

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

**COMMITTEE DAY**

**AGENDA**

*May 13, 2021*

*10:00 a.m.*

*Via Live Webcasting*

**I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW**

Peter Robinson, Chair

**A. Applications for Construction of Health Care Facilities/Agencies**

**Certified Home Health Agencies - Construction**

**Exhibit # 1**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	211039 C	Guthrie Home Health (Tioga County)

**Hospice Services - Construction**

**Exhibit # 2**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	211032 C	Niagara Hospice, Inc. (Niagara County)

**B. Applications for Establishment and Construction of Health Care Facilities/Agencies**

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	202273 B	147 Wellness LLC t/b/k/a Midtown Endoscopy & Surgical Center, LLC (New York County)
2.	211035 E	Griffiss Surgery Center (Oneida County)

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

**Exhibit # 4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	201273 B	CFR Advance Services, LLC d/b/a Village Med & Rehabilitation (Queens County)

**Certified Home Health Agencies - Establish/Construct**

**Exhibit # 5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	202250 E	Assured Care Home Health, LLC (Nassau County)



**Project # 211039-C  
Guthrie Home Health**

**Program:** Certified Home Health Agency  
**Purpose:** Construction

**County:** Tioga  
**Acknowledged:** March 12, 2021

**Executive Summary**

**Description**

Guthrie Home Care (GHC) d/b/a Guthrie Home Health (Guthrie HH), a not-for-profit Certified Home Health Agency (CHHA) currently certified to serve Chemung, Steuben, and Tioga Counties, is seeking approval to add Tompkins and Cortland Counties to its service area through a pilot Complex Care Collaboration Model (CCCM) under Public Health Law §2805-x, New York's Hospital-Homecare-Physician Collaboration law.

On December 8, 2020, Guthrie HH received approval from the New York State Department of Health for a waiver of Section 760.5 under Title 10 of the New York Codes, Rules, and Regulations to allow Guthrie HH to submit an application to expand its service area to Cortland and Tompkins Counties. This geographic expansion will allow Guthrie HH to pursue implementation of a pilot Complex Care Collaboration Model (CCCM) under Public Health Law §2805-x, New York's Hospital-Homecare-Physician Collaboration law. The purpose of the Hospital-Homecare-Physician Collaboration law is to facilitate innovation in hospital, home care agency, and physician collaboration in meeting the community's health care needs. The CCCM, proposed for an initial five-(5)-year period, creates an innovative continuum of care in which teams led by Guthrie HH CHHA will support patients with complex care needs in all counties served by Guthrie HH to reduce avoidable healthcare utilization, reduce costs and improve health outcomes.

GHC is affiliated with The Guthrie Clinic (TGC), a not-for-profit, integrated health care system designed to offer patients a full spectrum of

health services incorporating primary care, complex specialty care, behavioral health services, surgical services, inpatient care, durable medical equipment services, home health, long-term care, palliative care and hospice care. TGC's integrated approach is intended to create a better experience for patients and is designed to decrease the cost of the delivery of health care. As part of TGC, Guthrie HH is well positioned to implement the CCCM, which integrates various initiatives, teams, programs, and pilots to provide the backbone of TGC's Population Health Management infrastructure.

Guthrie HH provides in-home skilled nursing, home health aide services, medical social services, and physical, occupational and speech therapies. Services provided are in accordance with the Centers for Medicare and Medicaid Services (CMS) Conditions of Participation and New York State Department of Health regulations. These services are currently provided to the residents of Chemung, Steuben, and Tioga Counties. As described above, Guthrie HH recently received waiver approval to submit a CON application to add Tompkins and Cortland Counties to the service area of Guthrie HH, counties in which TGC currently has attributed lives under value-based payment contracts, patient referrals and affiliated/employed physicians.

**OPCHSM Recommendation**

Approval

**Need Summary**

There will be no Need review of this application. Guthrie Home Care d/b/a Guthrie Home Health applied for, and was granted, a regulatory waiver under the Hospital-Home Care-Physician Collaboration Program, as outlined in Public Health Law 2805-x. The Department approved a waiver of Section 760.5 under Title 10 of the New York Codes, Rules and Regulations

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

**Financial Summary**

There are no project costs associated with this application. Projected losses for the Guthrie NY CHHA program noted below and working capital needs will be provided by the system, The Guthrie Clinic and Affiliates, which had \$91M of cash and cash equivalents on the balance sheet as of June 30, 2020.

Budget (in 000's)

	<u>Current</u> <u>Year</u>	<u>Year</u> <u>One</u>	<u>Year</u> <u>Three</u>
Revenues	\$2,632	\$3,594	\$3,828
Expenses	<u>\$3,358</u>	<u>\$4,339</u>	<u>\$4,532</u>
Net Loss	(\$726)	(\$745)	(\$704)

## **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 3, 2021

## **Program Analysis**

### **Program Description**

Guthrie Home Care, a not-for-profit corporation, operates an Article 36 Certified Home Health Agency, Guthrie Home Health. This project requests approval to expand the service area of the Guthrie Home Health CHHA to include the counties of Tompkins and Cortland.

Guthrie Home Care d/b/a Guthrie Home Health applied for, and was granted, a regulatory waiver under the Hospital-Home Care- Physician Collaboration Program, as outlined in Public Health Law 2805-x. Pursuant to 2805-x, the Department may waive regulations under Title 10 of the New York Codes, Rules, and Regulations to support voluntary initiatives that support collaboration to improve patient care access and management, patient health outcomes, cost-effectiveness in the use of health care services and community population health. The Department approved of a waiver of Section 760.5 under Title 10 of the New York Codes, Rules and Regulations to allow the operation of the Complex Care Collaboration Model ("CCCM") in the counties listed above.

Upon approval of this project, the Complex Care Collaboration Model will be approved for a five-year period from the date of the waiver approval, December 8, 2020.

Guthrie Home Health is affiliated with The Guthrie Clinic ("TGC"), a not-for-profit integrated healthcare system designed to offer patients a full spectrum of health services. The Guthrie Clinic's system incorporates primary care, complex specialty care, behavioral health services, surgical services, inpatient care, durable medical equipment services, home health, long-term care, palliative care and hospice care. TGC's integrated approach is designed to decrease the cost of the delivery of healthcare and create a better experience for patients.

In addition to the CHHA, the Complex Care Collaboration model would include The Guthrie Clinic's Hospitals and affiliated/employed physicians. The applicant states the proposed CCCM would support the provision of innovative care models for patients under The Guthrie Clinic's Alternate Payment Model and Value Based Payment arrangements.

Under the Complex Care Collaboration Model, Guthrie Home Health will increase access to primary and specialty care services and use home care to facilitate primary care. The applicant states they will also implement an innovative disease-centered program for all patients, including high cost and complex cases. This program will have a goal of maintaining/improving patient health while reducing costly and avoidable hospital and nursing home admissions/readmissions. The CHHA will coordinate with Managed Long-Term Care Plans to ensure high quality care and seamless transition of patients from the institutional setting to the home setting.

Currently, Guthrie Home Health serves Chemung, Steuben and Tioga counties from an office located in Tioga County and a satellite office in Steuben County. The applicant proposes an additional satellite office to be located at 4005 West Road, Cortland, NY 13045 (Cortland County). The applicant anticipates being operational in Tompkins and Cortland Counties by October 1, 2021 as they are currently fully operational with policies and procedures compliant with New York State and Federal regulations already in place which can be easily implemented in Cortland and Tompkins counties.

The Guthrie Clinic has improved health outcomes and contributed to the prevention of unnecessary hospitalizations for the residents of Steuben and Chemung Counties. These improvements include a reduction in age-adjusted hospitalizations for asthma and cardiovascular disease (2014 – 2016) and an increase in the number of patients visiting a primary care provider (2015 – 2017). The applicant aims to replicate these outcomes in Tompkins and Cortland counties as The Guthrie Clinic's relationship with Guthrie Cortland Medical Center matures. Additionally, the applicant states that The Guthrie Clinic's extensive physician network provides a resource for home care patients in Tompkins and Cortland counties to experience comparable improvements in health outcomes, resulting in savings to the health care system through reductions in readmissions and unnecessary utilizations.

In Cortland County there are currently two Certified Home Health Agencies (CHHA) and one Long Term Home Health Care Program (LTHHCP). The LTHHCP is operated by the Guthrie Cortland Medical Center, whose parent is The Guthrie Clinic. Upon approval of this application, the LTHHCP will be closed and Guthrie Home Health will begin operations. Guthrie Home Health intends to recruit and hire the individuals currently working for the Guthrie Cortland Medical Center LTHHCP. This transition from the LTHHCP to a CHHA will enhance the care offered to the residents of Cortland County and result in cost savings, expanded access and improved efficiencies related to the provision of home health services.

In Tompkins county there is currently one CHHA. Tompkins County is part of The Guthrie Clinic's service area and as TGC already has an established presence in this county, it is familiar with the community and its needs. Approval of the CCCM will allow more choices in care and an increase in services within the county.

From December 18, 2017 to December 17, 2019, Guthrie Home Health had a total of 650 home health referrals from Cortland County and 74 home health referrals from Tompkins County. The CHHA was unable to serve these patients as the counties were not in the CHHA's approved service area. The applicant states that the inability for Guthrie Home Health to expand into additional counties has been severely limiting. The applicant suggests that approval of this application will remove barriers and allow for streamlining of operations and reduced operating costs.

Guthrie Home Health serves individuals of all ages, with the majority of care being provided to the elderly and geriatric population. The projected growth in the 65 and older population will increase the need for home care services in Cortland and Tompkins County. Through the Complex Care Collaboration Model, Guthrie Home Health will be positioned to meet the needs of the growing elderly population.

This project will have no impact on the services provided by Guthrie Home Health.

<b>CHHA Quality of Patient Care Star Rating</b> as of March 31, 2021	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Guthrie Home Care d/b/a Guthrie Home Health	3.5 out of 5 stars

**Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

## Financial Analysis

### Operating Budget

The applicant has submitted an incremental operating budget, in 2021 dollars, for the first and third years, summarized below:

	<u>Current Year (2019)</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>
<b>Revenues</b>						
Commercial FFS	\$4,182	\$610,539	\$3,407	\$872,150	\$3,351	\$941,634
Medicare FFS	\$4,632	1,287,630	\$4,032	1,846,756	\$3,911	1,975,114
Medicare MC	\$2,257	661,412	\$2,222	750,980	\$2,208	772,961
Medicaid FFS	\$8	320	\$4	315	\$4	315
Medicaid MC	\$2,222	84,435	\$2,006	136,464	\$1,770	150,456
Bad Debt		(101,312)		(101,312)		(101,312)
All Other		<u>88,612</u>		<u>88,612</u>		<u>88,612</u>
<b>Total Revenues</b>		<b>\$2,631,636</b>		<b>\$3,593,965</b>		<b>\$3,827,780</b>
<b>Expenses</b>						
Operating	\$4,325	\$3,278,380	\$3,731	\$4,197,600	\$3,607	\$4,393,264
Capital	<u>\$106</u>	<u>80,081</u>	<u>\$125</u>	<u>141,045</u>	<u>\$114</u>	<u>138,871</u>
<b>Total Expenses</b>	<b>\$4,431</b>	<b>\$3,358,461</b>	<b>\$3,857</b>	<b>\$4,338,645</b>	<b>\$3,721</b>	<b>\$4,532,135</b>
<b>Net Loss</b>		<b><u>(\$726,825)</u></b>		<b><u>(\$744,680)</u></b>		<b><u>(\$704,355)</u></b>
<b>Visits</b>		<b>758</b>		<b>1,125</b>		<b>1,218</b>

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	19%	23%	23%
Medicare FFS	37%	41%	41%
Medicare MC	39%	30%	29%
Medicaid MC	5%	6%	7%
<b>Total</b>	100%	100%	100%

The following is noted regarding the first- and third-year budgets:

- Utilization was projected based on the number of referrals sent to other home care agencies in Cortland and Tompkins Counties; projections reflect 10% of those referrals coming to Guthrie HH in Cortland and Tompkins Counties.
- Visits per episode for Medicare cases has been calculated at 10.41 visits based on average visits per episode in Cortland and average visits per episode for Guthrie HH using FY20 averages.
- Commercial and Medicaid visits were determined using Cortland County's historical visits.
- Salary expenses are based on a blend of average hourly rates for the Cortland County LTHHCP as of June 30, 2020 (from cost report information) and Guthrie HH as of December 31, 2020.

### Capability and Feasibility

There are no project costs associated with this application. The working capital requirement is estimated at \$755,356 based on two months of third year expenses. The applicant has indicated that they will provide equity to be derived from ongoing operations to meet the working capital requirements. BFA Attachment A, 2020 Certified Financial Statements of The Guthrie Clinic and Associates indicates the availability of sufficient funds to meet the working capital contribution.

The submitted budget for the Guthrie NY CHHA indicates a net loss of (\$744,680) and (\$704,355) during the first and third years of operation, respectively. During the fiscal year ended June 30, 2020 (FY20), the

CHHA generated an annual operating loss of approximately \$700,000 while the total legal entity, Guthrie Home Care, however, generated a net operating income of approximately \$460,000 due to the success of its Hospice services. Projected net income for Guthrie Home Care for the year ending on June 30, 2021 is expected to be over \$500,000 or a \$40,000 net increase over FY20. This improved performance, despite the impact of COVID-19, is due to a combination of the strong success of Guthrie Hospice and the Guthrie Home Care management team's determination in decreasing losses for Guthrie Home Health PA and NY. With the pilot Complex Care Collaboration Model (CCCM), there is a slight net income projected with the addition of Cortland County and a slight projected loss with the addition of Tompkins County. However, with the integration and coordination of care under the CCCM, the Guthrie Home Care net income is projected to grow to \$485,000 by Year Three. Guthrie Home Care anticipates continuing a positive net income status year after year, and as part of a larger integrated system of care, it is essential to the organization that Guthrie Home Care remain strong and solvent. Thus, Guthrie Home Care, as an overall entity, will be offsetting the losses of the New York CHHA, just as it has in the past and does today, to the extent that losses continue. The budget appears reasonable.

As shown on BFA Attachment A, for the 2019 and 2020 fiscal year ended June 30<sup>th</sup> Guthrie Clinic and Affiliates, has maintained an average negative working capital, an average positive net asset position, and an average positive excess of revenues over expenses. The reason for the negative working capital position is the result of measures taken to mitigate the spread of COVID-19. These measures included postponing elective surgical procedures and non-urgent and routine medical appointments and closing numerous outpatient and ambulatory facilities. The Guthrie Clinic and Affiliates, which had \$91M of cash and cash equivalents on the balance sheet as of June 30, 2020 will cover the projected working capital need and operating losses for the Guthrie NY CHHA.

As shown on BFA Attachment B, as of February 28, 2021, Guthrie Home Care has shown a negative working capital position, positive net asset position, and income from operations of \$331,000.

### **Conclusion**

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

## **Attachments**

- BFA Attachment A Financial Summary, The Guthrie Clinic and Affiliates – 2019 and 2020 Certified Financial Statements
- BFA Attachment B Financial Summary, Guthrie Home Care - Internals as of February 28, 2021





Project # 211032-C
Niagara Hospice, Inc.

Program: HOSPICE
Purpose: Construction

County: Niagara
Acknowledged: February 9, 2021

Executive Summary

Description

Niagara Hospice, a currently licensed hospice and not-for-profit corporation located at 4675 Sunset Drive Lockport, New York, requests approval to certify six additional residence beds for a total of 16 residence beds and 10 inpatient certified beds. The additional residence beds will be housed in a one-story, 4,192 sf. addition to an existing wing.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant currently has a wait list for residence beds. The addition of six residence beds to the hospice facility will allow more patients to receive end-of-life care when there is no active caregiver or when the patient's home is not safe or appropriate.

While NCYRR 790.16 Determinations of Public Need for Hospice does not prescribe a specific methodology for hospice residence bed need, 791.2(d)(2) requires a full review for the addition of hospice residence beds and 794.6 defines the Hospice Residence Service as providing greater than two but not more than sixteen residence beds for those hospices certified to provide the Hospice Residence Service.

Program Summary

Niagara Hospice is a deemed provider accredited by the Accreditation Commission for Health Care (ACHC). The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Financial Summary

Total project costs of \$1,814,569 will be met via accumulated funds from Niagara Hospice operations.

Table with 3 columns: Budget, Year One, Year Three. Rows include Revenues, Expenses, and Excess Revenues.

## **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 4006(9)(b) states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of thirty hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1. [AER]
3. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

#### **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. Construction must start on or before October 1, 2021 and construction must be completed by January 30, 2022, 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. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

### **Council Action Date**

June 3, 2021

## Need and Program Analysis

### Background

Niagara Hospice, Inc., a not-for-profit corporation, currently operates an Article 40 Hospice, serving Niagara county. This project seeks approval to construct and certify six additional residence beds under Article 40 of the Public Health Law.

Niagara Hospice is currently certified for ten inpatient beds and ten residence beds. These beds are located at 4675 Sunset Drive, Lockport, New York 14094. The applicant seeks to certify six additional residence beds and perform requisite construction for a total of 16 residence beds and ten inpatient beds. Upon approval, Niagara Hospice will have 26 certified beds (0 dually certified) and offer the following services:

Services	
Audiology	Medical Supplies Equipment and Appliances
Baseline Services - Hospice	Nursing
Bereavement	Nutritional
Clinical Laboratory Service	Pastoral Care
Home Health Aide	Personal Care
Homemaker	Pharmaceutical Service
Hospice Residence	Physician Services
Housekeeper	Psychology
Inpatient Certified	Therapy – Occupational and Physical
Inpatient Services	Therapy - Respiratory
Medical Social Services	Therapy - Speech Language Pathology

### Analysis

Hospices can be certified to operate a residence unit of three to 16 beds. Niagara Hospice's average daily census was 180 patients as of June 2020. The projected annual patient caseload is 1,500 for Year One and 1,800 for Year Three. Niagara Hospice reports that there has been a waiting list for admission to their current residence unit since 2010 when the capacity was increased to 10 beds. The additional six beds will improve access to hospice care for patients denied hospice care in nursing homes and assisted living facilities.

The residence is staffed 24/7 with a compilation of LPN's, RN's, RN charge nurse(s), Hospice aides (HHA) and support services staff. The staffing plan for the residence unit includes one Registered Nurse (RN) and one Licensed Practical Nurse (LPN) per 12.5-hour shift and three home health aides per 7.5-hour shift. The applicant intends to offer full time positions to current part time professional and para-professional staff as well as recruit new staff for the expanded residence unit.

This application will have no impact on the counties served or services provided by Niagara Hospice.

### Facility Compliance/Enforcement

Niagara Hospice is a deemed provider accredited by the Accreditation Commission for Health Care (ACHC). The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

### Conclusion

The applicant's proposal will address their persistent waiting list for hospice residence services. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance. Upon approval of this application, the need for additional inpatient and dually certified hospice beds in Niagara County will remain unchanged.

## Financial Analysis

### Total Project Cost and Financing

Total project cost, which is for new construction, is estimated at \$1,814,569:

New Construction	\$1,338,806
Site Development	75,000
Design Contingency	133,881
Construction Contingency	66,940
Architect/Engineering Fees	112,192
Construction Manager Fees	80,328
CON Fee	2,000
Additional Processing Fee	<u>5,422</u>
Total Project Cost	\$1,814,569

Project costs are based on a five-month construction period. The applicant will provide equity from accumulated funds to meet the total project cost.

### Operating Budget

The applicant has submitted an operating budget, in 2020 dollars, for Year One and Year Three, summarized below:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare	\$639,499	\$1,042,981	\$1,042,981
Medicaid	\$544,263	\$882,067	\$882,067
Third Party	\$30,202	\$57,686	\$57,686
Private Payer	<u>\$295,883</u>	<u>\$470,897</u>	<u>\$470,897</u>
Total Revenues	\$1,509,847	\$2,453,631	\$2,453,631
<u>Expenses</u>			
Operating	\$1,304,112	\$2,003,631	\$2,003,631
Capital	<u>100,501</u>	<u>196,356</u>	<u>196,356</u>
Total Expenses	\$1,404,613	\$2,199,987	\$2,199,987
Excess of Revenues	\$105,234	\$253,644	\$253,644
Patient Days	6,005	9,608	9,608

Utilization broken down by payor source appears as follows:

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Medicare	44.45%	44.44%	44.44%
Medicaid	41.10%	41.10%	41.10%
Third Party	3.35%	3.33%	3.33%
Private Payer	<u>11.11%</u>	<u>11.13%</u>	<u>11.13%</u>
Total	100.00%	100.00%	100.00%

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

- Expense and utilization assumptions are based on the facility's historical experience of operating hospice beds.
- Revenues are based on the facility's current reimbursement methodologies for hospice residence beds.
- Effective April 2, 2020, the 2020/2021 Enacted State Budget reduced Medicaid payments by 1.5%, therefore reducing Medicaid revenues in year one and year three. This reduction has been reflected within the budgets.

**Capability and Feasibility**

Project costs of \$1,814,569 will be met via accumulated funds from Niagara Hospice. The June 30, 2019 and June 30, 2020 certified financial statements of Niagara Hospice, Inc. are included as BFA Attachment A and indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenue over expenses of \$253,644 in both Year One and Year Three after projection completion. Revenues are based on current reimbursement methodologies for hospice beds. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position and an average positive net asset position for the period June 30, 2019 and 2020. Also, the entity achieved an excess of revenues over expenses of \$655,954 for the period June 30, 2019 and 2020.

**Conclusion**

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

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**Attachments**

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BFA Attachment A    June 30, 2019 and June 30, 2020 certified financial statements of Niagara Hospice, Inc.



Project # 202273-B
147 Wellness LLC t/b/k/a
Midtown Endoscopy & Surgical Center, LLC

Program: Diagnostic & Treatment Center County: New York
Purpose: Establishment and Construction Acknowledged: February 4, 2021

Executive Summary

Description

147 Wellness, LLC, an existing New York State Limited Liability company, has submitted this application to establish and construct an Article 28 diagnostic and treatment center to be certified as a single-specialty freestanding ambulatory surgical center (FASC) with the following three (3) surgical specialties: gastroenterology; gynecology (non-abortion); and podiatry. The Center will have four procedure rooms and will be in located in leased space at 147 East 26th Street, New York (New York County). Upon approval of this CON application the applicant's legal name will change from 147 Wellness LLC to Midtown Endoscopy & Surgical Center, LLC.

Dr. Shawn Khodadadian M.D. is the sole member of 147 Wellness LLC and will service as the Medical Director. Dr. Khodadadian is also the sole member of 147 East 26th Street LLC, the building owner and landlord. Dr. Khodadadian is currently the medical director and owner of a multi-site private medical practice and office-based surgery practice with three locations in Manhattan.

The facility has signed a Transfer and Affiliation Agreement with Lenox Hill Hospital/Northwell as of November 11, 2020.

Dr. Khodadadian will not personally perform surgical procedures at the proposed Center, but as the Medical Director, he will oversee all surgical procedures performed at the Center. Five non-member surgeons currently practicing

at Dr. Khodadadian's private practice will perform surgical services at the FASC and have provided letters of interest demonstrating their commitment to perform procedures at the proposed Center.

OPCHSM Recommendation

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

Need Summary

The applicant projects 2,251 procedures in Year One and 3,751 in Year Three, with Medicaid utilization at 3.01% and Charity Care at 2.00% in the third year.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Summary

Total project costs of \$2,923,078 will be funded entirely with equity.

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

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Primary Care and Health Systems Management**

#### **Contingent approval with an expiration of the operating certificate five years from the date of its issuance upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the centers 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 a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures.
  - b. Data displaying the breakdown of visits by payor source
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery
  - d. Data displaying the number of emergency transfers to a hospital
  - e. Data displaying the percentage of charity care provided
  - f. The number of nosocomial infections recorded during the year reported
  - g. A list of all efforts made to secure charity cases
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of an amended and executed certificate of amendment of the applicant's articles of organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's amended and executed amended and restated operating agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed lease, acceptable to the Department. [CSL]
8. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
9. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

#### **Approval conditional upon:**

1. The project must be completed within two 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. Construction must start on or before December 1, 2021 and construction must be completed by August 1, 2022, 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. [PMU]
3. 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]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]

**Council Action Date**

June 3, 2021



## Need and Program Analysis

### Program

<b>Proposed Operator</b>	147 Wellness LLC t/b/k/a Midtown Endoscopy & Surgical Center, LLC
<b>Site Address</b>	147 East 26 <sup>th</sup> Street New York, New York 10010 (New York County)
<b>Surgical Specialties</b>	Single Specialty - Gastroenterology Single Specialty - Gynecology Single Specialty - Podiatry
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	4
<b>Hours of Operation</b>	Monday through Friday 7:00 am to 5:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	8.5 FTEs / 14.5 FTEs
<b>Medical Director(s)</b>	Shawn Khodadadian, M.D.
<b>Support Services Agreement and Distance</b>	Is expected to be provided by: Lenox Hill Hospital/Northwell Health 2.9 Miles / 16 minutes
<b>On-call service Emergency, In-Patient and Backup</b>	Patients who require assistance during off-hours will have the phone number of a 24 hour per day/seven (7) day per week on-call service, to immediately refer the patient to the Center's on-call physician.

Dr. Khodadadian's current off-based surgical practice has outgrown its space and this application is intended to alleviate space and capacity issues, but all of Dr. Khodadadian's existing practice sites will remain open to provide pre- and post-surgical and consultation visits. All cases to be performed at the proposed FASC will originate from Dr. Khodadadian's existing private practice and consultations.

### Analysis

The service area consists of New York County. The population of New York County in 2010 was 1,585,873 with 595,344 individuals (37.5%) who are 45 and over, which are the primary population group utilizing ambulatory surgery services. Per PAD projection data, this population group (45 and over) is estimated to grow to 703,766 by 2025 and represent 41.2% of the projected population of 1,709,958.

The number of projected procedures is 2,251 in Year One and 3,751 in Year Three. These projections are based on the current practices of participating surgeons. The applicant states that all the procedures are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial	1,913	84.98%	3,188	84.99%
Medicare	225	10.00%	375	10.00%
Medicaid	68	3.02%	113	3.01%
Charity Care	45	2.00%	75	2.00%
Total	2,251	100.00%	3,751	100.00%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: BCBS Amerigroup, and United Healthcare Community Plan. The Center will work collaboratively with Federally Qualified Health Centers (FQHC), hospitals, family, and homeless shelters within the service area to provide service to the under-insured. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational. The Center will operate Monday through Friday from 7 am until 5 pm.

The table below shows the number of patient visits for ambulatory surgery centers in New York County during 2017, 2018, and 2019.

Spec Type	Facility Name	Patient Visits		
		2017	2018	2019
Gastroenterology	Carnegie Hill Endo, LLC	11,718	12,280	13,862
Gastroenterology/ Pain Management	East Side Endoscopy	9,498	8,828	8,812
Multi	Fifth Avenue Surgery Center	1,997	4,031	3,936
Gastroenterology	Gramercy Park Digestive Disease Center	9,863	11,972	12,335
Gastroenterology	Gramercy Park DDC-Bennett Ave (opened 4/8/20)	N/A	N/A	N/A
Multi	Gramercy Surgery Center, Inc	3,365	3,105	4,851
Multi	Greenwich Village ASC, LLC (opened 10/13/17)	N/A	522	1,344
Orthopedics	HSS ASC of Manhattan (opened 9/13/17)	N/A	1,895	3,603
Orthopedics	HSS West Side ASC (opened 7/16/19)	N/A	N/A	N/A
Ophthalmology	Hudson Yards Surgery Center (opened 6/30/20)	N/A	N/A	N/A
Gastroenterology	Kips Bay Endoscopy Center, LLC	9,410	9,434	10,051
Gastroenterology	Liberty Endoscopy Center (opened 1/13/17)	N/A	5,240	6,568
Gastroenterology	Manhattan Endoscopy Center, LLC	14,616	11,032	12,298
Gynecology	Manhattan Reproductive Surgery Center (opened 3/27/19)	N/A	N/A	N/A
Multi	Manhattan Surgery Center	6,364	6,080	6,395
Ophthalmology	Mid-Manhattan Surgi-Center (closed 4/30/19)	3,348	3,180	426
Multi	Midtown Surgery Center	2,411	2,745	3,749
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	N/A	N/A
Ophthalmology	Retinal Ambulatory Surgery Center of NY	4,095	4,179	4,882
Multi	SurgiCare of Manhattan, LLC	3,967	4,377	4,257
Gastroenterology	The Endoscopy Center of New York	12,488	13,377	14,758
Gastroenterology	West Side GI	17,802	18,694	17,894
Total Visits		110,942	120,971	130,021

### Character and Competence

The sole member of 147 Wellness LLC is Shawn Khodadadian, M.D.

**Dr. Shawn Khodadadian** has been the Medical Director of Manhattan Specialty Care Multispecialty Practice, an office-based surgical practice, for over five years and has also owned and operated Manhattan Gastroenterology, P.C. for over ten years. He is been an Attending Physician and Voluntary Faculty Member of Weill Cornell NY Presbyterian Hospital for over one year and of NYU Langone Medical Center for over nine years. Dr. Khodadadian received his medical degree from the State University of New York Stony Brook School of Medicine. He completed his residency in Internal Medicine at Lenox Hill Hospital and his residency in Radiation Oncology at State University of New York Health Science Center at Brooklyn. He completed his Fellowship in Gastroenterology at Lenox Hill Hospital. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

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. Khodadadian disclosed one malpractice suit file on January 16, 2019. The case is regarding a patient who underwent an uneventful colonoscopy on October 4, 2017. The patient was noted to have hit her wrist on a metal bedrail during recovery. She was given ice for the swelling and discharged with a referral to primary care and orthopedics for further evaluation. The patient did not seek follow up care. Three weeks later, the patient reached out and claimed to have fallen in the recovery room after the colonoscopy, causing the wrist injury. Dr. Khodadadian sat with the malpractice carrier on November 16, 2017 and gave the details of the event from the record. Depositions have not been taken at this time and the case is pending.

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**

For those patients who do not identify a primary care provider (PCP), the Applicant plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers, including a broad array of services offered by the Center's back up hospital. Prior to leaving the Center, each patient will be provided information concerning the local availability of primary care services. Prior to leaving the Center, each patient will be provided concerning the local availability of primary care services. The Applicant commits to treating patients based on the need for the procedures without discrimination due to personal characteristics or ability to pay. The Applicant commits to providing charity care for persons without the ability to pay, and to utilize a sliding fee scale for persons who are unable to pay the full charge for services are uninsured. The Applicant has proposed an operating budget that includes 3% Medicaid and 2% Charity Care. The Center will provide colon cancer screenings throughout the community it serves, in addition to the charity care, through free procedures.

The Center intends on using an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinical referral and event notifications. The Center does not intend to become part of any Accountable Care Organization or Medical Home at this time.

### **Conclusion**

Approval of this project will provide increased access to podiatry, gynecology, and gastroenterology surgery services in an outpatient setting for the residents of New York County. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

## Financial Analysis

### Total Project Cost and Financing

Total project cost for renovations and movable equipment, is estimated at \$2,923,078 broken down as follows:

Renovation & Demolition	\$1,664,000
Design Contingency	\$166,400
Construction Contingency	\$166,400
Architect/Engineering Fees	\$166,400
Construction Manager Fees	\$41,600
Other Fees	\$20,000
Movable Equipment	\$680,300
Application Fee	\$2,000
Processing Fee	<u>\$15,978</u>
<b>Total Project Cost</b>	<b>\$2,923,078</b>

Total Project Cost will be funded by the applicant's equity.

### Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Date:	TBD
Premises:	5,185 Sqft located in space on the first floor and basement level in the building located at 147 East 26th Street, New York (New York County)
Landlord:	147 East 26 <sup>th</sup> Street, LLC
Lessee:	147 Wellness, LLC (Midtown Endoscopy & Surgical Center, LLC)
Term:	10 Years
Rental:	Year 1-10 \$305,100 a year (\$25,425 a month and \$58.84 sqft)
Provisions:	Triple net lease

The lease/assignment arrangement is a non-arm's length agreement. The applicant has submitted letters from two New York Licensed Real Estate Brokers attesting that the lease cost per square foot is at fair market value.

### Operating Budget

The applicant has submitted their first year and third-year operating budgets, in 2020 dollars, as shown below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenue</u>				
Commercial - FFS	\$ 940.28	\$1,798,761	\$940.28	\$2,997,621
Medicare - FFS	\$1,106.21	\$248,898	\$1,106.22	\$414,831
Medicaid - FFS	\$536.56	<u>\$36,486</u>	\$536.56	<u>\$60,631</u>
<b>Total Revenue</b>		<b>\$2,084,145</b>		<b>\$3,473,083</b>
 <u>Expenses</u>				
Operating	\$700.78	\$1,577,449	\$661.42	\$2,480,973
Capital	<u>\$218.57</u>	<u>\$491,997</u>	<u>\$131.16</u>	<u>\$491,997</u>
<b>Total Expenses</b>	<b>\$919.35</b>	<b>\$2,069,446</b>	<b>\$792.58</b>	<b>\$2,972,970</b>
 Net Income		<u>\$14,699</u>		<u>\$500,113</u>
 Utilization (Procedures)		2,251		3,751

The following is noted with respect to the submitted budget:

- The Medicare reimbursement rate is based on the current respective Fee Schedule rate, which is the average rates experienced during 2020.
- The Medicaid reimbursement rate is based on the 2020 Downstate Medicaid APG rate (weighted based on CPT codes) times the discount for Medicaid Managed Care Company Negotiations plus the capital cost per visit.
- The Commercial rate is 85% of the 2020 Medicare FFS rate
- Operating expenses are based on Dr. Khodadadian's experience and the experience of other FASC's in New York State.
- Utilization by payer is based on the existing payer mix of the physicians who will participate at the Center.

Utilization by payor related to the submitted operating budget is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	84.98%	84.99%
Medicare - FFS	10.00%	10.00%
Medicaid - FFS	3.02%	3.01%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
	100.00%	100.00%

### **Capability and Feasibility**

The total project cost is \$2,923,078 and will be met with owner's equity. BFA Attachment A is the Net Worth Statement for Dr. Khodadadian. It indicates the availability of sufficient funds for the equity contribution to meet the total project cost.

Working capital requirements are estimated at \$495,495 based on two months of third year expenses. Working capital will be funded with owner's equity. BFA Attachment A indicates the availability of sufficient funds to meet working capital needs.

The submitted budgets indicate a net income of \$14,699 and \$500,113 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

### **Conclusion**

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

## **Supplemental Information**

### **DOH Comment**

The Department reached out to proximate hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC). None of the hospitals responded. Therefore, in the absence of comments from hospitals near the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

## **Attachments**

BFA Attachment A	Net Worth Statement of Dr. Shawn Khodadadian
BHFP Attachment	Map



Project # 211035-E
Griffiss Surgery Center

Program: DTC
Purpose: Establishment

County: Oneida
Acknowledged: February 24, 2021

Executive Summary

Description

Griffiss EC, LLC d/b/a Griffiss Surgery Center (Griffiss), an existing New York limited liability company, requests approval to transfer 2% membership interest in an Article 28 freestanding ambulatory surgery center (FASC) to one new member (Ganga Nair, M.D.). The application requires a Full Review because the aggregate membership transfers for the LLC over the last five years is greater than 25%. The Center is in leased space at 105 Dart Circle, Rome (Oneida County). The facility is certified as a multi-specialty. They are not proposing to add or change any services. The Center's existing lease agreement will not change and will remain in place upon approval of this application. The Center performed 6,064 procedures in 2018, 11,500 in 2019, and 11,741 in 2020. Volume plateaued in 2020 because the Center was closed from March 23, 2020 to May 20, 2020 due to the Governor's executive order related to the COVID-19 pandemic.

On January 20, 2021, seven physician members and one hospital member of Griffiss EC, LLC entered into a Membership Purchase Agreement to sell 2% of Griffiss to Ganga Nair, M.D. for \$80,000. The transaction will be finalized upon Public Health and Health Planning Council (PHHPC) approval.

The FASC is current with their SPARCS reporting.

Ownership interest of the operations before and after the request change is as follows:

Table with 3 columns: Members, Current, Proposed. Rows include Rome Memorial Hospital, John Costello, Jr. DO, Patrick Costello, MD, Alexander Harris, MD, Lorna Grant, MD, Aamer Mirza, MD, Ajay Goel, MD, Muhammad Jhandier, MD, Ganga Nair, MD, and Total.

OPCHSM Recommendation

Approval

Need Summary

There will be no Need recommendation for this project.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Summary

Ganga Nair, M.D. will purchase 2% interest in Griffiss EC, LLC with equity of \$80,000. 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 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 3, 2021

## Program Analysis

### Program Description

There are no programmatic changes as a result of this request; however, staffing is expected to increase by 2.0 FTEs in Year One and 3.0 FTEs in Year Three.

The table below details the proposed change in ownership:

<b>Member Name</b>	<b>Current</b>	<b>Proposed</b>
Rome Memorial Hospital	22.0751%	21.633598%
John Costello, Jr, D.O.	18.3691%	18.028178%
Patrick Costello, M.D.	11.0380%	10.817240%
Alexander Harris, M.D.	11.0380%	10.817240%
Lorna Grant, M.D.	4.3388%	4.3388%
Aamer Mirza, M.D.	11.0380%	10.817240%
Ajay Goel, M.D.	11.0380%	10.817240%
Mohammad Jhandier, M.D.	11.0380%	10.817240%
<b>Ganga Nair, M.D.*</b>	-----	2.000000%
<b>TOTAL</b>	100%	100%

*\*Member subject to Character and Competence*

### Character and Competence

**Dr. Ganga Nair** is an Ophthalmologist and has been practicing at Costello Eye Physicians and Surgeons for over two years. He was previously employed at Marcia Dunn, M.D., P.C. for over 14 years. He received his medical degree from State University of New York Health Sciences Center at Syracuse College. He completed his residency in Ophthalmology at Long Island Jewish Medical Center. He is board certified in Ophthalmology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

### Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.



## Financial Analysis

### Membership Purchase Agreement

The applicant has submitted an executed Membership Purchase Agreement which will be effectuated upon Public Health and Health Planning Council (PHHCP) approval of this CON. The terms of the agreement are summarized below:

Date:	January 20, 2021
Seller:	Rome Memorial Hospital sold 0.441502% membership interest for \$17,660.08; John Costello Jr., D.O. sold 0.367922% membership interest for \$14,716.88; Patrick Costello, M.D. sold 0.220760% membership interest for \$8,830.40; Alexander Harris, M.D. sold 0.220760% membership interest for \$8,830.40; Lorna Grant, M.D. sold 0.086776% membership interest for \$3,471.04; Aamer Mirza, M.D. sold 0.220760% membership interest for \$8,830.40; Ajay Goel, M.D. sold 0.220760% membership interest for \$8,830.40; Muhammad Jhandier, M.D. sold 0.220760% membership interest for \$8,830.40.
Buyer:	Ganga Nair, M.D.
Acquired	2% membership interest Griffiss EC, LLC for \$80,000
Further Action:	Ganga Nair, M.D shall deliver banks checks to each seller for the purchase price identified.

BFA Attachment A, Ganga Nair, M.D.net worth shows sufficient liquid resources to fund the purchase.

### Capability and Feasibility

Ganga Nair, M.D. will purchase 2% interest in Griffiss EC, LLC with equity of \$80,000. There are no project costs associated with this application. A review of BFA Attachment A, Ganga Nair, M.D. net worth statement shows sufficient liquid resources.

BFA Attachment B, Griffiss EC, LLC's certified financial statements for 2018 and 2019, shows negative working capital, negative equity position, and net income of \$102,417 and \$155,943, respectively. In 2018, Griffiss Surgery Center completed an expansion project to its surgery center. Upon completion of this project, the company underwent changes to their debt structure that contributed to their negative working capital. BFA Attachment C, Griffiss EC LLC's December 31, 2020 internal financial statements shows positive working capital and equity. The Center received supplemental federal stimulus dollars to mitigate the financial impact of the COVID-19 pandemic during April 2020. The Center received approximately \$130,000 from the federal Provider Relief Fund to reimburse for healthcare related expense or lost revenues that were attributable to the COVID-19 pandemic and approximately \$496,000 from the Paycheck Protection Program under the CARES Act.

Net income declined in 2020 from prior year to \$42,882. It was noted in the certified financial statement that the COVID-19 pandemic has resulted a reduction in elective surgeries due to New York State's restrictive measures. The Center was closed from March 23, 2020 to May 20, 2020 and the applicant believes that a certain portion of the deferred procedures will be performed and volume will recover to pre-COVID levels as more people are vaccinated and hesitancy to seek care is reduced.

## Attachments

- BFA Attachment A Ganga Nair, M.D. Net Worth
- BFA Attachment B Griffiss EC, LLC – 2018 and 2019 certified financial statements
- BFA Attachment C Griffiss EC, LLC - December 31, 2020 internal financial statement



Project # 201273-B
CFR Advance Services, LLC
d/b/a Village Med & Rehabilitation

Program: Diagnostic and Treatment Center County: Queens
Purpose: Establishment and Construction Acknowledged: July 17, 2020

Executive Summary

Description

CFR Advance Services, LLC, an existing New York limited liability company whose sole member is Frederick Giovanelli, D.C., requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be located at 61-33 Woodhaven Blvd., Rego Park, (Queens County). The D&TC will be housed in 2,776 gross square feet on the first floor of an existing six-story building. Village Med & Rehabilitation will occupy space currently used as a non-Article 28 physical therapy center. Minor interior renovations will be made to the current space for it to meet the regulatory standards of an Article 28 D&TC. Upon approval by the Public Health and Health Planning Council (PHHPC) the Center will do business as Village Med & Rehabilitation.

Eric Berger, MD. will serve as Medical Director. CFR Advance Services, LLC has commenced a dialogue with Long Island Jewish Forest Hills Hospital and has been in discussion with the applicant regarding providing a draft Transfer and Affiliation Agreement. Long Island Jewish Forest Hills Hospital is located approximately 1.4 miles, 9 minutes from the proposed site.

The proposed service area will be Queens, NY with specific emphasis on the zip code 11374, in which the center will be located (known as Rego Park), as well as adjoining areas of Forest Hills and Woodhaven. The applicant requests certification for Primary Medical Care O/P

Services and Other Medical Specialties and will offer physical therapy services, as well. Additionally, all staff of the Center will be trained in COVID-19 protocols of infection control.

OPCHSM Recommendation

Contingent Approval.

Need Summary

The number of projected visits is 8,424 in Year One and 16,673 in Year Three.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

Total project costs of \$1,297,111 will be met with \$129,711 member's equity and a bank loan of \$1,167,400 for a ten-year term with interest indexed to the bank's five-year cost of funds with an indicative rate of 5.00% as of December 2, 2020. Peapack-Gladstone Bank has provided a letter of interest for the financing. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$1,185,787 vs \$2,346,872), Expenses (1,179,827 vs 1,949,786), Net Income (\$5,960 vs \$397,086).

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Primary Care and Health Systems Management**

#### **Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed bank loan commitment for project costs, acceptable to the Department of Health. [BFA]
4. Submission of an executed bank loan for working capital loan acceptable to the Department. [BFA]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
6. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
7. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of amended and executed Lease Agreements, acceptable to the Department. [CSL]

#### **Approval conditional upon:**

1. The project must be completed within two 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.
2. Construction must start on or before November 1, 2021 and construction must be completed by April 1, 2022, 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. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

### **Council Action Date**

June 3, 2021

## Need and Program Analysis

### Program Description

<b>Proposed Operator</b>	CFR Advance Services, LLC
<b>To Be Known As</b>	Village Med & Rehabilitation
<b>Site Address</b>	61-33 Woodhaven Boulevard Rego Park, New York 11374 (Queens County)
<b>Specialties</b>	Medical Services – Primary Care Medical Services-Other Medical Specialties Physical Therapy
<b>Hours of Operation</b>	Monday through Friday 8:00 am -6:00 pm Saturday 8:30 am-6:30 pm as need dictates
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	13.25 FTEs / 23.33 FTEs
<b>Medical Director(s)</b>	Eric Berger, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Northwell LIJ Forest Hills 1.9 miles / 8 minutes away

### Analysis

The proposed service area will be Queens, NY with specific emphasis on the zip code 11374, in which the center will be located (known as Rego Park), as well as adjoining areas of Forest Hills and Woodhaven. The population of Queens County was 2,230,722 in 2010 and is estimated to grow to 2,508,764 by 2025, an increase of 12.5%. The number of projected visits is 8,424 in Year One and 16,673 in Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment and is projecting Medicaid utilization at 36% and Charity Care at 2%.

### Character and Competence

The sole member of CFR Advance Services, LLC d/b/a Village Med & Rehabilitation is Frederick Giovanelli, D.C.

**Dr. Frederick Giovanelli** is a Chiropractor and has owned Village Chiropractic for over 27 years. He provides chiropractic services to patients and provides oversight and management of the practice and facility. He has been the President of Village PT Chiropractic & Acupuncture for over seven years. As President, he oversees all the chiropractic aspects of patient care. He manages all the clerical, billing, scheduling of physical therapy, acupuncture, and chiropractic services. He works in conjunction with other practitioners.

**Dr. Eric Berger** is the proposed Medical Director. He is the current Medical Director of Revitta, wherefor the past five years he has performed cosmetic procedures and injectables. He has also owned his own private medical practice Eric Berger, MD, for approximately six months, where he provides patient evaluation for musculoskeletal disorders. He was previously employed at NY Physician House Calls for over one year providing house calls to foreign travelers. He was previously employed at Berger Medical Aesthetics for over nine years as a solo practitioner providing cosmetic laser, BOTOX, and fillers. He has previously served as the Medical Director for the American Council on Science and Health from 1987-1989. He earned his medical degree from the University Auto De Guadalajara in Mexico. He completed his residency in General Surgery at Cabrini Medical Center and a residency in Otolaryngology at Jacobi Medical Center. He is board certified in Laser Medicine and Surgery.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

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.

Dr. Giovanelli was named in a civil RICO case (1:2012cv-03398) at US District Court for the Eastern District of New York, on July 9, 2012. The case was between State Farm Mutual Insurance Company versus Richard Giovanelli, cousin of Dr. Giovanelli, and involved allegations of improper payments for medical services. The case was dismissed with prejudice on June 11, 2013.

### **Conclusion**

Approval for this project will provide for the improved access to a variety of medical services for individuals residing in the neighborhood of Rego Park, and the surrounding communities in Queens County. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

## **Financial Analysis**

### **Total Project Cost and Financing**

Total project cost of \$1,297,111 for renovations and moveable equipment are broken down as follows:

Renovation & Demolition	\$806,983
Design Contingency	80,698
Construction Contingency	80,698
Architect /Engineering Fees	64,559
Other Fees	50,000
Moveable Equipment	159,064
Telecommunications	73,130
Financing Costs	32,488
Interim Interest Expense	13,537
CON Fee	2,000
Additional Processing Fee	<u>7,084</u>
Total Project Cost	\$1,297,111

Project costs are based on a four-month construction period. The applicant's financing plan is as follows: \$129,711 member's equity and a \$1,167,400 loan for ten-year term with interest indexed to the bank's five-year cost of funds with an indicative rate of 5.00% as of December 2, 2020. Peapack-Gladstone Bank has provided a letter of interest for the loan. BFA attachment A provides the net worth statement of Frederick Giovanelli, M.D., which indicates sufficient resources to meet the equity requirements of this application

## Lease Agreement

The applicant has submitted an executed lease agreement, the terms of which are summarized below:

Date:	June 30, 2020
Premises:	Store known as 61-33 Woodhaven Boulevard, Rego Park, NY 11374 in the building known as 61-10 Alderton Street
Owner:	H.S. Brother Corp. c/o Deljanin Mgmt. Corp.
Tenant:	Frederick Giovanelli MBR
Security:	\$7,800 deposit paid
Rental:	Tenant shall deposit with landlord \$31,200 in equal monthly installments in advance of \$2,600 for the period 09/01/20 through 08/31/21. There will be 3% increases commencing the second year and every year thereafter.
Term:	Five years
Provisions:	Lessee shall be responsible for 5% of all real estate tax increases, maintenance, insurance and electricity.

Frederick Giovanelli is the sole member of CFR Advance Services LLC and has submitted an affidavit confirming that there is no relationship between him and H.S. Brothers Corp. The lease arrangement is an arm's length agreement.

## Operating Budget

The applicant submitted their first year and third-year operating budget, in 2021 dollars, as shown below:

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS	\$164.98	\$389,189	\$165.01	\$770,270
Medicare FFS	\$135.06	56,862	\$134.94	112,539
Medicare MC	\$107.99	181,958	\$107.98	360,126
Medicaid FFS	\$166.56	140,247	\$166.51	277,572
Medicaid MC	\$128.88	273,481	\$124.86	541,265
Private Pay	\$190.04	144,050	\$189.94	285,100
Total Revenue		\$1,185,787		\$2,346,872
<u>Expenses</u>				
Operating	\$106.63	\$898,173	\$99.94	\$1,666,298
Capital	\$33.44	281,654	\$17.00	283,488
Total Expenses	\$140.07	\$1,179,827	\$116.94	\$1,949,786
Net Income		\$5,960		\$397,086
Visits		8,423		16,673
Cost/Visit		\$140.07		\$116.94

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

	Year One		Year Three	
Payor	Visits	%	Visits	%
Commercial FFS	2,359	28%	4,668	28%
Medicare FFS	421	5%	834	5%
Medicare MC	1,685	20%	3,335	20%
Medicaid FFS	842	10%	1,667	10%
Medicaid MC	2,190	26%	4,335	26%
Private Pay	758	9%	1,501	9%
Charity Care	168	2%	333	2%
Total	8,423	100%	16,673	100%

The following is noted with respect to the submitted budget:

- Medicaid Fee for Service Rate is based on the base rate plus the cost of capital as obtained from the Bureau of D& TC Reimbursement. The base rate is \$169.02 which is what is being used as the per visit rate. This rate has been reduced by 1.5% reflect the ATB payment reductions for Medicaid Fee for Service.
- Medicaid Managed Care Rate is based on the base rate plus the cost of capital as obtained from the Bureau of D& TC Reimbursement. The base rate is \$126.77 which is what is being used as the per visit rate. This rate has been reduced by 1.5% reflect the ATB payment reductions for Medicaid managed care.
- Medicaid Managed Care is assumed to be 75% of the Medicaid APG Fee for Service rate.
- Commercial Insurance and Medicare Fee for Service is based on the Medicare Part B Fee Schedule. Medicare Managed Care is based on 80% of the Medicare Part B Fee Schedule.

### **Capability and Feasibility**

The total project cost is \$1,297,111 funded via \$129,711 member's equity and a \$1,167,400 loan for ten-year term with interest indexed to the bank's five-year cost of funds with an indicative rate of 5.00% as of December 2, 2020. Peapack-Gladstone Bank has submitted a letter of interest for the loan.

Working capital requirements are estimated at \$324,964 based on two months of third year expenses and will be satisfied via members' equity of \$162,482 and a working capital loan of \$162,482 over a three - year term at an indicative rate of 5.00% as of December 2, 2020. Peapack-Gladstone Bank has submitted a letter of interest for the working capital loan. BFA Attachment A is the net worth of Frederick Giovanelli, which indicates the availability of enough funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$292,193.

The submitted budget indicates the facility will generate net income of \$5,960 and \$397,086 for the first and third years, respectively.

### **Conclusion**

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

## **Attachments**

BFA Attachment A	Net Worth of Frederick Giovanelli
BFA Attachment B	Pro Forma Balance Sheet, CFR Advance Services, LLC



**Project # 202250-E  
Assured Care Home Health, LLC**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Nassau  
**Acknowledged:** January 7, 2021

**Executive Summary**

**Description**

Assured Care Home Health, LLC requests to be established as the new operator of an existing CHHA currently operated by Long Island Jewish Medical Center (LIJ). The CHHA is currently operated by LIJ and co-operated by Northwell Healthcare, Inc. and is located at 1983 Marcus Avenue, New Hyde Park (Nassau County). It will be relocated into leased space at 100-04 Ditmars Boulevard, East Elmhurst (Queens County). The CHHA is certified to operate in Nassau and Suffolk Counties providing Home Health Aide, Medical Social Services, Medical Supplies, Equipment and Appliances, Nursing Services, Physician Services, Occupational Therapy Services, Physical Therapy Services and Speech-Language Pathology Services. Upon Public Health and Health Planning Council (PHHPC) approval of this application, the agency will continue as there will be no changes in services.

Jack Basch entered into an Asset Purchase Agreement, (APA) for \$1,500,000 with LIJ for exclusive rights and certain assets of the CHHA. Jack Basch will assign his rights to Assured Home Health Care, LLC and will add a member as disclosed to the Department.

Ownership of the CHHA after the requested change is as follows:

<u>Proposed Operator</u>	
Assured Home Health Care, LLC	
<u>Members</u>	
Jack Basch	85%
Chaim Klein	15%

Upon approval, 100-04 Ditmars Boulevard LLC (landlord) will enter into a lease agreement with Assured Home Health Care, LLC.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

This change of ownership will not result in any changes to the counties being served or to the services being provided.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

**Financial Summary**

There are no project costs associated with this proposal. The purchase price for the assets is \$1,500,000 to be met via equity from both members proportionally to their membership. The operating budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$938,401	\$2,064,478
Expenses	<u>929,100</u>	<u>1,820,645</u>
Net Income	\$9,301	\$243,833



## **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 revised lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed assignments of Rights, Acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the applicant's amended operating agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the seller's certificate of amendment of the certificate of incorporation, acceptable to the Department. [CSL]
5. Submission of the applicant's amended and executed Certificate of Amendment of the Articles of Organization, 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 3, 2021

## **Need and Program Analysis**

### **Program Description**

Assured Care Home Health, LLC, a limited liability company, requests approval to become the new operator of Long Island Jewish Medical Center Home Care Department (CHHA) under Article 36 of the Public Health Law.

On August 12, 2020 Long Island Jewish Medical Center, the current operator of the Certified Home Health Agency, entered into an Asset Purchase Agreement (APA) with Jack Basch, who agreed to purchase certain assets of the CHHA and assigned his rights under the APA to Assured Care Home Health, LLC.

Long Island Jewish Medical Center d/b/a Long Island Jewish Medical Center Home Care Department currently serves Queens and Nassau counties from an office located at 1983 Marcus Avenue, New Hyde Park, NY. Upon approval, the applicant intends to relocate the office of the CHHA to 100-04 Ditmars Boulevard, East Elmhurst, NY. There will be no changes to the counties served or services provided as a result of this project. Upon approval, the CHHA will be known as Assured Care Home Health, LLC.

### **Character and Competence Review**

The membership of Assured Care Home Health, LLC is as follows:

#### **Jack Basch – Member, 85%**

Self-Employed

##### Affiliations

- King David Center for Nursing and Rehabilitation (2014 – Present)
- Crown Heights Center for Nursing and Rehabilitation (2014 – Present)
- Bedford Center for Nursing and Rehabilitation (2015 – Present)
- Linden Center for Nursing and Rehabilitation (2013 – Present)
- Elmhurst Care Center Inc. (1999 – Present)
- Bezalel Nursing Home (1986 – Present)

#### **Chaim Klein, Dentist – Member, 15%**

Owner, York MG

Owner, CK DDS PC Dentistry

##### Affiliations

- Elm York, LLC (ALP)
- Madison York Rego Park, LLC (ALP)
- Madison York Assisted Living Community, LLC (ALP)
- Universal Healthcare/At Your Side Home Care (LHCSA)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, and the Office of Professional Medical Conduct, indicate no issue with the licensure of the health professionals associated with this application.

### **Facility Compliance/Enforcement**

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID has reviewed the compliance histories of the affiliated Nursing Homes listed above and reports as follows:

- Bedford Center for Nursing and Rehabilitation was fined a Civil Monetary Penalty of \$6,500 as a result of survey findings on June 10, 2016.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID reported the remaining affiliated Nursing Homes have no histories of enforcement action taken during the time periods indicated above.

The NYS Department of Health Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance histories of the affiliated Assisted Living Programs listed above and reports as follows:

- Elm York, LLC was fined \$18,000 pursuant to a Stipulation and Order dated March 6, 2017 for inspection findings on June 21, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

<b>CHHA Quality of Patient Care Star Ratings</b> as of March 10, 2021	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Long Island Jewish Medical Center d/b/a Long Island Jewish Medical Center Home Care Department	3 out of 5 stars

### **Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2). The change in operator will result in no changes to the service area or the services being provided by the CHHA.

## **Financial Analysis**

### **Asset Purchase Agreement**

The applicant has submitted an executed Asset Purchase Agreement for the purchase of the CHHA, summarized below:

Date:	August 12, 2020
Purpose:	Buyer desires to purchase all rights of the Seller to own and operate the CHHA, and all CHHA's assets.
Seller:	Long Island Jewish Medical Center
Buyer:	Jack Basch who will relinquish everything to (Assured Care Home Health, LLC)
Assets Acquired:	Relinquish to New York State pursuant to this Agreement its CHHA license in connection with the application of the Purchaser for his own Certificate of Need for certified home health agency services in the New York Counties of Nassau and Queens.
Excluded Assets:	All fixed assets deployed in the Seller's CHHA except as set forth: (A) all existing patients. (B) all caregivers and other personnel employed in the Seller's CHHA; (C) all books and records of the Seller's CHHA, including, without limitation, all medical records of patients of such CHHA; (D) the name, logo, trademark, and all intellectual property except set forth in.
Purchase Price:	\$1,500,000
Payment of the Purchase Price:	\$450,000 deposit held in escrow) applicable to the APA in total, including acquisitions other than the CHHA) to be applied to the overall purchase price at closing. Balance due at closing.
Provision Update:	December 8, 2020 (The asset purchase agreement has been amended in order for Mr. Jack Basch who purchased the CHHA only, could then sell with written intent 15% of his portion to continue to operate the CHHA that is currently under Long Island Jewish Medical Center. Written documentation in NYSCON indicates that Chaim Klein will own 15% of the facility. Jack Basch as the managing member signed his purchase over to Assured Care Home Health, LLC and the amended sale agreement states that he can now sell membership into the CHHA. To date he has put the accumulated funds to buy the entity and they when the 15% is sold to the named member for \$250,000 estimated at the time of approval. This is not a separate agreement but an amendment to the original agreement.

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/r surcharges, assessments or fees due from the transferor pursuant to Article 36 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.

**Lease Rental Agreement**

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

Date:	November 5, 2020
Premises:	100-04 Ditmars Boulevard, East Elmhurst, New York, 11369
Landlord:	100-04 Ditmars Boulevard, LLC
Tenant:	Assured Care Home Health, LLC (f-k-a) We Care Home Health, LLC
Term:	10-Year
Rent:	\$60,000 annually or \$5,000 monthly for the term.

The applicant has attested that the lease is a non-arm’s length arrangement, as the landlord and tenant have an existing relationship. The applicant submitted two (2) letters of rent reasonableness indicating that the rent is reasonable from two New York State realtors.

**Operating Budget**

The applicant has submitted a projected operating budget for first and third year, in 2021 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>		
Commercial FFS	\$174,621	\$384,164
Medicare FFS	\$421,417	\$927,113
Medicare MC	\$149,566	\$329,042
Medicaid FFS	\$9,869	\$21,715
Medicaid MC	\$107,775	\$237,105
All Other	\$75,153	\$165,338
Total Revenues	\$938,401	\$2,064,478
<u>Expenses</u>		
Operating	\$929,100	\$1,820,645
Capital	<u>0</u>	<u>0</u>
Total Expenses	\$929,100	\$1,820,645
Net Income (Loss)	<u>\$9,301</u>	<u>\$243,833</u>
Utilization - Visits*	9,000	19,800
Utilization - Hours**	2,000	4,400

\* Nursing, PT, OT, SP, and Medical Social Services visits

\*\*Home Health Aid hours

- The Medicaid 1.5% decreased reimbursement has already been accounted for in the development of the Year One & Three budgets stated in the application.
- Projections are based on historical performance of the CHHA when it was under operation from LIJ and Northwell.

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

<u>Visits</u>	<u>Year One</u>	<u>Year Three</u>	<u>Hours</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	16.26%	16.26%	Commercial FFS	16.26%	16.26%
Medicare FFS	43.03%	43.03%	Medicare FFS	43.05%	43.05%
Medicare MC	15.26%	15.26%	Medicare MC	15.25%	15.25%
Medicaid FFS	1.02%	1.02%	Medicaid FFS	1.0%	1.0%
Medicaid MC	11.11%	11.11%	Medicaid MC	11.11%	11.11%
Charity Care	2.0%	2.0%	Charity Care	2.0%	2.0%
All Other	11.32%	11.32%	All Other	11.31%	11.31%
Total	100%	100%	Total	100%	100%

Charity care is expected to be 2%. The applicant states their policy is to assess individual based on income to determine eligibility fee reduced fees and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

**Capability and Feasibility**

Jack Basch will acquire the CHHA via asset purchase agreement for \$1,500,000, funded by member equity, of which \$450,000 is currently held in a mutual escrow account. He will then assign his rights to Assured Care Home Health, LLC. The applicant has submitted an agreement to sell 15% of the membership for \$225,000 to Chaim Klein, which is proportional to the cost of his membership.

The working capital requirement is estimated at \$154,850 based on two months of first year expenses. The \$154,850 will be funded from the members' equity. BFA Attachment A is the net worth statements for the proposed members Assured Care Home Health, LLC, which reveals sufficient resources to meet the equity requirements. BFA Attachment C is the pro forma balance sheet, which shows the entity will start with \$1,654,850 in equity.

The submitted budget projects a net income of \$9,301 and \$243,833 in the first- and third-year budgets, respectively. The budget appears reasonable based on historical utilization.

**Conclusion**

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

**Attachments**

- BFA Attachment A    Personal Net Worth Statement- Members of Assured Care Home Health, LLC
- BFA Attachment B    Pro Forma Balance Sheet of Assured Care Home Health, LLC