgery center to provide multi-specialty surgery services located at 2200 Northern Boulevard, East Hills, 11548, in Nassau County.

### Analysis

The service area consists of Nassau County. Nassau County has a total of 5 freestanding multi-specialty ASCs and 4 freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in Nassau County for 2013 and 2014.

ASC Type	Facility Name	Total Patients 2013	Total Patients 2014
Multi	Day OP of North Nassau Inc	654	149
Multi	Day-OP Center of Long Island Inc	3,952	3,259
Single	Endoscopy Center of Long Island, LLC	7,141	7,981
Multi	Garden City Surgi Center	5,870	6,035
Single	Island Eye Surgicenter LLC	10,396	10,269
Single	Long Island Center for Digestive Health, LLC	5,772	6,020
Single	Meadowbrook Endoscopy Center	6,617	7,702
Multi	Pro Health Ambulatory Surgery Center, Inc	6,595	12,325
Multi	South Shore Ambulatory Surgery Center, LLC	5,537	4,646
Total		52,534	58,386

Source: SPARCS-2015

For Nassau County, the total number of patient visits was 52,534 in 2013 and 58,386 in 2014, an 11.1% year-to-year increase. For the multi-specialty ASC's, the number of patient visits was 22,608 in 2013 and 26,414 in 2014, a 16.8% year-to-year increase.

The number of projected procedures is 3,669 in Year 1 and 4,045 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for East Hills Surgery Center for Years 1 and 3.

	Year 1	Year 1	Year 3	Year 3
Commercial Ins	1,687	46.0%	1,860	46.0%
Medicare	1,138	31.0%	1,253	31.0%
Medicaid	102	2.8%	114	2.8%
Private Pay	74	2.0%	81	2.0%
Charity Care	74	2.0%	81	2.0%
Other	594	16.2%	656	16.2%
Total	3,669	100.0%	4,045	100.0%

This application has been developed with the cooperation and support of St. Francis Hospital, which will have a 40% membership interest in the proposed center. The proposed center represents an attempt by St. Francis Hospital to partner with local physicians to create a multi-specialty ambulatory surgery center in the community. A significant portion of the projected procedures (80%) at the proposed center are currently being performed at St. Francis Hospital.

To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: Affinity and Fidelis. The center would also look to contract with any other Medicaid providers that have existing contracts with St. Francis Hospital.

The center will participate as a provider in the Community Health Care Collaborative Health Home (operated by Hudson River Healthcare, Inc.) and the Nassau Queens Performing Provider System (PPS)

to develop referrals and other collaborative arrangements to enhance access to the underinsured population. The center will look to establish an outreach plan to the underserved, which will include the development of referral arrangements with FQHC's and other community-based providers. As part of the outreach plan, the center will assist patients in the scheduling of appointments, the surgery and post-surgical follow-up.

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 expand access to multi-specialty ambulatory surgery services in a non-hospital setting for the communities of Nassau County.

**Recommendation**

**From a need perspective, approval is recommended.**

<b>Program Analysis</b>
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**Project Proposal**

S.F. Nassau ASC, LLC d/b/a East Hills Surgery Center (EHSC) seeks approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) that will be certified as a multi-specialty ambulatory surgery center (ASC) specializing in orthopedic, otolaryngology, vascular, neurosurgery (spine), plastic, pain management and general surgical procedures. The Center will be located on the 1st floor of a multi-purpose building at 2200 Northern Boulevard in East Hills (Nassau County).

The proposed Center will consolidate community-based physicians, many of whom work cooperatively with St. Francis Hospital, and bring them together into the regulatory environment of an Article 28 D&TC. Additionally, the Center will be aligning with Catholic Health Services of Long Island (CHSLI), an integrated health care delivery system that includes hospitals, residential health care facilities, a certified home health agency, a hospice and a multiservice community based agency for persons with special needs.

<b>Proposed Operator</b>	S.F. Nassau ASC, LLC
<b>Doing Business As</b>	East Hills Surgery Center
<b>Site Address</b>	2200 Northern Boulevard East Hills (Nassau County), New York 11548
<b>Surgical Specialties</b>	Multi-Specialty, to include: Orthopedics                      Otolaryngology Vascular Surgery                Neurosurgery (spine), Plastic Surgery                    Pain Management General Surgery
<b>Operating Rooms</b>	5 - Class C
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am to 6:00 pm (Will consider expanding hours and offering weekend/evening hours as needed.)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	27.30 FTEs / 31.60 FTEs
<b>Medical Director(s)</b>	Eugene Segall, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by St. Francis Hospital 2.2 miles / 5 minutes away
<b>On-call service</b>	Patients will be provided the number of an on-call service which will be available 24/7 to immediately refer the patient to the Center's on-call physician.

Character and Competence

The membership of S. F. Nassau, LLC is comprised of 34 Class A members; one (1) Class B member (S.F. Nassau ASC Investments, LLC); and Class C Member, St. Francis Hospital. The proposed members and their ownership interests is noted below:

<b>Name</b>	<b>Membership</b>
<b>Class A Members (35 Individual Physicians)</b>	<b>49.90%</b>
Michael Angel, MD - <i>Manager</i>	(1.9127%)
Patrick Anello, MD - <i>Manager</i>	(1.6127%)
Bradley Block, MD	(1.1127%)
Kevin Cassidy, MD	(1.0818%)
David Chen, DO	(1.3127%)
Richard D'Agostino, MD	(2.0127%)
George DeNoto, MD	(1.3127%)
Frank DiMaio, MD	(1.1127%)
Moshe Ephrat, MD	(1.1127%)
Randall Feingold, MD	(1.1127%)
Gary Gecelter, MD - <i>Manager</i>	(1.3627%)
Michael Giuffrida, MD	(1.1127%)
Matthew Goldstein, MD	(1.9127%)
Andrew Greenberg, MD	(1.9127%)
Ron Israeli, MD	(1.1127%)
Richard Johnson, MD	(1.3627%)
Michael Kang, MD	(1.9127%)
Peter Korn, MD	(1.1127%)
David Light, MD	(1.1127%)
William Long, MD	(1.9127%)
Rick Madhok, MD	(1.3127%)
Ron Mitzner, MD	(1.1127%)
Hamid Mostafavi, MD	(1.9127%)
Joel Portnoy, MD	(1.1127%)
Nicholas Post, MD	(1.3127%)
Craig Radnay, MD	(1.9127%)
Timothy Reish, MD	(1.9127%)
Eugene Rubach, MD	(1.3127%)
Daniel Sajewski, MD	(0.6127%)
Bruce Seideman, MD	(2.0127%)
Wei Shen, MD	(1.9127%)
Peter Stein, MD - <i>Manager</i>	(1.9127%)
David Tuckman, MD	(1.9127%)
Josh Werber, MD - <i>Manager</i>	(1.1127%)
<b>Class B Member</b>	<b>9.80%</b>
<b>S. F. ASC Investments, LLC</b>	
Thomas Mallon (50%)	
Jeffrey Simmons (50%) - <i>Manager</i>	
<b>Class C Member</b>	<b>40.30%</b>
<b>St. Francis Hospital</b>	
<b>CHSLI Board of Trustees</b>	
Salvatore F. Sodano - <b>Chairman</b>	
Brian R. McGuire - <b>Vice Chair</b>	
Christopher Pascucci - <b>Treasurer</b>	
Joseph Tantillo - <b>Secretary</b>	
Alan D. Guerci, MD - <b>Pres/CEO</b>	
Barbara Ellen Black, DPS	
Kevin Conway	

Peter D'Angelo Peter Dugandzic Virginia A. Ewen, RN John Francfort, MD Sister Audrey Harsen, OP Alexander Hazelton Brian P. Hehir Decon Frank L. Kurre Hon. Anthony Marano Stephen McLoughlin Rev. Monsignor Robert Morrissey Jerome M. Poller Daniel T. Rowe Rev. Monsignor James Vlaun John J. Wagner William Ward Ruth Hennessey - <i>Manager</i>	
<b>TOTAL</b>	<b>100.00%</b>

A full Character and Competence Review was conducted on all proposed member physicians of S.F. Nassau ASC, LLC; the members of S.F. ASC Investments, LLC; the voting members of Catholic Health Services of Long Island (CHSLI), the active parent of St. Francis Hospital; and the Center's proposed Medical Director.

The member physicians of S.F. Nassau ASC, LLC are Board-Certified or Board-eligible with medical practices within the proposed service area of the ASC.

Eugene Segall, M.D., a board-certified anesthesiologist and an attending physician at St. Francis Hospital, will be the Center's Medical Director. Dr. Segall will not be a member of the 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.

*Drs. Angel, Block, Feingold, Francfort, Kang, Madhok, Mostafavi, Rubach, Seideman, and Tuckman each disclosed one (1) pending malpractice case. Drs. DeNoto and Gecelter disclosed two (2) pending malpractice cases. Dr. Radnay disclosed three (3) pending malpractice cases. Dr. Israeli disclosed one (1) settled malpractice case. Dr. DiMaio disclosed two (2) settled malpractice cases and Dr. Johnson disclosed two (2) settled malpractices cases with paid indemnity at/over \$1,000,000.*

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 each of January 30, 2006, March 19, 2007, and September 5, 2008, Stipulation and Orders were issued against St. Catherine of Siena Nursing Home with accompanying fines of \$1,000, \$1,000 and \$2,000 respectively related to issues pertaining to Quality of Care.*

*In January 2007, St. Charles Hospital (SCH) notified the U.S. Department of Justice Drug Enforcement Administration of a theft/loss of controlled substances. On November 26, 2008, a Stipulation and Order and \$1,600 fine was issued to SCH in response to the Article 33 Violations.*

On September 5, 2008, a Stipulation and Order and a \$2,000 fine was issued against Our Lady of Consolation Nursing and Rehabilitative Care Center for issues related to Quality of Care.

On September 11, 2009, a Stipulation and Order and a \$22,000 fine was issued against St. Catherine of Siena Hospital based on the finding related to the care rendered to an elderly patient who had fallen out of bed and subsequently died. An x-ray was taken but a hematoma missed. The nurse delayed in notifying the physician when the patient deteriorated and, when notified, the physician failed to personally evaluate the patient's condition.

Integration with Community Resources

The Center will be located in an office building with other medical practices, to include primary care. In cooperation with St. Francis Hospital (SFH), the Center plans to work with its patients to educate them regarding the availability of, and services offered by, local primary care physicians and SFH.

The Center is dedicated to rendering care without regard to source of payment or other personal characteristics. In partnership with SFH, the Center has formed alliances with a variety of community-based organizations and community leaders to help educate the community on relevant health topics and the services offered. A sliding fee scale will be developed for patients without health insurance.

The Center commits to becoming a network provider in the provider-led health homes designated by the Department for Nassau County and the surrounding counties and will consider joining any Accountable Care Organization that SFH joins. In addition, the Center plans to implement an EMR system and will investigate the potential of affiliating with Healthix, an established regional health information exchange (RHIO).

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

**Financial Analysis**

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the proposed FASC, summarized below:

Premises:	16,500 square feet at 2200 Northern Blvd, Roslyn, New York
Landlord:	Steel Equities
Lessee:	St. Francis Hospital - Subtenant - S.F. Nassau ASC, LLC
Term:	15 years with option to renew for additional 20 years.
Rental:	First year (holding year for un-built space) - \$231,000 annual payment (\$14/sq. ft.); Second Year (until full buildout) - \$356,895 annual payment (\$21.63/sq. ft.); and After buildout, base rent for the first year of operations is \$424,875 (\$25.75/sq. ft.)
Provisions:	Utilities

The applicant has indicated that the lease will be an arm's length lease arrangement, and has submitted letters from two New York real estate brokers attesting to the reasonableness of the base per square foot rental.

Administrative Services Agreement

The applicant has submitted a draft administrative service agreement, which is summarized below:

Facility:	S.F. Nassau ASC, LLC d/b/a East Hills Surgery Center
Contractor:	Regent Surgical Management, LLC
Services Provided:	Support to maintain Medicare accreditation status; advise on purchase of supplies & capital; support Board members to fulfill duties; supervise all permits, licenses & other certifications; develop procedure manuals; implement/supervise billing & collection procedures, accounts receivable & accounts payable procedures; advise with joint venture agreements; provide human resource administration; coordinate contract relationships; develop capital operating budget, clinical & financial reports, oversee preparation of annual financial reports; assist with internal audit program; assist with opening bank accounts;, and assist with implementing EMR system.
Term:	7 years with the option to renew for an additional 3 years
Fee:	Annual fee of \$300,807 plus reimbursement for all necessary/reasonable direct costs.

While Regent Surgical Management, LLC (RSM) will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services. RSM is 100% owned by Regent Surgical Health, LLC (RSH). BFA Attachment F is RSH's membership and ownership percentages. It is noted that Thomas Mellon and Jeffrey Simmons have ownership interest in both RSH and S.F. Nassau ASC Investments, LLC.

Total Project Cost and Financing

Total project costs for renovations and the acquisition of movable equipment are estimated at \$9,087,484, broken down as follows:

Renovation & Demolition	\$4,130,984
Design Contingency	413,098
Construction Contingency	413,098
Architect/Engineering Fees	296,025
Other Fees	41,600
Movable Equipment	3,555,669
Financing Costs	48,999
Interim Interest Expense	136,314
Application Fee	2,000
Processing Fee	<u>49,697</u>
Total Project Cost	\$9,087,484

Project costs are based on a construction start date of September 1, 2016, and a seven-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$908,748
Bank Loan (5% interest, 7-year term)	<u>8,178,736</u>
Total	\$9,087,484

A letter of interest has been submitted by TD Bank, N.A. for the construction loan.

## Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
<u>Revenues</u>				
Commercial - FFS	\$2,140.60	\$2,119,195	\$2,140.10	\$2,336,985
Commercial - MC	\$1,996.94	1,391,866	\$1,997.26	1,533,892
Medicare - FFS	\$1,425.77	1,569,774	\$1,426.77	1,730,676
Medicare - MC	\$1,272.78	47,093	\$1,298.00	51,920
Medicaid - MC	\$984.67	100,436	\$971.32	110,731
Private Pay	\$1,131.36	83,721	\$1,139.54	92,303
All Other *	\$1,467.42	<u>871,645</u>	\$1,464.92	<u>960,989</u>
Total Revenues		\$6,183,730		\$6,817,496
<u>Expenses</u>				
Operating	\$1,230.69	\$4,515,401	\$1,238.00	\$5,007,710
Capital	\$446.54	<u>1,638,355</u>	<u>\$382.74</u>	<u>1,548,197</u>
Total Expenses	\$1,677.23	\$6,153,756	\$1,620.74	\$6,555,907
Net Income (Loss)		<u>\$29,974</u>		<u>\$261,589</u>
Utilization (procedures)		3,669		4,045
Cost Per Procedure		\$1,677.23		\$1,620.74

\* Other Payor: Workmen's Comp and No Fault

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

	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	27.0%	27.0%
Commercial - MC	19.0%	19.0%
Medicare - FFS	30.0%	30.0%
Medicare - MC	1.0%	1.0%
Medicaid - MC	2.8%	2.8%
Private Pay	2.0%	2.0%
Charity	2.0%	2.0%
All Other	<u>16.2%</u>	<u>16.2%</u>
Total	100.0%	100.0%

Revenue, expense and utilization assumptions are based on the historical experience of the participating physician members, Regent Surgical Health, LLC and Catholic Health Services of Long Island/St. Francis Hospital. Per the applicant, 80% of the procedures are currently being performed at St. Francis Hospital. The remaining 20% will come from the physician practices. Each physician Class A member has provided a letter estimating the number of ambulatory procedures currently performed elsewhere that can be appropriately performed at a FASC and that he/she expects to shift to the Center. These letters total 6,214 projected procedures. In the first year, the FASC projects 3,669 ambulatory procedures, a downward adjustment to reflect typical start-up issues and ramping to ensure all payer contracts are in place.

Total procedures needed to breakeven for the projected first and third years are 3,651 and 3890, respectfully.

## Capability and Feasibility

Project cost will be satisfied by a loan from TD Bank, N.A. for \$8,178,736 at the above stated terms, with the remaining \$908,748 from the proposed members' equity. Working capital requirements are estimated at \$1,092,652 based on two months of third year expenses. Working capital will be met by \$592,652 from the proposed members' equity and a loan for \$500,000 for a three-year term at 4% interest. TD Bank, N.A. has provided a letter of interest. BFA Attachments A, B and C, proposed members net worth



summaries and financial statements of St. Francis Hospital, indicate sufficient resources for the stated levels of equity for the project.

BFA Attachment E is the pro-forma balance sheet of EHSC as of the first day of operation, which indicates positive members' equity position of \$1,501,400.

The submitted budget indicates a net profit of \$29,974 the first year, and a net profit of \$261,589 the third year of operation. The budget appears reasonable.

As shown on BFA Attachment C, St. Francis Hospital has maintained positive working capital, net assets and net profit from operations for the periods 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	Net Worth Statements – Proposed Individual Members
BFA Attachment B	Net Worth Statements – S.F. Nassau ASC Investments LLC
BFA Attachment C	Financial Summary of St. Francis Hospital
BFA Attachment D	Organizational Chart - S.F. Nassau ASC, LLC d/b/a East Hills Surgery Center
BFA Attachment E	Pro-forma Balance Sheet
BFA Attachment F	Organizational Chart - Regent Surgical Health, LLC
BPNR Attachment	Map

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 9th day of June, 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 multi-specialty freestanding ambulatory surgery center specializing in orthopedic, otolaryngology, vascular, neurosurgery, plastic surgery and pain management to be located at 2200 Northern Boulevard, East Hills, 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:

152294 B

FACILITY/APPLICANT:

S.F. Nassau ASC, LLC  
d/b/a East Hills Surgery Center

APPROVAL CONTINGENT UPON:

**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 NYSECON. [PMU]
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8. Submission of a photocopy of the applicant's amended and completed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed facility contract of sale, deed or lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of completed, amended and executed Articles of Organization and Operating Agreement of S.F. Nassau Investments ASC, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the Application of Authority of S.F. Nassau ASC, LLC that, acceptable to the Department. [CSL]
12. Submission of a photocopy of the amended and executed Certificate of Incorporation and By-laws of St. Francis Hospital [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. Construction must start on or before September 1, 2016 and construction must be completed by April 30, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [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 the *Contingencies Tab in NYSE-CON*.



**Project # 152111-E**  
**CCRNC, LLC d/b/a Crown Park Rehabilitation and Nursing Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Cortland  
**Acknowledged:** August 25, 2015

**Executive Summary**

**Description**

CCRNC, LLC d/b/a Crown Park Rehabilitation and Nursing Center, a New York limited liability company, requests approval to be established as the operator of Crown Center for Nursing and Rehabilitation, a 200-bed, proprietary, Article 28 residential health care facility (RHCF) located at 28 Kellogg Road, Cortland (Cortland County). The facility is currently operated by Cortland Acquisition, LLC. A separate entity, Kellogg Road Realty Group, LLC, will acquire the real property. There will be no change in beds or services provided.

On March 1, 2015, Cortland Acquisition, LLC entered into an Asset Purchase Agreement (APA) with CCRNC, LLC for the sale and acquisition of the operating interests of the RHCF. Concurrently, Cortland Property NY, LLC, the realty owner, entered into a Real Estate Purchase Agreement (REPA) with Kellogg Road Realty Group, LLC for the sale and acquisition of the facility's real property. The APA and REPA will close at the same time, upon approval of this application by the Public Health and Health Planning Council (PHHPC). There is a relationship between CCRNC, LLC and Kellogg Road Realty Group, LLC in that the entities have identical membership. The applicant will lease the premises from Kellogg Road Realty Group, LLC.

Proposed ownership of the operations is as follows:

<u>Proposed Operator</u>	
CCRNC, LLC d/b/a Crown Park Rehabilitation & Nursing Center	
<u>Members</u>	<u>%</u>
Efraim Steif	39.9%
Uri Koenig	60.0%
David Camerota	0.1%

BFA Attachment B presents the Current and Proposed Owners of the real property.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to beds or services as a result of this project. Crown Center for Nursing and Rehabilitation's occupancy was 88.4% in 2012, 90.7% in 2013, and 93.5% in 2014. Current occupancy, as of January 20, 2016 is 96.0%.

**Program Summary**

This application proposes to establish CCRNC, LLC as the as the new operator of the 200-bed residential health care facility located at 28 Kellogg Road, Cortland currently operated as the Crown Center for Nursing and Rehabilitation. The facility will be operated as Crown Park Rehabilitation and Nursing Center as a result of this transaction.

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. It is anticipated that the applicant will enter into an administrative services and consulting agreement with a related entity.

#### Financial Summary

CCRNC, LLC will acquire the RHCF operating assets for \$50,000, which will be funded from the members' equity, plus an Agreed FF&E Price (net undepreciated value of furniture, fixtures and equipment at Closing) minus the assumption of certain liabilities as defined in the APA. The FF&E Price and the amount of assumed liabilities are anticipated to be roughly equivalent.

Kellogg Road Realty Group, LLC will purchase the real property for \$16,950,000 to be funded

with \$1,595,000 of members' equity, a \$1,000,000 promissory note payable to Cortland Property NY, LLC (seller) in 60 equal consecutive monthly payments, and a \$14,355,000 loan with a 10-year term, 25-year amortization period and interest to be fixed 3 business days prior to closing at 235 basis points over the Federal Reserve H.15/5 year Swap Index (approximately 3.61% as of March 4, 2016). S&T Bank has provided a letter of interest. Efraim Steif and Uri Koenig, proposed realty members, submitted affidavits committing to funding the balloon payment with equity if refinancing is not attainable. The applicant has provided a draft Promissory Note agreement for the monthly payments. There are no project costs associated with this application.

The proposed budget is:

Revenues:	\$15,511,101
Expenses:	<u>\$14,841,364</u>
Net Income:	\$ 669,737

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed promissory note, 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. [RNR]
7. Submission and review of an acceptable consulting and services agreement. [LTC]
8. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of the applicant's amended Asset Purchase Agreement, acceptable to the Department. [CSL]
10. Submission of the applicant's Real Estate Purchase Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's amended Administrative Service Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**June 9, 2016**



# Need Analysis

## Project Description

CCRNC, LLC seeks approval to become the established operator of Crown Center for Nursing and Rehabilitation, an existing 200-bed Article 28 residential health care facility (RHCF), located at 28 Kellogg Road, Cortland, 13045, in Cortland County. Upon approval of this application, Crown Center for Nursing and Rehabilitation will be renamed Crown Park Rehabilitation and Nursing Center.

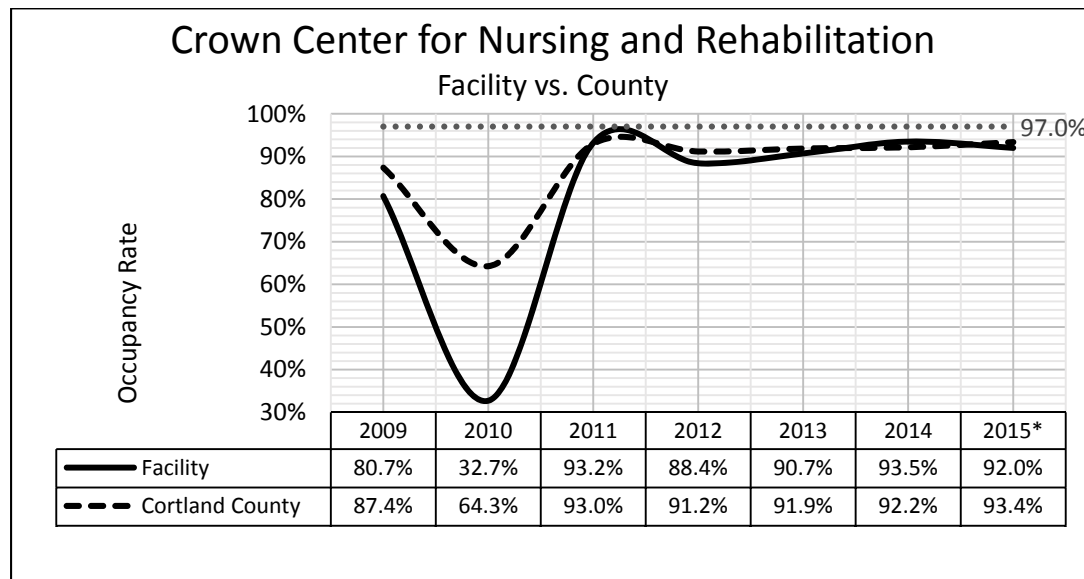
## Analysis

There is currently a surplus of 62 beds in Cortland County as indicated in the following table:

### RHCF Need – Cortland County

<b>2016 Projected Need</b>	338
<b>Current Beds</b>	400
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	400
<b>Unmet Need</b>	-62

The overall occupancy for Cortland County is 92.2% for 2014 as indicated in the following chart:



\*unaudited; facility reported data

Crown Center for Nursing and Rehabilitation's occupancy was 93.2% in 2011, 88.4% in 2012, 90.7% in 2013 and 93.5% in 2014. The decline in occupancy between 2011 and 2012 is attributed to unstable financial outcomes, resulting in net operating losses. The decline in occupancy between 2012 through 2014 is attributed to the following:

- Between 2012 and 2013, the facility underwent extensive renovations. Up to 40 beds at a time were unavailable for occupancy, as well as common areas such as the gym, activity room, and dining room.
- Management issues combined with up to 20% of the facility's beds offline at a time caused occupancy levels to remain low during 2013 and 2014.

On March 1, 2015, Upstate Services Group, LLC (USG) entered into an Administrative Services Agreement (ASA) with the facility. It should be noted that the applicant's members are also members of USG. During the time USG has provided services to the facility, the following programs have been identified and implemented. The applicant believes these programs will help drive occupancy to the Department's 97% planning optimum in the first three years.

- The facility improved its level of staff expertise to include complex care for Difficult-to-Place Patients (DTP) consisting of PICC lines, IV medications, trachs, and negative pressure wound therapy modalities. The facility also developed an all-male behavior unit and a dementia unit to increase opportunities for patient referrals, in addition to the existing short-term rehabilitation and long-term care services already offered. These services will increase the facility's capacity to accept more challenging cases from Cortland Regional Medical Center and all area hospitals.
  - According to the Syracuse Hospital Executive Council, 443 DTP patients were admitted to RHCs outside of Onondaga County in 2015. The distribution of the 443 DTP patients by county is provided in the following table:

<b>County</b>	<b>Number of Difficult-to-Place Patients</b>	<b>Percentage of Difficult-to-Place Patients</b>
Cayuga	18	4.0%
Cortland	103	23.3%
Jefferson	4	0.9%
Madison	60	13.5%
Oneida	78	17.6%
Oswego	73	16.5%
Saint Lawrence	2	0.5%
Other	105	23.7%
<b>Total</b>	<b>443</b>	<b>100%</b>

- Excluding counties in the other category, Cortland County accepted the most number of DTP patients from Syracuse hospitals that were admitted to RHCs outside of Onondaga County. Of the 103 DTP residents placed in Cortland County, 97 residents (94.2%) were admitted to Crown Center for Nursing and Rehabilitation. This demonstrates that the facility is fully capable and well-positioned to maintain occupancy levels due to their ability to provide care to the DTP population.
- The applicant notes their experience admitting DTP patients in the Onondaga County RHCs they operate as evidence of their commitment to serve this population. In 2014, 25.2% of all new admissions to the Van Duyn Center for Rehabilitation and Nursing consisted of DTP patients and this percentage increased to 39.0% of new admissions in 2015. In 2014, 49.4% of all new admissions to Central Park Rehabilitation and Nursing Center were difficult-to-place and this percentage increased to 51.0% of new admissions in 2015.
- The Syracuse Hospital Executive Council maintains a list of DTP patients and updates it weekly. The facility has been a recipient of patients from this list and will continue to search for opportunities to increase referrals;
- The facility will continue its focus on becoming an effective hospital partner, which will include identifying ways to reduce the length of hospital stays and/or eliminate avoidable re-hospitalizations;
- The facility will become part of a larger group of facilities operated by the applicant in Central New York, which should foster acceptance of the facility as a trusted provider;
- The facility's onsite concierge program has proven to be a key driver of customer satisfaction and the applicant intends to maintain and improve upon this program;
- The facility employs a Registered Nurse Screener who has established relationships in three Syracuse-area hospitals. The applicant will work with this individual to enhance these hospital relationships;
- The facility's Admissions Director has ties to St. Joseph's Medical Center in Syracuse as a former discharge planner of the hospital. The applicant will work with this individual to enhance their relationship with St. Joseph's;

- A community outreach program is in place for staff members to market the facility to key stakeholders in the Cortland community. This includes a more substantial, robust advertising and marketing campaign to include television commercials, radio ads and social media marketing; and
- The facility will continue to host orthopedic physician group talks for members of the community and professionals. These programs are well-attended and positions the facility as an important community resource.

#### 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. Crown Center for Nursing and Rehabilitation's Medicaid admissions of 52.5% in 2012 and 52.4% in 2013 exceeded the Cortland County 75% rates of 23.7% in 2012 and 25.2% in 2013.

#### Conclusion

Given the significant issues difficult-to-place residents experience and the applicant's members' demonstrated ability to serve this population, approval of this application will result in maintaining a necessary resource in Cortland County and surrounding communities.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

#### Facility Information

	<b>Existing</b>	<b>Proposed</b>
<b>Facility Name</b>	Crown Center for Nursing and Rehabilitation	Crown Park Rehabilitation and Nursing Center
<b>Address</b>	28 Kellogg Road Cortland, NY	Same
<b>RHCF Capacity</b>	200	Same
<b>ADHC Program Capacity</b>	N/A	Same
<b>Type of Operator</b>	Limited Liability Company	Limited Liability Company
<b>Class of Operator</b>	Proprietary	Proprietary
<b>Operator</b>	Cortland Acquisition LLC	CCRNC, LLC d/b/a Crown Park Rehabilitation and Nursing Center  <u>Members</u> *Uri Koenig                   60.00% *Efraim Steif                 39.90% David Camerota <u>0.10%</u> 100.00% *Managing Members

## Character and Competence – Background

### Facilities Reviewed

#### Nursing Homes

Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing	04/2006 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Folts Center for Rehabilitation and Nursing (receivership)	10/2013 to 2/2015
Highland Park Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	04/2006 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Vestal Park Rehabilitation and Nursing	06/2011 to present
Westchester Center for Rehabilitation and Nursing	04/2006 to 12/2006

#### Diagnostic and Treatment Center

Bridgewater Center for Dialysis	03/2012 to present
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#### Adult Care Facility

Riverside Manor Adult Care (closed)	09/2009 to 07/2010
The Pavillion at Claxton Manor (receivership on Folts Campus)	10/2013 to 2/2015

### Individual Background Review

The ownership share, as disclosed by the applicant, is indicated in parenthesis.

**Uri Koenig** is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. He is a member of Upstate Services Group, LLC. Upstate Services Group is an administrative services organization providing administrative services to affiliated long term care facilities. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing (55%)	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing (17.714%)	01/2008 to present
Central Park Rehabilitation and Nursing Center (27.5%)	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing (60%)	12/2013 to present
Chestnut Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Highland Park Rehabilitation and Nursing (60%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (60%)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (60%)	03/2012 to present
Northeast Center for Rehabilitation and Brain Injury (60%)	11/2013 to present
Beechtree Center for Rehabilitation and Nursing (60%)	09/2013 to present
Bridgewater Center for Dialysis (55%)	03/2012 to present
Folts Center for Rehabilitation and Nursing	10/2013 to 02/13/2015
The Pavillion at Claxton Manor	10/2013 to 02/13/2015

Mr. Koenig has also received PHHPC approval to operate Evergreen Commons Rehabilitation and Nursing Center (CON#151180). The transaction was not completed at the time of this report.

**Efraim Steif** is a licensed Nursing Home Administrator in New York State. Mr. Steif is the President of FRS Healthcare Consultants, Inc., and formerly served as Administrator of Record at Forest View Center for Rehab and Nursing in Forest Hills from 2000 to 2005. He is a member of Upstate Services Group, LLC. Upstate Services Group is an administrative services organization providing administrative services to affiliated long term care facilities. Mr. Steif discloses the following health care facility interests:

Bridgewater Center for Rehabilitation & Nursing (44.9%)	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing (49.9%)	12/2004 to present
Central Park Rehabilitation and Nursing Center (44.9%)	11/2008 to present
Van Duyn Center for Rehabilitation and Nursing (39.9%)	12/2013 to present
Chestnut Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Highland Park Rehabilitation and Nursing (39.9%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (39.9%)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (39.9%)	03/2012 to present
Beechtree Center for Rehabilitation and Nursing (39.9%)	09/2013 to present
Northeast Center for Rehabilitation and Brain Injury (39.9%)	11/2013 to present
Bridgewater Center for Dialysis (45%)	03/2012 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010
Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006
Folts Center for Rehabilitation and Nursing (39.9%)	10/2013 to 02/13/2015
The Pavillion at Claxton Manor (39.9%)	10/2013 to 02/13/2015

Mr. Steif has also received PHHPC approval to operate Evergreen Commons Rehabilitation and Nursing Center (CON#151180). The transaction was not completed at the time of this report.

**David Camerota** is a licensed NY nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota discloses the following health care facility interests:

Central Park Rehabilitation and Nursing Center (.1%)	02/2012 to present
Van Duyn Center for Rehabilitation and Nursing (.1%)	12/2013 to present
Bridgewater Center for Rehabilitation and Nursing (.1%)	03/2011 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (.1%)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (.1%)	06/2011 to present
Highland Park Rehabilitation and Nursing (.1%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (.1%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (.1%)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (.1%)	03/2012 to present
Beechtree Center for Rehabilitation and Nursing (.1%)	09/2013 to present
Northeast Center for Rehabilitation and Brain Injury (.1%)	11/2013 to present
Bridgewater Center for Dialysis (.1%)	03/2012 to present
Folts Center for Rehabilitation and Nursing (Rec)	10/2013 to 02/13/2015
The Pavillion at Claxton Manor (Rec)	10/2013 to 02/13/2015

Mr. Camerota has also received PHHPC approval to operate Evergreen Commons Rehabilitation and Nursing Center (CON#151180). The transaction was not completed at the time of this report.

## Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing, LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.
- Civil Monetary Penalty of \$3,575.00 for the period of July 6, 2011 to July 6, 2011.

A review of Central Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-16-142 issued March 9, 2016 for surveillance findings on March 2, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 10NYCRR 415.12(c)(2) Quality of Care Pressures Sores, Prevention, Pressure Sores With Admission.

In response to the latest enforcement, the operators investigated the circumstances surrounding the violations and decided to implement a change to staffing which included adding multiple nurse managers to the facility. The operator has also implemented increased monitoring of the facility which includes onsite visits, mock surveys, and staff training conducted by Upstate Services Group's clinical consulting team. The Administrator is also required to complete a monthly report detailing risk analysis and trending of clinical and operational indicators.

A review of Highland Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on October 25, 2013. Deficiencies were found under 10 NYCRR 415.3e(2)(ii)(b) Notification of Significant Changes in Condition.

A review of Hudson Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$28,000 pursuant to a Stipulation and Order NH-15-020 for surveillance findings on March 20, 2012, February 1, 2013 and May 7, 2013. Deficiencies were cited on: March 30, 2012 for 10 NYCRR 415.15(b)(2)(iii) Physician Services: Physician Visits; March 1, 2013 for 10NYCRR 415.12 Quality of Care: Highest Practicable Potential, 10 NYCRR 415.12(m)(2) Quality of Care: Medication Errors, 10 NYCRR 415.26 Administration and 10 NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance; May 7, 2013 for 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents.
- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-137 for surveillance findings on January 28, 2011, March 28, 2011 and December 17, 2012. It should be noted that the applicant was the owner of the nursing home only at the time of the December 17, 2012 survey.
- The facility incurred a Civil Monetary Penalty of \$4,387.50 for the period of December 17, 2012 to February 1, 2013; and a Civil Monetary Penalty of \$48,600 for the period of September 19, 2013 to October 28, 2013.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The State enforcements listed above were based on surveys that occurred while the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in December 2014.

A review of Van Duyn Center for Rehabilitation and Nursing for the period identified above reveals the following:

- The facility was fined \$14,000 pursuant to Stipulation and Order for surveillance findings on October 14, 2015. Deficiencies were found under 10NYCRR 415.14(b)(2)(h) Dietary Services Food Storage, 10NYCRR 415.19(c)(2) Quality of Care Pressure Sores With Admission and 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

The operator investigated the circumstances surrounding the violations, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. This included a review of laboratory procedures which resulted in implementing a new audit tool and monthly skin reports developed by IPRO that are submitted to Upstate Services Group for analysis for possible patterns that require timely plans of action. For the food storage citation, the operator had already identified the need for replacement coolers and they were purchased and delivered prior to the citation but not yet in use. The new coolers were made operational immediately upon the citation which was based on the use of the old problematic coolers.

A review of operations for the Beechtree Center for Rehabilitation and Nursing, Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Folts Center for Rehabilitation and Nursing, Northeast Center for Rehabilitation and Brain Injury, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, Westchester Center for Rehabilitation and Nursing, Riverside Manor Adult Care, The Pavilion at Claxton Manor, and Bridgewater Center for Dialysis for the periods identified above revealed that there were no enforcements.

#### Quality Review

Provider Name	Overall	Health Inspection	MDS Quality Measures
Crown Center For Nursing & Rehabilitation	*	*	*
Beechtree Center For Rehabilitation And Nursing	*	*	*
Bridgewater Center For Rehab & Nursing LLC	*	*	*
Capstone Center For Rehabilitation And Nursing	**	**	*
Central Park Rehabilitation And Nursing Center	*	*	****
Chestnut Park And Rehabilitation Nursing Center	**	**	**
Cortland Park Rehabilitation And Nursing Center	**	**	*****
Colonial Park Rehabilitation And Nursing Center	**	*	*****
Highland Park Rehabilitation And Nursing Center	**	**	***
Hudson Park Rehabilitation And Nursing Center	*	*	**
Northeast Center For Rehabilitation & Brain Injury	***	****	*
Pine Valley Center For Rehab And Nursing	*****	*****	*****
Riverside Center For Rehabilitation And Nursing	**	**	****
Van Duyn Center For Rehabilitation And Nursing	*	*	*
Vestal Park Rehabilitation And Nursing Center	*	*	*

Above ratings are based on CMS Provider Rating dated March 1, 2016.

### Project Review

This application proposes to establish CCRNC, LLC d/b/a Crown Park Rehabilitation and Nursing Center as the new operator of Crown Center for Nursing and Rehabilitation. No changes in the program or physical environment are proposed in this application. The previous ownership group, Cortland Acquisition LLC took ownership of the subject facility on 1/1/2015.

The current operator of the facility has entered into a consulting and administrative services agreement (CASA) with Upstate Services Group LLC, (Upstate) whose members include Messrs. Steif, Koenig and Camerota. The CASA specifies that Upstate will monitor the operations of the facility, provide advice on identified problems and suggest possible corrective actions. It is anticipated that this agreement will be extended to the new operators of the facility. Upstate Services Group provides similar services to numerous affiliated long term care facilities across the state. It should be noted that Upstate has no direct ownership interest in the operation of residential health care facilities in New York State. Although the applicant and Upstate share common ownership, CCRNC, LLC will operate as an independent and distinct legal entity.

### 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 RHCF's operating interest. The agreement will be effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	March 1, 2015
Seller:	Cortland Acquisition, LLC
Purchaser:	CCRNC, LLC
Asset Transferred:	All rights, title, interest in the assets used/held for use in connection with ownership and operation of the center; all cash, cash equivalents, marketable securities; all accounts, notes, refunds, other account receivables; assumed contracts; all rights under equipment leases; all FF&E; inventory; all books/records; all patient records; the current operator's Medicare and Medicaid provider numbers; all claims, cause of actions; name of the company; all telephones, faxes, intellectual properties and software used; all other assets, properties, claims, rights and interest of company.
Excluded Assets:	All claims, rights, causes of action, rights of recovery, rights of set-off and recoupment against or arising out of the ownership or operation of the facility or assets prior to the Contract Date. All accounts receivable prior to the contract date, permits of company; all benefit plans, all contracts other than the assumed contracts, personal items belonging to the owners, all rights and interest of company prior to the Contract Date.
Assumption of Liabilities:	Assumed liabilities including operator's obligations & liabilities with respect to the ownership or operation of the facility's assets to the extent arising on and after the Contract Date. All of the operator's accounts and trade payables and other liabilities, all liabilities with respect to assumed contracts.
Purchase Price:	\$50,000, plus Agreed FF&E Price, minus assumed liabilities prior to Closing (latter amounts roughly equivalent estimated at \$3,994,494 as of September 30, 2015).
Payment of Purchase Price:	\$50,000 due at Closing.



The purchase price for the RHCF's operating interest is \$50,000, to be funded from members' equity, plus Agreed FF&E price minus assumed liabilities (estimated at \$3,994,494 as of September 30, 2015). The FF&E price and the amount of assumed liabilities will be roughly equivalent.

BFA Attachment A is the net worth summary for the members of CCRNC, LLC, which reveals sufficient resources to meet the equity requirement.

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 had outstanding Medicaid liabilities of \$2,698,661 as of February 5, 2016.

#### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed real estate purchase agreement 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:	March 1, 2015
Seller:	Cortland Property NY, LLC
Buyer:	Kellogg Road Realty Group, LLC
Purchase Price:	\$16,950,000 minus the agreed FF&E Price as defined in the APA.
Payment of Purchase Price:	\$1,000,000 deposit in Escrow on signing \$1,000,000 promissory note (5 years, payable in 60 equal monthly payments) \$14,950,000 due at Closing.

The purchase price for the real property acquisition is proposed to be satisfied as follows:

- Equity (Kellogg Road Realty Group, LLC Members) - \$1,595,000
- Promissory Note (5 years via 60 equal payments, no interest) - \$1,000,000
- Loan (10-year term, 25-year amortizing, interest rate fixed 3 business days prior to closing at 235 basis points over the Federal Reserve H.15 Bulletin/5 year Swap Index (approximately 3.61% as of 03/04/2016) - \$14,355,000.

BFA Attachment A is the net worth summaries of the proposed members' of Kellogg Road Realty Group, LLC, which reveals sufficient resources to meet the equity requirements. The applicant has submitted a draft promissory note with the seller, Cortland Property NY, LLC, that provides for repayment over 60 months at no interest. S&T Bank has provided a letter of interest for the realty loan financing. The proposed realty members have submitted affidavits attesting they will personally contribute resources to fund the balloon payment should acceptable financing not available at the time of refinancing.

#### Lease Agreement

The applicant has submitted an executed lease agreement for the RHCF real property, summarized below:

Date:	August 20, 2015
Premises:	200-bed RHCF located at 28 Kellogg Road, Cortland, NY 13045
Landlord:	Kellogg Road Realty Group, LLC
Lessee:	CCRNC, LLC d/b/a Crown Park Rehabilitation & Nursing Center
Term:	10 Years
Rental:	\$0 plus debt service on mortgage obtained by landlord to finance purchase of the premises, plus Landlord's administrative costs.
Provisions:	Tenant is responsible for real estate taxes, insurance, maintenance and utilities.

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.

Currently, Medicaid capital reimbursement is based on return of/return on equity methodology, which will not be altered upon the change in ownership.

#### Administrative Service Agreement

The applicant has submitted an executed Administrative Services Agreement (ASA), which is summarized below:

Date:	March 1, 2016
Service Provider:	Upstate Services Group, LLC
Facility:	CCRNC, LLC d/b/a Crown Park Rehabilitation & Nursing Center
Services Provided:	Monitor the operation of facility and advise of any problems; monitor the performance of facility; keep in force insurance policies and coverage; maintain census of patients; monitor the facility is in compliance with applicable laws and regulations; assist facility to develop and implement programs, to maximize reimbursement for services, to financing transactions, in the negotiation of contracts, to prepare and maintain its financial books and records, administration of account payable, accounts receivable and human resources functions, prepare payrolls.
Term:	The agreement commences on the date of this agreement and shall continue until it is terminated by either party on thirty days' notice.
Compensation:	\$465,000 for 1 <sup>st</sup> year. Future year will be adjusted for inflation factor.

There is a relationship between CCRNC, LLC and Upstate Services Group, LLC in that the entities have identical membership. Review of the ASA indicates that the Governing Law of the Agreement shall be governed by and construed in accordance with the laws of the State of New York; hence, while Upstate Services Group, LLC will provide the above services, the licensed Facility operator retains ultimate authority, responsibility and control for the operations.

#### Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

	Per Diem	Current Year (2014)	Per Diem	Year One (2016)
<u>Revenues</u>				
Medicaid-FFS	\$189.97	\$10,438,917	\$189.97	\$10,418,039
Medicaid-MC	\$189.97	\$251,336	\$190.02	\$250,832
Medicare-FFS	\$282.74	\$1,310,504	\$282.75	\$1,991,966
Medicare-MC	\$282.74	\$751,525	\$282.74	\$1,127,288
Private Pay	\$319.83	\$789,657	\$319.79	\$1,184,486
Other-Assessment Rev		<u>\$1,518,117</u>	\$472.80	<u>\$538,490</u>
Total Revenue		\$15,060,056		\$15,511,101
<u>Expenses</u>				
Operating	\$197.30	\$13,028,628	\$193.27	\$13,701,738
Capital	<u>\$21.99</u>	<u>\$1,452,073</u>	<u>\$16.07</u>	<u>\$1,139,626</u>
Total	\$219.29	\$14,480,701	\$209.34	\$14,841,364
Net Income		<u>\$579,355</u>		<u>\$669,737</u>
Utilization/(Patient days)		66,034		70,895
Occupancy		90.45%		97.12%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the current operator’s payment rates by payor, with the Medicaid revenue reflecting the facility’s current 2015 Medicaid Regional Pricing rate. Medicare, Private Pay and Other Manage Care payment rates are also based on the facility’s current 2015 rates.
- Expense assumptions are based on the costs incurred by the current operator as of May 31, 2015, then annualized, and include lease rental expense. It is noted that, effective March 1, 2015, the current operator entered into an ASA with Upstate Services Group, LLC, whose members are identical to the proposed operators. The proposed new operators have submitted an executed ASA with Upstate per this application. Therefore, the administrative services provided by Upstate to the RHCF will continue essentially uninterrupted upon PHHPC approval of this CON. The year one annual fee related to the ASA (\$465,000) has been included in the first year budget.
- The projected utilization for the facility is 97% in year one and year three. Utilization for the past three years has averaged around 90.76% and occupancy was 94.0% as of February 17, 2016.
- The applicant plans to increase utilization by changing the business model to one that supports DSRIP program goals, and by working closely with health care and social service providers. To facilitate a continued growth in utilization, the applicant plans on taking the following steps:
  - Add programs and services that will allow the facility to serve more medically complex individuals to increase the facility’s capacity to accept more challenging cases from all surrounding hospitals;
  - Enhance relationships with hospitals and become part of larger well respected group of facilities in Central New York to foster acceptance of the facility as a trusted provider which may result in increased referrals and admission to the RHCF;
  - Introduce a robust advertising and marketing campaign to include television commercials, radio ads and social media marketing; and
  - Integrate and coordinate medical, nursing and ancillary service programs to ensure a home like atmosphere for the residents.
- The breakdown utilization is projected at 93%
- Utilization by payor source for the current year and first year after the change in ownership is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>
Medicaid -FFS	83.21%	77.35%
Medicaid-MC	2.00%	1.86%
Medicare-FFS	7.02%	9.94%
Medicare-MC	4.03%	5.62%
Private Pay	<u>3.74%</u>	<u>5.22%</u>
Total	100%	100%

### Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the RHCF’s operating interest is \$50,000, to be funded from members’ equity, plus Agreed FF&E price minus assumed liabilities (estimated at \$3,994,494 as of September 30, 2015). The FF&E price and the amount of assumed liabilities will be roughly equivalent. Concurrently, Kellogg Road Realty Group, LLC will purchase the real property for \$16,950,000 to be funded as follows: \$1,595,000 in members’ equity, a \$1,000,000 promissory note payable in 60 equal payments with no interest, and a \$14,355,000 loan at the above stated terms. S&T Bank has provided a letter of interest for the loan. The applicant has submitted a draft Promissory note for monthly payments to the Seller. BFA Attachment H provides an amortization table for the balloon payment after 10 years. Proposed realty members have provided affidavits stating that they will personally contribute resources to fund the balloon payment should acceptable financing not be available at the time of refinancing. BFA Attachments A is the members’ net worth summaries, which shows sufficient assets to complete the transactions.

The working capital requirement is estimated at \$2,473,560 based on two months of Year One expenses. The applicant will provide \$1,273,560 from the members’ equity with the remaining \$1,200,000 to be satisfied through a five-year term loan at 7.5% interest. Century Health Capital, Inc. has provided a letter of interest. As referenced above, the members have sufficient liquid resources to meet both the project equity and working capital requirements.

The submitted budget projects net profit of \$669,737 in Year One after the change in ownership. The budget was created taking into consideration the proposed new owners' experience in operating similar size facilities. The proposed operator projects to increase occupancy by refocusing on implementing various programs, as stated above. BFA Attachment F is CCRNC, LLC's and Kellogg Road Realty Group, LLC's pro forma balance sheet, which shows the operating entity will start off with \$1,323,561 and realty entity will start off with \$1,595,000 in members' equity. CCRNC, LLC's equity includes \$50,000 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. Eliminating goodwill, the total net assets would become \$823,561. 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. Cortland County has transitioned to Medicaid Managed Care for new enrollees.

BFA Attachment D is the Financial Summary of Cortland Operating Co, LLC. As shown, the RHC had an average positive working capital position of \$693,920, average positive net assets of \$2,242, and an average income of \$436,525 for the period and net operating loss of \$226,453 as of September 30, 2015. The proposed sale of the nursing home is expected to result in improved utilization due to the aforementioned service enhancements.

BFA Attachment G is the 2013-2014 Financial Summary of the proposed members' affiliated nursing homes. The following is noted with respect to these affiliated nursing homes:

- All facilities had positive income from the operations for 2014, with the exception of Riverside Center for Rehab & Nursing and Vestal Park Rehab & Nursing Center.
- All facilities generated positive income from operations as of September 30, 2015, with the exception of Vestal Park Rehab & Nursing Center.
- Beech Tree Center for Rehab & Nursing had a negative assets position for 2014 due to higher liabilities, which has since been reduced. The facility had a positive net asset position as of September 30, 2015.
- Bridgewater Center for Rehab and Nursing had a negative working capital position in 2014 due to a large account payable balance between the facility and the related party. The account payable will be moved to long-term liabilities, which will create a positive working capital position. The facility expects that the account payable balance will return to normal level by the end of 2015. The facility had a negative working capital position of \$121,849 as of September 30, 2015.
- Highland Park Rehab & Nursing had a negative assets position during the period due to higher liabilities. The facility expects to reduce liabilities by the end of 2016.
- Riverside Center for Rehab & Nursing had a large negative working capital position primarily due to a related party transaction in the amount of \$3,684,221 in liabilities. The facility expects a significant portion of this liability to be paid down over the upcoming months.
- Vestal Park Rehab & Nursing Center had a negative assets position and a negative income position due to a devastating flood in 2011, causing financial stress as the facility was unfit for use. The facility opened a new site in 2015, which is expected to improve the census and profitability.
- Hudson Park Rehab & Nursing had a negative assets position as the facility was financially troubled for many years. After the current financial turnaround the funds used to stabilize the facility will be returned which will reduce the liabilities.

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 Proposed Members, CCRNC, LLC and Kellogg Road Realty Group, LLC
BFA Attachment B	Pre and Post Ownership of the Realty
BFA Attachment C	Proposed Members' Ownership Interest in Affiliated Nursing Home
BFA Attachment D	Financial Summary of Cortland Operating Co, LLC
BFA Attachment E	2014 Certified Financial Statement of Cortland Operating Co, LLC
BFA Attachment F	Pro Forma Balance Sheet, CCRNC, LLC and Kellogg Road Realty Group, LLC
BFA Attachment G	Financial Summary of proposed members' affiliated (RHCF) Entities
BFA Attachment H	Amortization Table

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 9th day of June, 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 CCRNC, LLC as the new operator of the 200-bed residential health care facility located at 28 Kellogg road, Cortland currently operated as the Crown Center for Nursing and Rehabilitation, 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:

152111 E

CCRNC, LLC  
d/b/a Crown Park Rehabilitation and  
Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed promissory note, 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. [RNR]
7. Submission and review of an acceptable consulting and services agreement. [LTC}
8. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of the applicant's amended Asset Purchase Agreement, acceptable to the Department. [CSL]
10. Submission of the applicant's Real Estate Purchase Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's amended Administrative Service Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.





**Project # 161091-E**  
**YRNC Operating, LLC d/b/a Yorktown Rehabilitation &  
Nursing Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Westchester  
**Acknowledged:** February 23, 2016

**Executive Summary**

**Description**

YRNC Operating, LLC d/b/a Yorktown Rehabilitation & Nursing Center, a New York limited liability company, requests approval to be established as the operator of Field Home-Holy Comforter, a 125-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 2300 Catherine Street, Cortlandt Manor (Westchester County). The facility also operates two respite beds. Upon the change in ownership, the RHCF will transition to a proprietary facility. There will be no change in beds or services provided.

On December 8, 2015, Field Home-Holy Comforter, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with YRNC Operating, LLC for the sale and acquisition of the operating interests of the nursing home upon approval by the Public Health and Health Planning Council (PHHPC). The purchase price for the RHCF operations is \$3,000,000. Concurrently, Field Home-Holy Comforter, the real property owner, entered into a Purchase and Sale Agreement (PSA) with YRNC Realty, LLC for the sale and acquisition of the RHCF's real property for \$16,050,000. The transactions contemplated by the APA and PSA will close simultaneously. The applicant will lease the premises from YRNC Realty, LLC. There is a relationship between YRNC Operating, LLC and YRNC Realty, LLC in that the entities have identical ownership.

Proposed ownership of the operations is as follows:

<u>Proposed Operator</u> YRNC Operating, LLC	
<u>Members</u>	
Ephraim Zagelbaum *	50%
Alexander Barth *	28%
Yehuda Walden *	12%
Yechiel Zagelbaum	10%

*\* Managing Members*

The APA and the PSA reference simultaneous transactions whereby YALR Operating, LLC and YALR Realty, LLC, each with membership identical to YRNC Operating, LLC and YRNC Realty, LLC, respectively, seek to acquire an 85-bed Assisted Living Residence with a 40-bed Assisted Living Program known as The Seabury at Fieldhome. A corresponding application for the change in ownership of the Adult Home is under review by the Department (Project # 3060). In addition, the APA references the sale and acquisition of a licensed children's day care center and social model adult day care program operated by Field Home entities. Those programs are not a part of this application.

The applicant indicated that the seller intends to use the proceeds of the sale transactions to build and operate an independent living campus next door to the current RHCF and Adult Home sites. The to-be-constructed campus will be called Stone Ridge at Fieldhome and will be a look-alike continuing care retirement community. The project is currently on hold until the sale of Field Home-Holy Comforter is completed.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Field Home-Holy Comforter's occupancy was 93.0% in 2012, 80.2% in 2013, and 94.9% in 2014. As of April 5, 2016 occupancy is 97.6% with three vacant beds.

Program Summary

This application proposes to establish YRNC Operating as the new operator of the 125-bed residential health care facility located at 2300 Catherine Street, Cortlandt Manor currently operated as Field Home-Holy Comforter. The facility will be operated as Yorktown Rehabilitation and Nursing Center as a result of this transaction.

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. 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

The total purchase price for the RHCF's operating and real property interests is \$19,050,000. YRNC Operating, LLC will acquire the operations for \$3,000,000 and YRNC Realty, LLC will acquire the real property for \$16,050,000. Financing will be met with cash equity of \$1,400,000 from the members, apportioned equal to their ownership percentage, and a \$17,650,000 bank loan at 4% interest for a 5-year term, with a borrower's option to extend for an additional 5-year term, and a 25-year amortization period. Ephraim Zigelbaum has provided an affidavit to fund the balloon payment if acceptable terms are not available at the time of refinancing. The applicant plans to look into the option of a HUD-insured loan within several years of PHHPC approval. There are no project costs associated with this proposal. The projected budget is:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$16,470,448	\$16,470,448
Expenses	<u>\$16,469,572</u>	<u>\$16,147,548</u>
Gain/(Loss)	\$876	\$322,900

## 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 an executed permanent mortgage for the project provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of an executed working capital loan commitment, 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
  - 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
  - e. Other factors as determined by the applicant to be pertinent [RNR]

**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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date  
**June 9, 2016**

# Need Analysis

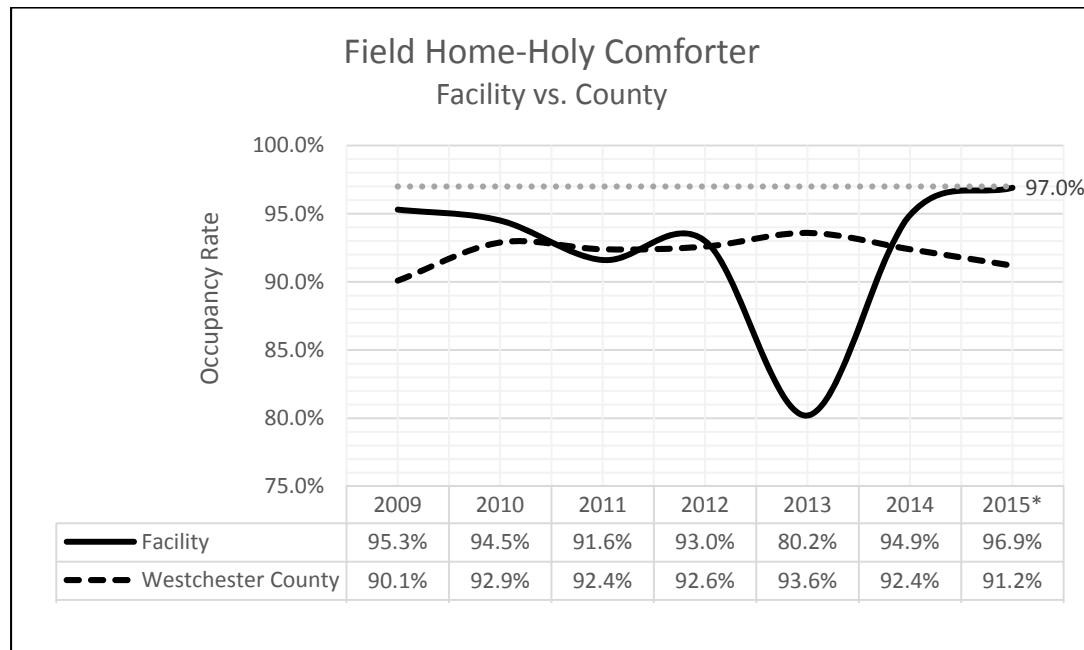
## Analysis

There is currently a need for 498 beds in Westchester County as indicated in the following table:

### RHCF Need – Westchester County

2016 Projected Need	6,716
Current Beds	6,066
Beds Under Construction	152
Total Resources	6,218
Unmet Need	498

The overall occupancy for Westchester County was 92.4% for 2014 as indicated in the following chart:



\* unaudited; facility reported data

The facility submitted a limited CON to decertify 75 beds through a phased sequence that took place between January, 2013 and November, 2013. It is assumed that the facility's low occupancy in 2013 can be attributed to this decertification. The facility's overall occupancy for 2016 is 97.0% and is expected to continue with approval of this application.

## 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.

Field Home-Holy Comforter's Medicaid admissions of 4.8% in 2013 did not exceed Westchester County's 75% rate of 21.5%. Field Home-Holy Comforter's Medicaid admissions of 57.9% in 2014 exceeded Westchester County's 75% rates of 18.8%.

**Conclusion**

Contingent approval is recommended given the facility's occupancy since the 2013 reduction of beds from 200 to 125.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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**Facility Information**

	Existing	Proposed
Facility Name	Field Home-Holy Comforter	Yorktown Rehabilitation and Nursing Center
Address	2300 Catherine Street Cortlandt Manor, NY 10567	Same
RHCF Capacity	125	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not-for-profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Field Home-Holy Comforter	YRNC Operating, LLC d/b/a Yorktown Rehabilitation and Nursing Center  Members: * Ephraim Zigelbaum 50.0% * Alexander Barth 28.0% * Yahudah Walden 12.0% Yechiel Zigelbaum 10.0%  * <i>Managing Members</i>

**Character and Competence - Background**

**Facilities Reviewed**

Nursing Homes

Tarrytown Hall Care Center	04/2008 to present
Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation and Nursing Center	02/2015 to present
Plattsburgh Rehabilitation and Nursing Center	01/2016 to present
Auburn Rehabilitation and Nursing Center	02/2016 to present
Sodus Rehabilitation and Nursing Center	02/2016 to present

Massachusetts Nursing Homes

Cambridge Rehabilitation and Nursing Center	09/2010 to present
Medford Rehabilitation and Nursing Center	04/2012 to present
Rehabilitation and Nursing Center at Everett	01/2013 to present

## Individual Background Review

**Ephraim Zagelbaum** is a licensed New York State nursing home administrator and is considered to be in good standing. Mr. Zagelbaum has been the President/Chief Executive Officer at Personal Healthcare Management LLC since December 2012, a company administering business office functions for health facilities located in Tarrytown, New York. He was previously employed as the Administrator of Record at Windsor Park Nursing from 2004 to 2012. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center [80%]	07/2009 to present
Norwich Rehabilitation and Nursing Center [50%]	01/2011 to present
Tarrytown Hall Care Center [43%]	04/2008 to present
Highland Rehabilitation and Nursing Center [45%]	02/2013 to present
Plattsburgh Rehabilitation and Nursing Center [50%]	01/2016 to present
Auburn Rehabilitation and Nursing Center [50%]	02/2016 to present
Sodus Rehabilitation and Nursing Center [50%]	02/2016 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

**Alexander Barth** is a licensed New York State nursing home administrator and is considered to be in good standing. He also holds an EMT license, which is considered to be in good standing. Mr. Barth has been a managing partner at Personal Healthcare Management LLC since January 2013, a company administering business office functions for health facilities located in Tarrytown, New York. Previously he was employed as Administrator of Record at Tarrytown Hall Care Center from 2007 to 2012. Mr. Barth discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center [5%]	07/2009 to present
Norwich Rehabilitation and Nursing Center [15%]	01/2011 to present
Tarrytown Hall Care Center [5%]	04/2008 to present
Highland Rehabilitation and Nursing Center [20%]	02/2013 to present
Plattsburgh Rehabilitation and Nursing Center [30%]	01/2016 to present
Auburn Rehabilitation and Nursing Center [30%]	02/2016 to present
Sodus Rehabilitation and Nursing Center [30%]	02/2016 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

**Yehudah Walden** has been a managing member at Personal Healthcare Management LLC since 2010, a company administering business office functions for health facilities located in Tarrytown, New York. Mr. Walden discloses the following health facility ownership interests:

Highland Rehabilitation and Nursing Center [5%]	02/2013 to present
Plattsburgh Rehabilitation and Nursing Center [20%]	01/2016 to present
Auburn Rehabilitation and Nursing Center [20%]	02/2016 to present
Sodus Rehabilitation and Nursing Center [20%]	02/2016 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

**Yeziel Zagelbaum** has been a pediatrician in private practice in Brooklyn, NY since 2002. Dr. Zagelbaum is a New York State Physician with license in good standing; and current certification in general pediatrics. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center [5%]	07/2009 to present
Norwich Rehabilitation and Nursing Center [15%]	01/2011 to present
Tarrytown Hall Care Center [13.5%]	04/2008 to present
Highland Rehabilitation & Nursing Center [10%]	02/2013 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation & Nursing Center (MA)	04/2012 to present
Rehab & Nursing Center at Everett (MA)	01/2013 to present

## Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

Ephraim Zagelbaum, Alexander Barth, Yehudah Walden, and Yechiel Zagelbaum were approved by the Public Health and Health Planning Council on February 12, 2015 to be established as operators of Delhi Nursing & Rehabilitation Center as members of DRNC Operating, LLC (CON# 142195). This ownership interest was not included in the Character and Competence – Background because the establishment of the facility has not been finalized.

A review of operations for Alpine Rehabilitation and Nursing Center, Norwich Rehabilitation and Nursing Center, Tarrytown Hall Care Center, Highland Rehabilitation and Nursing Center, Auburn Rehabilitation and Nursing Center, Sodus Rehabilitation and Nursing Center for the periods identified above revealed that there were no enforcements.

A review of operations for Plattsburgh Rehabilitation and Nursing Center revealed that the facility was issued an enforcement for §415.12 Quality of Care- Highest Practicable Potential based on a survey that occurred on 2/29/16. A review of the details from the complaint survey showed that the enforcement is based on events that occurred prior to the change in ownership on 1/1/16. The enforcement is not being considered in the character and competence review of the proposed operators since events leading to the enforcement occurred at the end of the previous management and prior to the current operator's legal and programmatic takeover of operational control of the facility.

An affidavit submitted by the applicant for Medford Rehabilitation and Nursing Center, Massachusetts revealed that the facility paid an enforcement of \$96,785 for findings on 2/27/13. Deficiencies were cited under §483.25 – Quality of Care with a scope and severity of L. Since there were no additional enforcements, the requirements for approval as set forth in Public Health Law §2801-1(3) have been met.

An affidavit submitted by the applicant for Rehabilitation and Nursing Center at Everett, Massachusetts revealed that the facility paid an enforcement of \$49,400 for findings on 6/4/13. Deficiencies were cited under §483.10(b)(3) (d)(2) – Informed of Health Status / Medical Condition with a scope and severity of G. Since there were no additional enforcements, the requirements for approval as set forth in Public Health Law §2801-1(3) have been met.

An affidavit submitted by the applicant for Cambridge Rehabilitation and Nursing Center, Massachusetts for the period identified above revealed that the facility was fined \$2,275 pursuant to surveillance findings on 1/12/15. Deficiencies were cited under §483.20(k)(3)(ii) – Qualifications of Facility Staff with a scope and severity of G. Since there were no additional enforcements, the requirements for approval as set forth in Public Health Law §2801-1(3) have been met.

A review of the Massachusetts Health and Human Services website for Cambridge Rehabilitation and Nursing Center lists G and F level citations for substandard quality of care on 3/29/16 and 9/30/13. The applicant provided the following explanations for the citations:

- The applicant indicated the substandard deficiency on 3/29/16 was a result of inconsistent hot water temperatures throughout the building. The applicant further stated that due to the age of the building temperatures in areas farthest from the boiler room tend to be a few degrees cooler. The operator is in the process of installing a hot water re-circulator pump to address this issue. This was cited at a scope and severity level of G.
- The applicant indicated the facility was in the final stages of an extermination treatment for an insect issue when the 9/30/13 substandard deficiency was issued. The treatment was successful and there have been no subsequent insect issues at the facility. This was cited at a level of F.

A review of the Massachusetts Health and Human Services website for Medford Rehabilitation and Nursing Center revealed no additional information.



A review of the Massachusetts Health and Human Services website for Rehabilitation and Nursing Center at Everett lists that a denial of payments for new admission was imposed on 11/27/15. However, communication with the applicant reveals that the operator never received any notice of a denial of payment and a denial of payment was never enforced.

Quality Review

Provider Name	Overall	Health Inspection	MDS Quality Measures
Field Home - Holy Comforter	*****	*****	****
Tarrytown Hall Care Center	***	***	****
Alpine Rehabilitation And Nursing Center	*	**	*
Norwich Rehabilitation & Nursing Center	**	**	****
Highland Rehabilitation And Nursing Center	***	****	***
Utica Rehabilitation & Nursing Center	*	*	*
Plattsburgh Rehabilitation And Nursing Center	*	**	*
Auburn Nursing Home	**	*	***
Blossom View Nursing Home (Sodus Rehabilitation & Nursing Center)	**	**	****
Cambridge Rehabilitation & Nursing Center	**	*	*****
Medford Rehabilitation And Nursing Center	***	**	**
Rehabilitation & Nursing Center At Everett (The)	**	*	*****

Above ratings are based on CMS Provider Rating dated 3/1/2016

Project Review

This application proposes to establish YRNC Operating as the new operator of the 125-bed residential health care facility located at 2300 Catherine Street, Cortlandt Manor currently operated as Field Home-Holy Comforter. The facility will be operated as Yorktown Rehabilitation and Nursing Center as a result of this transaction. The proposed operating group has been approved by the PHHPC over the past few years to acquire numerous RHCfs across the State and re-establish the former Countryside Care Center in Delaware County.

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application.

Recommendation

**From a programmatic perspective, approval is recommended.**

**Financial Analysis**

Asset Purchase Agreement (Operations)

The applicant has submitted an executed APA for the operating interests of the RHCF. The agreement will be effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	December 8, 2015
Seller:	Field Home-Holy Comforter
Buyer:	YRNC Operating, LLC
Purchased Assets:	All of the following items associated with the operations of the business: all tangible assets, telephone, fax numbers, websites domain names, manufactures' and vendors' warranties, seller's rights in any agreements, seller's book and

	records, seller's licenses, certificates and approvals to do business, resident funds held in trust in connection with the nursing home, Medicaid and Medicare provider numbers and all goodwill.
Excluded Assets:	All of the following items associated with the operations of the business: All seller's cash, cash equivalents, bank deposits or similar cash items, business trade names, service/trademarks and logos insurance policies accounts receivable generated prior to the closing date, deposits or prepaid charges and expenses, any rights to refunds, settlements and retroactive adjustments for periods ending on or prior to the closing date, and any personal, tangible and intangible property identified by the Seller.
Assumed Liabilities:	None
Excluded Liabilities:	N/A
Purchase Price:	\$3,000,000
Payment of Purchase Price:	\$1,400,000 placed in escrow account as of 12/8/2015; \$1,600,000 due at Closing

Purchase and Sale Agreement (Real Property)

The applicant has submitted an executed PSA for the purchase of the RHCF's real property by YRNC Realty, LLC. The agreement will become effectuated upon PHHPC approval of this CON and will close concurrent with the transaction contemplated by the APA. The terms of the agreement are summarized below:

Date:	December 8, 2015
Seller:	Field Home-Holy Comforter
Buyer:	YRNC Realty, LLC
Purchased Assets:	All seller's right, title and interest in and to the real property, buildings and improvements located at 2300 Catherine Street, Cortlandt Manor, NY and commonly known as Field Home –Holy Comforter
Excluded Assets:	None
Assumed Liabilities:	None
Purchase Price:	\$16,050,000
Payment of Purchase Price:	Due at closing

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

Operations - Equity from Members	\$1,400,000
Real Estate/Operations (Mortgage, 10 years, 25-year amortization, 4% interest)	<u>\$17,650,000</u>
Total	\$19,050,000

M&T Bank has provided a letter of interest for the financing at 4% interest for a 5-year term with a borrower's option to extend for an additional 5-year term, and repayment based on a 25-year amortization period. Applicant member Ephraim Zigelbaum provided an affidavit to fund the balloon payment for the operating and realty financing if terms acceptable to the Department are not available at the time of refinancing. The applicant intends to look into the option of a HUD-insured loan two to three years after PHHPC approval.

BFA Attachment A is the net worth summary for the proposed members of YRNC Operating, LLC and YRNC Realty, LLC, which shows sufficient assets to cover the equity requirements. Disproportionate share affidavits have been provided confirming the members' willingness to contribute personal resources to fulfill the equity requirements for the project.

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.

#### Lease Agreement

The applicant submitted an executed lease agreement. The terms are summarized below:

Date:	January 25, 2016
Premises:	125-bed RHCf with 2 respite beds located at 2300 Catherine Street, Cortlandt, NY
Lessor:	YRNC Realty, LLC
Lessee:	YRNC Operating, LLC
Term:	10 years with ten (10) 1 year renewals
Rental:	\$1,117,958 annually (\$93,163.17 monthly) [covers the debt service]
Provisions:	Lessee pays for all taxes, utilities, insurance and maintenance fees (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 in that there is common ownership between the entities.

With the change from a voluntary to a proprietary facility, the methodology for capital cost reimbursement would change in accordance with the Title 10 of the NYCRR, Part 86.2. While the capital reimbursement structure for proprietary and voluntary NH's differ, we do not believe that there will be a significant change in the per diem capital reimbursement.

#### Operating Budget

The following is a summary of the submitted operating budget, presented in 2016 dollars, for the current year and years one and three subsequent to the change in ownership:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues						
Medicaid	\$242.87	\$6,304,309	\$240.43	\$6,889,420	\$240.43	\$6,889,420
Medicare	\$584.56	\$8,532,282	\$632.44	\$7,461,545	\$632.44	\$7,461,545
Private Pay	\$406.72	\$1,107,104	\$439.95	\$1,697,771	\$439.95	\$1,697,771
Other Revenues		\$541,783		\$421,712		\$421,712
Total		\$16,485,478		\$16,470,448		\$16,470,448
Expenses						
Operating	\$415.85	\$17,996,114	\$346.44	\$15,351,614	\$339.18	\$15,029,590
Capital	\$18.79	\$813,059	\$25.23	\$1,117,958	\$25.23	\$1,117,958
Total	\$434.63	\$18,809,173	\$371.67	\$16,469,572	\$364.41	\$16,147,548
Net Income/loss		<u>(\$2,323,695)</u>		<u>\$876</u>		<u>\$322,900</u>
Utilization-Pt days		43,276		44,312		44,312
Occupancy		94.85%		97.12%		97.12%

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

- Medicaid revenue is based on the facility's current Medicaid FFS rate, which remains the benchmark rate for payments by Medicaid Managed Care Plans through to April 2018. The facility projected the FFS rate into Year Three due to lack of historical experience with Medicaid managed care (MMC) reimbursement, but anticipates remaining profitable if the MMC rate is no more than 5% lower than the current rate.

- Utilization by payor source for both years one and three is expected as follows:
 

Medicaid FFS	64.67%
Medicare FFS	26.62%
Private Pay	8.71%
- The facility's 2014 utilization was 94.9%, an increase of 16.4% from their 2013 utilization of 78.5%. The increase was due to the facility's decertification of 75 beds over the course of 2013 to bring the facility in line with the need for skilled nursing home beds in the area.
- As of April 5, 2016, the facility's utilization was 97%. The applicant projected Year One utilization will increase slightly to 97.12% due to the facility's ongoing programs to improve their relationship with the community, local hospitals and local physicians.
- Breakeven utilization is projected at approximately 97.12% for year one and 95.17% for Year Three.

#### Capability and Feasibility

YRNC Operating, LLC will acquire the RHCF's operating interest for \$3,000,000 and YRNC Realty, LLC will acquire the RHCF's real property for \$16,050,000 at the above stated terms. M&T Bank has provided a letter of interest for the financing. There are no project costs associated with this proposal.

Working capital requirements are estimated at \$2,744,929 based on two months of year one expenses. The proposed members will provide \$1,372,465 in equity equivalent to their ownership percentages. The remaining \$1,372,464 will be provided through a working capital loan at 4% interest with a five-year term. A letter of interest has been provided by M&T Bank for the proposed working capital financing. Affidavits have been provided confirming the members' willingness to contribute resources disproportionate to their ownership interest to fulfill the equity requirements for the project. BFA Attachment A is the net worth statement for the proposed owners, which shows significant resources available to cover both the purchase price and the working capital equity requirements for this project.

BFA Attachment B is the pro-forma balance sheet of YRNC Operating, LLC and YRNC Realty, LLC, which indicates a positive members' equity of \$2,772,465 as of the first day of operations for the facility and a breakeven members' equity as of day one of operations for the reality entity.

The submitted budget indicates a net income of \$876 and \$322,900 for Years One and Three, respectively. The submitted 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 C is the 2013 and 2014 certified and the internal financial statements for Field Home-Holy Comforter as of December 31, 2015. The 2013 and 2014 certified statements show that the facility generated an average operating loss of \$2,204,662, and had an average positive net asset position and an average negative working capital position for the period shown. The 2015 internal financial statements show that the entity generated an operating loss of \$1,250,660, and had a positive net asset position and negative working capital position for the period shown. The loss and the negative working capital were due to excess expenses in certain categories such as dietary, supplies and contractual services. To rectify this, the proposed members will implement cost-cutting measures to limit or eliminate outsourced services, add programs to serve a more medically complex population, and rehab the facility to provide a better resident experience.

BFA Attachment E is the financial summaries of the members' affiliated nursing homes, which shows that the facilities have maintained a positive net asset position, negative working capital position and a positive income from operations for the period shown. Previous owner operational inefficiencies contributed to prior period negative working capital positions and net losses for the related facilities. The inefficiencies were addressed and rectified on a going forward basis by the current owners. No financial

statements for Utica Rehab & Nursing Center and Plattsburgh Rehab & Nursing Center are provided as the applicant only recently acquired the facilities.

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 Proposed Members of YRNC Operating, LLC d/b/a Yorktown Rehabilitation & Nursing Center and YRNC Realty, LLC
- BFA Attachment B Pro-forma Balance Sheets for YRNC Operating, LLC d/b/a Yorktown Rehabilitation & Nursing Center and YRNC Realty, LLC
- BFA Attachment C 2013 and 2014 certified and the internal financial statements as of December 31, 2015 for Field Home-Holy Comforter
- BFA Attachment D Ownership interest of the proposed members' of YRNC Operating, LLC d/b/a Yorktown Rehabilitation affiliated Nursing Homes
- BFA Attachment E 2013-2015 Financial Summaries of the proposed members' of YRNC Operating, LLC d/b/a Yorktown Rehabilitation affiliated Nursing Homes

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 9th day of June, 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 YRNC Operating, LLC d/b/a Yorktown Rehabilitation & Nursing Center as the new operator of Field Home-Holy Comforter, a 125-bed nursing home located at 2300 Catherine St., Cortlandt Manor, 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:

161091 E

YRNC Operating, LLC  
d/b/a Yorktown Rehabilitation & Nursing  
Center

APPROVAL CONTINGENT UPON:

**Approval contingent upon:**

1. Submission of an executed permanent mortgage for the project provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of an executed working capital loan commitment, 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
  - 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
  - e. Other factors as determined by the applicant to be pertinent [RNR]

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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.





**Project # 161223-E  
St. Margaret's Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Albany  
**Acknowledged:** April 4, 2016

**Executive Summary**

**Description**

Center for Disability Services Holding Corporation (CDS) is requesting approval to disestablish St. Margaret's House and Hospital for Babies (SMHHB) as a co-operator of St. Margaret's Center, a 92-bed voluntary not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 27 Hackett Boulevard, Albany (Albany County). Upon approval of this application, SMHHB will merge into CDS and cease to exist as an entity. CDS will take title and ownership of all assets owned by SMHHB, and CDC will become the sole operator of the RHCF.

Over the past several years, SMHHB has struggled financially and CDS has been reluctant to take on additional liability without having full control of St. Margaret's Center. Based on the stressed financial position of SMHHB, financial institutions require CDS to assume full responsibility for any liability associated with loans or guarantees made to the RHCF. By assuming full control of St. Margaret's Center, CDS will be able to access capital more easily. Currently, CDS has an administrative services agreement with St. Margaret's Center to provide certain administrative services. This agreement will be terminated upon completion of the merger.

The Board of Directors of CDS, the surviving corporation, will be identical before and after the merger. This application does not propose any

change to the certified services, the bed count, the name of the facility or the RHCF management team. Also, there are no capital costs and no projected incremental change in staffing, operating expense or operating revenues associated with this application.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There is no Need review for this project.

Program Summary  
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. The Board of Directors for St. Margaret's Center will not change as a result of this transaction. The removal of the active parent and co-operator arrangement will have positive impact on St. Margaret's Center by allowing the Center for Disability Services to access funds needed to make capital improvements to the facility.

Financial Summary  
There is no capital cost and no projected incremental change in staffing, operating expense or operating revenues associated with this application.

## 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 Agreement and Plan of Merger, acceptable to the Department of Health. [BFA]

**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. Submission of a photocopy of the fully executed Agreement and Plan of Merger, acceptable to the Department. [CSL]
3. Submission of a photocopy of the Certificate of Merger and Consolidation filed with the New York State Secretary of State, acceptable to the Department. [CSL]

Council Action Date

**June 9, 2016**

## Program Analysis

### Program Description

This application is being filed to remove St. Margaret's House and Hospital for Babies as the active parent and co-operator of St. Margaret's Center. Upon approval of this application St Margaret's House and Hospital for Babies will be merged into the Center for Disability Services Holding Corporation (CDS). The merger of the two entities will not result in a change to the Board of Directors for CDS or St. Margaret's Center. The transaction will result in CDS having full control of the RHCF, enabling it to assume full responsibility for liabilities and easing access to capital.

### Facility Information

	Existing	Proposed
<b>Facility Name</b>	St. Margaret's Center	Same
<b>Address</b>	27 Hackett Boulevard Albany, NY 12208	Same
<b>RHCF Capacity</b>	36 Pediatric Non-vent 36 Pediatric Vent <u>20 Young Adult</u> 92 Total Pediatric/Young Adult	Same
<b>ADHC Program Capacity</b>	None	None
<b>Type of Operator</b>	Not-for-profit corporation	Same
<b>Class of Operator</b>	Voluntary	Same
<b>Operator</b>	Center for Disability Services Holding Corporation  <u>Active Parent/Co-operator</u> St Margaret's House and Hospital for Babies	Center for Disability Services Holding Corporation

### Character and Competence

The following corporations were reviewed:

- Center for Disability Services Holding Corporation
- St. Margaret's House and Hospital for Babies
- St. Margaret's Center

No negative information has been received concerning the character and competence of the above corporations. All corporations were found to be in current compliance.

### Project Review

This application is being filed to remove St Margaret's House and Hospital for Babies (SMHHB) as the active parent and co-operator of St. Margaret's Center. Upon approval of this application St. Margaret's House and Hospital for Babies will be merged into the CDS. The merger of the two entities will not result in a change to the Board of Directors of CDS or St. Margaret's Center. The transaction will result in CDS having full control of the RHCF, enabling it to assume full responsibility for liabilities and easing access to capital.

Since 2000, CDS and SMHHB have been the approved co-operators of St. Margaret's Center. CDS and SMHHB were granted co-operator status pursuant to an Order of the New York State Supreme Court. Based on the Court-approved co-operator arrangement, CDS is the guarantor of SMHHB's financial liabilities, and CDS was granted certain powers concerning the operation of St. Margaret's Center.

While St. Margaret's is operating at full capacity, the recent approval of additional pediatric beds in the lower Hudson valley is anticipated to create increased competition for pediatric RHCF residents. St. Margaret's was recently approved to convert 20 pediatric non-vent beds to pediatric vent beds. CDS has been reluctant to take on additional liability without having full control of St. Margaret's Center.

Disestablishing SMHHB as a co-operator of St. Margaret's Center will vest CDS with full control of the RHCF, enabling it to assume full responsibility for the RHCF liabilities and more easily access capital.

#### 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. The Board of Directors for St. Margaret's Center will not change as a result of this transaction. The removal of the active parent and co-operator arrangement will have positive impact on St. Margaret's Center by allowing Center for the Disability Services Holding Corporation to access funds needed to make capital improvements to the facility.

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

#### Agreement and Plan of Merger

The applicant has submitted a draft Agreement and Plan of Merger, summarized below:

Non-Surviving Corporation:	Saint Margaret's House and Hospital for Babies (SMHHB)
Surviving Corporation:	Center for Disability Services Holding Corporation (CDS)
Agreement:	On the effective date of the merger, the separate existence of SMHHB and CDS shall cease and all rights, privileges, powers and franchises and all the property and assets of every kind shall be vested and be held and enjoyed by CDS. This includes all of the estates and interests of every kind of SMHHB, including all debts due on whatever account, shall be the property of the CDS. SMHHB will cease to exist.
Payments/Fees:	\$0

There will be no change to the RHCF's certified services, bed count, facility name, or management team. There are no capital costs and no projected change in staffing, operating expenses or operating revenues associated with this application.

#### Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

BFA Attachment A is a summary of the 2014 through 2015 combined financial statements of Center for Disability Services Holding Corporation which includes St. Margaret's Center. As shown, CDS had an average positive working capital position and an average positive net asset position for the period. Also, the facility achieved an average positive net income from 2014 through 2015.

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

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

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## Attachments

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- BFA Attachment A    2014 - 2015 Financial Summary of Center for Disability Services Holding Corporation and St Margaret's Center
- BFA Attachment B    Organizational Charts – Pre-merger and Post-Merger

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 9th day of June, 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 St. Margaret's House and Hospital for Babies as the active parent/co-operator of St. Margaret's 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:

161223 E

St. Margaret's Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed Agreement and Plan of Merger, acceptable to the Department of Health. [BFA]

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. Submission of a photocopy of the fully executed Agreement and Plan of Merger, acceptable to the Department. [CSL]
3. Submission of a photocopy of the Certificate of Merger and Consolidation filed with the New York State Secretary of State, acceptable to the Department. [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 the *Contingencies Tab in NYSE-CON*.

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Hamilton Home Care, LLC d/b/a Hamilton Home Care  
Address: Manlius  
County: Onondaga  
Structure: Limited Liability Company  
Application Number: 2322L

Description of Project:

Hamilton Home Care, 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.

Gregory P. Collins d/b/a Hamilton Home Care was previously approved as a home care services agency by the Public Health Council at its June 25, 1999 meeting and subsequently licensed as 0824L001. Hamilton Home Care Agency serves the residents of the Assisted Living Program (ALP) in Manlius Home for Adults. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home.

This application was submitted to transfer the ownership of this LHCSA due to the death of Gregory P. Collis. The heirs to the Estate of Gregory Collis are the members of Hamilton Home Care, LLC.

Susan McSweeney is currently the court designated administrator of the estate and has been serving as the DOH approved Temporary Operator of the ACFs and home care agencies.

The members of Hamilton Home Care, LLC comprise the following individuals:

Anna C. Bronnenkant, Esq. - 45%  
Assistant Attorney General, Arizona Attorney General

Maria A. Collis – 45%  
Manager/Member/Writer/Producer, Leomark Studios LLC

Susan J. McSweeney – Managing Member – 10%  
Administrator/Manager, Manlius Home for Adults

Affiliations:

- Manlius Home for Adults (2010 – Present)
- Hamilton Manor Home for Adults (2010 – Present)
- Highland Home (Adult Home) (2010 – Present)
- Hamilton Home Care (2010 – Present)
- Hamilton Limited Home Care Services Agency (2010 – Present)
- Highland Limited Home Care Services Agency (2010 – Present)
- Manlius Home Care Services Agency (Limited LHCSA) (2010 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for Anna Bronnenkant.

A seven year review was conducted for the following healthcare facilities:

- Manlius Home for Adults (2010 – Present)
- Manlius Home Care Services Agency (Limited LHCSA) (2010 – Present)
- Hamilton Manor Home for Adults (2010 – Present)
- Highland Home (Adult Home) (2010 – Present)
- Highland Limited Home Care Services Agency (2010 – Present)
- Hamilton Home Care
- Hamilton Limited Home Care Services Agency (2010 – Present)



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.

The information provided by the Adult Care Facility Policy and Surveillance unit 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.

The applicant proposes to serve the residents of the following counties from an office located at 215 East Pleasant Street, Manlius, New York 13104:

Madison                      Onondaga

The applicant proposes to continue to provide the following health care services:

Nursing                      Home Health Aide                      Speech-Language Pathology  
Physical Therapy      Occupational Therapy                      Respiratory Therapy

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:                      April 25, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Hamilton Home Care, LLC d/b/a Hamilton Limited Home Care Services Agency  
Address: Hubbardsville  
County: Madison  
Structure: Limited Liability Company  
Application Number: 2322A

Description of Project:

Hamilton Home Care, LLC d/b/a Hamilton Limited Home Care Services Agency, a limited liability company, requests approval for a change in ownership of a limited licensed home care services agency under Article 36 of the Public Health Law.

Gregory P. Collis d/b/a Hamilton Limited Home Care Services Agency was previously approved as a limited licensed home care services agency by the Public Health Council at its June 25, 1999 meeting and subsequently licensed as 0824A003. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home.

This application was submitted to transfer the ownership of this LLHCSA due to the death of Gregory P. Collis. The heirs to the Estate of Gregory Collis are the members of Hamilton Home Care, LLC.

Susan McSweeney is currently the court designated administrator of the estate and has been serving as the DOH approved Temporary Operator of the ACFs and home care agencies.

The proposed members of Hamilton Home Care, LLC d/b/a Hamilton Limited Home Care Services Agency comprises the following individuals:

Anna C. Bronnenkant, Esq. - 45%  
Assistant Attorney General, Arizona Attorney General

Maria A. Collis –45%  
Manager/Member/Writer/Producer, Leomark Studios LLC

Susan J. McSweeney – Managing Member – 10%  
Administrator/Manager, Manlius Home for Adults

Affiliations:

- Manlius Home for Adults (2010 – Present)
- Hamilton Manor Home for Adults (2010 – Present)
- Highland Home (Adult Home) (2010 – Present)
- Hamilton Home Care (2010 – Present)
- Hamilton Limited Home Care Services Agency (2010 – Present)
- Highland Limited Home Care Services Agency (2010 – Present)
- Manlius Home Care Services Agency (Limited LHCSA) (2010 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for Anna Bronnenkant.

A seven year review was conducted for the following healthcare facilities:

- Manlius Home for Adults (2010 – Present)
- Manlius Home Care Services Agency (Limited LHCSA) (2010 – Present)
- Hamilton Manor Home for Adults (2010 – Present)
- Highland Home (Adult Home) (2010 – Present)
- Highland Limited Home Care Services Agency (2010 – Present)
- Hamilton Home Care
- Hamilton Limited Home Care Services Agency (2010 – Present)

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.

The information provided by the Adult Care Facility Policy and Surveillance unit 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.

The applicant proposes to continue to serve the residents of Hamilton Manor Home for Adults in Madison County located at 8196 Green Road, Hubbardsville, New York 13355.

The applicant proposes to provide the following health care services allowed to be delivered by a limited LHCSA: Personal Care, Application of Sterile Dressings by a RN and Administration of Medications by a RN.

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: April 25, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Senior Solutions Worldwide, Inc. d/b/a Wesley Senior Solutions  
Address: Saratoga Springs  
County: Saratoga  
Structure: Not-For-Profit Corporation  
Application Number: 2509-L

Description of Project:

Senior Solutions Worldwide, Inc. d/b/a Wesley Senior Solutions, a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Senior Solutions Worldwide, Inc. d/b/a Senior Solutions Health Care was previously approved as a home care services agency by the Public Health Council at its October 1, 2001 meeting and subsequently licensed 1312L001.

Through a Stock Purchase Agreement, United Methodist Health and Housing, Inc. (UMHH), the sole member of Wesley at Home, Inc., proposes to purchase the shares of Senior Solutions Worldwide, Inc. UMHH will then assign its interest in Senior Solutions Worldwide, Inc. under the Stock Purchase Agreement to Wesley at Home, Inc. Upon approval, Wesley at Home, Inc. will own 100% of the shares of Senior Solutions Worldwide, Inc. which will continue to operate the LHCSA and do business as Wesley Senior Solutions

The Board of Directors of United Methodist Health and Housing, Inc. (UMHH) and Wesley at Home, Inc. are identical and are comprised of the following individuals:

Peggy A. Murphy – President  
Director of HR/FSO/Corporate Security, Espey  
Manufacturing & Electronics

Brendan F. Chudy, Esq. – 1<sup>st</sup> Vice-President  
Senior Manager Legal Affairs, Global Foundries  
US, Inc.

Jon R. Allen – 2<sup>nd</sup> Vice-President  
Consultant/Owner, Performance Matters

Karen S. Martell, Esq. – Secretary  
Partner, Lemery Greisler LLC

Walter W. Sankowski, CPA – Treasurer  
Shareholder, Fredette, Sankowski & Co.

Robert L. Marino  
Retired

Catherine D. Masie  
Owner/Manager, The Masie Center

Beth A. Thayer, CPA  
Self-employed, Beth Thayer, CPA

Elizabeth W. Rovers  
Managing Engineer/Principal-Environmental  
Engineer, C.T. Male Associates

Andrew J. Wise  
Financial, Operations, IT, Adirondack Trust, Co.

Carol H. Shippey, RN  
Retired

Carla R. Williams  
Consultant, O-Connell & Aronowitz

Erica M. Coletti  
Director, Consulting Operations, Blue State  
Solutions

Helen A. Endres, RN  
Retired

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: 111 Ensminger Road Operating Company, LLC  
d/b/a Elderwood Home Care at Tonawanda  
Address: Tonawanda  
County: Erie  
Structure: Limited Liability Company  
Application Number: 152199E

Description of Project:

111 Ensminger Road Operating Company, LLC d/b/a Elderwood Home Care at Tonawanda, 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.

Braunview Associates, Inc. d/b/a Tonawanda Manor Home Care Services was previously approved by the Public Health and Health Planning Council at its March 13, 2009 meeting and subsequently licensed 1757L001.

This LHCSA will be associated with the assisted living program to be operated by 111 Ensminger Road Operating Company, and will serve the assisted living program residents of Elderwood Assisted Living at Tonawanda.

Through an Asset Purchase Agreement the applicant will purchase all the assets of Braunview Associates, Inc. d/b/a Tonawanda Manor Home Care Services.

The sole member of 111 Ensminger Road Operating Company, LLC is 111 Ensminger Road Operating Holdco, LLC

The members of 111 Ensminger Road Operating Holdco, LLC comprise the following individuals:

Cole Warren – 50%	Jeffrey Rubin – 50%
Partner, Post Acute Partners, LLC	Partner, Post Acute Partners, LLC

A search of the individuals 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 the following facilities/agencies were performed as part of this review (unless otherwise noted):

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)

Adult Homes

- 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)

### Licensed Home Care Agencies

- 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)

### California

- Care Alternatives of California (07/2005-10/2009)

### Connecticut

- Danbury Health Care Center (07/2005-10/2009)
- Darien Health Care Center (07/2005- 2007)
- Golden Hill Health Care Center (07/2005-10/2009)
- Long Ridge of Stamford (07/2005-10/2009)
- Newington Health Care Center (07/2005-10/2009)
- River Glen Health Care Center (07/2005-10/2009)
- The Highlands Health Care Center (07/2005-10/2009)
- West River Health Care Center (07/2005-10/2009)
- Westport Health Care Center (07/2005-10/2009)
- Wethersfield Health Care Center (07/2005-10/2009)

### Kansas

- Care Alternatives of Kansas (07/2005-10/2009)

### Maryland

- Montgomery Village Health Care Center (07/2005-10/2009)

### Massachusetts

- Brookline Health Care Center (07/2005-10/2009)
- Calvin Coolidge Nursing & Rehab Center (07/2005-10/2009)
- Cedar Hill Health Care Center (07/2005-10/2009)
- Concord Health Care Center (07/2005-10/2009)
- Essex Park Rehabilitation & Nursing Center (07/2005-10/2009)
- Holyoke Health Care Center (07/2005-10/2009)
- Lexington Health Care Center (07/2005-10/2009)
- Lowell Health Care Center (07/2005-10/2009)
- Milbury Health Care Center (07/2005-10/2009)
- New Bedford Health Care Center (07/2005-10/2009)
- Newton Health Care Center (07/2005-10/2009)
- Peabody Glen Health Care Center (07/2005-10/2009)
- Redstone Health Care Center (07/2005-10/2009)
- Weymouth Health Care Center (07/2005-10/2009)
- Wilmington Health Care Center (07/2005-10/2009)

### Michigan

- Grand Blanc Rehabilitation & Nursing Center (10/2006-10/2009)

### Missouri

- Care Alternatives of Missouri (07/2005-10/2009)

### New Jersey

- Bergen Care Home Health (2007-10/2009)
- Bergen Care Personal Touch (2007-10/2009)
- Care Alternatives of New Jersey (07/2005-10/2009)
- Care One at Dunroven (07/2005-10/2009)
- Care One at East Brunswick (07/2005-10/2009)
- Care One at Evesham (07/2005-10/2009)
- Care One at Evesham Assisted Living (10/2007-10/2009)

- Care One at Ewing (07/2005-10/2009)
- Care One at Hamilton (07/2005-10/2009)
- Care One at Holmdel (07/2005-10/2009)
- Care One at Jackson (07/2005-10/2009)
- Care One at King James (07/2005-10/2009)
- Care One at Livingston (09/2005-10/2009)
- Care One at Madison Avenue (07/2005-10/2009)
- Care One at Moorestown (07/2005-10/2009)
- Care One at Morris (07/2005-10/2009)
- Care One at Morris Assisted Living (07/2005-10/2009)
- Care One at Pine Rest (07/2005-10/2009)
- Care One at Raritan Bay MC (07/2005-10/2009)
- Care One Harmony Village at Moorestown (07/2005-10/2009)
- Care One at Teaneck (04/2007-10/2009)
- Care One at The Cupola (07/2005-10/2009)
- Care One at The Highlands (07/2005-10/2009)
- Care One at Valley (07/2005-10/2009)
- Care One at Wall (07/2005-10/2009)
- Care One at Wayne (07/2005-10/2009)
- Care One at Wellington (07/2005-10/2009)
- Ordell Health Care Center (07/2005-10/2009)
- Somerset Valley Rehabilitation and Nursing (10/2006-10/2009)
- South Jersey Health Care Center (07/2005-10/2009)
- Woodcrest Health Care Center (07/2005-10/2009)
- Care Alternatives of New Jersey (07/2005-10/2009)

#### North Carolina

- Blue Ridge Health Care Center (07/2005-10/2009)

#### Ohio

- Bellbrook Health Care Center (07/2005-10/2009)
- The Rehabilitation & Nursing Center at Elm Creek (10/2006-10/2009)
- The Rehabilitation & Nursing Center at Firelands (10/2006-10/2009)
- The Rehabilitation & Nursing Center at Spring Creek (10/2006-10/2009)

#### Pennsylvania

- Presque Isle Rehabilitation and Nursing Center (10/2006-10/2009)
- The Rehab and Nursing Center at Greater Pittsburg (10/2006-10/2009)
- Pediatric Specialty Care at Point Pleasant (02/2011-present)
- Pediatric Specialty Care at Doyleston (02/2011-present)
- Pediatric Specialty Care at Quakertown (02/2011-present)
- Pediatric Specialty Care at Lancaster (02/2011-present)
- Pediatric Specialty Care at Hopewell (02/2011-present)
- Pediatric Specialty Care at Philadelphia (02/2011-present)
- Senior Living at Lancaster (02/2011-present)
- Care Alternatives of Pennsylvania (07/2005-10/2009)

#### Puerto Rico

- Medicare Y Mucho Mas (07/2005-11/2009)

#### Rhode Island

- Chestnut Terrace Rehabilitation and Nursing (02/2014-present)
- Scallop Shell Nursing and Rehabilitation Center (12/2010-present)

#### Virginia

- Colonial Heights Health Care Center (07/2005-10/2009)
- Glenburnie Rehabilitation (07/2005-10/2009)
- Hopewell Health Care Center (07/2005-10/2009)



The Information provided by the Bureau of Quality and Surveillance 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.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that adult care facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

A review of the out of state facilities in which the applicants currently hold ownership interests is below:

A review of Chestnut Terrace Rehabilitation and Nursing, and Scallop Shell Nursing and Rehabilitation of Rhode Island for the periods indicated above revealed that a substantially consistent high level of care has been provided since there were no enforcements. This information was obtained from a Rhode Island State Official, as well as the Medicare.gov Nursing Home Compare website.

The applicants have submitted an affidavit regarding the pediatric intermediate care facilities in which they attest to the provision of a substantially consistent high level of care.

The applicant proposes to serve the residents of Erie County from an office located at 111 Ensminger Road, Tonawanda, New York 14150:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	

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: March 29, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Helping U Homecare, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 152285E

Description of Project:

Helping U Homecare, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Helping U Homecare, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its February 12, 2015 meeting and subsequently licensed as 2259L001. At that time the name of the corporation was NMC Home Care Agency of NY, Inc. and the sole shareholder was Natalya Chornaya. A corporate name change was approved by the Department of State on November 6, 2015 and the name on the agency's license was subsequently changed.

Helping U Homecare, Inc. has authorized 200 shares of stock, which are solely owned by Polina Mesh.

The Board of Directors of Helping U Homecare, Inc. is comprised of the following individual:

Polina Mesh, HHA, President  
Retired

The New York State Home Care Registry indicates no issues with the certification of the health care professional associated with this application.

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 of the following counties from an office located at 111 East 125<sup>th</sup> Street, 1<sup>st</sup> Floor, New York, New York 10035:

New York	Kings	Queens
Richmond	Bronx	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Supplies, Equipment and Appliances		

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: March 21, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Focus Rx Pharmacy Services, Inc.  
Address: Holbrook  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 152367E

Description of Project:

Focus Rx Pharmacy Services, 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.

Home Care Service of Long Island, LLC d/b/a Visiting Angels was previously approved as a home care services agency by the Public Health Council at its May 4, 2007 meeting and subsequently licensed as 1474L001. At that time, the members of Home Care Service of Long Island, LLC were Christopher Nicholson 50% and Glenn Nicholson 50%.

Focus Rx Pharmacy Services, Inc. and Home Care Service of Long Island, LLC d/b/a Visiting Angels entered into an asset purchase agreement which was executed on September 23, 2015.

Focus Rx Pharmacy Services, Inc. has authorized 200 shares of stock which are owned as follows:

Richard Collins – 50 shares  
Louis J. Puleo, Jr. – 50 shares

Christopher W. Varvaro – 50 shares  
Eugene Basini – 50 shares

The Board of Directors of Focus Rx Pharmacy Services, Inc. is comprised of the following individuals:

Richard Collins, R.Ph – President  
Pharmacist in Charge, Focus Rx Pharmacy  
Services, Inc.  
Pharmacist, Focus Rx, Inc.

Christopher W. Varvaro, R. Ph. – Vice-President  
Pharmacist & COO, Focus Rx Pharmacy  
Services, Inc.  
Pharmacist, Focus Rx, Inc.

Louis J. Puleo, Jr. – Secretary  
CEO, Focus Rx Pharmacy Services, Inc.  
Business Developer, Focus Rx, Inc.

Eugene Basini, R.Ph. – Treasurer  
Treasurer, Focus Rx Pharmacy Services, Inc.  
President/Pharmacist in Charge, Focus Rx, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the licenses of the health care professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1361 Lincoln Avenue, Suite 9, Holbrook, New York 11741:

Suffolk  
Putnam  
Westchester

Nassau  
Rockland  
Queens

Orange  
Ulster

The applicant proposes to provide the following health care services:

Nursing  
Nutrition

Home Health Aide  
Homemaker

Personal Care  
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: March 15, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: New Broadview Manor Home for Adults, LLC  
d/b/a New Broadview Manor Home for Adults LHCSA  
Address: Staten Island  
County: Richmond  
Structure: Limited Liability Company  
Application Number: 161126E

Description of Project:

New Broadview Manor Home for Adults, LLC d/b/a New Broadview Manor Home for Adults LHCSA, 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.

New Broadview Manor d/b/a New Broadview Manor Home for Adults LHCSA, a proprietary partnership, was previously approved as a home care services agency by the Public Health Council at its May 29, 1998 meeting and subsequently licensed as 9910L001. At that time, the partners were Ludovic Marcovici (50%) and Josef Yunger (50%). In June 2003, the partnership filed a Certificate of Conversion with the Department of State to convert the partnership into a limited liability company.

The purpose of this application is to seek approval to transfer all of the membership interest of Ludovic Marcovici to Josef Yunger (40%), Jonathan Yunger (5%) and Katherine Yunger (5%).

This LHCSA will be associated with the Adult Home/Assisted Living Program operated by Broadview Manor Home for Adults, LLC.

The proposed membership of New Broadview Manor Home for Adults, LLC d/b/a New Broadview Manor Home for Adults LHCSA comprises the following individuals:

Josef Yunger – 90%  
Owner/Member, New Broadview Manor Home for Adults, LLC  
Owner/Operator, New Broadview Manor Home for Adults LHCSA  
Owner/Operator, New Broadview Manor Home for Adults Limited LHCSA

Affiliations:

New Broadview Manor Home for Adults, LLC (AH/ALP, 1982 – Present)  
New Broadview Manor Home for Adults LHCSA (1982 – Present)  
New Broadview Manor Home for Adults Limited LHCSA (1982- Present)

Jonathan Yunger – 5%  
Director of Operations/Compliance, New Broadview Manor Home for Adults, LLC

Katherine Yunger – 5%  
Manufacturer's Representative-HVAC Systems, ADE Systems

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 of Richmond County from an office located at 70 Father Capodanno Boulevard, Staten Island, New York 10305.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Nutrition	Housekeeper	

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

New Broadview Manor Home for Adults, LLC (AH/ALP)  
New Broadview Manor Home for Adults LHCSA  
New Broadview Manor Home for Adults Limited LHCSA

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that adult care facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies 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.

Recommendation: Approval  
Date: March 21, 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 9th day of June, 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.

<u>NUMBER:</u>	<u>FACILITY:</u>
2322 L	Hamilton Home Care, LLC d/b/a Hamilton Home Care (Madison and Onondaga Counties)
2322 A	Hamilton Home Care, LLC d/b/a Hamilton Limited Home Care Services Agency (Madison County)
2509 L	Senior Solutions Worldwide, Inc. d/b/a Wesley Senior Solutions (Saratoga County)
152199 E	111 Ensminger Road Operating Company, LLC d/b/a Elderwood Home Care at Tonawanda (Erie County)


- 152285 E Helping U Homecare, Inc.  
(New York, Richmond, Kings, Bronx, Queens, and Nassau Counties)
- 152367 E Focus RX Pharmacy Services, Inc.  
(Suffolk, Putnam, Westchester, Nassau, Rockland, Queens, Orange, and Ulster Counties)
- 161126 E New Broadview Manor Home for Adults, LLC  
d/b/a New Broadview Manor Home for Adults LHCSA  
(Richmond County)





## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** April 27, 2016

**Subject:** Restated Certificate of Incorporation of Housing Works Health Services III, Inc.

---

Attached is the proposed Restated Certificate of Incorporation of Housing Works Health Services III, Inc. This not-for-profit corporation seeks approval to change its name to "Housing Works Community Healthcare". One of the purposes of the corporation is to solicit grants, contributions and donations of money. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804(a) and 10 NYCRR § 600.11 (a) (1).

There is no legal objection to the proposed name change, and the proposed Restated Certificate of Incorporation is in legally acceptable form.



**DELANEY CORPORATE SERVICES, LTD.**

99 Washington Ave., Ste. 805A, Albany, NY 12210  
800-717-2810 • 518-465-9242 • 518-465-7883 (fax)  
nick@delaneycorporate.com

An Affiliate of National Registered Agents, Inc.

*"For service as good as gold"*

April 19, 2016

**STATE OF NEW YORK DEPARTMENT OF HEALTH**

Colleen M. Leonard, Executive Secretary  
Public Health and Health Planning Council  
Corning Tower, Room 1805  
Albany, New York 12237  
518-402-0964

**RE: HOUSING WORKS HEALTH SERVICES III, INC.**

To whom this may concern:

I hereby respectfully request your consent to the filing of the attached restated certificate of incorporation for the above reference NYS Not-for-Profit Corporation. A copy of all charter documents are attached from the New York Secretary of State.

If you have any questions or require further information, please do not hesitate to contact me. Otherwise, please issue your consent to the undersigned at your earliest convenience.

Sincerely,

  
Nicholas P. Hopeck  
Vice President

**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**HOUSING WORKS HEALTH SERVICES III, INC.**

---

(Under Section 805 of the Not-for-Profit Corporation Law)

The undersigned, being the Secretary of Housing Works Health Services III, Inc., in accordance with Section 805 of the New York Not-for-Profit Corporation Law, does hereby certify:

1. The name of the corporation is Housing Works Health Services III, Inc.
2. The Certificate of Incorporation of Housing Works Health Services III, Inc. was filed by the Department of State on the 4<sup>th</sup> day of April, 1995.
3. The Certificate of Incorporation as now in full force and effect is hereby amended to effect the following amendments:

Article **FIRST** of the Certificate of Incorporation, setting forth the name of the corporation, is hereby amended to read, in its entirety, as follows

**FIRST:** The name of the corporation is Housing Works Community Healthcare, Inc. (hereinafter referred to as the "Corporation").

Article **FOURTH** of the Certificate of Incorporation, setting forth the purposes of the corporation, is hereby amended to read, in its entirety, as follows:

**FOURTH:** The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any

low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases and sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with applicable law;

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(f) operating 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 understands that it may not establish any facility or program without first obtaining such operating certificate.

(g) 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.

Article FIFTH, subsection (a) of the Certificate of Incorporation, setting forth the powers and authorities of the corporation in furtherance of its corporate purposes, is hereby amended to read as follows:

#### **FIFTH**

...(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal or mixed, by private or public appeal, by advertisement or by any other lawful means for any corporate purpose;

Article SEVENTH, subsection (d) of the Certificate of Incorporation, regarding Internal Revenue Code requirements, is hereby amended to read as follows:

**SEVENTH**

...(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

Article **EIGHTH**, setting forth the principal office of the corporation, is hereby amended to read as follows:

**EIGHTH**: The principal office of the Corporation is to be located in Kings County, State of New York.

Article **TENTH**, setting forth the initial Board of Directors, is hereby deleted, and the Certificate of Incorporation is hereby renumbered to reflect such deletion.

Article **ELEVENTH**, setting forth the address of the corporation, is hereby renumbered and amended to read as follows:

**TENTH**: The Corporation hereby designates the Secretary of State 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 against the Corporation served upon him is:

Housing Works Community Healthcare, Inc.  
57 Willoughby St.  
Brooklyn, NY 11201

6. The text of the Certificate of Incorporation is hereby restated to set forth its entire text, as amended, as follows:

**FIRST**: The name of the corporation is Housing Works Community Healthcare, Inc. (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 and shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law having the purposes set forth in Article Fourth below.

**THIRD:** Pursuant to Section 601 of the Not-for-Profit Corporation Law, the Corporation shall have one class of members, the sole member of which shall be Housing Works, Inc. (hereinafter referred to as "Housing Works"), a New York corporation organized under the Not-for-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"; all references herein to Sections of the Code shall be to Sections thereof, as amended from time to time, and to corresponding provisions of subsequent United States Internal Revenue laws).

**FOURTH:** The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases and sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with applicable law;

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(f) operating 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 understands that it may not establish any facility or program without first obtaining such operating certificate.

(g) 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.

**FIFTH:** In furtherance, but not in limitation, of the purposes set forth in Article Fourth above, the Corporation shall have the power and authority to do the following:

(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal or mixed, by private or public appeal, by advertisement or by any other lawful means for any corporate purpose;

(b) receive, own, repair, administer and maintain, as applicable, money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, received by grant, contribution, donation, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, and to own, hold, repair, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, mortgage, grant a security interest in or otherwise dispose of or deal with, as applicable, any and all such money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights or services so acquired for any corporate purpose;

(c) aid, support and assist by gifts, contributions or otherwise, other domestic or foreign corporations, community chests, funds and foundations that are organized and operated exclusively for charitable, educational, religious, scientific, literary or cultural purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

**SIXTH:** (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would require the approval or consent of the State of New York or any official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c) Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereunder, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

"The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossession proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified mail



the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that the lease is about to expire."

or other such language, if any, as may be required by applicable law to be contained in any such lease agreement.

(d) The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision of the Commissioner to the extent required by provisions of Article 28-B of the Public Health Law and the relevant regulations in effect from time to time thereunder.

**SEVENTH:** (a) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable, scientific and educational purposes as specified in Section 501(c)(3) of the Code and the Corporation shall not carry on any activity not permitted to be carried on (i) by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code or (ii) by a corporation the contributions, transfers, or gifts to which are deductible under Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code.

(b) The Corporation is not formed for pecuniary profit or for financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual, except to the extent permitted by the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets of the Corporation upon dissolution of the Corporation.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene (including the publishing or distributing of statements) in, any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

**EIGHTH:** The principal office of the Corporation is to be located in Kings County, State of New York.

**NINTH:** The number of Directors shall be as specified in the by-laws of the Corporation, but in no event shall there be fewer than three Directors.

**TENTH:** The Corporation hereby designates the Secretary of State 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 against the Corporation served upon him is:

Housing Works Community Healthcare, Inc.  
57 Willoughby St.  
Brooklyn, NY 11201

**ELEVENTH:** 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, subject to the approval of a Justice of the Supreme Court of the State of New York, but only to one or more organizations as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code.

**TWELFTH:** The Corporation's existence shall be perpetual.

7. The changes included in this Restated Certificate of Incorporation and the restatement of this Certificate of Incorporation were authorized by the sole member of the Corporation.

[The remainder of this page has been intentionally left blank.]

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 13 day of April, 2016.


A handwritten signature in cursive script, appearing to read "Daronne Hudson", written over a horizontal line.

Daronne Hudson  
Secretary

Officer's Statement

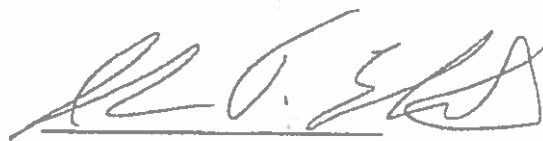
I, Matthew Bernardo, President of Housing Works Community Healthcare (the "Corporation"), a not-for-profit corporation formed under the laws of the State of New York, do hereby confirm that the assets that the Corporation currently has on hand will be used for the current purposes of the Corporation and the assets that are obtained by the Corporation following the filing of the certificate of amendment to the certificate of incorporation of the Corporation, which amends the purposes of the Corporation, will be used for the purposes of the Corporation as amended.

Dated: April 13, 2015

  
Matthew Bernardo / President  
Name & Title of the Office/Director

State of New York     )  
County of KINGS     )

On this 13<sup>th</sup> day of April, 2015 (EE.) before me personally appeared Matthew Bernardo to me known to be the individual described in and who executed the foregoing instrument, and he/she acknowledged to me that he/she executed the same.



Notary Public

ILENA T ELEVITCH  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01EL6149353  
Qualified In Kings County  
My Commission Expires 7/10/16

**STATE OF NEW YORK**  
**OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES**  
**ALBANY, NEW YORK**

**KNOWN ALL PERSONS BY THESE PRESENTS:**

Pursuant to the provisions of Article 32 of the Mental Hygiene Law, and Section 805 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Restated Certificate of Incorporation of

**Housing Works Health Services III, Inc.**

This approval shall not be construed as an authorization for the Corporation to engage in any activity for which the provisions of Article 32 of the Mental Hygiene Law require an Operating Certificate to be issued by the Office of Alcoholism and Substance Abuse Services unless said Corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said Corporation to meet any and all of the requirements and conditions precedent set forth in Article 32 of such law and the regulations promulgated thereunder for issuance of said Operating Certificate.

IN WITNESS WHEREOF, this instrument is Executed and the Seal of the New York State Office of Alcoholism and Substance Abuse Services is affixed this 25<sup>th</sup> day of March, 2016

ROBERT A. KENT  
GENERAL COUNSEL  
NYS OASAS

By: Janet L. Paloski  
Director  
Bureau of Certification and  
Systems Management



*Janet Paloski*

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DOSPITEFH		CORPORATIONS PUBLIC INQUIRY SYSTEM			04/19/16	
FILING HISTORY INFORMATION						
ORG. NAME HOUSING WORKS HEALTH SERVICES III, INC.						
TYPE	NUM OF DOCS	STATUS	COUNTY	NFP TYPE	JURISDIC	
DOM NFP	3	A	NEWY	B		
DATE	MICROFILM #	CODE	DESCRIPTION			
05/06/2003	030506000175	27DN A	PRO			
09/04/1995	950804000462	02DN A	DUR PRO			
04/04/1995	950404000599	01DN A	INCORPORATION (NOT-FOR-PROFIT)			
/ /						
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/ /						
INF101 - PROVIDE REQUIRED INFORMATION AND PRESS APPROPRIATE FUNCTION KEY						
=>						
1=	2=CURRENT	3=PREVIOUS	4=LIST	5=MERGER	6=STOCK	
7=BACKWARD	8=FORWARD	9=CO DETAIL	10=	11=CONVER	12=NAME ENTRY	
		Increase Font	Decrease Font	Disconnect		AT OFF

F 950404000599

CERTIFICATE OF INCORPORATION

OF

HOUSING WORKS HEALTH SERVICES III, INC.

Under Section 402 of the Not-for-Profit Corporation Law  
of the State of New York

I, the undersigned, a natural person eighteen years of age or older, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York, as amended (hereinafter referred to as the "Not-for-Profit Corporation Law"), do hereby certify as follows:

FIRST: The name of the corporation is Housing Works Health Services III, Inc. (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 and shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law having the purposes set forth in Article Fourth below.

THIRD: Pursuant to Section 601 of the Not-for-Profit Corporation Law, the Corporation shall have one class of members, the sole member of which shall be Housing Works, Inc. (hereinafter referred to as "Housing Works"), a New York corporation organized under the Not-for-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code");

all references herein to Sections of the Code shall be to Sections thereof, as amended from time to time, and to corresponding provisions of subsequent United States Internal Revenue laws).

FOURTH: The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include, but are not limited to, the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-



disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counseling and HIV Risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying 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; provided, however, that the Corporation shall not promote or carry on scientific research involving Human subjects, unless such scientific research is conducted in accordance with; and

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public.

FIFTH: In furtherance, but not in limitation, of the purposes set forth in Article Fourth above, the Corporation shall have the power and authority to do the following:

(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal and mixed, by private or public appeal, by

advertisement or by any other lawful means for any corporate purpose;

(b) receive, own, repair, administer and maintain, as applicable, money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, received by grant, contribution, donation, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, and to own, hold, repair, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, mortgage, grant a security interest in or otherwise dispose of or deal with, as applicable, any and all such money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights or services so acquired for any corporate purpose;

(c) aid, support and assist by gifts, contributions or otherwise, other domestic or foreign corporations, community chests, funds and foundations that are organized and operated exclusively for charitable, educational, religious, scientific, literary or cultural purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is

carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(b) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would

carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(b) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would

require the approval or consent of the State of New York or any official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c) Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereunder, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

"The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossession proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified

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mail the New York State Department of Health,  
Tower Building, Empire State Plaza, Albany, NY  
12237, of the receipt of such notice or service of  
such process or that the lease is about to  
expire."

or such other language, if any, as may be required by applicable  
law to be contained in any such lease agreement.

(d) The Corporation has been organized exclusively to  
serve a public purpose and it shall be and remain subject to the  
supervision of the Commissioner to the extent required by the  
provisions of Article 25-B of the Public Health Law and the  
relevant regulations in effect from time to time thereunder.

SEVENTH: (a) Notwithstanding any other provision of  
this Certificate of Incorporation, the Corporation is organized  
exclusively for charitable, scientific and educational purposes  
as specified in Section 501(c)(3) of the Code and the Corporation  
shall not carry on any activity not permitted to be carried on  
(i) by a corporation exempt from Federal income taxation under  
Section 501(c)(3) of the Code or (ii) by a corporation the  
contributions, transfers, or gifts to which are deductible under  
Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code.

(b) The Corporation is not formed for pecuniary profit  
or for financial gain and no part of its assets, income or profit  
shall be distributed to or inure to the benefit of any private  
individual, except to the extent permitted by the Not-for-Profit  
Corporation Law and the Public Health Law and the relevant  
regulations in effect from time to time thereunder. Reasonable  
compensation, however, may be paid for services rendered to or

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require the approval or consent of the State of New York or any official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c). Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereunder, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

"The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossession proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified

for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets of the Corporation upon dissolution of the Corporation.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene (including the publishing or distributing of statements) in, any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 405 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;



(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945(d) of the Code.

EIGHTH: The principal office of the Corporation is to be located in the County and State of New York.

NINTH: The number of Directors shall be as specified in the by-laws of the Corporation; but in no event shall there be fewer than three Directors.

TENTH: The names and addresses of the persons constituting the initial Board of Directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Mindy Fullilove, M.D.	715 Park Avenue Hoboken, New Jersey 07030
Dennis de León, Esq.	337 West 14th St. #51 New York, New York 10014
Valerie Jiménez	262 East 2d St. Apt. 1B New York, New York 10009
Teri Hagan	239 East 2d St. Apt. #2 New York, New York 10009

ELEVENTH: The Corporation hereby designates the Secretary of State as its agent upon which process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation

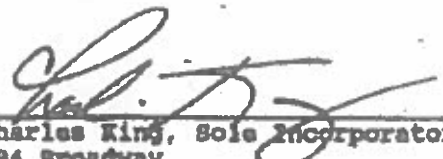
served upon him is:

Housing Works Health Services III, Inc.  
594 Broadway  
7th Floor, Suite 700  
New York, New York 10012  
Attn: Charles King

TWELFTH: 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, subject to the approval of a Justice of the Supreme Court of the State of New York, but only to one or more organisations as shall at the time qualify as an exempt organisation(s) under Section 501(c)(3) of the Code.

THIRTEENTH: The Corporation's existence shall terminate on January 20, 1998.

IN WITNESS WHEREOF, I, CHARLES KING, as sole incorporator, hereby subscribe and affirm, under penalties of perjury, this Certificate of Incorporation as true this 15<sup>th</sup> day of February, 1995.

  
Charles King, Sole Incorporator  
594 Broadway  
7th Floor, Suite 700  
New York, NY 10012

Subscribed and Sworn to this  
15<sup>th</sup> day of February, 1995

  
Notary Public



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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

## PUBLIC HEALTH COUNCIL

MARCH 23, 1995

Mr. Charles King  
Co-Executive Director  
Housing Works, Inc.  
594 Broadway, Suite 700  
New York, NY 10012

Re: Application No. 941006 - Housing Works Health Services III,  
Inc. d/b/a Housing Works East New York HIV/AIDS Adult Day  
Health Care Program (Kings Co.)

Dear Mr. King:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Housing Works Health Services III, Inc. 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 January 20, 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, 8 Penn Plaza, 8th Floor, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, or (212) 623-4268 within 30 days of receipt of this letter.

Sincerely,

Karen S. Westcott  
Executive Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

## PUBLIC HEALTH COUNCIL

March 23, 1995

Mr. Charles King  
Co-Executive Director  
Housing Works, Inc.  
594 Broadway, Suite 700  
New York, NY 10012

Re: Certificate of Incorporation of Housing Works Health  
Services III, Inc.

Dear Mr. King:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of January, 1995, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Housing Works Health Services III, Inc., dated February 15, 1995, for a limited life duration expiring on January 20, 1998.

Sincerely,

  
Karen S. Westervelt  
Executive Secretary

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F 950404000 579

CERTIFICATE OF INCORPORATION  
OF

HOUSING WORKS HEALTH SERVICES III, INC.

UNDER SECTION 401 OF THE NOT-FOR-PROFIT CORPORATION  
LAW OF THE STATE OF NEW YORK

APR 4 5 12 PM '55

FILED

**BILLED**  
**NCR-26**

FILED BY:  
HOUSING WORKS, INC.  
594 BROADWAY  
NEW YORK, N.Y. 10012.

1-22  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED APR 04 1955  
TAX \$ 0  
BY: J.W.  
NEW YORK

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CERTIFICATE OF AMENDMENT  
OF THE CERTIFICATE OF INCORPORATION

PH-32

OF

Housing Works Health Services III, Inc.

PH-92

F 950 804 000 462

Under Section 803 of the  
Not-For-Profit Corporation Law

We, the undersigned, Charles King and Craig Stier, being respectively the Vice-President and Secretary of Housing Works Health Services III, Inc. (hereinafter referred to as the "Corporation"), hereby certify:

1. The name of the Corporation under which it was originally incorporated is Housing Works Health Services III, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on the 4th day of April, 1995 and the law under which it was formed is Section 402 of the New York Not-For-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the New York Not-For-Profit Corporation law and is a Type B corporation under Section 201 of the New York Not-For-Profit Corporation Law. Pursuant to Section 601 of the Not-For-Profit Corporation Law, the Corporation has one class of member, the sole member of which is Housing Works, Inc., a New York corporation organized under the Not-For-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 501(a) (1) of the Internal Revenue Code of 1986, as amended.

4. (a) Article THIRTEENTH of the Corporation's Certificate of Incorporation is amended to extend the existence of the Corporation from terminating on January 20, 1998 to perpetual existence.

(b) To effect the foregoing, Article THIRTEENTH of the Corporation's Certificate of Incorporation is amended to read in its entirety as follows:

**THIRTEENTH:** The Corporation's existence shall be perpetual.


(c) this amendment was authorized by the unanimous vote of the Board of Directors of the Corporation present at a duly convened meeting of the Board of Directors of the Corporation held on July 26, 1995 at which all of the members of the Board of Directors of the Corporation were present.

5. The Secretary of State is designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Health Services III, Inc.  
594 Broadway  
7th Floor, Suite 7000  
New York, New York 10012  
Attn: Charles King

INN WITNESS WHEREOF, the undersigned have executed this  
Certificate of Amendment on the 27th day of July, 1995 and affirm the statements  
contained herein as true under penalties of perjury.

  
-----  
Charles King  
Vice-President

  
-----  
Craig Stier  
Secretary

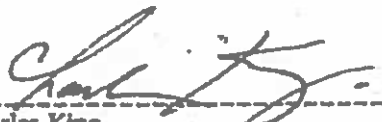
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**VERIFICATION**

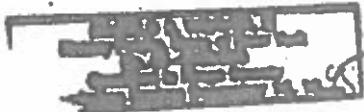
STATE OF NEW YORK )  
                                  :  
COUNTY OF NEW YORK )

Charles King, being duly sworn, deposes and says that he is the Vice-President of Housing Works Health Services III, Inc., and that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. and knows the contents thereof, and that the contents thereof are, of his own personal knowledge, true and correct, except as to statements based upon information and belief, and as to those matters, he believes them to be true.

  
-----  
Charles King  
Vice-President

Sworn to before me this  
27th day of July, 1995

  
-----  
Notary Public




VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

Craig Stier, being duly sworn, deposes and says that he is the Secretary of Housing Works Health Services III, Inc., and that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. and knows the contents thereof, and that the contents thereof are, of his own personal knowledge, true and correct, except as to statements based upon information and belief, and as to those matters, he believes them to be true.

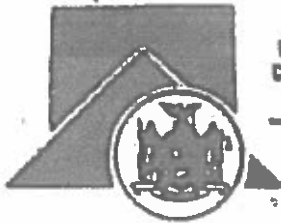
  
-----  
Craig Stier  
Secretary

Sworn to before me this  
27th day of July, 1995

  
-----  
Notary Public



5



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12227

## PUBLIC HEALTH COUNCIL

August 4, 1995

Mr. Charles King  
Co-Executive Director  
Housing Works, Inc.  
594 Broadway, Suite 700  
New York, NY 10012

Re: Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc.

Dear Mr. King:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of January, 1995, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of Housing Works Health Services III, Inc., dated July 27, 1995.

Sincerely,

Karen S. Weisheit  
Executive Secretary

PH-32

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
HOUSING WORKS HEALTH SERVICES-III, INC.

F 950 80 4000 462

Under Section 803 of the  
Not-For-Profit Corporation Law

*WAS*

*ICG*

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED AUG 04 1995

TAXS  
BY: *SAC*  
*New York*

AUG 4 1 50 PM '95

AUG 5 1 52 PM '95

RECEIVED

Craig S. Stier, Esq.  
Housing Works, Inc.  
594 Broadway - suite 700  
New York, NY 10012  
(212)966-0466

**BILLED**

⑦

950 80 4000 487

1080506000/78

New York State  
Department of State  
Division of Corporations, State Records  
and Uniform Commercial Code  
41 State Street  
Albany, NY 12211

CERTIFICATE OF CHANGE

Housing Works Health Services III, Inc.  
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for Profit Corporation Law

FIRST: The name of the corporation is: Housing Works Health Services III, Inc.

If the name of the corporation has been changed, the name under which it was formed is: \_\_\_\_\_

SECOND: The certificate of incorporation was filed by the Department of State on: 7/4/95

THIRD: The change(s) effected hereby are: *(Check appropriate box(es))*

The county location within this state in which the office of the corporation is located is changed to: \_\_\_\_\_

The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to: 320 West 134th Street 4th Floor  
New York, NY 10014

The corporation hereby: *(Check one)* (N/A)

Designates \_\_\_\_\_ as its registered agent upon whom process against the corporation may be served. The street address of the registered agent is: \_\_\_\_\_

Changes the designation of its registered agent to: \_\_\_\_\_ The street address of the registered agent is: \_\_\_\_\_

Changes the address of its registered agent to: \_\_\_\_\_

Revokes the authority of its registered agent.

f 030506000 175

FOURTH: The change was authorized by the board of directors.

[Signature]  
(Signature)

Keith Cylan - Co-President/CEO  
(Name and Capacity of Signer)

CERTIFICATE OF CHANGE

OF

Housing Works Health Services III, Inc.  
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name Kris Cavanaugh  
Address 320 West 13<sup>th</sup> Street 4<sup>th</sup> Floor  
City, State and Zip Code NY, NY 10014

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$20 filing fee.

STATE OF NEW YORK  
DEPARTMENT OF STATE

For Office Use Only

MAY 06 2003

FILED  
TAXS  
BY: [Signature]  
NEWY

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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of June, 2016, approves the filing of the Restated Certificate of Incorporation of Housing Works Health Service III, Inc., dated April 13, 2016.



## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** May 11, 2016

**Subject:** Proposed Revised Restated Certificate of Incorporation of Planned Parenthood of Nassau County, Inc.

---

Attached is the proposed revised and restated certificate of incorporation of Planned Parenthood of Nassau County, Inc. This not-for-profit corporation seeks approval to file its Revised and Restated Certificate of Incorporation. Public Health and Health Planning Council approval for the changes made to said certificate is required by Not-for-Profit Corporation Law § 804(a) and Public Health Law § 2801-a.

There is no legal objection to the changes and the proposed revised and restated certificate of incorporation is in legally acceptable form.





NIXON PEABODY LLP  
ATTORNEYS AT LAW

NIXONPEABODY.COM  
@NIXONPEABODYLLP

**Laura Roethel**  
*Paralegal*  
T 585-263-1503  
F 866-351-8783  
lroethel@nixonpeabody.com

Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792  
585-263-1000

May 9, 2016

**VIA FEDERAL EXPRESS**

Eric Mantey, Esq.  
NYS Department of Health  
Division of Legal Affairs  
Empire State Plaza  
Corning Tower, Room 2482  
Albany, New York 12237-0031

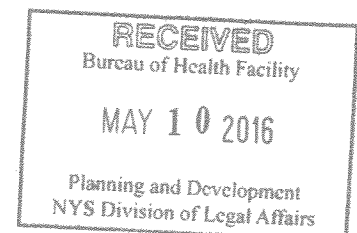
RE: Planned Parenthood of Nassau County, Inc.  
*Revised Restated Certificate of Incorporation*

Dear Mr. Mantey:

In connection with our conversations, enclosed please find the revised Restated Certificate of Incorporation of Planned Parenthood of Nassau County, Inc. (the "Corporation").

The Corporation is amending and restating its Certificate of Incorporation to:

1. provide that the Corporation now operates multiple treatment and diagnostic centers in New York State, each of which obtained approval from the Department prior to operating (See. paragraph SECOND);
2. more accurately reflect the purposes for which the Corporation operates and address the scope of their services as they have evolved over the years (See. paragraph SECOND); and
3. make certain clean-up changes throughout its Certificate, including:
  - (i) updating its principal office;
  - (ii) removing the fixed number of directors;
  - (iii) omitting the names of the initial directors and subscribers;
  - (iv) updating its dissolution provisions; and
  - (v) adding language relating to the Corporation's federal tax-exempt status as required by the IRS.



We respectfully request the Department's consent to the enclosed revised Restated Certificate. If the Restated Certificate meets with your approval, please return evidence of your approval to me so that we may file the documents with the Secretary of State

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Laura R. Roethel".

Laura R. Roethel  
Paralegal

Enclosures

**RESTATED CERTIFICATE OF INCORPORATION  
OF  
PLANNED PARENTHOOD OF NASSAU COUNTY, INC.**

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the President and Chief Executive Officer of Planned Parenthood of Nassau County, Inc. (the "Corporation"), for the purpose of amending and restating the Certificate of Incorporation of the Corporation pursuant to Section 805 of the Not-for-Profit Corporation Law of the State of New York (the "N-PCL"), hereby certifies:

- (1) The name of the Corporation is Planned Parenthood of Nassau County, Inc.
- (2) The Certificate of Incorporation of the Corporation was filed by the Department of State on the 31st day of October, 1973 under Section 402 New York Not-For-Profit Corporation Law ("N-PCL").
- (3) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL. The Corporation was formed as a charitable corporation under Section 201 of the N-PCL and will remain a charitable corporation after the amendment of its Certificate of Incorporation reflected herein.
- (4) The Certificate of Incorporation is hereby amended to affect the following:
  - (A) Paragraph "FIRST" relating to the name and type of the Corporation is hereby amended in its entirety to read as follows:

"FIRST: The name of the Corporation is PLANNED PARENTHOOD OF NASSAU COUNTY, INC., which is a corporation as defined in subparagraph (a)(5) of §102 and is a charitable corporation under §201, respectively, of the Not-For-Profit Corporation Law."
  - (B) Paragraph "SECOND" related to the purposes of the Corporation is amended in its entirety to read as follows:

"SECOND: The purposes for which the Corporation is formed are (a) to establish, operate and maintain three treatment and diagnostic centers engaged principally in providing medical services by or under the supervision of physicians, wherein medically approved reproductive health care information, advice and treatment will be provided within the meaning of subdivision 1 of §2801 of the New York State Public Health Law; such treatment and diagnostic centers will be located in Nassau County, State of New York; and (b) for any purpose for which corporations may be organized under the Not-for-Profit Corporation Law as a charitable corporation. This corporation shall conduct or operate a health facility or service as that term is defined in the Public Health Law

of the State of New York, Article 28 thereof; nor will this corporation charge a fee for any referral services of any kind of nature whatever; nor will this corporation solicit or accept directly or indirectly funds from those medical facilities to which it refers persons. 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 §404(b)-(n) and (p).”

- (C) Paragraph “THIRD” relating to the Corporation’s principal office is hereby amended in its entirety to read as follows:

“THIRD: Its principal office, treatment and diagnostic center and operations in the State of New York shall be located in Nassau County.”

- (D) Paragraph “FIFTH” relating to the number of directors is deleted in its entirety.

- (E) Paragraph “SIXTH” relating to the names and address of the initial directors is omitted.

- (F) Paragraph “SEVENTH” relating to the subscribers to the Certificate of Incorporation is omitted.

- (G) Paragraph “EIGHTH” relating to the dissolution of the Corporation is hereby renumbered and amended in its entirety to read as follows:

“In the event of the liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary or by operation of law, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more organizations which are then qualified under Code Section 501(c)(3) to be used in a manner that will best accomplish the general purposes for which this Corporation was formed, subject to any required approvals under the N-PCL or other applicable law.”

- (H) A new Paragraph relating to service of process is hereby added to read in its entirety as follows:

“The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process so served is: 540 Fulton Avenue, Hempstead, New York 11550.”

- (I) A new Paragraph relating to the tax-exempt status of the Corporation is hereby added to read in its entirety as follows:

“The following language relates to the Corporation’s and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation’s purposes or powers set forth in paragraph SECOND.

Notwithstanding any other provision of this certificate, the Corporation is organized exclusively for charitable purposes, and the Corporation 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.”

- (J) A new Paragraph relating to federal tax matters is hereby added to the Certificate of Incorporation to read as follows:

“(a) 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, other than an organization described in Section 501(c)(3) of the Code, except that reasonable compensation may be paid for services rendered to or for the Corporation. No member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(b) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Code. The Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office.

(c) 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, as specified in Section 501(c)(3) of the Code. The Corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code.”

- (K) To renumber the Paragraphs accordingly.

(5) This amendment and restatement of the Certificate of Incorporation was authorized by majority vote of the entire Board of Directors.

- (6) The Certificate of Incorporation is restated as amended herein to read as follows:

FIRST: The name of the Corporation is PLANNED PARENTHOOD OF NASSAU COUNTY, INC., which is a Corporation as defined in subparagraph

(a)(5) of §102 and is a charitable corporation under §201, respectively, of the Not-For-Profit Corporation Law.

SECOND: The purposes for which the Corporation is formed are (a) to establish, operate and maintain three treatment and diagnostic centers engaged principally in providing medical services by or under the supervision of physicians, wherein medically approved reproductive health care information, advice and treatment will be provided within the meaning of subdivision 1 of §2801 of the New York State Public Health Law; such treatment and diagnostic centers will be located in Nassau County, State of New York; and (b) for any purpose for which corporations may be organized under the Not-for-Profit Corporation Law as a charitable corporation. This corporation shall conduct or operate a health facility or service as that term is defined in the Public Health Law of the State of New York, Article 28 thereof; nor will this corporation charge a fee for any referral services of any kind of nature whatever; nor will this corporation solicit or accept directly or indirectly funds from those medical facilities to which it refers persons. 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 §404(b)-(n) and (p).

THIRD: Its principal office, treatment and diagnostic center and operations in the State of New York shall be located in Nassau County.

FOURTH: Prior to the delivery of this certificate of incorporation to the Department of State for filing, all approvals or consents required by law will be endorsed upon or annexed hereto.

FIFTH: In the event of the liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary or by operation of law, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more organizations which are then qualified under Code Section 501(c)(3) to be used in a manner that will best accomplish the general purposes for which this Corporation was formed, subject to any required approvals under the N-PCL or other applicable law.

SIXTH: The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process so served is: 540 Fulton Avenue, Hempstead, New York 11550.

SEVENTH: The following language relates to the Corporation's tax-exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation's purposes or powers set forth in paragraph SECOND.

Notwithstanding any other provision of this certificate, the Corporation is organized exclusively for charitable purposes, and the Corporation 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.

EIGHTH: (a) 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, other than an organization described in Section 501(c)(3) of the Code, except that reasonable compensation may be paid for services rendered to or for the Corporation. No member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(b) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Code. The Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office.

(c) 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, as specified in Section 501(c)(3) of the Code. The Corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code.

(7) The Secretary of State is hereby designated as the agent of the Corporation upon when process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary shall mail a copy of any such process is: 540 Fulton Avenue, Hempstead, New York 11550.

IN WITNESS WHEREOF, the undersigned has signed this certificate and hereby affirms it as true under penalties of perjury this 5<sup>th</sup> day of November, 2014.



Name: JoAnn D. Smith  
Title: President and  
Chief Executive Officer

**RESTATED CERTIFICATE OF INCORPORATION  
OF  
PLANNED PARENTHOOD OF NASSAU COUNTY, INC.**

**Under Section 805 of the Not-for-Profit Corporation Law**

Filed By:  
Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604



CERTIFICATE NO. 2950105R

PFI NO. 0532

# State of New York Department of Health Office of Health Systems Management

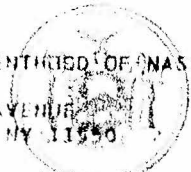
EFFECTIVE DATE 10/18/01

DIAGNOSTIC & TREATMENT CENTER

## OPERATING CERTIFICATE

EXPIRES DATE \*\*\*NONE\*\*

PLANNED PARENTHOOD OF NASSAU CO  
INC  
540 FULTON AVENUE  
HENPSTEAD NY 11750



OPERATOR VOLUNTARY CORPORATION  
PLANNED PARENTHOOD OF NASSAU  
COUNTY INC

HAS BEEN GRANTED THIS OPERATING CERTIFICATE PURSUANT TO ARTICLE 28  
OF THE PUBLIC HEALTH LAW FOR THE SERVICE(S) SPECIFIED:

ABORTION  
NURSING  
PRIMARY MEDICAL CARE  
.....

FAMILY PLANNING  
PART TIME CLINICS  
SOCIAL WORK SERVICE  
.....

HEALTH FAIRS  
PRENATAL  
.....

OTHER AUTHORIZED LOCATION(S) 2  
PP OF NASSAU COUNTY - GLEN COVE  
110 SCHOOL STREET  
GLEN COVE 11542

PP OF NASSAU CO MASSAPEQUA  
35 CARMENS ROAD  
MASSAPEQUA 11750

*Christina M. Johnson*

AREA ADMINISTRATOR

*John C. Anello*  
COMMISSIONER

CERTIFICATE OF INCORPORATION

-of-

PLANNED PARENTHOOD OF NASSAU COUNTY, INC.  
Under §402 of the Not-For-Profit Corporation Law

We, the undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-For-Profit Corporation Law, hereby certify:

FIRST: The name of the proposed corporation is PLANNED PARENTHOOD OF NASSAU COUNTY, INC., which is a corporation as defined in subparagraph (a)(5) of §102 and is a Type B corporation under §201, respectively, of the Not-For-Profit Corporation Law.

SECOND: The purposes for which it is to be formed are:

(a) To establish, operate and maintain one (1) treatment and diagnostic center engaged principally in providing medical services by or under the supervision of physicians, wherein medically approved birth control information, advice and treatment will be provided within the meaning of subdivision 1 of §2801 of the New York State Public Health Law; such treatment and diagnostic center will be located in Nassau County, State of New York;

(b) To provide leadership for the universal acceptance of family planning as an essential element of responsible parenthood, stable family life and social harmony;

(c) To provide information for family planning and study the social and economic consequences of various rates of population increase;

(d) To provide information and counselling for marriages, and to cooperate with other responsible agencies in this field;

(e) To provide information about control of conception without regard to race, creed or color;

(f) To provide the means, through referral or otherwise, for childless couples to obtain specialized medical advice on fertility problems;

(g) To provide medically approved birth control information in conformity with the laws of the State of New York; however, this corporation shall not conduct or operate a health facility or service as that term is defined

in the Public Health Law of the State of New York, Article 28 thereof; nor will this corporation charge a fee for any referral services of any kind or nature whatever; nor will this corporation solicit or accept directly or indirectly funds from those medical facilities to which it refers persons;

(h) To promote research in the field of human reproduction;

(i) To operate on a non-profit but sustaining basis. The corporation shall not be conducted or operated for profit and no part of any net earnings shall inure to the benefit of any member or individual nor shall any of such net earnings on the property or assets of the corporation be used otherwise than for charitable purposes, scientific, educational and/or religious purposes;

(j) No part of the activities of this 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 or on behalf of any candidate for public office. 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 §404(b) -(p) or Executive Law, §757;

(k) The corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under §501(c)(3) of the Internal Revenue Code of 1954, as amended;

(l) To acquire property for corporate purposes by grant, gift, purchase, devise or bequest and to hold and to dispose of the same subject to such limitations as are prescribed by statute; in furtherance of its corporate purposes, the corporation shall have all general powers enumerated in §202, N-PCL, together with the power to solicit grants and contributions for corporate purposes;

(m) To enter into, make and perform contracts of a sort and description necessary to the activities of the corporation with any person, firm, association, corporation, body politic or government;

(n) To purchase, acquire, own, hold, maintain, operate, manage, use, develop, improve, rent, lease, mortgage, sell, exchange, dispose of, deal in and otherwise hold real, mixed or personal property, and any and all interests or rights therein, subject to such limitations as are prescribed by law and as may be requisite for the transaction of its business or the conduct of its affairs.

(o) In general to exercise such powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes herein above set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the corporation subject to such limitations as are or may be prescribed by law.

THIRD: Its principal office, treatment and diagnostic center and operations

AT 1940 HEMPSTEAD TURNPIKE, EAST MEADOW,  
are to be located and conducted in the Town of Hempstead, County of Nassau,  
THE ADDRESS TO WHICH THE SECRETARY OF STATE SHALL MAIL ANY NOTICE REQUIRED BY LAW

FOURTH: Prior to the delivery of this certificate of incorporation to the

Department of State for filing, all approvals or consents required by law will be endorsed upon or annexed hereto.

FIFTH: The number of directors shall be not less than five (5) nor more than twenty-five (25).

SIXTH: The names and addresses of residence of its directors until the first annual meeting are as follows:

Mrs. Emaline Finkels, 17 Lawson Lane, Great Neck, New York  
Mrs. Esther Jonas, 4 Summit Avenue, East Williston, New York  
Mrs. Grace Lynch, 365 Stewart Avenue, Garden City, New York  
Mrs. Marjorie P. McEwen, 3 Devereux Place, Garden City, New York  
Mrs. Helen Minton, Old Courthouse Road, New Hyde Park, New York  
Mrs. Anne Smith, 475 Mineola Boulevard, Mineola, New York

SEVENTH: All of the subscribers to this Certificate are of full age, at least two-thirds of them are citizens of the United States and at least one of them is a resident of the State of New York. Of the persons named as directors, at least one is a citizen of the United States and a resident of the State of New York.

EIGHTH: 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 by virtue of and subject to 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, literary, religious and/or educational.

IN WITNESS WHEREOF, we have made, subscribed, and acknowledged this Certificate, this 2nd day of December, 1971.

*Emaline Finkels*

(MRS.) EMALINE FINKELS

17 Lawson Lane, Great Neck, New York

*Esther Jonas*

(MRS.) ESTHER JONAS

4 Summit Avenue, East Williston, New York

*Grace Lynch*

(MRS.) GRACE LYNCH

365 Stewart Avenue, Garden City, New York

*Marjorie P. McEwen*

(MRS.) MARJORIE P. MC EWEN

3 Devereux Place, Garden City, New York

*Helen Minton*

(MRS.) HELEN MINTON

Old Courthouse Road, New Hyde Park, N. Y.

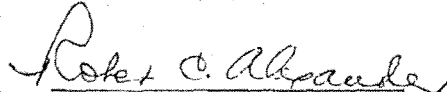
*Anne R. Smith*

(MRS.) ANNE SMITH

475 Mineola Boulevard, Mineola, New York

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NASSAU )

On this 2nd day of December 1971, before me personally appeared EMALINE FINKELS, ESTHER JONAS, GRACE LYNCH, MARJORIE P. MC EWEN, HELEN MINTON and ANNE SMITH, each to me known and known to me to be the same persons described in and who executed the foregoing Certificate of Incorporation, and each thereupon duly acknowledged to me that she executed the same.

  
Notary Public

ROBERT C. ALEXANDER  
NOTARY PUBLIC, State of New York  
No. 30-0029975  
Qualified in Nassau County  
Commission Expires March 30, 1973

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NASSAU )


On this 28th day of December, 1972, before me personally appeared EMALINE FINKELS, ESTHER JONAS, GRACE LYNCH, MARJORIE MC EWEN, HELEN MINTON and ANNE SMITH, each to me known and known to me to be the same persons described in and who executed the foregoing Certificate of Incorporation and each thereupon duly reacknowledged that she executed the same, as amended.

  
Notary Public

ROBERT C. ALEXANDER  
NOTARY PUBLIC, State of New York  
No. 30-0029975  
Qualified in Nassau County  
Commission Expires March 30, 1973

I, HON. L. KINGSLEY SMITH, a Justice of the  
Supreme Court of the State of New York, of the Tenth Judicial District, hereby  
approve the foregoing Certificate of Incorporation.


Dated:

  
Justice of the Supreme Court

*J*  
Dated OCT 31 1973  
SUPREME COURT, NASSAU COUNTY  
**SPECIAL TERM, PART II**  
MINEOLA, NEW YORK 11501

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: October 25, 1973  
LOUIS J. LEFKOWITZ  
Attorney General

By   
Assistant Attorney General

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NASSAU )

EMALINE FINKELS, ESTHER JONAS, GRACE LYNCH,  
MARJORIE P. MC EWEN, HELEN MINTON and ANNE SMITH, each being  
duly sworn, says:

That each deponent is one of the subscribers of the fore-  
going Certificate of Incorporation of PLANNED PARENTHOOD OF NASSAU  
COUNTY, INC. ; that the said Certificate of Incorporation is the incorpora-  
tion of an existing unincorporated association, namely, PLANNED  
PARENTHOOD OF NASSAU COUNTY; that the purposes set forth in the  
Certificate of Incorporation are the same as those of the unincorporated  
association; that the subscribers of such Certificate of Incorporation consti-  
tute a majority of the members of a committee authorized to incorporate  
such association, by vote, as required by the organic law of the association,  
for the amendment of such organic law.

That no previous application for the approval of the fore-  
going Certificate of Incorporation has been made.

Marjorie P. McEwen  
Esther S. Jonas  
Grace Lynch  
Emaline Finkels  
Helen C. Minton  
Grace Lynch

Sworn to before me this

2nd day of December, 1971.

Robert C. Alexander  
Notary Public

ROBERT C. ALEXANDER  
NOTARY PUBLIC, State of New York  
No. 30-0029875  
Qualified in Nassau County  
Commission Expires March 30, 1973



CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
PLANNED PARENTHOOD OF NASSAU COUNTY, INC.  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT  
CORPORATION LAW

We, the undersigned, being the Chairman of the Board, President and Secretary of the PLANNED PARENTHOOD OF NASSAU COUNTY, INC., do hereby certify:

FIRST: The name of the corporation is PLANNED PARENTHOOD OF NASSAU COUNTY, INC.

SECOND: The Certificate of Incorporation of the PLANNED PARENTHOOD OF NASSAU COUNTY, INC. was filed by the Department of State on the 31st day of October, 1973. The said corporation was formed under the Not-For-Profit Corporation Law of the State of New York.

THIRD: The PLANNED PARENTHOOD OF NASSAU COUNTY, 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.

FOURTH: The Certificate of Incorporation is hereby amended to effect the following changes:

(a) To effect an enlargement of the corporate purposes pursuant to Section 801(b)(2) of the Not-For-Profit Corporation Law, and

(b) To change the location of the office of the corporation pursuant to Section 801(b)(6) of the Not For Profit Corporation Law, and

(c) To add the provision that the corporation will not solicit funds from any facility to which it refers any individual and no fee will be charged for such referrals, and

(d) To provide that in the event of dissolution of the corporation, all of the assets of the corporation shall be distributed after the satisfaction of its liabilities to another exempt corporation under 501(c)3 of the Internal Revenue Code, and

(e) To add the provision that the corporation 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, and

(f) To add the provision that no part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director or officer of the corporation and that upon dissolution they are not entitled to share in any of the corporate assets.

FIFTH: Paragraph "SECOND (j)" of the Certificate of Incorporation is hereby amended to read as follows:

"No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by 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."

SIXTH: Paragraph "THIRD" of the Certificate of Incorporation is hereby amended to read as follows:

"Its principal office, treatment and diagnostic center and operations are to be located and conducted at 107 Mineola Boulevard, Mineola, Town of North Hempstead, County of Nassau, the address to which the Secretary of State shall mail any notice required by law".

SEVENTH: Paragraph "SECOND" of the Certificate of Incorporation is hereby amended adding provision (p), (q) and (r) as follows:

- (p) "The corporation will not solicit funds from any facility to which it refers any individual and no fee will be charged for such referrals."
- (q) "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 amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment, or for the prevention of cruelty to children or animals, as specified in Section 501(c)(3) of the 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."

(r) "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 (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."

EIGHTH: Paragraph "EIGHTH" of the Certificate of Incorporation is hereby amended to read as follows:

"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."

NINTH: The manner in which these amendments to the Certificate of Incorporation of the PLANNED PARENTHOOD OF NASSAU COUNTY, INC. was authorized was by the affirmative vote of a majority of the entire Board of Directors at a meeting of the Board of Directors duly called and held on the            day of            , 19            , the affirmative votes being at least equal to the quorum.

TENTH: That notwithstanding the foregoing amendments of the Certificate of Incorporation the PLANNED PARENTHOOD OF NASSAU COUNTY, INC. shall continue to be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law.


ELEVENTH: The post office address to which the Secretary of State shall mail a copy of any notice required by law is 107 Mineola Boulevard, Mineola, New York, 11501.

TWELFTH: The following approvals and consents were endorsed or annexed to the Certificate of Incorporation:

The approval of a Justice of the Supreme Court for the Second Judicial District, a Waiver of Notice of Application by the Attorney General of the State of New York and an approval by the Public Health Council, State of New York, Department of Health.

Prior to the delivery of this Certificate of Amendment to the Department of State for filing, all approvals or consents of the body or officer hereinabove set forth will be endorsed upon or annexed hereto.

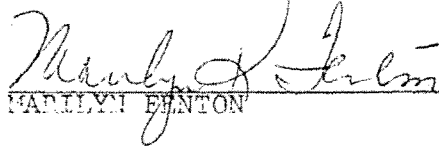
IN WITNESS WHEREOF, the undersigned have made, subscribed and verified this certificate this                      day of November, 1980.

  
\_\_\_\_\_  
MARILYN STANTON  
President and Chairman

  
\_\_\_\_\_  
EZEDRED SILKO  
Recording Secretary

STATE OF NEW YORK)  
COUNTY OF NASSAU ) ss.:

MARILYN FENTON, being duly sworn, deposes and says that she is one of the persons described in and who executed the foregoing certificate and is the Chairman and President of Planned Parenthood of Nassau County, Inc., that she has read the foregoing certificate and knows the contents thereof and that the statements therein contained are true.

  
MARILYN FENTON

Sworn to before me this  
12<sup>th</sup> day of November, 1980

  
NOTARY

ROBERT EILELLO  
Notary Public, State of New York  
No. 30-4526978  
Qualified in Nassau County  
Commission Expires March 30, 1982

STATE OF NEW YORK)  
COUNTY OF NASSAU ) ss.:

MILDRED ZILKO, being duly sworn, deposes and says that she is one of the persons described in and who executed the foregoing certificate and is the Recording Secretary of Planned Parenthood of Nassau County, Inc., that she has read the foregoing certificate and knows the contents thereof and that the statements therein contained are true.

  
MILDRED ZILKO

Sworn to before me this  
12<sup>th</sup> day of November, 1980

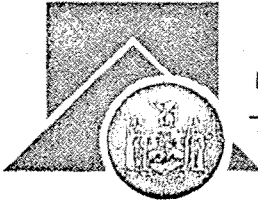
  
NOTARY

ROBERT EILELLO  
Notary Public, State of New York  
No. 30-4526978  
Qualified in Nassau County  
Commission Expires March 30, 1982

I, HON. \_\_\_\_\_, a Justice of the Supreme Court  
of the State of New York, of the Tenth Judicial District, hereby approve  
the foregoing Certificate of Amendment of the Certificate of Incorporation  
of Planned Parenthood of Nassau County, Inc.

---

Justice of the Supreme Court



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY

# PUBLIC HEALTH COUNCIL

June 26, 1973

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 22nd day of June, 1973, I hereby certify that the application for the establishment of Planned Parenthood of Nassau County, Inc. as the operator of Planned Parenthood of Nassau County, Inc. is APPROVED.

ANDREW KRIEGER  
Secretary

Sent to: Robert Alexander, Esq. ✓  
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Planned Parenthood of Nassau County  
1940 Hempstead Turnpike  
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of June, 2016, approves the filing of the Restated Certificate of Incorporation of Planned Parenthood of Nassau County, Inc., dated November 5, 2014.



**Project # 152302-B**  
**UES ASC, LLC t/b/k/a Upper East Side ASC, LLC**

**Program: Diagnostic and Treatment Center      County: New York**  
**Purpose: Establishment and Construction      Acknowledged: November 23, 2015**

**Executive Summary**

**Description**

UES ASC, LLC, a New York limited liability company, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC) to be certified as a multi-specialty FASC specializing in orthopedic, podiatric and otolaryngology surgery, including plastic and head and neck surgery. The applicant will lease 6,672 square feet on the sixth floor of an existing building located at 234 East 85th Street, New York (New York County). The site will include two operating rooms along with the requisite support areas. Upon approval, the FASC will be known as Upper East Side ASC, LLC.

This application was developed with the support of Mount Sinai Health System (MSHS), which encompasses the Icahn School of Medicine at Mount Sinai and seven (7) member hospital campuses (Mount Sinai Hospital, Mount Sinai St. Luke's, Mount Sinai Beth Israel, Mount Sinai Roosevelt, Mount Sinai Hospital Queens, Mount Sinai Brooklyn and New York Eye and Ear Infirmary of Mount Sinai). The FASC will consolidate several Mount Sinai (faculty) medical practices and community-based physicians, bringing them together into an Article 28 regulatory environment. The applicant expects 85% of the projected 3,020 first year procedures will come from the following: 55% from one of Mount Sinai Health System's facilities (Mount Sinai Hospital, Mount Sinai Beth Israel, Mount Sinai St. Luke's and New York Eye and Ear Infirmary of Mount Sinai); 27% from other FASCs; and 3% from physicians' private practices.

The proposed ownership structure of the Center consists of the following:

- 14 individual physicians collectively owning 50% Class A membership;
- four individuals employed by and having ownership interest in Ambulatory Surgical Centers of America (ASCOA), collectively owning 20% Class B membership interest; and
- Mount Sinai Ambulatory Ventures, Inc. (previously known as Beth Israel Ambulatory Care Services Corp.), a New York not-for-profit corporation owning 30% Class C membership interest.

Mount Sinai Ambulatory Venture's Inc.'s (MSAV) sole passive member is Mount Sinai Health System, Inc. (MSHS) (which has no members) and whose Board of Trustees consists of the same members as the board of Mount Sinai Hospitals Group, Inc. (MSHG), the active parent and co-operator of the Mount Sinai Hospital, Mount Sinai Queens, New York Eye and Ear Infirmary of Mount Sinai, Mount Sinai St. Luke's, Mount Sinai Roosevelt, Mount Sinai Beth Israel and Mount Sinai Brooklyn. MSAV, MSHS and MSHG have not taken, and will not take, an active role in the operations of UES ASC, LLC.

**OPCHSM Recommendation**  
Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

### Need Summary

The number of projected procedures is 3,020 in Year 1 with Medicaid at 10% and charity care at 2%.

### 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 \$5,755,399 will be met through members' equity of \$575,539, with the remaining \$5,179,860 balance being financed over seven years through Bankwell Bank at 4.8% interest. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,986,942	\$5,394,869
Expenses	<u>\$4,323,187</u>	<u>\$4,664,117</u>
Gain/(Loss)	\$663,755	\$730,752

## 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 of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed project 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 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]
6. 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]
7. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
  - a. Actual utilization including procedures;
  - b. Breakdown of visits by payor source;
  - c. Percentage of charity care provided by visits;
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - e. Number of emergency transfers to a hospital;
  - f. Number of nosocomial infections recorded;
  - g. A brief list of all efforts made to secure charity cases; and
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans.[RNR]
8. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
9. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
10. Submission of a photocopy of the applicant's completed and executed Asset Purchase Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of an amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]

12. Submission of a photocopy of the applicant's amended and completed Articles or Organization, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed facility contract of sale, deed or lease agreement, acceptable to the Department. [CSL]
14. Submission of a photocopy of the Certificate of Incorporation and By-laws of TBHC Endo Services Corp., acceptable to the Department. [CSL]
15. Submission of all relevant corporate documents of BIMC Holding Corporation, 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 submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. 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]
8. Construction must start on or before July 15, 2016 and construction must be completed by January 4, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**June 9, 2016**

## Need Analysis

### Analysis

The service area consists of New York County. New York County has a total of 15 freestanding ambulatory surgery centers: seven multi-specialty ASCs and eight 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	Facility 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 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 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 2/22/13)	9,140	10,685
<b>Total</b>		<b>93,680</b>	<b>97,420</b>

Source: SPARCS-2015

For all ambulatory surgery centers in New York County, the total number of patient visits was 93,680 in 2013 and 97,420 in 2014, a 4% year-to-year increase. For all multi-specialty ASCs in the county, the number of patient visits was 24,717 in 2013 and 26,768 in 2014, 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%) in the 45 and over age category. This is the primary population group utilizing ambulatory surgery services. Per Cornell Program on Applied Demographics (PAD) projection data, this 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 3,020 in Year 1 and 3,265 in Year 3. The table below shows the projected payor source utilization for Years 1 and 3.

	Year 1 Volume	Year 1 %	Year 3 Volume	Year 3 %
Commercial Ins	1,779	58.9%	1,923	58.9%
Medicare	528	17.4%	570	17.4%
Medicaid	302	10.0%	327	10.0%
Private pay	59	2.0%	64	2.0%
Charity Care	59	2.0%	64	2.0%
Other	293	9.7%	317	9.7%
<b>Total</b>	<b>3,020</b>	<b>100.0%</b>	<b>3,265</b>	<b>100.0%</b>

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: AmeriHealth, Fidelis and Health First. In addition, the Center would look to contract with any other Medicaid provider that has existing contracts with any of the MSHS hospitals and/or affiliated providers.

The Center will partner with the Mount Sinai Health System (MSHS) to implement a charity care initiative. The Center and MSHS would look to leverage clinical affiliations through the Mount Sinai Health Network to make care available at the Center for those uninsured, underinsured and Medicaid-recipient patients who require ambulatory surgical services.

There are two federally qualified health centers (FQHC's) which are part of the Mount Sinai Health Network, with locations within the Center's service area of New York County and with which the Center would seek to establish a collaborative relationship: The Institute for Family Health and Settlement Health. In addition, the Center will participate as a provider in the Mount Sinai Health Home and the MSHS PPS to develop referral and other collaborative arrangements to enhance access to ambulatory surgery services to Medicaid and charity care patients.

**Conclusion**

Approval of this project will provide increased access to multi-specialty surgery services for the communities of New York County.

**Recommendation**

**From a need perspective, contingent approval is recommended for a limited period of five years.**

**Program Analysis**

**Project Proposal**

UES ASC, LLC, seeks approval to establish and construct a multi-specialty freestanding ambulatory surgical center (FASC), specializing in orthopedic, podiatric and otolaryngological surgery, including plastic and head and neck surgery at 234 East 85<sup>th</sup> Street in New York (New York County).

<b>Proposed Operator</b>	UES ASC, LLC
<b>To Be Known As</b>	Upper East Side ASC, LLC
<b>Site Address</b>	234 East 85th Street New York, NY 10028 (New York County)
<b>Surgical Specialties</b>	Multi-Specialty, to include: Orthopedics Otolaryngology Plastic Surgery Head & Neck Surgery
<b>Operating Rooms</b>	2
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am to 6:00 pm (Will expand hours and offer weekend/evening hours as needed.)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	14.0 FTEs / 17.0 FTEs
<b>Medical Director(s)</b>	Fred Lin, M.D
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Expected to be provided by Mount Sinai Hospital 1.1 miles / 11 minutes away
<b>On-call Service</b>	Patients will be provided the number of an on-call service which will be available 24/7 to immediately refer the patient to the Center's on-call physician.

**Character and Competence**

The proposed ownership structure of the Center is as follows: 14 individual physicians (with member interests ranging from 1.9231% to 3.8462%) collectively owning 50% Class A membership interests in the Center; four individuals employed by and having ownership interest in Ambulatory Surgical Centers of America (ASCOA) collectively owning 20% Class B membership; and Mount Sinai Ambulatory Ventures,

Inc. (formerly known as Beth Israel Ambulatory Care Services Corp.), a New York not-for-profit corporation owning 30% Class C membership.

The proposed members and their ownership interests is noted below:

<b>Name</b>	<b>Membership</b>
<b>Class A Members (14 Individual Physicians)</b>	<b>50.0%</b>
Josef Geldwert, DPM	(3.8462%)
Satish Govindaraj, MD	(3.8462%)
Alfred Iloreta, Jr., MD	(3.8462%)
Jeffrey Kaplan, MD	(3.8462%)
Anthony LaBruna, MD	(3.8462%)
Brian Levy, DPM	(3.8462%)
Jonathan Levy, DPM	(1.9231%)
Fred Lin, MD	(3.8462%)
Kevin Plancher, MD	(3.8462%)
Jason Pruzansky, MD	(3.8462%)
Mark Pruzansky, MD	(3.9462%)
Jonathan Richards, DPM	(3.8462%)
Alan Rosen, DPM	(1.9231%)
Joshua Rosenberg, MD	(3.8462%)
<b>Class B Member - Ambulatory Surgical Centers of America (ASCOA)</b>	<b>20.0%</b>
Thomas Bombardier, MD	(6.0%)
Brent Lambert, MD	(6.0%)
George Violin, MD	(2.0%)
Luke Lambert	(6.0%)
<b>Class C Member – Mount Sinai Amulatory Ventures, Inc.</b>	<b>30.0%</b>
Jeremy Boal, MD	
Alan Henrick	
Donald Scanlon	
<b>TOTAL</b>	<b>100.00%</b>

A full Character and Competence Review was conducted on all proposed member physicians, the members of ASCOA and the Officers of MSAV.

Each of the Class A physician members of UES ASC, LLC are Board-Certified or Board-eligible in their respective specialty (orthopedics, podiatry, or otolaryngology) and currently have medical practices within the proposed service area of the ASC. The physicians either have or will apply for admitting privileges at Mount Sinai Hospital, which has been identified as the backup hospital for the proposed Center.

The passive corporate member of Mount Sinai Ambulatory Ventures, Inc. is Mount Sinai Health System, Inc.

The proposed Medical Director is Fred Lin, M.D., a board-certified otolaryngologist who is currently serves as an Attending Physician at Mount Sinai Hospital and an Assistant Professor of otolaryngology-head and neck surgery at the Icahn School of Medicine at Mount Sinai. Dr. Lin will be a physician Class A member of the 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.



Dr. Plancher disclosed one pending malpractice case. Drs. Bombardier and Geldwert each disclosed one settled malpractice case. Dr. Mark Pruzansky disclosed a malpractice case settled without his consent by his liability insurance carrier for economic reasons.

The ASCOA members each disclosed that a surgery center under management, which had formerly been operating profitably, declared bankruptcy after several physician partners joined a competing center. The remaining case volume was not enough to sustain the center resulting in its closure in November 2012.

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 will take steps to be integrated into existing health care resources in the community by becoming a provider in the Mount Sinai Health Home and by participating as a provider in the Mount Sinai Hospitals Group's Performing Provider System (PPS). Additionally, the Center is dedicated to providing charity care for persons without the ability to pay, and will utilize a discounted fee scale for persons unable to pay the full charge for services or are uninsured.

The Center is committed to implementing an electronic medical record (EMR) system that allows the patient's health information to be accessible to both health care providers of the Center and other health care providers involved with providing medical care to the patient. Further, the Center will consider joining a regional health information organization (RHIO) or qualified health information exchange (HIE) for data exchange.

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

#### Lease Rental Agreement

The applicant has submitted a letter of intent to lease for the proposed site, the terms of which are summarized below:

Premises:	6,672 gross square feet located at 234 East 85th Street, New York, NY 10028
Landlord:	Icahn School of Medicine at Mount Sinai
Lessee:	UES ASC, LLC
Term:	10 years, (rent abated for 1st 12 months) rent at \$492,394 in year two (\$73.80 per sq. ft.) and increased yearly at 2.5 % based upon terms. Renewal option (2) with 10-year terms.
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit stating that the lease is a non-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 a draft administrative services agreement, the terms of which are summarized below:

Facility:	UES ASC, LLC
Contractor:	Cataract and Laser Center Partners, L.L.C. d/b/a Ambulatory Surgery Centers of America (ASCOA)
Services Provided:	Assist with project development, 18 month pro forma financial feasibility study; recommend physical space specifications; assist in securing necessary permits, licenses and certification; advise on the purchase of equipment and supplies; help in securing project financing; assist in the development of policies and procedures; coordinate legal counsel regarding organizational documents, licensure, as well as initial and continuing operations; assist in implementing billing and collection procedures; assist in the development of fee schedules and payor contracts; advise in the development of forms, polices, and procedures to comply with the law; assist in utilization management, quality assurance procedures and software management systems; assist in human resource administration; assist in developing budgets, accounting procedures, controls, reporting systems, and timely reports.
Term:	5 years
Fee:	Annual Fee of \$250,000 (1/12 to be paid monthly = \$20,833) Expense reimbursement not to exceed \$50,000 per calendar year (except 1 <sup>st</sup> year approved at \$75,000), amounts exceeding such \$50,000 limitation must be approved by the Company prior to reimbursement.

Class B members of UES ASC, LLC are employed and/or members of ASCOA, the administrative service agreement provider. ASCOA is a national provider of consulting and administrative services to ambulatory surgery centers. UES ASC, 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 \$5,755,399, broken down as follows:

Renovation & Demolition	\$2,568,784
Design Contingency	256,878
Construction Contingency	256,878
Architect/Engineering Fees	294,128
Other Fees	24,800
Movable Equipment	2,159,990
Financing Costs	54,518
Interim Interest Expense	105,953
CON Application Fee	2,000
CON Processing Fee	<u>31,470</u>
Total Project Cost	\$5,755,399

Project costs are based on a start date of July 15, 2016, with a six-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$575,539
Bank Loan (4.8%, 7-year term)	<u>5,179,860</u>
Total	\$5,755,399

Bankwell Bank has provided a letter of interest.

BFA Attachments A and B are, respectively, the members' net worth summaries and Beth Israel Medical Center and Affiliates certified and internal financial statements dated December 31, 2014 and September 30, 2015, respectively, which shows sufficient resources to meet the equity requirement.

### Operating Budget

The applicant has submitted their first and third years operating budgets, in 2016 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
<b>Revenues</b>				
Medicaid Fee-For-Service	\$1,069.33	\$35,288	\$1,060.19	\$38,167
Medicaid Managed Care	\$1,061.38	285,510	\$1,061.20	308,808
Medicare Fee-For-Service	\$1,332.11	691,364	\$1,331.67	747,067
Medicare Managed Care	\$1,205.89	10,853	\$1,304.22	11,738
Commercial Fee-For-Service	\$1,993.28	1,829,834	\$1,995.11	1,979,149
Commercial Managed Care	\$1,862.72	1,603,804	\$1,863.24	1,734,674
Self-Pay	\$1,076.75	63,528	\$1,073.63	68,712
Other-Worker Compensation	\$1,593.04	<u>466,761</u>	\$1,597.96	<u>506,554</u>
<b>Total Revenues</b>		<b>\$4,986,942</b>		<b>\$5,394,869</b>
<b>Expenses</b>				
Operating	\$1,027.77	\$3,103,879	\$1,067.19	\$3,484,391
Capital	<u>\$403.74</u>	<u>1,219,308</u>	<u>\$361.32</u>	<u>1,179,726</u>
<b>Total Expenses</b>	<b>\$1,431.51</b>	<b>\$4,323,187</b>	<b>\$1,428.51</b>	<b>\$4,664,117</b>
<b>Net Income or (Loss)</b>		<b><u>\$663,755</u></b>		<b><u>\$730,752</u></b>
Utilization (procedures)		3,020		3,265
Cost Per Procedure		\$1,431.51		\$1,428.51

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

Medicaid Fee-For-Service	1.1%
Medicaid Managed Care	8.9%
Medicare Fee-For-Service	17.1%
Medicare Managed Care	.3%
Commercial Fee-For-Service	30.4%
Commercial Managed Care	28.5%
Self-Pay	2.0%
All Other (Worker Compensation)	9.7%
Charity	<u>2.0%</u>
<b>Total</b>	<b>100.00%</b>

Revenues are based on current federal and state governmental reimbursement methodologies for FASCs, with commercial payers reflecting adjustments based on estimated rates to be negotiated based on industry norms, and MSHS's experience.

Expense assumptions are based upon the experience of the participating physicians, ASCOA and MSHS in providing ambulatory surgery services, as well as the projections and experience of other FASCs in New York State. The breakeven point is approximately 86% of the projected volume or 2,597 and 2,809 procedures in the first and third years, respectively.

The Class A physician members have provided letters supporting the utilizations projections (which have been adjusted downward from 4,025 to 3,020 ambulatory surgeries, as a conservative measure for any start-up issues).

### Capability and Feasibility

Total project costs of \$5,755,399 will be met through members' equity of \$575,539, with the remaining \$5,179,860 balance being financed over seven years through Bankwell Bank at the above stated terms.

The working capital requirement is estimated at \$777,353 based on two months of third year expenses. Funding will be as follows: \$388,677 from the members' equity with the remaining \$388,676 satisfied through a five-year loan at 4.5% interest rate. Bankwell Bank has provided a letter of interest. BFA Attachments A and B, are the members' net worth summaries and Beth Israel Medical Center and Affiliates' 2014 Certified Financial Statements and Internal Financial Statements as of September 30, 2015, respectively, which reveals sufficient resources to meet all the equity requirements. BFA Attachment D is UES ASC pro forma balance sheet that shows operations will start with \$964,216 in positive equity.

Review of Attachment B, MSBI's 2014 certified and internal financial statements as of September 30, 2015 shows operating losses of \$90.7 million and \$86.2 million, respectively. Per the applicant, MSBI's overall financial stability and sustainability has been supported by the inclusion of MSBI as part of the Mount Sinai Hospitals Group (MSHG), which has been awarded \$82 million of Vital Access Provider (VAP) funds to, among other things, assist with the "financial revival" of MSBI and Mount Sinai St. Luke's. MSBI, in collaboration with MSHG, has initiated steps to promote a financially stable organization in both the short-term and the long-term. Steps taken in 2015 include, the closure (and decertification) of 31 inpatient chemical dependence - detoxification beds and the closure of its 28 AIDS bed residential health care facility. Over the long-term, the Hospital is working with MSHG and its affiliated hospitals to build an integrated behavioral health care system to meet the needs of the community, in order to reduce costs. This project will aid in the reduction of the annual loss while promoting increased community-based ambulatory care.

USE ASC projects an operating surplus of \$663,755 and \$730,752 in the first and third years of operation, respectively. The budget appears reasonable.

BFA Attachment E is the members' New York State affiliated FASCs' that were operational prior to the beginning of 2015. Each of the five entities generated positive operating results and had positive net assets with exception of Hudson Valley Ambulatory Surgery, LLC (due to the accountants not recording approximately \$365,000 in accounts receivable).

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.**

## 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. This application has been developed with the cooperation and support of Mount Sinai Health System (MSHS). 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:** Lenox Hill Hospital --- **No Response**  
100 East 77<sup>th</sup> Street  
New York, New York 10075

**Facility:** Hospital for Special Surgery --- **No Response**  
535 East 70<sup>th</sup> Street  
New York, New York 10021

**Facility:** Metropolitan Hospital Center --- **No Response**  
1901 First Avenue  
New York, New York 10029

### Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that the Center will consolidate a significant number of Mount Sinai Health System (MSHS) medical practice physicians and community-based physicians into an Article 28 Center. The applicant states that approximately 55% of the projected caseload will come from procedures currently being performed at one of the Mount Sinai Health System facilities (Mount Sinai Hospital, Mount Sinai Beth Israel, Mount Sinai St. Luke's and New York Eye and Ear Infirmary of Mount Sinai). 27% of the projected caseload is currently being performed at other Freestanding Ambulatory Surgery Centers (FASC) and 3% is currently performed in the private practices of the participating physicians. The proposed Center represents an attempt by MSHS to enhance access to services by establishing an FASC in the community, lessening the need for patients and surgeons to travel to MSHS Hospitals for ambulatory surgery services.

**Staff Recruitment and Retention:** The applicant states that, initially recruitment will be from selected staff currently employed by the member physicians in their private, office based practices, particularly the nursing and technical staff. Recruitment will also come from accredited schools, newspaper advertisements, training programs, local recruiters and job fairs.

**Office-Based Cases:** The applicant states that 3% of the projected surgical procedures for the proposed ASC are currently performed in the private, office-based practices of the applicant physicians.

### 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

- BFA Attachment A UES ASC, LLC members' net worth summaries
- BFA Attachment B 2014 Certified Financial Statement and September 30, 2015 Internal Financial Statement for Beth Israel Medical Center and Affiliates
- BFA Attachment C UES ASC, LLC Organizational Chart
- BFA Attachment D Pro Forma Balance Sheet of UES ASC, LLC
- BFA Attachment E Proposed members' ownership interest and Financial Summaries of Affiliated FASCs
- BHFP Attachment Map

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 9th day of June, 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 multi-specialty freestanding ambulatory surgery center to be located at 234 East 85<sup>th</sup> Street, New York, 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:

152302 B

FACILITY/APPLICANT:

UES ASC, LLC  
t/b/k/a Upper East Side 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. [PMU]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed project 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 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]
6. 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]
7. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
  - a. Actual utilization including procedures;
  - b. Breakdown of visits by payor source;
  - c. Percentage of charity care provided by visits;
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - e. Number of emergency transfers to a hospital;
  - f. Number of nosocomial infections recorded;
  - g. A brief list of all efforts made to secure charity cases; and
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]



8. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
9. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
10. Submission of a photocopy of the applicant's completed and executed Asset Purchase Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of an amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's amended and completed Articles or Organization, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed facility contract of sale, deed or lease agreement, acceptable to the Department. [CSL]
14. Submission of a photocopy of the Certificate of Incorporation and By-laws of TBHC Endo Services Corp., acceptable to the Department. [CSL]
15. Submission of all relevant corporate documents of BIMC Holding Corporation, 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 submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. 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]
8. Construction must start on or before July 15, 2016 and construction must be completed by January 4, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [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 the *Contingencies Tab in NYSE-CON*.



Project # 152384-E
Suffolk Primary Health, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Suffolk
Acknowledged: January 8, 2016

Executive Summary

Description

Suffolk Primary Health, LLC, a New York limited liability company, requests approval to be established as the new operator of United Comprehensive Care, Ltd., an existing Article 28 Diagnostic and Treatment Center (D&TC) located at 170 Old Country Road, Riverdale (Suffolk County). The proposed member of Suffolk Primary Health, LLC is Kenneth Gaul. The facility is currently licensed to provide Medical Services - Primary Care, therapy services, clinical laboratory services and podiatry. Following the change in ownership the provider will focus on primary care only, until the operations are stabilized and the expansion of services can be accomplished. Upon approval, the applicant will change the name of the facility to Suffolk Primary Health.

On May 12, 2012, United Comprehensive Care, Ltd., the current operator of the D&TC, entered into an Asset Purchase Agreement (APA) with Kenneth Gaul and Joseph Zwolak, whereby Mr. Gaul and Mr. Zwolak agreed to purchase the operations of United Comprehensive Care, Ltd. The APA provides that the purchase price for the assets is the assumption of certain liabilities by the buyers, as outlined in the agreement.

Mr. Zwolak and Mr. Gaul organized Suffolk Primary Health, LLC as their designee to purchase United Comprehensive Care, Ltd. On October 20, 2014, Mr. Zwolak and Mr. Gaul entered into an Assignment and Assumption Agreement, whereby Mr. Zwolak assigned all of his membership interest in Suffolk Primary Health, LLC to Mr. Gaul, who then became the 100% member/manager of Suffolk Primary Health, LLC.

Ownership of the D&TC operation after the requested change is as follows:

Table with 2 columns: Member, Percentage. Row 1: Proposed Operator Suffolk Primary Health, LLC, 100%. Row 2: Member Kenneth Gaul, 100%.

OPCHSM Recommendation
Contingent Approval

Need Summary
Suffolk Primary Health, LLC, proposes to become the new operator of an existing diagnostic and treatment center located at 170 Old Country Road, Riverhead, 11901, in Suffolk County, currently operated by United Comprehensive Care, LTD. The clinic will continue to provide the following services: Medical Services - Primary Care. The number of projected visits is 6,281 in Year 1.

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

Financial Summary
The purchase price for the operations is the assumption of liabilities. The proposed buyer paid off the current operators' existing bank loan of \$731,656 with a new \$850,000 loan guaranteed by Kenneth Gaul, which appears on Mr. Gaul's personal net worth statement. This bank loan liability is a component of the total

liability reported in United Comprehensive Care Ltd.'s internal 12/31/15 Balance Sheet account labeled "Due to Other" in the amount of \$3,429,211. This "Due to Other" liability will be converted to equity upon approval of the change in ownership application. There are no project costs associated with this application. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$781,950	\$1,104,216
Expenses	<u>932,746</u>	<u>1,030,787</u>
Net income	(\$150,796)	\$73,429

## 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of a photocopy of the applicant's amended articles of organization, which are acceptable to the department. [CSL]
3. Submission of a photocopy of the applicant's amended operating agreement, which is acceptable to the department. [CSL]
4. Submission of a photocopy of an executed amended facility lease, which is acceptable to the department. [CSL]
5. Submission of a photocopy of an executed medical director agreement, which is 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. 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]

Council Action Date

**June 9, 2016**

## Need Analysis

### Analysis

The service area is Suffolk County. The population of Suffolk County was 1,493,350 in 2010. Per the Cornell Program on Applied Demographics (PAD) projection data, the population of Suffolk County is projected to grow to 1,543,715 by 2025.

Suffolk Primary Health, LLC is proposing to initially provide primary care.

Per HRSA, areas of Suffolk County are designated as a Medically Underserved Area/Population:

Medically Underserved Area/Population

- Low Income – Riverhead

The number of projected visits is 6,281 in Year 1 and 8,973 in Year 3.

### Conclusion

Approval of this proposed change in ownership will allow for the continued access to the primary care services at this location in Suffolk County.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Establish Suffolk Primary Health, LLC as the new operator of United Comprehensive Care, LTD, an existing and operating Article 28 diagnostic and treatment center operating at 170 Old Country Road, Riverhead in Suffolk County. Upon approval, the name of the facility will be changed to Suffolk Primary Health.

Upon approval the facility will be certified for Medical Services – Primary Care only; all other services currently on the operating certificate will be decertified. Eventually the proposed operator intends to request additional services, which will be the subject of future Certificate of Need applications.

### Character and Competence

The sole member of Suffolk Primary Health, LLC is Kenneth Gaul. Mr. Gaul has a long history of administration in health care facilities.

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 U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Disclosure information was similarly submitted and reviewed for the Medical Director. Jose Rodriguez-Ospina, M.D. is a Family Practitioner who operated a private practice for over 20 years. Since 2013, Dr. Rodriguez-Ospina has been employed in the Article 28 setting and is experienced in the development of medical protocols for primary care clinics.

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.

Recommendation

**From a programmatic perspective, approval is recommended.**

<b>Financial Analysis</b>
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**Asset Purchase Agreement**

The applicant submitted an executed APA for the purchase of the DTC operations, as summarized below:

Date:	May 21, 2012
Seller:	United Comprehensive Care, Ltd.
Buyer:	Kenneth Gaul and Joseph Zwolak
Assets Acquired:	All current, non-obsolete, useable, merchantable and saleable inventories of the Facility "as is" as of the Closing Date; all agreements of the Facility with suppliers, other distributors, licensees and licensors, purchase commitments, futures contracts and employment and all other agreements relating to the operation of the Facility including, but not limited to: the Assignment of the Article 28 license, all rights, title and interest of Seller in the trademarks, logos, trade names and copyrights associated with the Facility; all of the equipment, machinery and furniture owned or leased by Seller and used in the operation of the Facility; all of the unfilled purchase orders of the Facility as of the Closing Date; the goodwill associated with the Facility sold as a going concern; all other books and records relating solely to the Facility, and all bank accounts of the Seller.
Purchase Price:	The total purchase price shall be the assumption by the Buyers of the facility's existing liabilities.

The proposed buyer paid off the existing bank loan of \$731,656 with a new \$850,000 loan guaranteed by Ken Gaul, which appears on Ken Gaul's personal net worth statement. This referenced bank loan liability is a component of the liability reported in United Comprehensive Care Ltd.'s internal 12/31/15 Balance Sheet account labeled "Due to Other" in the amount of \$3,429,211. One of the loans included in this "Due to Other" account is a promissory note from the current operators, Augustus Mantia and Ronald Bernardini, to pay Kenneth Gaul and Joseph Zwolak a sum of \$135,892.78. This "Due to Other" liability will be converted to equity upon final approval of this application.

**Assignment and Assumption Agreement**

The applicant has submitted an executed assignment agreement for the transfer of all of Assignor's membership interest in the D&TC, which is summarized below:

Date:	October 20, 2014
Purpose:	Assignor desires to transfer and assign all of Assignor's membership interest in Suffolk Primary Health, LLC to Assignee, and Assignor desires to acquire the Interest.
Assignor:	Joseph Zwolak
Assignee:	Kenneth Gaul
Consideration:	\$10

## Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site they will occupy, which is summarized below:

Date:	May 1, 2012
Premises:	5,719 square feet located at 170 Old Country Road, Riverhead, New York
Lessor:	Peconic Plaza, LLC
Lessee:	Kenneth Gaul and Joseph Zwolak d/b/a Suffolk Primary Health, LLC *
Term:	10-year term with a 5-year renewal period
Rental:	Year One-\$125,818 (\$22.00/sq. ft.). Thereafter, annual rent increases by 4% per year.

\* Per the assignment and assumption agreement dated October 20, 2014, Mr. Zwolak assigned his interest in the D&TC to Mr. Gaul, rendering Mr. Gaul 100% owner of Suffolk Primary Health, LLC.

The applicant has submitted an affidavit attesting that lease agreement is an arm's length transaction.

## Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, for the first and third years after the change in operator, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$176.08	\$22,186	\$193.70	\$30,412	\$193.68	\$17,378
Medicaid MC	\$129.12	278,013	\$142.05	535,275	\$142.04	796,540
Medicare FFS	\$98.16	29,253	\$112.89	35,451	\$112.89	25,322
Medicare MC	\$99.28	4,865	\$114.57	53,794	\$114.20	102,466
Commercial FFS	\$69.06	35,982	\$79.45	69,837	\$79.42	117,582
Private Pay	\$75.87	<u>33,534</u>	\$91.05	<u>57,181</u>	\$91.04	<u>44,928</u>
Total Revenues		\$403,833		\$781,950		\$1,104,216
<u>Expenses</u>						
Operating	\$173.39	\$622,281	\$95.61	\$600,537	\$77.86	\$698,578
Capital	<u>86.58</u>	<u>310,734</u>	<u>52.89</u>	<u>332,209</u>	<u>37.02</u>	<u>332,209</u>
Total Expenses	\$259.97	\$933,015	\$148.50	\$932,746	\$114.88	\$1,030,787
Net Income		<u>(\$529,182)</u>		<u>(\$150,796)</u>		<u>\$73,429</u>
Utilization (Visits)		3,589		6,281		8,973
Cost Per Visit		\$259.97		\$148.50		\$114.87

Revenue and expense assumptions are based on the historical experience of the facility. Year One expenses will decrease due to a reduction in other direct expenses related to the elimination of one-time expenses incurred by the current operator, including administration/consulting (\$30,000) and auditing fees (\$90,000). An increase in visits is anticipated as a result of the implementation of more efficient operations. The existing operator and the applicant have been speaking with representatives of Northwell / Peconic Bay Hospital on collaborative efforts related to primary care services and the desired result of DSRIP. The proposed operator is planning the following improvements: implementation of an electronic medical records system, implementation of a more expansive marketing program to make the community aware of the Center's existence, working more closely with the local hospital and the PPS in implementation of DSRIP efforts, and the existing operator has retained a new medical billing company which has implemented a more efficient method of billing efforts and timely collection.

Utilization broken down by payor source for the current year (2015) and the first and third years after the change in ownership is summarized as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	3.51%	2.5%	1.0%
Medicaid MC	59.99%	60.0%	62.5%
Medicare FFS	8.30%	5.0%	2.5%
Medicare MC	1.37%	7.5%	10.0%
Commercial FFS	14.52%	14.0%	16.5%
Private Pay	12.31%	10.0%	5.5%
Charity Care	0.00%	1.0%	2.0%

#### Capability and Feasibility

The purchase price is the assumption of liabilities. The proposed buyer paid off the existing bank loan of \$731,656 with a new \$850,000 loan guaranteed by Kenneth Gaul, which appears on Mr. Gaul's personal net worth statement. This reference liability is a component of the liability as reported in United Comprehensive Care Ltd.'s internal 12/31/15 Balance Sheet account "Due to Other" in the amount of \$3,429,211. As previously noted, this Balance Sheet liability will be converted to equity upon approval of the change in ownership application.

Working capital requirements are estimated at \$171,797 based on two months of third year expenses. The proposed member will provide equity to meet the working capital requirement. BFA Attachment A is the personal net worth statement of the proposed member of Suffolk Primary Health, LLC, which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirement. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$329,612.

The submitted budget projects a net income of (\$150,796) and \$73,429 during the first and third years after the change in ownership. The proposed member of Suffolk Primary Health, LLC will cover any operating loss from his personal resources. BFA Attachment A, the personal net worth statement of the proposed member, indicates the availability of sufficient funds. Revenues reflect current reimbursement methodologies for diagnostic and treatment services. The applicant indicated that reimbursement rates are projected to increase from historical based on the following factors: the existing managed care contracts for all payers have not been reviewed by the existing operator for several years, and a combination of the increased acuity of patients coming to the Center and expanded development of specialty services will positively influence reimbursement. The submitted budget appears reasonable.

BFA Attachment C is the 2014 certified financial statements of United Comprehensive Care, Ltd. As shown, the entity had a positive working capital position and a shareholders deficit. The entity incurred a loss of \$866,325 in 2014. The applicant has indicated that the reason for the losses were the result of inefficient programmatic and operational management and billing inefficiencies.

BFA Attachment D is the 2015 internal financial statements of United Comprehensive Care, Ltd. As shown, the entity had a negative working capital position and a negative net asset position in 2015. Also, the entity incurred a net loss of \$529,182 in 2015. The reason for the losses were the result of ongoing inefficient programmatic and operational management and billing inefficiencies of the current operators.

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.**



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## Attachments

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- BFA Attachment A Personal Net Worth Statement
- BFA Attachment B Pro Forma Balance Sheet
- BFA Attachment C Financial Summary - 2014 certified financial statements of United Comprehensive Care, Ltd.
- BFA Attachment D Financial Summary - 2015 internal financial statements of United Comprehensive Care, Ltd.

## 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 9th day of June, 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 Suffolk Primary Health, LLC as the new operator of the diagnostic and treatment center located at 170 Old Country Road, Riverhead, currently operated as United Comprehensive Care, Ltd., 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:

152384 E

FACILITY/APPLICANT:

Suffolk Primary Health, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of a photocopy of the applicant's amended articles of organization, which are acceptable to the department. [CSL]
3. Submission of a photocopy of the applicant's amended operating agreement, which is acceptable to the department. [CSL]
4. Submission of a photocopy of an executed amended facility lease, which is acceptable to the department. [CSL]
5. Submission of a photocopy of an executed medical director agreement, which is 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. 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 161077-E  
Woman's Christian Association**

**Program: Hospital  
Purpose: Establishment**

**County: Chautauqua  
Acknowledged: February 19, 2016**

**Executive Summary**

**Description**

UPMC Chautauqua Services, Inc. (UPMCCS), an existing corporation, requests approval to become the active parent and co-operator of The Women's Christian Association of Jamestown, NY d/b/a Women's Christian Association Hospital (WCA). WCA is a 317-bed, voluntary not-for-profit, Article 28 hospital located in Jamestown (Chautauqua County). The Hospital operates a 277-bed facility (main campus) located at 207 Foote Avenue, a 40-bed facility (psychiatric service) located at 61 Glasgow Avenue and three extension clinics sites. There will be no change in authorized services, the number or type of beds, or staffing as a result of approval of this project. In addition, there are no projected changes in the utilization, revenue or expenses of the hospital as a direct result of this project. Upon approval of this application, the entity will be renamed UPMC Chautauqua at WCA.

UPMCCS will be the sole member of the hospital. The sole member and passive parent of UPMCCS is UPMC Hamot (Hamot), a Pennsylvania not-for-profit corporation, which is a subsidiary of the University of Pittsburgh Medical Center (UPMC). Hamot operates a tertiary acute care hospital in Erie, Pennsylvania, which is located 50 miles west of WCA. The Hospital will enter into an administrative services agreement with UPMC.

As active parent and co-operator, UPMCCS will have the following rights, powers and authority with respect to WCA Hospital:

- Appointment or dismissal of hospital management level employees and medical staff;

- Approval of hospital operating and capital budgets;
- Adoption or approval of hospital operating policies and procedures;
- Approval of certificate of need applications filed by on or 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;
- Approval of settlements of administrative proceedings or litigation to which the hospital is a party, except approval of settlements or litigation that exceed insurance coverage or any applicable self-insurance funds.

The purpose of this transaction is to establish an integrated care network with the objective of improving quality, increasing access and lowering the costs of healthcare in the community served by WCA Hospital.

BFA Attachment A presents the organizational chart post-closing.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

This transition will help establish an integrated health system and is expected to improve the quality of care, access to care, and to lower costs. The facility will continue to serve the patients in Chautauqua County, but with a more streamlined approach.

There will not be any 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 associated with this application.

## 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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
3. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
5. Submission of a photocopy of the certificate of incorporation of UPMC Chautauqua Services, Inc., which is acceptable to the department. [CSL]
6. Submission of a photocopy of the by-laws of UPMC Chautauqua Services, Inc., which is acceptable to the department. [CSL]
7. Submission of a photocopy of the certificate of incorporation of UPMC Chautauqua at WCA, Inc., which is acceptable to the department. [CSL]
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10. Submission of a photocopy of the by-laws of WCA Group, Inc., which is 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

**June 9, 2016**

## Need Analysis

### Background

Woman's Christian Association (207 Foote Av)		WCA-Jones (51 Glasgow Av)	
	<b>Beds</b>		<b>Beds</b>
Chemical Dependence Rehab	13	Psychiatric	40
Coronary Care	16		
Intensive Care	7		
Maternity	26		
Medical / Surgical	195		
Pediatric	10		
Physical Medicine and Rehab	10		
<b>Total</b>	<b>277</b>		

This approval will also strengthen the financial viability of the facility and increase recruitment opportunities to better provide healthcare services to the residents in the area.

### Conclusion

This project will allow the health system to operate in a more cost effective manner, provide a more streamlined approach to patient health, and offer better access to care.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

UPMC Chautauqua Services, Inc. (UPMCCS) seeks approval to be established as the active parent and co-operator of The Woman's Christian Association of Jamestown, NY d/b/a WCA Hospital (WCA). WCA is an existing not-for-profit hospital located at 207 Foote Avenue in Jamestown (Chautauqua County) that offers a wide array of certified services at two inpatient sites and four extension clinics.

Approval of this application will give UPMCCS the ability to exercise the Article 28 active powers over the Hospital. UPMCCS will be the sole member of the Hospital. The sole member and passive parent of UPMCCS is UPMC Hamot (Hamot), a Pennsylvania not-for-profit corporation, which is located 50 miles due west of WCA and is a subsidiary of UPMC (University of Pittsburgh Medical Center). Hamot operates a tertiary acute care hospital in Erie, Pennsylvania. The Hospital will become a third-tier subsidiary of, and will enter into an Administrative Services Agreement with UPMC (a Pennsylvania not-for-profit corporation headquartered in Pittsburgh, Pennsylvania).

This proposal aims to preserve the continued operations of WCA as an economically viable hospital by allowing WCA to benefit from operating financially and administratively within the UPMC health system. UPMC seeks to closely align WCA and Hamot so they can achieve an integrated, coordinated and regional approach to delivering accessible and quality healthcare in their service areas.

There are no projected changes in staffing, authorized services, or the number or type of beds at either hospital as a result of the proposed change in governance structure. The Hospital will remain a separate not-for-profit corporation certified under Article 28, and will maintain a separate operating certificate following completion of the project. Upon approval, WCA Hospital will be renamed UPMC Chautauqua at WCA.

## Character and Competence

The proposed Directors of UPMC Chautauqua Services, Inc. and UPMC Chautauqua at WCA are:

<u>Name</u>	<u>Designee From</u>
Anna M. Dibble	WCA
William A. Geary, MD, PhD	WCA
Cristie L. Herbst	WCA
Brenda J. Ireland	WCA
Steven D. Kilburn	WCA
Michael P. Sullivan	WCA
Bradley N. Dinger	UPMCCS
Vincent J. Fiorenzo	UPMCCS
Camellia A. Herisko	UPMCCS
Edward T. Karlovich	UPMCCS
Mark H. Raimy	UPMCCS
David C. Russell	UPMCCS

All proposed board members are subject to a character and competence review. Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Geary disclosed a pending malpractice case currently in discovery regarding a prostate biopsy diagnosis. Dr. Herisko disclosed that Western Psychiatric Institute and Clinic (WPIC) has been subject to civil and administrative actions in the normal course of its business as an acute care psychiatric hospital. Further, she disclosed that, in 2012, she testified as a witness in two matters. The first related to a grand jury investigation into the reporting practices of WPIC in cases involving alleged sexual assault by one patient on another. The second case involved the U.S. Department of Labor (Occupational Health and Safety Administration) regarding workplace violence and assaults by WPIC patients on staff. Both matters were concluded with no criminal charges or citations. Messrs. Fiorenzo and Raimy, disclosed that UPMC Hamot has been subject to civil and administrative actions in the normal course of its business as an acute care general hospital. In addition, in November 2010, the U.S. Department of Justice opened an investigation into numerous hospitals (to include UPMC Hamot), as to whether claims were submitted to Medicare for payment related to the implantation of implantable cardioverter defibrillators that were excluded from Medicare coverage. In December 2014, UPMC entered into a settlement agreement but did not admit to any liability and expressly denied the allegations.

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.

## Recommendation

**From a programmatic perspective, contingent approval is recommended.**



## Financial Analysis

### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Contractor:	UPMC
Facility:	UPMC Chautauqua Services
Services Provided:	UPMC will provide the following services: payroll, processing employees unemployment insurance premiums, disability premiums and workers compensation premiums, compiling and records billing, accounting and other medical data for billing purposes, compiling information and records to draw up purchase orders for procurement of materials and services, making payments to vendors and posting payment to status of accounts, general administrative duties, planning and executing a public relations program or corporate communications policy, gathering and reviewing information in accounting records for use in preparing financial statements, processing tax payments according to prescribed laws and regulations, overseeing audits conducted by tax authorities, compiling data to prepare budget and assumed contracts for management, provide staffing and recruiting services and provide information technology services.
Term:	1 year term with an automatic 1 year renewal term.
Fee:	The fee will be equal to the Contractors incurred expenses.

### Capability and Feasibility

There are no issues of capability or feasibility, as there are no project cost or budgets associated with this application.

BFA Attachment B is the certified financial statements of UPMC and Subsidiaries for the periods ending June 30, 2014, and June 30, 2015. As shown, the entity had an average negative working capital position, an average positive net asset position, and achieved an average after tax operating income of \$210,307,500 for the period two-year period ending June 30, 2015.

BFA Attachment C is the 2013 and 2014 certified financial statements of The Woman's Christian Association of Jamestown, NY. 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 incurred average operating losses of \$1,358,071 from 2013 through 2014. The applicant indicated that the losses were due to the following:

- The hospital is seeing an ongoing shift from inpatient admissions to outpatient observations. This creates financial challenges as patients continue to receive nursing care, ancillary testing and pharmaceuticals, while reimbursement is significantly less for observation than for inpatient care.
- WCA had an increase in the percentage of Medicaid beneficiaries and a decrease in the percent of patients with commercial insurance.
- The hospital also saw an increase in its bad debt and charity care. Some of this is related to high deductible plans being offered by employers, including WCA. In 2014, the increase was \$1.5 million over 2013.
- A large contributing factor was the hospital's implementation of its electronic health record. WCA used \$11 million in cash over a 36-month period to implement the HER system.

The hospital implemented the following initiatives to improve operations: hired a consultant to work with management to identify ways to increase revenues and reduce expenses, implemented staff reductions at both the management and staff levels, closely monitored supply costs, improved its accounts receivable collection, and reduced its length of stay.

BFA Attachment D is the October 31, 2015 internal financial statements of the Woman's Christian Association of Jamestown, NY. As shown, the entity had a positive working capital position and a positive net asset position for the period ending October 31, 2015. Also, the hospital incurred an operating loss of \$1,467,868 through October 31, 2015.

Subject to the noted contingency, 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.**

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## Attachments

BFA Attachment A	Organizational Chart Post-Closing
BFA Attachment B	June 30, 2014 and June 30, 2015 certified financial statements of UPMC and Subsidiaries
BFA Attachment C	2013 and 2014 certified financial statements of Woman's Christian Association of Jamestown, NY.
BFA Attachment D	October 31, 2015 internal financial statements of Woman's Christian Association of Jamestown, NY.



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 9th day of June, 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 UPMC Chautauqua Services, Inc. as the active parent and co-operator of The Woman's Christian Association of Jamestown, NY d/b/a Woman's Christian Association Hospital, 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:

161077 E

Woman's Christian Association

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
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10. Submission of a photocopy of the by-laws of WCA Group, Inc., which is 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 the *Contingencies Tab in NYSE-CON*.