

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

November 18, 2021
10:15 a.m.

Empire State Plaza, Concourse Level, Meeting Room 6, Albany

I. SPECIAL COMMITTEE ON CODES, REGULATIONS, AND LEGISLATION

Angel Gutiérrez, Chair

For Emergency Adoption

- 20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease; Isolation and Quarantine)
- 20-07 Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention)
- 21-07 Amendment of Section 415.3 of Title 10 NYCRR and Addition of Section 485.18 to Title 18 NYCRR (Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes and Adult Care Facilities)
- 21-14 Addition of Section 2.61 to Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR (Prevention of COVID-19 Transmission by Covered Entities)
- 21-15 Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing)

For Information

- 20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease; Isolation and Quarantine)
- 20-07 Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention)
- 21-07 Amendment of Section 415.3 of Title 10 NYCRR and Addition of Section 485.18 to Title 18 NYCRR (Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes and Adult Care Facilities)
- 21-14 Addition of Section 2.61 to Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR (Prevention of COVID-19 Transmission by Covered Entities)
- 21-08 Amendment of Section 756.3 and Repeal of Section 756.4 of Title 10 NYCRR (Abortion Services)

*****CONVENE SPECIAL FULL COUNCIL MEETING*****

II. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

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

Acute Care Services- Establish and Construct

Exhibit # 1

<u>Number</u>	<u>Applicant/Facility</u>
1. 212009 E	Long Island Community Hospital and Hospice (Suffolk County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 2

<u>Number</u>	<u>Applicant/Facility</u>
1. 201273 B	CFR Advance Services, LLC d/b/a Village Med & Rehabilitation (Queens County)
2. 211132 B	Arena Care LLC (Suffolk County)
3. 211262 E	Montefiore Westchester Community Corp. t/b/k/a Montefiore Einstein Advanced Care (Westchester County)
4. 211270 B	Samaritan Daytop Health, Inc. (Bronx County)
5. 212015 B	RiverSpring Project Corp. t/b/k/a RiverSpring DTC Corp. (Kings County)
6. 212032 B	Emes Vision Center LLC (Kings County)

Certified Home Health Agencies - Establish/Construct

Exhibit # 3

<u>Number</u>	<u>Applicant/Facility</u>
1. 211107 E	Northern Lights Home Health Care (St. Lawrence County)
2. 211169 E	OGL Holdings, LLC d/b/a Mount Sinai at Home (Nassau County)

B. Certificates

Exhibit # 4

Certificate of Amendment of the Certificate of Incorporation

Applicant

1. Hudson River Healthcare, Inc.

Certificate of Dissolution

Applicant

1. Buena Vida Corporation

SUMMARY OF EXPRESS TERMS

These regulations clarify the authority and duty of the New York State Department of Health (“Department”) and local health departments to protect the public in the event of an outbreak of communicable disease, through appropriate public health orders issued to persons diagnosed with or exposed to a communicable disease. These regulations also require hospitals to report syndromic surveillance data to the Department upon direction from the Commissioner and clarify reporting requirements for clinical laboratories with respect to communicable diseases.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 225, 576, and 2803 of the Public Health Law, Section 2.2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, Section 2.6 is repealed and a new Section 2.6 is added, a new Section 2.13 is added, Sections 2.25 through 2.30 are repealed, a new Section 58-1.14 is added, and Section 405.3 is amended, to be effective upon filing with the Secretary of State, to read as follows:

Subdivision (b) and (c) of Section 2.2 are amended, and new subdivisions (h) through (q) are added, to read as follows:

(b) [A *case* is defined as] Case shall mean a person who has been diagnosed [as likely to have] as having a particular disease or condition. The diagnosis may be based [solely] on clinical judgment, signs and symptoms combined with known exposure based on the best available evidence of transmissibility to a case or suspected case, [solely] and/or on laboratory evidence, [or on both criteria] as applicable.

(c) [A *suspected case* is defined as] Suspected case shall mean a person who has been [diagnosed] determined as [likely to have] possibly having a particular disease or condition. [The suspected diagnosis] A suspected case may be based [solely] on signs and symptoms, signs and symptoms combined with known exposure based on the best available evidence of transmissibility to a case or suspected case, [or solely] and/or on laboratory evidence, [or on both criteria] as applicable. The term “suspected case” shall include persons under

investigation, consistent with any guidance that the Commissioner of Health may issue with respect to a particular disease.

* * *

- (h) Contact shall mean any person known to have been sufficiently associated with a case or suspected case that, based on the best available evidence of transmissibility, such person has had the opportunity to contract a particular disease or condition.

- (i) Isolation shall mean the physical separation and confinement of an individual or group of individuals who are infected or reasonably determined by the State Commissioner of Health or local health authority to be infected with a highly contagious disease or organism, for such time as will prevent or limit the transmission of the reportable disease or organism to non-isolated individuals, in the clinical judgment of the State Commissioner of Health, or of the local health authority and consistent with any direction that the State Commissioner of Health may issue.

- (j) Quarantine shall mean the physical separation and confinement of an individual or groups of individuals who are reasonably determined by the State Commissioner of Health or local health authority to have been exposed to a highly contagious communicable disease, but who do not show signs or symptoms of such disease, for such time as will prevent transmission of the disease, in the clinical judgment of the State Commissioner of Health, or of the local

health authority and consistent with any direction that the State Commissioner of Health may issue.

- (k) Home quarantine or home isolation shall mean quarantine or isolation in a person's home, consistent with this Part and any direction that the State Commissioner of Health may issue;
- (l) Congregate quarantine shall mean quarantine at a location operated or contracted by the State or local health authority, consistent with this Part and any direction that the State Commissioner of Health may issue, where multiple persons are quarantined;
- (m) Highly contagious communicable disease shall mean a communicable disease or unusual disease that the State Commissioner of Health determines may present a serious risk of harm to the public health, for which isolation or quarantine may be required to prevent its spread.
- (n) Monitor shall mean contacting a person who is the subject of an isolation or quarantine order by the State Department of Health or local health authority, to ensure compliance with the order and to determine whether such person requires a higher level of medical care, consistent with any direction that the State Commissioner of Health may issue.
- (o) Mandatory quarantine shall mean quarantine pursuant to a legal order consistent with this Part.
- (p) Voluntary quarantine shall mean quarantine pursuant to a voluntary agreement with a public health authority.
- (q) Confinement shall mean enforcement of an isolation or quarantine order through the use or possible use of law enforcement personnel.

Section 2.6 is repealed and replaced as follows:

2.6 Investigations and Response Activities.

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

- (1) Verify the existence of a disease or condition;
- (2) Ascertain the source of the disease-causing agent or condition;
- (3) Identify unreported cases;
- (4) Locate and evaluate contacts of cases and suspected cases, as well as those reasonably expected to have been exposed to the disease;
- (5) Collect and submit, or cause to be collected or submitted, for laboratory examination such specimens as may furnish necessary or appropriate information for determining the source of disease, or to assist with diagnosis; and furnish or cause to be furnished with such specimens pertinent data on forms prescribed by the State Commissioner of Health, including but not limited to the history of cases, physical findings and details of the epidemiological investigation;
- (6) Examine the processes, structures, conditions, machines, apparatus, devices, equipment, records, and material within such places that may be relevant to the investigation of disease or condition;

- (7) Instruct a responsible member of a household or entity, as applicable, to implement appropriate actions to prevent further spread of a disease; and
- (8) Take any other steps to reduce morbidity and mortality that the local health authority determines to be appropriate.

(b) When a case or suspected case of a disease, condition, outbreak, or unusual disease occurs in any business, organization, institution, or private home, the person in charge of the business, organization, institution or the home owner, as well as any individuals or entities required to report pursuant to sections 2.10 and 2.12 of this Part, shall cooperate with the State Department of Health and local health authorities in the investigation of such disease, condition, outbreak, or unusual disease.

(c) Investigation Updates and Reports.

- (1) Upon request of the State Department of Health, the local health authority shall submit updates and reports on outbreak investigations to the State Department of Health. The content, timeframe, and manner of submission of such updates shall be determined by the State Department of Health.
- (2) The local health authority shall complete investigation reports of outbreaks within 30 days of the conclusion of the investigation in a manner prescribed by the State Commissioner of Health, unless the State Commissioner of Health prescribes a different time period.

(d) Commissioner authority to lead investigation and response activities.

(1) The State Commissioner of Health may elect to lead investigation and response activities

where:

(i) Residents of multiple jurisdictions within the State are affected by an outbreak of a reportable disease, condition, or unusual disease; or

(ii) Residents in a jurisdiction or jurisdictions within the State and in another state or states are affected by an outbreak of a reportable disease, condition, or unusual disease; or

(iii) An outbreak of an unusual disease or a reportable disease or condition involves a single jurisdiction with the high potential for statewide impact.

(2) Where the State Commissioner of Health elects to lead investigation and response activities pursuant to paragraph (1) of this subdivision, local health authorities shall take all reasonable steps to assist in such investigation and response, including supply of personnel, equipment or information. Provided further that the local health authority shall take any such action as the State Commissioner of Health deems appropriate and that is within the jurisdiction of the local health authority. Any continued investigation or response by the local health authority shall be solely pursuant to the direction of the State Commissioner of Health, and the State Commissioner of Health shall have access to any investigative materials which were heretofore created by the local health authority.

New section 2.13 is added to read as follows:

2.13 Isolation and Quarantine Procedures

(a) Duty to issue isolation and quarantine orders

- (1) Whenever appropriate to control the spread of a highly contagious communicable disease, the State Commissioner of Health may issue and/or may direct the local health authority to issue isolation and/or quarantine orders, consistent with due process of law, to all such persons as the State Commissioner of Health shall determine appropriate.
- (2) Paragraph (1) of this subdivision shall not be construed as relieving the authority and duty of local health authorities to issue isolation and quarantine orders to control the spread of a highly contagious communicable disease, consistent with due process of law, in the absence of such direction from the State Commissioner of Health.
- (3) For the purposes of isolation orders, isolation locations may include home isolation or such other residential or temporary housing location that the public health authority issuing the order determines appropriate, where symptoms or conditions indicate that medical care in a general hospital is not expected to be required, and consistent with any direction that the State Commissioner of Health may issue. Where symptoms or conditions indicate that medical care in a general hospital is expected to be required, the isolation location shall be a general hospital.
- (4) For the purposes of quarantine orders, quarantine locations may include home quarantine, other residential or temporary housing quarantine, or quarantine at such other locations as the public health authority issuing the order deems appropriate, consistent with any direction that the State Commissioner of Health may issue.

(b) Any isolation or quarantine order shall specify:

- (1) The basis for the order;
- (2) The location where the person shall remain in isolation or quarantine, unless travel is authorized by the State or local health authority, such as for medical care;
- (3) The duration of the order;
- (4) Instructions for traveling to the isolation or quarantine location, if appropriate;
- (5) Instructions for maintaining appropriate distance and taking such other actions as to prevent transmission to other persons living or working at the isolation or quarantine location, consistent with any direction that the State Commissioner of Health may issue;
- (6) If the location of isolation or quarantine is not in a general hospital, instructions for contacting the State and/or local health authority to report the subject person's health condition, consistent with any direction that the State Commissioner of Health may issue;
- (7) If the location of isolation or quarantine is a multiple dwelling structure, that the person shall remain in their specific dwelling and in no instance come within 6 feet of any other person, and consistent with any direction that the State Commissioner of Health may issue;
- (8) If the location of isolation or quarantine is a detached structure, that the person may go outside while remaining on the premise, but shall not leave the premise or come within 6 feet of any person who does not reside at the premise, or such other distance as may be appropriate for the specific disease, and consistent with any direction that the State Commissioner of Health may issue;
- (9) Such other limitations on interactions with other persons as are appropriate, consistent with any direction that the State Commissioner of Health may issue;

- (10) Notification of the right to request that the public health authority issuing the order inform a reasonable number of persons of the conditions of the isolation or quarantine order;
- (11) A statement that the person has the right to seek judicial review of the order;
- (12) A statement that the person has the right to legal counsel, and that if the person is unable to afford legal counsel, counsel will be appointed upon request.

(c) Whenever a person is subject to an isolation or quarantine order, the State Department of Health or local health authority, or the local health authority at the State Department of Health's direction shall, consistent with any direction issued by the State Commissioner of Health:

- (1) monitor such person to ensure compliance with the order and determine whether such person requires a higher level of medical care;
- (2) whenever appropriate, coordinate with local law enforcement to ensure that such person comply with the order; and
- (3) the extent such items and services are not available to such person, provide or arrange for the provision of appropriate supports, supplies and services, including, but not limited to: food, laundry, medical care, and medications.

(d) If the location of an isolation or quarantine order is owned by a landlord, hotel, motel or other person or entity, no such landlord or person associated with such hotel, motel or other person or entity shall enter the isolation or quarantine location without permission of the

local health authority, and consistent with any direction that the State Commissioner of Health may issue.

(e) No article that is likely to be contaminated with infective material may be removed from a premise where a person is isolated or quarantined unless the local health authority determines that such article has been properly disinfected or protected from spreading infection, or unless the quarantine period expires and there is no risk of contamination. Such determinations shall be made pursuant to any direction that the State Commissioner of Health may issue.

(f) Any person who violates a public health order shall be subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each day that the order is violated shall constitute a separate violation of this Part.

(g) Duty of attending physician

(1) Every attending physician shall immediately, upon discovering a case or suspected case of a highly contagious reportable communicable disease, cause the patient to be appropriately isolated and contact the State Department of Health and the local health authority where the patient is isolated and, if different, the local health authority where the patient resides.

(2) Such physician shall advise other members of the household regarding precautions to be taken to prevent further spread of the disease, consistent with any direction that the State Commissioner of Health may issue.

(3) Such physician shall furnish the patient, or caregiver of such patient where applicable, with detailed instructions regarding the disinfection and disposal of any contaminated articles, consistent with any direction that the State Commissioner of Health may issue.

Sections 2.25, 2.26, 2.27, 2.28, 2.29, and 2.30 are repealed.

Paragraph (11) of subdivision (d) of section 405.3 is amended, paragraph (12) is renumbered paragraph (13), and a new paragraph (12) is added, to read as follows:

(d) Records and reports. Any information, records or documents provided to the department shall be subject to the applicable provisions of the Public Health Law, Mental Hygiene Law, Education Law, and the Public Officers Law in relation to disclosure. The hospital shall maintain and furnish to the Department of Health, immediately upon written request, copies of all documents, including but not limited to:

* * *

(11) written minutes of each committee's proceedings. These minutes shall include at least the following:

- (i) attendance;
- (ii) date and duration of the meeting;
- (iii) synopsis of issues discussed and actions or recommendations made; [and]

(12) whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, such

syndromic surveillance data as the commissioner deems appropriate, which the hospital shall submit in the manner and form determined by the commissioner; and

(13) any record required to be kept by the provisions of this Part.

* * *

New section 58-1.14 is added to read as follows:

Section 58-1.14 Reporting of certain communicable diseases.

(a) The commissioner shall designate those communicable diseases, as defined by section 2.1 of the Sanitary Code, that require prompt action, and shall make available on the Department's website a list of such communicable diseases.

(b) Laboratories performing tests for screening, diagnosis or monitoring of communicable diseases requiring prompt action pursuant to subdivision (a) of this section, for New York State residents and/or New York State health care providers, shall:

(i) immediately report to the commissioner all positive results for such communicable diseases in a manner and format as prescribed by the commissioner; and

(ii) report all results, including positive, negative and indeterminate results, to the commissioner in a time and manner consistent with Public Health Law § 576-c.

* * *

Section 405.3 is amended by adding a new subdivision (g) as follows:

(g) Whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, the

commissioner may direct general hospitals, as defined in Article 28 of the public health law, and consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA), to accept patients pursuant to such procedures and conditions as the commissioner may determine appropriate.

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

The statutory authority for the proposed new section 58-1.14 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 576 of the PHL, which authorizes the Department to adopt regulations prescribing the requirements for the proper operation of a clinical laboratory, including the methods and the manner in which testing or analyses of samples shall be performed and reports submitted.

The statutory authority for the proposed amendments to section 405.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 2803 of the PHL, which authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

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

The legislative objective of PHL § 576 is, in part, to promote public health by establishing minimum standards for clinical laboratory testing and reporting of test results, including to the Department for purposes of taking prompt action to address outbreaks of disease.

The legislative objective of PHL § 2803 includes among other objectives authorizing PPHPC, with the approval of the Commissioner, to adopt regulations concerning the operation of facilities licensed pursuant to Article 28 of the PHL, including general hospitals.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had

existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen more than 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant.

In light of this situation, these regulations update, clarify and strengthen the Department's authority as well as that of local health departments to take specific actions to control the spread of disease, including actions related to investigation and response to a disease outbreak, as well as the issuance of isolation and quarantine orders.

The following is a summary of the amendments to the Department's regulations:

Part 2 Amendments:

- Relocate and update definitions, and add new definitions
- Repeal and replace current section 2.6, related to investigations, to make existing clarify local health department authority.
 - Sets forth specific actions that local health departments must take to investigate a case, suspect case, outbreak, or unusual disease.
 - Requires individuals and entities subject to a public health investigation to cooperate with the Department and local health departments.

- While the Department works collaboratively with local health departments on a variety of public health issues, including disease control, this regulation clarifies the authority for the Commissioner to lead disease investigation activities under certain circumstances (i.e., where there is potential for statewide impact, multiple jurisdictions impacted, or impact on one or more New York State jurisdictions and another state or states), while working collaboratively with impacted local health departments. In all other situations, local health departments retain the primary authority and responsibility to control communicable disease within their respective jurisdictions, with the Department providing assistance as needed.

(i) Codifies in regulation the requirement that local health departments send reports the Department during an outbreak.

- New section 2.13 added to clarify isolation and quarantine procedures.
 - Clarify that the State Department of Health has the authority to issue isolation and quarantine orders, as do local departments of health.
 - Clarifies locations where isolation or quarantine may be appropriate.
 - Sets forth requirements for the content of isolation and quarantine orders.
 - Specifies other procedures that apply when a person is isolated or quarantined.
 - Explicitly states that violation of an order constitutes grounds for civil and/or criminal penalties
 - Relocates and updates existing regulatory requirements that require the attending physician to report cases and suspected cases to the local health

authority, and to requires physicians to provide instructions concerning how to protect others.

Part 58 Amendments

- New section 58-1.14 added clarifying reporting requirements for certain communicable diseases
 - Requires the Commissioner to designate those communicable disease that require prompt action, and to make available a list of such disease on the State Department of Health website.
 - Requires clinical laboratories to immediately report positive test results for communicable diseases identified as requiring prompt attention, in a manner and format identified by the Commissioner.
 - Requires clinical laboratories to report all test result, including negative and indeterminate results, for communicable diseases identified as requiring prompt attention, via the Electronic Clinical Laboratory Reporting System (ECLRS).

Part 405 Amendments

- Mandates hospitals to report syndromic surveillance data during an outbreak of a highly contagious communicable disease.
- Permits the Commissioner to direct hospitals to take patients during an outbreak of a highly contagious communicable disease, which is consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA).

COSTS:

Costs to Regulated Parties:

The requirement that hospital submit syndromic surveillance reports when request during an outbreak is not expected to result in any substantial costs. Hospitals are already regularly and voluntarily submitting data to the Department, and nearly all of them submit such reports electronically. With regard to the Commissioner directing general hospitals to accept patients during an outbreak of a highly contagious communicable disease, hospitals are already required to adhere to the federal Emergency Medical Treatment and Labor Act (EMTALA). Accordingly, both of these proposed amendments will not impose any substantial additional cost to hospitals.

Clinical laboratories must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to imposes any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

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

Costs to Local and State Governments:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs

beyond what local health departments would incur in the absence of these regulations. Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Any clinical laboratories operated by a local government must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

To the extent that the State Department of Health and local health departments issue isolation and quarantine orders in response to COVID-19, such actions will impose costs upon the state. As the scope of any outbreak is difficult to predict, the cost to the State of issuing such orders cannot be predicted at this time.

Paperwork:

Some hospitals may be required to make additional syndromic surveillance reports that they are not already making. Otherwise, these regulations do not require any additional paperwork.

Local Government Mandates:

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

Duplication:

There is no duplication in existing State or federal law.

Alternatives:

The alternative would be to leave in place the current regulations on disease investigation and isolation and quarantine. However, many of these regulatory provisions have not been updated in fifty years and should be modernized to ensure appropriate response to a disease outbreak, such as COVID-19.

Federal Standards:

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

Compliance Schedule:

These emergency regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed rulemaking for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

Professional Services:

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

Compliance Costs:

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

Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

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

United States Census data:

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

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States

Census estimated county populations for 2010:

Albany County
Dutchess County
Erie County

Monroe County
Niagara County
Oneida County
Onondaga County

Orange County
Saratoga County
Suffolk County

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

As the proposed regulations largely clarify existing responsibilities and duties among regulated entities and individuals, no additional recordkeeping, compliance requirements, or professional services are expected. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. Additionally, the requirement for local health departments to continually report to the Department during an outbreak is historically a practice that already occurs. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102.

Compliance Costs:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, no initial or annual capital costs of compliance are expected above and beyond the cost of compliance for the requirements currently in Parts 2, 58 and 405.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

Where compliance with routine administrative procedures would be contrary to public interest, the State Administrative Procedure Act (SAPA) § 202(6) empowers state agencies to adopt emergency regulations necessary for the preservation of public health, safety, or general welfare. In this case, compliance with SAPA for filing of this regulation on a non-emergency basis, including the requirement for a period of time for public comment, cannot be met because to do so would be detrimental to the health and safety of the general public.

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19. New York State first identified cases on March 1, 2020 and thereafter became the national epicenter of the outbreak.

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen more than 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant.

Based on the foregoing, the Department has determined that these regulations, while applicable to several diseases, are necessary to promulgate on an emergency basis to control the spread of COVID-19 in New York State. Accordingly, current circumstances necessitate immediate action, and pursuant to the State Administrative Procedure Act Section 206(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by repealing Subpart 66-3 and repealing and replacing Section 2.60, to be effective upon filing with the Secretary of State, to read as follows:

Subpart 66-3 is hereby repealed.

Section 2.60 is repealed and replaced to read as follows:

2.60. Face Coverings for COVID-19 Prevention

(a) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, any person who is over age two and able to medically tolerate a face-covering may be required to cover their nose and mouth with a mask or face-covering when: (1) in a public place and unable to maintain, or when not maintaining, social distance; or (2) in certain settings as determined by the Commissioner, which may include schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings, and which may distinguish between individuals who are vaccinated against COVID-19 and those that are not vaccinated. The Commissioner shall issue findings regarding the necessity of face-covering requirements at the time such requirements are announced.

(b) Businesses must provide, at their expense, face-coverings for their employees required to wear a mask or face-covering pursuant to subdivision (a) of this section.

(c) large-scale indoor event venues with more than five thousand attendees shall require patrons to wear face coverings consistent with subdivision (a) of this section; may require all patrons to wear a face covering irrespective of vaccination status; and may deny admittance to any person who fails to comply. This regulation shall be applied in a manner consistent with the federal American with Disabilities Act, New York State or New York City Human Rights Law, and any other applicable provision of law.

(d) No business owner shall deny employment or services to or discriminate against any person on the basis that such person elects to wear a face-covering that is designed to inhibit the transmission of COVID-19, but that is not designed to otherwise obscure the identity of the individual.

(e) For purposes of this section face-coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth.

(f) Penalties and enforcement.

(i) A violation of any provision of this Section is subject to all civil and criminal penalties as provided for by law. Individuals or entities that violate this Section are subject to a maximum fine of \$1,000 for each violation. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the Section shall constitute a separate violation under this Section.

(ii) All local health officers shall take such steps as may be necessary to enforce the provisions of this Section accordance with the Public Health Law and this Title.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for adding a new Section 2.60 is sections 201, 206, and 225 of the Public Health Law.

Legislative Objectives:

The legislative objective of PHL § 201 includes authorizing the New York State Department of Health (“Department”) to control and promote the control of communicable diseases to reduce their spread. Likewise, the legislative objective of PHL § 206 includes authorizing the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases. The legislative objective of Public Health Law § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to amend the State Sanitary Code to address public health issues related to communicable disease.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) and the Department have identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Cases in New York are over 10-fold their levels in late June 2021, and greater than 99 percent of the sequenced recent positives in New York State were the Delta variant.

These regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

COSTS:

Costs to Regulated Parties:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Costs to Local and State Governments:

State and local government are authorized to enforce civil and criminal penalties related to the violation of these regulations, and there may be some cost of enforcement, however such costs are anticipated to be minimal as these provisions continue existing enforcement requirements.

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

As part of ongoing efforts to address the COVID-19 pandemic, local governments have been a partner in implementing and enforcing measures to limit the spread and/or mitigate the impact of COVID-19 within their jurisdictions since March of 2020. Further, local governments have separate authority and responsibilities to control disease within their jurisdictions pursuant to PHL sec. 2100 and Part 2 of the State Sanitary Code.

Duplication:

There is no duplication of federal law.

Alternatives:

The alternative would be to not promulgate these emergency regulations. However, this alternative was rejected, as the Department believes this regulation will facilitate the

Department's ability to respond to the evolving nature of this serious and ongoing communicable disease outbreak.

Federal Standards:

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

Compliance Schedule:

The regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed ruling-making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

As part of ongoing efforts to address the COVID-19 pandemic, businesses and local government have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact on or cost to small business and local government.

Compliance Requirements:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Professional Services:

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

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, any adverse impacts are expected to be minimal.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

The following 44 counties have an estimated population of less than 200,000 based upon the 2019 United States Census county populations projections:

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the 2019 United States Census population projections:

Albany County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	
Monroe County	Orange County	

Reporting, recordkeeping, and other compliance requirements; and professional services:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of

COVID-19 within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, adverse impacts are expected to be minimal.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

JOB IMPACT STATEMENT

The Department of Health has determined that this regulatory change is necessary to prevent further complete closure of the businesses impacted, and therefore, while there may be lost revenue for many businesses, the public health impacts of continued spread of COVID-19 are much greater.

EMERGENCY JUSTIFICATION

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) and the Department have identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Cases in New York are over 10-fold their levels in late June 2021, and greater than 99 percent of the sequenced recent positives in New York State were the Delta variant.

To that end, these regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19

disease spread. Based on the foregoing, the Department has determined that these emergency regulations are necessary to control the spread of COVID-19, necessitating immediate action. Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

SUMMARY OF EXPRESS TERMS

These regulations are intended to implement section 2801-h of the Public Health Law (PHL) and section 461-u of the Social Services Law (SSL), as enacted by Chapter 108 of the Laws of 2021. These statutory amendments required the Commissioner of Health to promulgate regulations governing personal caregiving visitors in all licensed nursing homes and adult care facilities. According to the statute, a “personal caregiving visitor” means a family member, close friend, or legal guardian of a resident designated by such resident, or such resident’s lawful representative, to assist with personal caregiving or compassionate caregiving for the resident. Personal caregiving is defined as care and support of a resident to benefit such resident’s mental, physical, or social well-being, and compassionate caregiving is defined as personal caregiving provided in anticipation of the end of the resident’s life or in the instance of significant mental, physical or social decline or crisis (*see* PHL § 2801-h[1][a-c], SSL § 461-u[1][a-c]).

In accordance with the statutory directive, the new regulatory sections amend 10 NYCRR 415.3(d) to add new paragraphs (3), (4), and (5) concerning, respectively, personal caregiving visitation, additional provisions relating to compassionate caregiving, and authority for the Department of Health to review a nursing home’s personal caregiving visitation policies and procedures. Likewise, for adult care facilities, the regulation adds a new section 485.18 of 18 NYCRR to address general visitation rights in an adult care facility (section 485.18[b]), personal caregiving visitation (section 485.18[c]), additional provisions relating to compassionate caregiving (section 485.18[d]), and authority for the Department of Health to review an adult care facility’s personal caregiving visitation policies and procedures (section 485.18[e]).

More specifically, the regulatory amendments relating to personal caregiving visitation, as contained in the new 10 NYCRR 415.3(d)(3) and 18 NYCRR 485.18(c), provide that such

visitation shall be permitted in a nursing home and adult care facility during a public health emergency declared under section twenty-four or section twenty-eight of the Executive Law, notwithstanding general visitation restrictions in the facility, and subject to certain limitations, including the need to limit or temporarily suspend personal caregiving visitation due to an increase in local infection rates, temporary inadequate staff capacity, an acute emergency situation such as loss of an essential service, or because the personal caregiving visitor poses a threat to the safety and well-being of the resident or any resident or personnel in the facility. The regulations governing personal caregiving visitation further: (i) set forth procedures for residents or their lawful representatives to designate and change their designation of personal caregiving visitors; (ii) provide that a resident shall be entitled to designate at least two personal caregiving visitors; (iii) require that all personal caregiving visitors follow infection prevention safety protocols required for nursing home and adult care facility staff, such as communicable disease testing, health screenings, and donning appropriate personal protective equipment; and (iv) set forth standards for a facility to determine the maximum frequency and duration of personal caregiving visits and the total number of personal caregiving visitors allowed to visit the facility at any one time.

The new 10 NYCRR 415.3(d)(4) and 18 NYCRR 485.18(d) establish additional provisions for compassionate caregiving provided by personal caregiving visitors. These sections set forth the situations in which a resident is eligible for a compassionate caregiving visitor and the requirements for screening compassionate caregiving visitors prior to their entry into the facility.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2801-h and 2803 of the Public Health Law and sections 461, 461-e, and 461-u of the Social Services Law, Section 415.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended and a new Section 485.18 of Title 18 of the NYCRR is hereby added, to be effective upon filing with the Secretary of State, to read as follows:

Subparagraph (iv) of paragraph (2) of subdivision (d) of Section 415.3 of 10 NYCRR is amended to read as follows:

(iv) provide immediate access to any resident by the following:

* * *

(f) immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time; [and]

(g) personal caregiving visitors, as defined in subdivision (1) of section 2801-h of the Public Health Law and pursuant to criteria specified in paragraph (3) of this subdivision, including those providing compassionate caregiving, as defined in subdivision (1) of section 2801-h of the Public Health Law and pursuant to criteria specified in paragraph (4) of this subdivision; and
[(g)] (h) others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time;

Subdivision (d) of Section 415.3 of 10 NYCRR is amended to add new paragraphs (3), (4), and (5) to read as follows:

(3) Personal caregiving visitors.

(i) During a public health emergency declared under section twenty-four or section twenty-eight of the executive law, the facility must continue to allow residents to access their designated personal caregiving visitors, notwithstanding any restrictions or prohibitions relating to residential health care visitation resulting from the declared public health emergency, subject to the following restrictions:

(a) If a facility has reasonable cause to believe that a resident will not benefit from accessing their designated personal caregiving visitors, and such reasoning has been documented in the resident's individualized comprehensive plan of care, a facility may require a health or mental health professional duly licensed or certified in New York State under the Education Law, and who need not be associated with the nursing home, including but not limited to a physician, registered nurse, licensed clinical social worker, psychologist, or psychiatrist, to provide a written statement that the personal caregiving will substantially benefit the resident's quality of life, including a statement from such medical provider that the personal caregiving visitation will enhance the resident's mental, physical, or psychosocial well-being, or any additional criteria evidencing a benefit to quality of life as determined by the Department. Such written statements from the medical provider shall be maintained in the resident's individualized comprehensive plan of care.

(b) Notwithstanding any provision of this subparagraph (i), a facility may temporarily suspend or limit personal caregiving visitors to protect the health, safety and welfare of residents if: the declared public health emergency is related to a communicable disease and the Department determines that local infection rates are at a level that presents a serious risk of transmission of such communicable disease within local facilities; the

facility is experiencing temporary inadequate staffing and has reported such staffing shortage to the Department of Health and any other State or federal agencies as required by law, regulation, or other directive; or an acute emergency situation exists at the facility, including loss of heat, loss of elevator service, or other temporary loss of an essential service. Provided, however, that in the event a facility suspends or limits personal caregiving visitation pursuant to this clause, the facility shall notify residents, all designated personal caregiving visitors, and the applicable Department regional office of such suspension or limitation and the duration thereof within twenty-four hours of implementing the visitation suspension or limitation. Additionally, for each day of the suspension or limitation, the facility shall document the specific reason for the suspension or limitation in their administrative records. The facility shall further provide a means for all residents to engage in remote visitation with their designated personal caregiving visitor(s), including but not limited to phone or video calls, until such time that the suspension or limitation on personal caregiving visitation has ended.

(c) Notwithstanding any provision of this subparagraph (i), a facility may prohibit a personal caregiving visitor from entering if the facility has reasonable cause to believe that permitting the personal caregiving visitor to meet with the resident is likely to pose a threat of serious physical, mental, or psychological harm to such resident. In the event the facility determines that denying such personal caregiving visitor access to the resident is in the resident's best interests pursuant to this subparagraph, the facility must document the date of and reason for visitation refusal in the resident's individualized comprehensive plan of care, and on the same date of the refusal the facility shall communicate its decision to the resident and their designated representative. Further, a

facility may refuse access to or remove from the premises any personal caregiving visitor who is causing or reasonably likely to cause physical injury to any facility resident or personnel.

(ii) The facility shall develop written policies and procedures to ask residents, or their designated representatives in the event the resident lacks capacity, at time of admission or readmission, or for existing residents within fourteen days of the effective date of this paragraph, which individuals the resident elects to serve as their personal caregiving visitor during declared public health emergencies. A resident shall be entitled to designate at least two personal caregiving visitors at one time.

(iii) The facility shall maintain a written record of the resident's designated personal caregiving visitors in the resident's individualized comprehensive plan of care, and shall document when personal caregiving and compassionate caregiving is provided in the resident's individualized comprehensive plan of care.

(iv) As part of its ongoing review of a resident's comprehensive plan of care, the facility shall regularly inquire of all current residents, or their designated representative if the resident lacks capacity, whether the facility's current record of designated personal caregiving visitors remains accurate, or whether the resident, or their designated representative if the resident lacks capacity, wishes to make any changes to their personal caregiving visitor designations. The facility shall update the resident's individualized comprehensive plan of care with the date the facility sought updates from the resident and indicate any changes to the resident's personal caregiving visitor designations therein. Such inquiries shall be made no less frequently than quarterly and upon a change in the resident's condition; upon review of a facility's visitation policies and procedures,

the Department may also require the facility inquire of any resident whether the facility's current record of designated personal caregiving visitors remains accurate.

(v) The facility shall require all personal caregiving visitors to adhere to infection control measures established by the facility and consistent with any guidelines from the Department, or in the absence of applicable Department guidance, consistent with long term care facility infection control guidelines from the U.S. Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services. Such infection control measures may include, but need not be limited to:

(a) testing all personal caregiving visitors for any communicable disease that is the subject of the declared public health emergency, which may include rapid on-site testing or requiring the visitor to present a negative test result dated no more than seven days prior to the visit;

(b) checking the personal caregiving visitor's body temperature upon entry to the facility, and denying access to any visitor with a temperature above 100 degrees Fahrenheit;

(c) conducting health screenings of all personal caregiving visitors upon entry to the facility, including screenings for signs and symptoms of any communicable disease that is the subject of the declared public health emergency or any other communicable disease which is prevalent in the facility's geographic area, and recording the results of such screenings;

(d) requiring all personal caregiving visitors to don all necessary personal protective equipment appropriately, and providing such personal protective equipment to all personal caregiving visitors; and

(e) enforcing social distancing between persons during visitation, including personal caregiving visitation, except as necessary to provide personal caregiving by the personal caregiving visitor for the resident.

(vi) The facility shall establish policies and procedures regarding the frequency and duration of personal caregiving visits and limitations on the total number of personal caregiving visitors allowed to visit the resident and the facility at any one time. Such policies shall not be construed to limit access by other visitors that would otherwise be permitted under state or federal law or regulation. The facility shall ensure its policies and procedures respect resident privacy and take into account visitation protocols in the event a resident occupies a shared room. In establishing frequency and duration limits, the facility policy shall ensure that residents are able to receive their designated personal caregiving visitors for the resident's desired frequency and length of time, and any restrictions on that desired frequency and duration must be:

(a) attributable to the resident's clinical or personal care needs;

(b) necessary to ensure the resident's roommate has adequate privacy and space to receive their own designated personal caregiving visitors; or

(c) because the desired visitation frequency or duration would impair the effective implementation of applicable infection control measures, including social distancing of at least six feet between the visitors and others in the facility, having sufficient staff to effectively screen all personal caregiving visitors and monitor visits to ensure infection control protocols are being followed throughout, and having a sufficient supply of necessary personal protective equipment for all personal caregiving visitors.

(4) Compassionate caregiving.

(i) In the event a resident experiences a long-term or acute physical, mental, or psychosocial health condition for which, in the opinion of the resident, their representative, or a health care professional (including but not limited to a physician, registered nurse, licensed clinical social worker, psychologist, or psychiatrist), a compassionate caregiving visitor would improve the resident's quality of life, the resident or their representative shall designate at least two compassionate caregiving visitors at one time, and the facility shall record such designation in the resident's individualized comprehensive plan of care. A resident's designated personal caregiving visitors may also provide compassionate caregiving.

(ii) Situations in which a resident is eligible for a compassionate caregiving visitor include but are not limited to the following:

(a) end of life;

(b) the resident, who was living with their family before recently being admitted to an adult care facility, is struggling with the change in environment and lack of physical family support;

(c) the resident is grieving after a friend or family member recently passed away;

(d) the resident needs cueing and encouragement with eating or drinking, and such cueing was previously provided by family and/or caregiver(s), and the resident is now experiencing weight loss or dehydration; and

(e) the resident, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently (when the resident had rarely cried in the past).

(iii) Compassionate caregiving visitation shall be permitted at all times, regardless of any general visitation restrictions or personal caregiving visitation restrictions in effect in the facility.

Provided, however, that the facility shall require compassionate caregiving visitors to be screened for communicable diseases prior to entering the facility and visits must be conducted using appropriate social distancing between the resident and visitor if applicable based on guidance from the Department or the U.S. Centers for Disease Control and Prevention; if, however, personal contact would be beneficial for the resident's mental or psychosocial well-being, the facility shall establish policies and procedures to ensure that such necessary physical contact follows appropriate infection prevention guidelines, including the visitor's use of personal protective equipment and adhering to hand hygiene protocols before and after resident contact, and that the physical contact is limited in duration.

(5) The Department shall have discretion to review and require modifications to a facility's personal caregiving visitation and compassionate caregiving visitation policies and procedures to ensure conformity with paragraphs (3) and (4) of this subdivision and any applicable visitation guidelines issued by the Department or the Centers for Medicare and Medicaid Services.

A new Section 485.18 of 18 NYCRR, titled Personal and Compassionate Caregiving Visitation, is added to read as follows:

(a) This section shall apply to all adult care facilities, including every adult care facility regulated pursuant to Parts 487, 488 and 490 of this Title and Part 1001 of Title 10 of the NYCRR.

(b) Subject to the resident's right to deny or withdraw consent at any time, all adult care facilities must provide immediate access to any resident of visitors of their choice, including but not limited to immediate family or other relatives of the resident and any others who are visiting with the consent of the resident. Provided, however, that the facility may establish policies and

procedures to establish reasonable restrictions on such visitation, including but not limited to: setting forth visitation hours; denying access to any visitor suffering from a communicable disease; terminating visitation with any visitor causing a threat to the health or safety of any resident; and setting a cap on the number of visitors allowed in the facility at any one time. Any such restrictions or limitations on visitation shall be communicated in writing to residents.

(c) Personal caregiving visitors.

(1) During a public health emergency declared under section twenty-four or section twenty-eight of the executive law, the facility must continue to allow residents to access their designated personal caregiving visitors, as defined in subdivision (1) of section 2801-h of the Public Health Law, notwithstanding any restrictions or prohibitions relating to residential health care facility visitation resulting from the declared public health emergency, subject to the following restrictions:

(i) If a facility has reasonable cause to believe that a resident will not benefit from accessing their designated personal caregiving visitors, and such reasoning has been documented in the resident's case management record, a facility may require a health or mental health professional duly licensed or certified in New York State under the Education Law, and who is not associated with the facility, including but not limited to a physician, registered nurse, licensed clinical social worker, psychologist, or psychiatrist, to provide a written statement that the personal caregiving will substantially benefit the resident's quality of life, including a statement from such medical provider that the personal caregiving visitation will enhance the resident's mental, physical, or psychosocial well-being, or any additional criteria evidencing a benefit to quality of life

as determined by the Department. Such written statements shall be maintained in the resident's case management record.

(ii) Notwithstanding any provision of this paragraph, a facility may temporarily suspend or limit personal caregiving visitors to protect the health, safety and welfare of residents, if: the declared public health emergency is related to a communicable disease and the Department determines that local infection rates are at a level that presents a serious risk of transmission of such communicable disease within local facilities; the facility is experiencing temporary inadequate staffing and has reported such staffing shortage to the Department of Health any other State or federal agencies as required by law, regulation, or other directive; or an acute emergency situation exists at the facility, including loss of heat, loss of elevator service, or other temporary loss of an essential service. Provided, however, that in the event a facility suspends or limits personal caregiving visitation pursuant to this subparagraph, the facility shall notify residents, all designated personal caregiving visitors, and the applicable Department regional office of such suspension or limitation and the duration thereof within twenty-four hours of implementing the visitation suspension or limitation. Additionally, for each day of the suspension or limitation, the facility shall document the specific reason for the suspension or limitation in their administrative records. The facility shall further provide a means for all residents to engage in remote visitation with their designated personal caregiving visitor(s), including but not limited to phone or video calls, until such time that the suspension or limitation on personal caregiving visitation has ended.

(iii) Notwithstanding any provision of this paragraph, a facility may also prohibit a personal caregiving visitor from entering if the facility has reasonable cause to believe

that permitting the personal caregiving visitor to meet with the resident is likely to pose a threat of serious physical, mental, or psychological harm to such resident. In the event the facility determines that denying such personal caregiving visitor access to the resident is in the resident's best interests pursuant to this subparagraph, the facility must document the date of and reason for visitation refusal in the resident's case management record, and on the same date of the refusal the facility shall communicate its decision to the resident and their designated representative. Further, a facility may refuse access to or remove from the premises any personal caregiving visitor who is causing or reasonably likely to cause physical injury to any facility resident or personnel.

(2) The facility shall develop written policies and procedures to ask residents, or their designated representatives in the event the resident lacks capacity, at time of admission or readmission, or for existing residents within fourteen days of the effective date of this paragraph, which individuals the resident elects to serve as their personal caregiving visitor during declared local or state health emergencies. A resident shall be entitled to designate at least two personal caregiving visitors at one time.

(3) The facility shall maintain a written record of the resident's designated personal caregiving visitors in the resident's case management record, and shall document when personal caregiving and compassionate caregiving is provided in the case management record.

(4) As part of its ongoing review of a resident's case management needs, the facility shall regularly inquire of all current residents, or their designated representative if the resident lacks capacity, whether the facility's current record of designated personal caregiving visitors remains accurate, or whether the resident, or their designated representative if the resident lacks capacity, wishes to make any changes to their personal caregiving visitor designations. The facility shall

update the resident's case management record with the date the facility sought updates from the resident and indicate any changes to the resident's personal caregiving visitor designations therein. Such inquiries shall be made no less frequently than every six months and upon a change in the resident's condition; upon review of a facility's visitation policies and procedures, the Department may also require the facility inquire of any resident whether the facility's current record of designated personal caregiving visitors remains accurate.

(5) The facility shall require all personal caregiving visitors to adhere to infection control measures established by the facility and consistent with any guidelines from the Department, or in the absence of applicable Department guidance, consistent with long term care facility infection control guidelines from the U.S. Centers for Disease Control and Prevention. Such infection control measures may include, but need not be limited to:

- (i) testing all personal caregiving visitors for any communicable disease that is the subject of the declared public health emergency, which may include rapid on-site testing or requiring the visitor to present a negative test result from no more than seven days prior to the visit;
- (ii) checking the personal caregiving visitor's body temperature upon entry to the facility, and denying access to any visitor with a temperature above 100 degrees Fahrenheit;
- (iii) conducting health screenings of all personal caregiving visitors upon entry to the facility, including screenings for signs and symptoms of any communicable disease that is the subject of the declared public health emergency or any other communicable disease which is prevalent in the facility's geographic area, and recording the results of such screenings;

(iv) requiring all personal caregiving visitors to don all necessary personal protective equipment appropriately, and providing such personal protective equipment to all personal caregiving visitors; and

(v) enforcing social distancing between persons during visitation, including personal caregiving visitation, except as necessary to provide personal caregiving by the personal caregiving visitor for the resident.

(6) The facility shall establish policies and procedures regarding the frequency and duration of personal caregiving visits and limitations on the total number of personal caregiving visitors allowed to visit the resident and the facility at any one time. Such policies shall not be construed to limit access by other visitors that would otherwise be permitted under state or federal law or regulation. The facility shall ensure its policies and procedures respect resident privacy and take into account visitation protocols in the event a resident occupies a shared room. In establishing frequency and duration limits, the facility policy shall ensure that residents are able to receive their designated personal caregiving visitors for the resident's desired frequency and length of time, and any restrictions on that desired frequency and duration must be:

(i) attributable to the resident's clinical or personal care needs;

(ii) necessary to ensure the resident's roommate has adequate privacy and space to receive their own designated personal caregiving visitors; or

(iii) because the desired visitation frequency or duration would impair the effective implementation of applicable infection control measures, including social distancing of at least six feet between the visitors and others in the facility, having sufficient staff to effectively screen all personal caregiving visitors and monitor visits to ensure infection

control protocols are being followed throughout, and having a sufficient supply of necessary personal protective equipment for all personal caregiving visitors.

(d) Compassionate caregiving.

(1) In the event a resident experiences a long-term or acute physical, mental, or psychosocial health condition for which, in the opinion of the resident, their representative, or a health care professional (including but not limited to a physician, registered nurse, licensed clinical social worker, psychologist, or psychiatrist), a compassionate caregiving visitor would improve the resident's quality of life, the resident or their representative shall designate at least two compassionate caregiving visitors at one time, and the facility shall record such designation in the resident's case management record. A resident's designated personal caregiving visitors may also provide compassionate caregiving.

(2) Situations in which a resident is eligible for a compassionate caregiving visitor include but are not limited to the following:

(i) end of life;

(ii) the resident, who was living with their family before recently being admitted to an adult care facility, is struggling with the change in environment and lack of physical family support;

(iii) the resident is grieving after a friend or family member recently passed away;

(iv) the resident needs cueing and encouragement with eating or drinking, and such cueing was previously provided by family and/or caregiver(s), and the resident is now experiencing weight loss or dehydration; and

(v) the resident, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently (when the resident had rarely cried in the past).

(3) Compassionate caregiving visitation shall be permitted at all times, regardless of any general visitation restrictions or personal caregiving visitation restrictions in effect in the facility.

Provided, however, that the facility shall require compassionate caregiving visitors to be screened for communicable diseases prior to entering the facility and visits must be conducted using appropriate social distancing between the resident and visitor if applicable based on guidance from the Department or the U.S. Centers for Disease Control and Prevention; if, however, personal contact would be beneficial for the resident's well-being, the facility shall establish policies and procedures to ensure such physical contact follows appropriate infection prevention guidelines, including the visitor's use of personal protective equipment and adhering to hand hygiene protocols before and after resident contact, and that physical contact is limited in duration.

(e) The Department shall have discretion to review and require modifications to a facility's personal caregiving visitation and compassionate caregiving visitation policies and procedures to ensure conformity with subdivisions (c) and (d) of this section and any applicable visitation guidelines issued by the Department or the Centers for Medicare and Medicaid Services.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority is provided under sections 2801-h and 2803 of the Public Health Law (PHL) and sections 461, 461-e, and 461-u of the Social Services Law (SSL).

PHL § 2801-h and SSL § 461-u specifically authorize the New York State Department of Health (Department) to promulgate regulations relating to personal caregiving visitors and compassionate caregiving visitors in nursing homes and adult care facilities (ACFs).

SSL § 461 requires the Department to promulgate regulations establishing general standards applicable to ACFs. SSL § 461-e authorizes the Department to promulgate regulations to require ACFs to maintain certain records with respect to the facilities' residents and the operation of the facility.

Legislative Objectives:

The legislative objective of PHL § 2801-h and SSL § 461-u is to ensure residents' rights to visitation are respected by allowing residents of nursing homes and ACFs to have access to their designated personal caregiving visitors and compassionate caregiving visitors during a declared State or local public health emergency. Further, the legislative objective of SSL § 461 is to promote the health and well-being of residents of ACFs.

Needs and Benefits:

These regulations are necessary pursuant to the statutory directives in PHL § 2801-h and SSL § 461-u, which direct the Commissioner of Health to promulgate regulations governing personal caregiving visitation and compassionate caregiving visitation in nursing homes and ACFs during a declared State or local public health emergency.

These regulations are beneficial insofar as they will provide clarity to facility operators and administrators, residents, and their family members regarding whether certain visitors are permitted to access a nursing home or ACF during a declared local or State health emergency, notwithstanding any visitation restrictions currently in effect within the facility.

COSTS:

Costs to Regulated Parties:

There are no anticipated costs to regulated parties. The regulations require facilities to establish policies and procedures regarding personal caregiving visitation and compassionate caregiving visitation that comply with these regulations and the governing statutes, PHL § 2801-h and SSL § 461-u. Insofar as facilities are obligated to establish policies and procedures for other facility operations, this responsibility should be managed using existing resources.

Costs to Local and State Governments:

There are no anticipated costs to any regulated parties, including nursing homes and ACFs operated by a local or State government.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health. Any increased surveillance and enforcement activities relating to this regulation will be handled with existing resources.

Paperwork:

This regulation requires facilities to develop and maintain visitation policies relating to personal caregiving visitation and compassionate caregiving visitation. However, this requirement is expected to be of minimal burden to facilities, which are currently obligated to

develop and maintain other policies and procedures relating to facility operations, and the requirements for such visitation policies and procedures are thoroughly detailed in these regulations and the governing statutes, PHL § 2801-h and SSL § 461-u.

Local Government Mandates:

Nursing homes and ACFs operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28 or ACF licensed under SSL Article 7, Title 2. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two adult care facilities operated by county governments.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

There are no viable alternatives. The alternative of not issuing these regulations was rejected given the statutory directive to promulgate these regulations, pursuant to PHL § 2801-h and SSL § 461-u.

Federal Standards:

The federal Centers for Medicare & Medicaid Services (CMS) has issued visitation guidance applicable to Medicaid- and Medicare-enrolled nursing homes, titled “Nursing Home Visitation - COVID-19 (REVISED)” (QSO-20-39-NH), revised April 27, 2021. This visitation guidance discusses general visitation in nursing homes including compassionate care visitation. The Department has reviewed this CMS guidance and finds that the proposed regulations are consistent with the CMS guidance insofar as they both relate to compassionate care visitation in nursing homes. No other federal standards apply.

Compliance Schedule:

The regulations will become effective upon filing with the Secretary of State.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a nursing home or adult care facility (ACF). Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two ACFs operated by county governments (Chenango and Warren Counties). Additionally, to date, 79 nursing homes in New York qualify as small businesses given that they have 100 or fewer employees. There are also 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

This regulation requires nursing homes and ACFs to develop policies and procedures relating to compassionate caregiver visitation and personal caregiver visitation that are consistent with these regulations and the governing statutes, Public Health Law (PHL) § 2801-h and Social Services Law (SSL) § 461-u.

Professional Services:

No professional services are required by this regulation.

Compliance Costs:

There are no costs associated with this regulation.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with resident right standards and current CMS and Department visitation guidance. Therefore, the Department expects no adverse impact to facilities given that nursing homes and ACFs are currently required to comply with similar standards and are expected to have already developed policies and procedures in accordance with those existing standards. In any event, the Department is required by PHL § 2801-h and SSL § 461-u to promulgate these regulations; as such, any adverse impact on covered facilities cannot be avoided due to the statutory mandate.

Small Business and Local Government Participation:

Facilities were put on notice of the forthcoming promulgation of these regulations upon the enactment of PHL § 2801-h and SSL § 461-u, as enacted by Chapter 108 of the Laws of 2021. Additionally, the Department plans to advise all facilities, including those operated by small businesses and local governments, of the publication of these regulations and the opportunity to submit any questions relating to such regulations to the Department.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

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

The following counties have populations of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Both licensed nursing homes and ACFs are located in these identified rural areas.

Reporting, recordkeeping, and other compliance requirements; and professional services:

This regulation imposes no additional paperwork.

Compliance Costs:

There are no costs associated with this regulation.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with resident right standards and current CMS and Department visitation guidance. Therefore, the Department expects no adverse impact to facilities given that nursing homes and ACFs are currently required to comply with similar standards and are expected to have already developed policies and procedures in accordance with those existing standards. In any event, the Department is required by PHL § 2801-h and SSL § 461-u to promulgate these regulations; as such, any adverse impact on covered facilities cannot be avoided due to the statutory mandate.

Rural Area Participation:

Facilities were put on notice of the forthcoming promulgation of these regulations upon the enactment of PHL § 2801-h and SSL § 461-u, as enacted by Chapter 108 of the Laws of 2021. Additionally, the Department plans to advise all facilities, including those located in rural areas, of the publication of these regulations and the opportunity to submit any questions relating to such regulations to the Department.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

Chapter 108 of the Laws of 2021, which amended Public Health Law (PHL) § 2801-h and Social Services Law (SSL) § 461-u, requires nursing homes and adult care facilities (ACFs) to permit personal and compassionate caregiving visitations. The new law became effective immediately and required that regulations be promulgated within forty-five days after enactment. Thus, the law authorized the promulgation of emergency regulations.

The purpose of the new law is to benefit the health and general well-being of nursing home and ACF residents. This emergency rulemaking is necessary to satisfy the statutory requirement, provide clarity to facility operators and administrators as well as residents and their families regarding the process for implementing personal caregiving requirements under the newly enacted law.

Furthermore, throughout the COVID-19 pandemic, visitation guidance for long-term care facilities has been issued by several authorities, including the Department and federal Centers for Medicare & Medicaid Services (CMS). Facility outreach to the Department and surveillance activities show that many nursing homes and adult care facilities have not appropriately adhered to these guidance documents or have implemented their own form of personal caregiving visitation policies. This emergency rulemaking will assist facilities in understanding their legal obligations with respect to visitation, for the purposes of preparing the facility's visitation policies and procedures in the event of a declared State or local public health emergency, by providing additional information as to who may access a facility during periods of visitation closure, and what, if any, restrictions can be implemented on personal caregiving and compassionate caregiving visitation.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Public Health Law Sections 225, 2800, 2803, 3612, and 4010, as well as Social Services Law Sections 461 and 461-e, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon filing with the Department of State, to read as follows:

Part 2 is amended to add a new section 2.61, as follows:

2.61. Prevention of COVID-19 transmission by covered entities.

(a) Definitions.

- (1) “Covered entities” for the purposes of this section, shall include:
 - (i) any facility or institution included in the definition of “hospital” in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;
 - (ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies;
 - (iii) hospices as defined in section 4002 of the Public Health Law; and
 - (iv) adult care facility under the Department’s regulatory authority, as set forth in Article 7 of the Social Services Law.

(2) “Personnel,” for the purposes of this section, shall mean all persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.

(3) “Fully vaccinated,” for the purposes of this section, shall be determined by the Department in accordance with applicable federal guidelines and recommendations. Unless otherwise specified by the Department, documentation of vaccination must include the manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site, in one of the following formats:

(i) record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;

(ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner’s signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system; or

(iii) any other documentation determined acceptable by the Department.

(c) Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, absent receipt of an exemption as allowed below. Covered entities shall require all personnel to receive at least their first dose before engaging in activities covered under paragraph (2) of subdivision (a) of this section. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in subdivision (d) of this section.

(d) Exemptions. Personnel shall be exempt from the COVID-19 vaccination requirements set forth in subdivision (c) of this section as follows:

(1) Medical exemption. If any licensed physician, physician assistant, or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the health of member of a covered entity's personnel, based upon a pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be inapplicable only until such immunization is found no longer to be detrimental to such personnel member's health. The nature and duration of the medical exemption must be stated in the personnel employment medical record, or other appropriate record, and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services), and any reasonable accommodation may be granted and must likewise be documented in such record. Covered entities shall document medical exemptions in personnel records or other appropriate records in accordance with applicable privacy laws by: (i) September 27, 2021 for general hospitals and nursing homes; and (ii) October 7, 2021 for all other covered entities. For all covered

entities, documentation must occur continuously, as needed, following the initial dates for compliance specified herein, including documentation of any reasonable accommodation therefor.

(e) Upon the request of the Department, covered entities must report and submit documentation, in a manner and format determined by the Department, for the following:

- (1) the number and percentage of personnel that have been vaccinated against COVID-19;
- (2) the number and percentage of personnel for which medical exemptions have been granted;
- (3) the total number of covered personnel.

(f) Covered entities shall develop and implement a policy and procedure to ensure compliance with the provisions of this section and submit such documents to the Department upon request.

(g) The Department may require all personnel, whether vaccinated or unvaccinated, to wear an appropriate face covering for the setting in which such personnel are working in a covered entity. Covered entities shall supply face coverings required by this section at no cost to personnel.

Subparagraph (vi) of paragraph (10) of subdivision (b) of Section 405.3 of Part 405 is added to read as follows:

(vi) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation immediately available upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (5) of subdivision (a) of Section 415.19 of Part 415 is added to read as follows:

(5) collects documentation of COVID-19 or documentation of a valid medical exemption to such vaccination, for all personnel pursuant to section 2.61 of this title, in accordance with applicable privacy laws, and making such documentation immediately available upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (7) of subdivision (d) of Section 751.6 is added to read as follows:

(7) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (6) of subdivision (c) of Section 763.13 is added to read as follows:

(6) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making

such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (7) of subdivision (d) of Section 766.11 is added to read as follows:

(7) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (8) of subdivision (d) of Section 794.3 is added to read as follows:

(8) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (5) of subdivision (q) of Section 1001.11 is added to read as follows:

(5) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (18) of subdivision (a) of Section 487.9 of Title 18 is added to read as follows:

(18) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (14) of subdivision (a) of Section 488.9 of Title 18 is added to read as follows:

(14) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (15) of subdivision (a) of Section 490.9 of Title 18 is added to read as follows:

(15) Operator shall collect documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 225(5), 2800, 2803(2), 3612 and 4010 (4). PHL 225(5) authorizes the Public Health and Health Planning Council (PHHPC) to issue regulations in the State Sanitary Code pertaining to any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises.

PHL Article 28 (Hospitals), Section 2800 specifies that “hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.”

PHL Section 2803(2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

PHL Section 3612 authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies. PHL Section 4010 (4) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

Social Service Law (SSL) Section 461 requires the Department to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF). SSL Section 461-e authorizes the Department to promulgate regulations to require adult care facilities to maintain certain records with respect to the facilities residents and the operation of the facility.

Legislative Objectives:

The legislative objective of PHL Section 225 empowers PHHPC to address any issue affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises. PHL Article 28 specifically addresses the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 addresses the services rendered by certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional

curative care for the terminally ill. Lastly, the legislative objective of SSL Section 461 is to promote the health and well-being of residents of ACFs.

Needs and Benefits:

The vaccine mandate for health care workers, which required general hospital and nursing home personnel to receive their first dose of COVID-19 vaccine by September 27, 2021, and required all other covered entities to receive their first dose of COVID-19 vaccine by October 7, 2021, has greatly increased the percentage of health care workers who are vaccinated against COVID-19. COVID cases, hospitalizations, and deaths are decreasing in New York State, and the continuation of these regulations will help ensure that the epidemiology curve continues downward in furtherance of the New York State Department of Health's mission to reduce morbidity and mortality. These regulations are helping New York State reduce sickness and death from COVID-19.

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen more than 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant. Recent New York State data show that unvaccinated individuals are approximately 5 times as likely to be diagnosed with COVID-19 compared to vaccinated individuals. Those who are unvaccinated have over 10 times the risk of being hospitalized with COVID-19.

The COVID-19 vaccines are safe and effective. They offer the benefit of helping to reduce the number of COVID-19 infections, including the Delta variant, which is a critical component to protecting public health. Certain settings, such as healthcare facilities and

congregate care settings, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve. Unvaccinated personnel in such settings have an unacceptably high risk of both acquiring COVID-19 and transmitting the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing unacceptably high risk of complications.

In response to this significant public health threat, through this emergency regulation, the Department is requiring covered entities to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, and provide reasonable accommodations therefor to protect the wellbeing of the patients, residents and personnel in such facilities. Documentation and information regarding personnel vaccinations as well as exemption requests granted are required to be provided to the Department immediately upon request.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, as well as any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Cost to State and Local Government:

The State operates several healthcare facilities subject to this regulation. Most county health departments are licensed under Article 28 or Article 36 of the PHL and are therefore also subject to regulation. Similarly, certain counties and the City of New York operate facilities licensed under Article 28. These State and local public facilities would be required to ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. They must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations.

Although the costs to the State or local governments cannot be determined with precision, the Department does not expect these costs to be significant. State facilities should already be ensuring COVID-19 vaccination among their personnel, subject to State directives. Further, these entities are expected to realize savings as a result of the reduction in COVID-19 in personnel and the attendant loss of productivity and available staff.

Cost to the Department of Health:

There are no additional costs to the State or local government, except as noted above. Existing staff will be utilized to conduct surveillance of regulated parties and to monitor compliance with these provisions.

Local Government Mandates:

Covered entities operated by local governments will be subject to the same requirements as any other covered entity subject to this regulation.

Paperwork:

This measure will require covered entities to ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Duplication:

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

Alternative Approaches:

One alternative would be to require covered entities to test all personnel in their facility before each shift worked. This approach is limited in its effect because testing only provides a

person's status at the time of the test and testing every person in a healthcare facility every day is impractical and would place an unreasonable resource and financial burden on covered entities if PCR tests couldn't be rapidly turned around before the commencement of the shift. Antigen tests have not proven as reliable for asymptomatic diagnosis to date.

Another alternative to requiring covered entities to mandate vaccination would be to require covered entities to mandate all personnel to wear a fit-tested N95 face covering at all times when in the facility, in order to prevent transmission of the virus. However, acceptable face coverings, which are not fit-tested N95 face coverings have been a long-standing requirement in these covered entities, and, while helpful to reduce transmission it does not prevent transmission and; therefore, masking in addition to vaccination will help reduce the numbers of infections in these settings even further.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

These emergency regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or

issuing a notice of proposed rule making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a covered entity as defined in the emergency regulation. Currently, 5 general hospitals, 79 nursing homes, 75 certified home health agencies (CHHAs), 20 hospices and 1,055 licensed home care service agencies (LHCSAs), and 483 adult care facilities (ACFs) are small businesses (defined as 100 employees or less), independently owned and operated affected by this rule. Local governments operate 19 hospitals, 137 diagnostic and treatment facilities, 21 nursing homes, 12 CHHAs, at least 48 LHCSAs, 1 hospice, and 2 ACFs.

Compliance Requirements:

Covered entities are required to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department's understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small businesses and local governments were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity to provide comments during the notice and comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

The following 44 counties have an estimated population of less than 200,000 based upon 2020 United States Census data:

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon 2019 United States Census population projections:

Albany County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	
Monroe County	Orange County	

Reporting, recordkeeping, and other compliance requirements; and professional services:

Covered entities are required to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy

and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Compliance Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department’s understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity to provide comments during the notice and comment period.

JOB IMPACT STATEMENT

Nature of Impact:

Covered entities may terminate personnel who are not fully vaccinated and do not have a valid medical exemption and are unable to otherwise ensure individuals are not engaged in patient/resident care or expose other covered personnel.

Categories and numbers affected:

This rule may impact any individual who falls within the definition of “personnel” who is not fully vaccinated against COVID-19 and does not have a valid medical exemption on file with the covered entity for which they work or are affiliated.

Regions of adverse impact:

The rule would apply uniformly throughout the State and the Department does not anticipate that there will be any regions of the state where the rule would have a disproportionate adverse impact on jobs or employment.

Minimizing adverse impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department’s understanding that many facilities across the State

have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

EMERGENCY JUSTIFICATION

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant. Recent New York State data show that unvaccinated individuals are approximately 5 times as likely to be diagnosed with COVID-19 compared to vaccinated individuals. Those who are unvaccinated have over 11 times the risk of being hospitalized with COVID-19.

The COVID-19 vaccines are safe and effective. They offer the benefit of helping to reduce the number of COVID-19 infections, including the Delta variant, which is a critical component to protecting public health. Certain settings, such as healthcare facilities and congregate care settings, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve. Unvaccinated personnel in such settings have an unacceptably high risk of both acquiring COVID-19 and transmitting the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing unacceptably high risk of complications.

In response to this significant public health threat, through this emergency regulation, the Department is requiring covered entities to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, and provide reasonable accommodations therefor to protect the wellbeing of the patients, residents and personnel in such facilities. Documentation and information regarding personnel vaccinations as

well as exemption requests granted are required to be provided to the Department immediately upon request.

Based on the foregoing, the Department has determined that these emergency regulations are necessary to control the spread of COVID-19 in the identified regulated facilities or entities. As described above, current circumstances and the risk of spread to vulnerable resident and patient populations by unvaccinated personnel in these settings necessitate immediate action and, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is adding new sections 2.9 and 2.62, to be effective upon filing with the Secretary of State, to read as follows:

Section 2.9 is added to read as follows:

2.9. COVID-19 Reporting in Schools. In addition to all other reporting requirements in this Part, every kindergarten, elementary, intermediate, or secondary school as well as any pre-kindergarten programs and school districts, as identified by the Department, shall report to the Department of Health, on a daily basis, in a form and manner to be determined by the Commissioner, all COVID-19 testing, positive test results reported in any manner to the school, and related information among students, teaching staff, and any other employees or volunteers. Such daily report shall include any other data elements as the Commissioner determines to be appropriate to track outbreaks of COVID-19 within such schools and school districts.

Section 2.62 is added to read as follows:

2.62. COVID-19 Testing Requirements.

(a) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, the Commissioner may require routine COVID-19 testing in certain settings, which may include schools, homeless shelters, correctional facilities, nursing homes, and health care settings, and

which may distinguish between individuals who have received full vaccination against COVID-19 and those who have not. Such testing determination may also include alternatives to testing as well as prevention protocols pending test results based on symptoms and/or exposure in certain settings.

(1) Entities subject to routine COVID-19 testing pursuant to a Commissioner's determination may accept documentation demonstrating full vaccination in lieu of imposing such testing requirements, if permitted in a Commissioner's determination. "Full vaccination", for the purposes of this section, shall be determined by the Department in accordance with applicable federal guidelines and recommendations. Unless otherwise specified by the Department, documentation of full vaccination must include the manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site, in one of the following formats:

(i) record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;

(ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner's signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system;

(iii) Excelsior Pass; or

(iv) any other documentation determined acceptable by the Department.

(2) Entities subject to a Commissioner's determination pursuant to this section shall document testing or vaccination in appropriate records in accordance with applicable

privacy laws and submit data and information related thereto to the Department in a manner and format set forth in such determination.

(3) The Commissioner shall issue findings regarding the necessity of testing requirements at the time such requirements are announced.

(b) Enforcement and Penalties

(1) All local health officers shall take such steps as may be necessary to assist with the enforcement of the provisions of this section in accordance with the Public Health Law and this Title.

(2) A violation of any provision of this section is subject to all civil and criminal penalties as provided for by law. Entities that violate this section are subject to a maximum fine of \$1,000 for each violation. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the section shall constitute a separate violation under this section.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for adding a new section 2.9 and 2.60 is sections 201, 206, and 225 of the Public Health Law (PHL). Subdivision (c) of section 201 of the PHL requires the Department to supervise the reporting and control of disease. Subdivision (d) of section 206 of the PHL requires the Commissioner to investigate the causes of diseases and epidemics. Section 225 of the Public Health Law (PHL) authorizes the Public Health and Health Planning Council (PHHPC), subject to the approval of the Commissioner of Health (Commissioner), to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York.

Legislative Objectives:

The legislative objective of PHL § 201 includes authorizing the New York State Department of Health (“Department”) to control and promote the control of communicable diseases to reduce their spread. Likewise, the legislative objective of PHL § 206 includes authorizing the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases. The legislative objective of Public Health Law § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to amend the State Sanitary Code to address public health issues related to communicable disease.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are substantially similar to a common cold to severe pneumonia requiring medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical conditions.

The Centers for Disease Control and Prevention (CDC) and the Department have identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Cases in New York are over 10-fold their levels in late June 2021, and greater than 99 percent of the sequenced recent positives in New York State were the Delta variant.

In response to this significant public health threat, the Department of Health seeks to empower the Commissioner through this emergency regulation to issue determinations requiring the immediate implementation of heightened COVID-19 testing protocols for population segments that may be at increased risk of transmission due, in part, to their employment or residential circumstances. Regular COVID-19 testing enables the immediate identification of COVID-19-positive individuals, even if they are not symptomatic, so that they can isolate and prevent further transmission. Additionally, the reporting of positive COVID-19 test results to public health authorities facilitates the rapid initiation of contact tracing to ensure close contacts are quarantined, tested, and isolated as needed.

These regulations also permit the Department to require reporting of testing and positive reports among school students, teaching staff, and any other employees or volunteers. It is important for the Department to monitor COVID-19 testing and positive reports in schools, given

the number of students that are currently unvaccinated. Children ages 5 through 11 years old were only recently authorized by the U.S. Food and Drug Administration (FDA) to receive COVID-19 vaccinations. For those in the 12-17 age group, the CDC data estimates that 70.2% of this population has been vaccinated in New York State, with 61.6% in this age group completing a COVID-19 vaccine series. By carrying forward the reporting requirements that were in place for the 2020-2021 school year, the Department will be able to track COVID-19 incidence and prevalence in school settings for the upcoming school year. This will allow the Department to work with school districts and local health departments to implement targeted prevention strategies, where needed to limit the spread of the virus.

COSTS:

Costs to Regulated Parties:

In imposing testing requirements pursuant to a Commissioner's determination, the Commissioner, in consultation with the Department, will consider costs and how they may be offset. For example, testing for certain populations is supported by federal grant funding. The State has received approximately 335 million dollars in federal Epidemiology and Laboratory Capacity for Infectious Diseases Cooperative (ELC) Agreement School Reopening Funding through at least July 31, 2022 with the possibility for future funding periods. The New York City Department of Health and Mental Hygiene has received an award for this purpose of approximately 251 million dollars. These amounts are believed to be sufficient to offset any costs associated with any school-related testing in New York State that may be required pursuant to this regulation, such that the fiscal impact on Local Health Departments and schools is minimized. Costs for testing can also be offset by testing that is offered under Operation

Expanded Testing which is free testing in K-12 schools and other congregate settings which is funded by the Department of Health and Human Services (HHS) and Department of Defense (DoD).

With regard to the COVID-19 school reporting requirement, schools had to submit daily reports related to COVID-19 testing and positive reports for the 2020-2021 school year. These regulations carry forward this reporting requirement and is not expected to generate any additional cost.

Costs to Local and State Governments:

Costs to local health departments and the Department are expected to be minimal and related to monitoring compliance with these regulations, which can be incorporated into existing reporting and oversight activities and resources.

Paperwork:

This measure will require documentation related to the testing requirement, as well as documentation to opt-out of testing by providing documentation of full vaccination against COVID-19 in appropriate records. No additional paperwork requirements are anticipated for the school reporting requirement, which is expected to take the form of electronic submission to the Department.

Local Government Mandates:

These regulations impose an obligation on schools and school districts to report COVID-19 testing and positive report data for students, teaching staff, and any other employees or

volunteers. Local government may also be impacted if subject to a Commissioner's testing determination.

Duplication:

There is no duplication of federal law.

Alternatives:

The alternative to the school reporting requirement would be to not require COVID-19 related reporting for schools and school districts. A lack of the regulation would translate to a lack of accuracy in case statistics and delays or inadequate contact tracing. In addition, the Department would lose the ability to communicate with the community about COVID transmission patterns at the individual school level.

The alternative to permitting the Commissioner to issue determinations to require testing in certain settings would limit the ability for the Department to monitor trends related to COVID-19 transmission in more vulnerable populations, making it more difficult to work with partners to implement prevention strategies. Regular testing also helps to isolate infected individuals more quickly, as well as identify any contacts that need to be quarantined to prevent additional spread of COVID-19.

Federal Standards:

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

Compliance Schedule:

The regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed ruling making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

As part of ongoing efforts to address the COVID-19 pandemic, small businesses and local governments have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Given the testing and reporting mechanisms that have already been established in many settings, it is not anticipated that this regulation will have a significant impact on or cost to these entities. With regard to the school COVID-19 reporting requirement, this regulation will apply to private schools, including parochial schools, some of which may be small businesses, as well as public schools operated by local governments.

Compliance Requirements:

These regulations provide that testing may be required under certain circumstances, and in certain settings, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. As part of a Commissioner's testing-related determination, this regulation permits the Commissioner to request information/data related to the elements set forth in the determination. These regulations also set forth specific COVID-19 testing and positive report reporting requirements for schools, carrying forward the reporting requirements in place during the 2020-2021 school year.

Professional Services:

As testing is a requirement of this regulation, the types of professional services that will be needed to comply with this rule include diagnostic and screening testing services offered by clinical laboratories that hold the appropriate New York State approval to carry out testing. Because there will be flexibility in the types of tests that can be used to operationalize testing, the types of clinical laboratories that can be used for testing will depend on the type of testing being performed. If a laboratory-based nucleic acid amplification tests (e.g., PCR) will be used to meet the testing requirement, testing will need to be performed off-site by a fully permitted clinical laboratory. In this scenario, individuals are sent to a partner for testing, or an arrangement can be made to conduct sample collection on-site for testing off-site at the clinical laboratory. If rapid waived tests will be used to meet the testing requirement, testing can be performed by a Limited Service Laboratory (LSL). Due to the lower requirements that need to be met for waived testing, an LSL can be established for on-site testing of individuals (e.g., performing testing on-site at a school).

Compliance Costs:

In imposing testing requirements pursuant to a Commissioner's determination, the Commissioner, in consultation with the Department, will consider costs and how they may be offset. For example, testing for certain populations is supported by federal grant funding. The State has received approximately 335 million dollars in federal Epidemiology and Laboratory Capacity for Infectious Diseases Cooperative (ELC) Agreement School Reopening Funding through at least July 31, 2022 with the possibility for future funding periods. The New York City Department of Health and Mental Hygiene has received an award for this purpose of

approximately 251 million dollars. These amounts are believed to be sufficient to offset any costs associated with any school-related testing in New York State that may be required pursuant to this regulation, such that the fiscal impact on Local Health Departments and schools is minimized. Costs for testing can also be offset by testing that is offered under Operation Expanded Testing which is free testing in K-12 schools and other congregate settings which is funded by the Department of Health and Human Services (HHS) and Department of Defense (DoD).

With regard to the COVID-19 school reporting requirement, schools had to submit daily reports related to COVID-19 testing and diagnoses for the 2020-2021 school year. These regulations carry forward this reporting requirement and is not expected to generate any additional cost.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

Any adverse impacts related to school reporting requirements are expected to be minimal, as it carries forward reporting requirements that schools were required to implement last year. The Department, however, will work with schools to ensure they are aware of the new regulations and have the information necessary to comply.

With regard to minimizing adverse impacts related to the Commissioner's authority to issue test-related determinations, many settings have been increasingly implementing COVID-19 prevention strategies, with testing being one such example. Specifically, schools became

familiar with COVID-19 testing last year when the Department provided no cost antigen test cards as part of the microcluster testing initiative. Some schools have already implemented regular pooled surveillance testing to give communities confidence in the safety of their schools. Where the Commissioner issues a testing-related determination, the Department will work with the entities subject to such determination to provide the guidance necessary to comply.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

The following 44 counties have an estimated population of less than 200,000 based upon the 2019 United States Census county populations projections:

Allegany County	Greene County	Schoharie County
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Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
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The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the 2019 United States Census population projections:

Albany County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	
Monroe County	Orange County	

Reporting, recordkeeping, and other compliance requirements; and professional services:

These regulations provide that testing may be required under certain circumstances and in certain settings, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. As part of a Commissioner’s testing-related determination, this regulation permits the Commissioner to request information/data related to the elements set forth in the determination. Lastly, these regulations also set forth specific COVID-19 testing and positive test reporting requirements for schools, carrying forward the reporting requirements in place during the 2020-2021 school year.

Compliance Costs:

In imposing testing requirements pursuant to a Commissioner's determination, the Commissioner, in consultation with the Department, will consider costs and how they may be offset. For example, testing for certain populations is supported by federal grant funding. The State has received approximately 335 million dollars in federal Epidemiology and Laboratory Capacity for Infectious Diseases Cooperative (ELC) Agreement School Reopening Funding through at least July 31, 2022 with the possibility for future funding periods. The New York City Department of Health and Mental Hygiene has received an award for this purpose of approximately 251 million dollars. These amounts are believed to be sufficient to offset any costs associated with any school-related testing in New York State that may be required pursuant to this regulation, such that the fiscal impact on Local Health Departments and schools is minimized. Costs for testing can also be offset by testing that is offered under Operation Expanded Testing which is free testing in K-12 schools and other congregate settings which is funded by the Department of Health and Human Services (HHS) and Department of Defense (DoD).

With regard to the COVID-19 school reporting requirement, schools had to submit daily reports related to COVID-19 testing and diagnoses for the 2020-2021 school year. These regulations carry forward this reporting requirement and is not expected to generate any additional cost.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

Any adverse impacts related to school reporting requirements are expected to be minimal, as it carries forward reporting requirements that schools were required to implement last year. The Department, however, will work with schools to ensure they are aware of the new regulations and have the information necessary to comply.

With regard to minimizing adverse impacts related to the Commissioner's authority to issue test-related determinations, many settings have been increasingly implementing COVID-19 prevention strategies, with testing being one such example. Specifically, schools became familiar with COVID-19 testing last year when the Department provided no cost antigen test cards as part of the microcluster testing initiative. Some schools have already implemented regular pooled surveillance testing to give communities confidence in the safety of their schools. Where the Commissioner issues a testing-related determination, the Department will work with the entities subject to such determination to provide the guidance necessary to comply.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

JOB IMPACT STATEMENT

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no impact on jobs and employment opportunities. The primary purposes of this rule is to carry forward COVID-19 related reporting and to permit the Commissioner to impose COVID-19 testing requirements in certain settings based on specified criteria.

EMERGENCY JUSTIFICATION

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are substantially similar to a common cold to severe pneumonia requiring medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

The Centers for Disease Control and Prevention (CDC) and the Department have identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Cases in New York are over 10-fold their levels in late June 2021, and greater than 99 percent of the sequenced recent positives in New York State were the Delta variant.

In response to this significant public health threat, the Department of Health seeks to empower the Commissioner through this emergency regulation to issue determinations requiring the immediate implementation of heightened COVID-19 testing protocols for population segments that may be at increased risk of transmission due, in part, to their employment or residential circumstances. Regular COVID-19 testing enables the immediate identification of COVID-19-positive individuals, even if they are not symptomatic, so that they can isolate and prevent further transmission. Additionally, the reporting of positive COVID-19 test results to public health authorities facilitates the rapid initiation of contact tracing to ensure close contacts are quarantined, tested, and isolated as needed.

These regulations also permit the Department to require reporting of testing and diagnoses among school students, teaching staff, and any other employees or volunteers. It is important for the Department to monitor COVID-19 testing and diagnoses in schools, given the

number of students that are currently unvaccinated. Children ages 5 through 11 years old only recently were authorized by the FDA to receive COVID-19 vaccinations. For those in the 12-17 age group, the CDC data estimates that 70.2% of this population has been vaccinated in New York State, with 61.6% in this age group completing a COVID-19 vaccine series. By carrying forward the reporting requirements that were in place for the 2020-2021 school year, the Department will be able to track COVID-19 incidence and prevalence in school settings for the upcoming school year. This will allow the Department to work with school districts and local health departments to implement targeted prevention strategies, where needed to limit the spread of the virus.

Based on the foregoing, the Department has determined that these emergency regulations are necessary to control the spread of COVID-19, necessitating immediate action. Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

SUMMARY OF EXPRESS TERMS

These regulations clarify the authority and duty of the New York State Department of Health (“Department”) and local health departments to protect the public in the event of an outbreak of communicable disease, through appropriate public health orders issued to persons diagnosed with or exposed to a communicable disease. These regulations also require hospitals to report syndromic surveillance data to the Department upon direction from the Commissioner and clarify reporting requirements for clinical laboratories with respect to communicable diseases.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 225, 576, and 2803 of the Public Health Law, Section 2.2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, Section 2.6 is repealed and a new Section 2.6 is added, a new Section 2.13 is added, Sections 2.25 through 2.30 are repealed, a new Section 58-1.14 is added, and Section 405.3 is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (b) and (c) of Section 2.2 are amended, and new subdivisions (h) through (q) are added, to read as follows:

(b) [A *case* is defined as] Case shall mean a person who has been diagnosed [as likely to have] as having a particular disease or condition. The diagnosis may be based [solely] on clinical judgment, signs and symptoms combined with known exposure based on the best available evidence of transmissibility to a case or suspected case, [solely] and/or on laboratory evidence, [or on both criteria] as applicable.

(c) [A *suspected case* is defined as] Suspected case shall mean a person who has been [diagnosed] determined as [likely to have] possibly having a particular disease or condition. [The suspected diagnosis] A suspected case may be based [solely] on signs and symptoms, signs and symptoms combined with known exposure based on the best available evidence of transmissibility to a case or suspected case, [or solely] and/or on laboratory evidence, [or on both criteria] as applicable. The term “suspected case” shall include persons under

investigation, consistent with any guidance that the Commissioner of Health may issue with respect to a particular disease.

* * *

- (h) Contact shall mean any person known to have been sufficiently associated with a case or suspected case that, based on the best available evidence of transmissibility, such person has had the opportunity to contract a particular disease or condition.

- (i) Isolation shall mean the physical separation and confinement of an individual or group of individuals who are infected or reasonably determined by the State Commissioner of Health or local health authority to be infected with a highly contagious disease or organism, for such time as will prevent or limit the transmission of the reportable disease or organism to non-isolated individuals, in the clinical judgment of the State Commissioner of Health, or of the local health authority and consistent with any direction that the State Commissioner of Health may issue.

- (j) Quarantine shall mean the physical separation and confinement of an individual or groups of individuals who are reasonably determined by the State Commissioner of Health or local health authority to have been exposed to a highly contagious communicable disease, but who do not show signs or symptoms of such disease, for such time as will prevent transmission of the disease, in the clinical judgment of the State Commissioner of Health, or of the local

health authority and consistent with any direction that the State Commissioner of Health may issue.

- (k) Home quarantine or home isolation shall mean quarantine or isolation in a person's home, consistent with this Part and any direction that the State Commissioner of Health may issue;
- (l) Congregate quarantine shall mean quarantine at a location operated or contracted by the State or local health authority, consistent with this Part and any direction that the State Commissioner of Health may issue, where multiple persons are quarantined;
- (m) Highly contagious communicable disease shall mean a communicable disease or unusual disease that the State Commissioner of Health determines may present a serious risk of harm to the public health, for which isolation or quarantine may be required to prevent its spread.
- (n) Monitor shall mean contacting a person who is the subject of an isolation or quarantine order by the State Department of Health or local health authority, to ensure compliance with the order and to determine whether such person requires a higher level of medical care, consistent with any direction that the State Commissioner of Health may issue.
- (o) Mandatory quarantine shall mean quarantine pursuant to a legal order consistent with this Part.
- (p) Voluntary quarantine shall mean quarantine pursuant to a voluntary agreement with a public health authority.
- (q) Confinement shall mean enforcement of an isolation or quarantine order through the use or possible use of law enforcement personnel.

Section 2.6 is repealed and replaced as follows:

2.6 Investigations and Response Activities.

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

- (1) Verify the existence of a disease or condition;
- (2) Ascertain the source of the disease-causing agent or condition;
- (3) Identify unreported cases;
- (4) Locate and evaluate contacts of cases and suspected cases, as well as those reasonably expected to have been exposed to the disease;
- (5) Collect and submit, or cause to be collected or submitted, for laboratory examination such specimens as may furnish necessary or appropriate information for determining the source of disease, or to assist with diagnosis; and furnish or cause to be furnished with such specimens pertinent data on forms prescribed by the State Commissioner of Health, including but not limited to the history of cases, physical findings and details of the epidemiological investigation;
- (6) Examine the processes, structures, conditions, machines, apparatus, devices, equipment, records, and material within such places that may be relevant to the investigation of disease or condition;

- (7) Instruct a responsible member of a household or entity, as applicable, to implement appropriate actions to prevent further spread of a disease; and
- (8) Take any other steps to reduce morbidity and mortality that the local health authority determines to be appropriate.

(b) When a case or suspected case of a disease, condition, outbreak, or unusual disease occurs in any business, organization, institution, or private home, the person in charge of the business, organization, institution or the home owner, as well as any individuals or entities required to report pursuant to sections 2.10 and 2.12 of this Part, shall cooperate with the State Department of Health and local health authorities in the investigation of such disease, condition, outbreak, or unusual disease.

(c) Investigation Updates and Reports.

- (1) Upon request of the State Department of Health, the local health authority shall submit updates and reports on outbreak investigations to the State Department of Health. The content, timeframe, and manner of submission of such updates shall be determined by the State Department of Health.
- (2) The local health authority shall complete investigation reports of outbreaks within 30 days of the conclusion of the investigation in a manner prescribed by the State Commissioner of Health, unless the State Commissioner of Health prescribes a different time period.

(d) Commissioner authority to lead investigation and response activities.

(1) The State Commissioner of Health may elect to lead investigation and response activities

where:

(i) Residents of multiple jurisdictions within the State are affected by an outbreak of a reportable disease, condition, or unusual disease; or

(ii) Residents in a jurisdiction or jurisdictions within the State and in another state or states are affected by an outbreak of a reportable disease, condition, or unusual disease; or

(iii) An outbreak of an unusual disease or a reportable disease or condition involves a single jurisdiction with the high potential for statewide impact.

(2) Where the State Commissioner of Health elects to lead investigation and response activities pursuant to paragraph (1) of this subdivision, local health authorities shall take all reasonable steps to assist in such investigation and response, including supply of personnel, equipment or information. Provided further that the local health authority shall take any such action as the State Commissioner of Health deems appropriate and that is within the jurisdiction of the local health authority. Any continued investigation or response by the local health authority shall be solely pursuant to the direction of the State Commissioner of Health, and the State Commissioner of Health shall have access to any investigative materials which were heretofore created by the local health authority.

New section 2.13 is added to read as follows:

2.13 Isolation and Quarantine Procedures

(a) Duty to issue isolation and quarantine orders

- (1) Whenever appropriate to control the spread of a highly contagious communicable disease, the State Commissioner of Health may issue and/or may direct the local health authority to issue isolation and/or quarantine orders, consistent with due process of law, to all such persons as the State Commissioner of Health shall determine appropriate.
- (2) Paragraph (1) of this subdivision shall not be construed as relieving the authority and duty of local health authorities to issue isolation and quarantine orders to control the spread of a highly contagious communicable disease, consistent with due process of law, in the absence of such direction from the State Commissioner of Health.
- (3) For the purposes of isolation orders, isolation locations may include home isolation or such other residential or temporary housing location that the public health authority issuing the order determines appropriate, where symptoms or conditions indicate that medical care in a general hospital is not expected to be required, and consistent with any direction that the State Commissioner of Health may issue. Where symptoms or conditions indicate that medical care in a general hospital is expected to be required, the isolation location shall be a general hospital.
- (4) For the purposes of quarantine orders, quarantine locations may include home quarantine, other residential or temporary housing quarantine, or quarantine at such other locations as the public health authority issuing the order deems appropriate, consistent with any direction that the State Commissioner of Health may issue.

(b) Any isolation or quarantine order shall specify:

- (1) The basis for the order;
- (2) The location where the person shall remain in isolation or quarantine, unless travel is authorized by the State or local health authority, such as for medical care;
- (3) The duration of the order;
- (4) Instructions for traveling to the isolation or quarantine location, if appropriate;
- (5) Instructions for maintaining appropriate distance and taking such other actions as to prevent transmission to other persons living or working at the isolation or quarantine location, consistent with any direction that the State Commissioner of Health may issue;
- (6) If the location of isolation or quarantine is not in a general hospital, instructions for contacting the State and/or local health authority to report the subject person's health condition, consistent with any direction that the State Commissioner of Health may issue;
- (7) If the location of isolation or quarantine is a multiple dwelling structure, that the person shall remain in their specific dwelling and in no instance come within 6 feet of any other person, and consistent with any direction that the State Commissioner of Health may issue;
- (8) If the location of isolation or quarantine is a detached structure, that the person may go outside while remaining on the premise, but shall not leave the premise or come within 6 feet of any person who does not reside at the premise, or such other distance as may be appropriate for the specific disease, and consistent with any direction that the State Commissioner of Health may issue;
- (9) Such other limitations on interactions with other persons as are appropriate, consistent with any direction that the State Commissioner of Health may issue;

- (10) Notification of the right to request that the public health authority issuing the order inform a reasonable number of persons of the conditions of the isolation or quarantine order;
- (11) A statement that the person has the right to seek judicial review of the order;
- (12) A statement that the person has the right to legal counsel, and that if the person is unable to afford legal counsel, counsel will be appointed upon request.

(c) Whenever a person is subject to an isolation or quarantine order, the State Department of Health or local health authority, or the local health authority at the State Department of Health's direction shall, consistent with any direction issued by the State Commissioner of Health:

- (1) monitor such person to ensure compliance with the order and determine whether such person requires a higher level of medical care;
- (2) whenever appropriate, coordinate with local law enforcement to ensure that such person comply with the order; and
- (3) the extent such items and services are not available to such person, provide or arrange for the provision of appropriate supports, supplies and services, including, but not limited to: food, laundry, medical care, and medications.

(d) If the location of an isolation or quarantine order is owned by a landlord, hotel, motel or other person or entity, no such landlord or person associated with such hotel, motel or other person or entity shall enter the isolation or quarantine location without permission of the

local health authority, and consistent with any direction that the State Commissioner of Health may issue.

(e) No article that is likely to be contaminated with infective material may be removed from a premise where a person is isolated or quarantined unless the local health authority determines that such article has been properly disinfected or protected from spreading infection, or unless the quarantine period expires and there is no risk of contamination. Such determinations shall be made pursuant to any direction that the State Commissioner of Health may issue.

(f) Any person who violates a public health order shall be subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each day that the order is violated shall constitute a separate violation of this Part.

(g) Duty of attending physician

(1) Every attending physician shall immediately, upon discovering a case or suspected case of a highly contagious reportable communicable disease, cause the patient to be appropriately isolated and contact the State Department of Health and the local health authority where the patient is isolated and, if different, the local health authority where the patient resides.

(2) Such physician shall advise other members of the household regarding precautions to be taken to prevent further spread of the disease, consistent with any direction that the State Commissioner of Health may issue.

(3) Such physician shall furnish the patient, or caregiver of such patient where applicable, with detailed instructions regarding the disinfection and disposal of any contaminated articles, consistent with any direction that the State Commissioner of Health may issue.

Sections 2.25, 2.26, 2.27, 2.28, 2.29, and 2.30 are repealed.

Paragraph (11) of subdivision (d) of section 405.3 is amended, paragraph (12) is renumbered paragraph (13), and a new paragraph (12) is added, to read as follows:

(d) Records and reports. Any information, records or documents provided to the department shall be subject to the applicable provisions of the Public Health Law, Mental Hygiene Law, Education Law, and the Public Officers Law in relation to disclosure. The hospital shall maintain and furnish to the Department of Health, immediately upon written request, copies of all documents, including but not limited to:

* * *

(11) written minutes of each committee's proceedings. These minutes shall include at least the following:

- (i) attendance;
- (ii) date and duration of the meeting;
- (iii) synopsis of issues discussed and actions or recommendations made; [and]

(12) whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, such

syndromic surveillance data as the commissioner deems appropriate, which the hospital shall submit in the manner and form determined by the commissioner; and

(13) any record required to be kept by the provisions of this Part.

* * *

New section 58-1.14 is added to read as follows:

Section 58-1.14 Reporting of certain communicable diseases.

(a) The commissioner shall designate those communicable diseases, as defined by section 2.1 of the Sanitary Code, that require prompt action, and shall make available on the Department's website a list of such communicable diseases.

(b) Laboratories performing tests for screening, diagnosis or monitoring of communicable diseases requiring prompt action pursuant to subdivision (a) of this section, for New York State residents and/or New York State health care providers, shall:

(i) immediately report to the commissioner all positive results for such communicable diseases in a manner and format as prescribed by the commissioner; and

(ii) report all results, including positive, negative and indeterminate results, to the commissioner in a time and manner consistent with Public Health Law § 576-c.

* * *

Section 405.3 is amended by adding a new subdivision (g) as follows:

(g) Whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, the

commissioner may direct general hospitals, as defined in Article 28 of the public health law, and consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA), to accept patients pursuant to such procedures and conditions as the commissioner may determine appropriate.

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

The statutory authority for the proposed new section 58-1.14 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 576 of the PHL, which authorizes the Department to adopt regulations prescribing the requirements for the proper operation of a clinical laboratory, including the methods and the manner in which testing or analyses of samples shall be performed and reports submitted.

The statutory authority for the proposed amendments to section 405.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 2803 of the PHL, which authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

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

The legislative objective of PHL § 576 is, in part, to promote public health by establishing minimum standards for clinical laboratory testing and reporting of test results, including to the Department for purposes of taking prompt action to address outbreaks of disease.

The legislative objective of PHL § 2803 includes among other objectives authorizing PPHPC, with the approval of the Commissioner, to adopt regulations concerning the operation of facilities licensed pursuant to Article 28 of the PHL, including general hospitals.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had

existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen more than 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant.

In light of this situation, these regulations update, clarify and strengthen the Department's authority as well as that of local health departments to take specific actions to control the spread of disease, including actions related to investigation and response to a disease outbreak, as well as the issuance of isolation and quarantine orders.

The following is a summary of the amendments to the Department's regulations:

Part 2 Amendments:

- Relocate and update definitions, and add new definitions
- Repeal and replace current section 2.6, related to investigations, to make existing clarify local health department authority.
 - Sets forth specific actions that local health departments must take to investigate a case, suspect case, outbreak, or unusual disease.
 - Requires individuals and entities subject to a public health investigation to cooperate with the Department and local health departments.

- While the Department works collaboratively with local health departments on a variety of public health issues, including disease control, this regulation clarifies the authority for the Commissioner to lead disease investigation activities under certain circumstances (i.e., where there is potential for statewide impact, multiple jurisdictions impacted, or impact on one or more New York State jurisdictions and another state or states), while working collaboratively with impacted local health departments. In all other situations, local health departments retain the primary authority and responsibility to control communicable disease within their respective jurisdictions, with the Department providing assistance as needed.

(i) Codifies in regulation the requirement that local health departments send reports the Department during an outbreak.

- New section 2.13 added to clarify isolation and quarantine procedures.
 - Clarify that the State Department of Health has the authority to issue isolation and quarantine orders, as do local departments of health.
 - Clarifies locations where isolation or quarantine may be appropriate.
 - Sets forth requirements for the content of isolation and quarantine orders.
 - Specifies other procedures that apply when a person is isolated or quarantined.
 - Explicitly states that violation of an order constitutes grounds for civil and/or criminal penalties
 - Relocates and updates existing regulatory requirements that require the attending physician to report cases and suspected cases to the local health

authority, and to requires physicians to provide instructions concerning how to protect others.

Part 58 Amendments

- New section 58-1.14 added clarifying reporting requirements for certain communicable diseases
 - Requires the Commissioner to designate those communicable disease that require prompt action, and to make available a list of such disease on the State Department of Health website.
 - Requires clinical laboratories to immediately report positive test results for communicable diseases identified as requiring prompt attention, in a manner and format identified by the Commissioner.
 - Requires clinical laboratories to report all test result, including negative and indeterminate results, for communicable diseases identified as requiring prompt attention, via the Electronic Clinical Laboratory Reporting System (ECLRS).

Part 405 Amendments

- Mandates hospitals to report syndromic surveillance data during an outbreak of a highly contagious communicable disease.
- Permits the Commissioner to direct hospitals to take patients during an outbreak of a highly contagious communicable disease, which is consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA).

COSTS:

Costs to Regulated Parties:

The requirement that hospital submit syndromic surveillance reports when request during an outbreak is not expected to result in any substantial costs. Hospitals are already regularly and voluntarily submitting data to the Department, and nearly all of them submit such reports electronically. With regard to the Commissioner directing general hospitals to accept patients during an outbreak of a highly contagious communicable disease, hospitals are already required to adhere to the federal Emergency Medical Treatment and Labor Act (EMTALA). Accordingly, both of these proposed amendments will not impose any substantial additional cost to hospitals.

Clinical laboratories must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to imposes any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

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

Costs to Local and State Governments:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs

beyond what local health departments would incur in the absence of these regulations. Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Any clinical laboratories operated by a local government must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

To the extent that the State Department of Health and local health departments issue isolation and quarantine orders in response to COVID-19, such actions will impose costs upon the state. As the scope of any outbreak is difficult to predict, the cost to the State of issuing such orders cannot be predicted at this time.

Paperwork:

Some hospitals may be required to make additional syndromic surveillance reports that they are not already making. Otherwise, these regulations do not require any additional paperwork.

Local Government Mandates:

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

Duplication:

There is no duplication in existing State or federal law.

Alternatives:

The alternative would be to leave in place the current regulations on disease investigation and isolation and quarantine. However, many of these regulatory provisions have not been updated in fifty years and should be modernized to ensure appropriate response to a disease outbreak, such as COVID-19.

Federal Standards:

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

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

Professional Services:

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

Compliance Costs:

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

Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

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

United States Census data:

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

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States

Census estimated county populations for 2010:

Albany County
Dutchess County
Erie County

Monroe County
Niagara County
Oneida County
Onondaga County

Orange County
Saratoga County
Suffolk County

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

As the proposed regulations largely clarify existing responsibilities and duties among regulated entities and individuals, no additional recordkeeping, compliance requirements, or professional services are expected. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. Additionally, the requirement for local health departments to continually report to the Department during an outbreak is historically a practice that already occurs. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102.

Compliance Costs:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, no initial or annual capital costs of compliance are expected above and beyond the cost of compliance for the requirements currently in Parts 2, 58 and 405.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by repealing Subpart 66-3 and repealing and replacing Section 2.60, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subpart 66-3 is hereby repealed.

Section 2.60 is repealed and replaced to read as follows:

2.60. Face Coverings for COVID-19 Prevention

(a) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, any person who is over age two and able to medically tolerate a face-covering may be required to cover their nose and mouth with a mask or face-covering when: (1) in a public place and unable to maintain, or when not maintaining, social distance; or (2) in certain settings as determined by the Commissioner, which may include schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings, and which may distinguish between individuals who are vaccinated against COVID-19 and those that are not vaccinated. The Commissioner shall issue findings regarding the necessity of face-covering requirements at the time such requirements are announced.

(b) Businesses must provide, at their expense, face-coverings for their employees required to wear a mask or face-covering pursuant to subdivision (a) of this section.

(c) large-scale indoor event venues with more than five thousand attendees shall require patrons to wear face coverings consistent with subdivision (a) of this section; may require all patrons to wear a face covering irrespective of vaccination status; and may deny admittance to any person who fails to comply. This regulation shall be applied in a manner consistent with the federal American with Disabilities Act, New York State or New York City Human Rights Law, and any other applicable provision of law.

(d) No business owner shall deny employment or services to or discriminate against any person on the basis that such person elects to wear a face-covering that is designed to inhibit the transmission of COVID-19, but that is not designed to otherwise obscure the identity of the individual.

(e) For purposes of this section face-coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth.

(f) Penalties and enforcement.

(i) A violation of any provision of this Section is subject to all civil and criminal penalties as provided for by law. Individuals or entities that violate this Section are subject to a maximum fine of \$1,000 for each violation. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the Section shall constitute a separate violation under this Section.

(ii) All local health officers shall take such steps as may be necessary to enforce the provisions of this Section accordance with the Public Health Law and this Title.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for adding a new Section 2.60 is sections 201, 206, and 225 of the Public Health Law.

Legislative Objectives:

The legislative objective of PHL § 201 includes authorizing the New York State Department of Health (“Department”) to control and promote the control of communicable diseases to reduce their spread. Likewise, the legislative objective of PHL § 206 includes authorizing the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases. The legislative objective of Public Health Law § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to amend the State Sanitary Code to address public health issues related to communicable disease.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) and the Department have identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Cases in New York are over 10-fold their levels in late June 2021, and greater than 99 percent of the sequenced recent positives in New York State were the Delta variant.

These regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

COSTS:

Costs to Regulated Parties:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Costs to Local and State Governments:

State and local government are authorized to enforce civil and criminal penalties related to the violation of these regulations, and there may be some cost of enforcement, however such costs are anticipated to be minimal as these provisions continue existing enforcement requirements.

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

As part of ongoing efforts to address the COVID-19 pandemic, local governments have been a partner in implementing and enforcing measures to limit the spread and/or mitigate the impact of COVID-19 within their jurisdictions since March of 2020. Further, local governments have separate authority and responsibilities to control disease within their jurisdictions pursuant to PHL sec. 2100 and Part 2 of the State Sanitary Code.

Duplication:

There is no duplication of federal law.

Alternatives:

The alternative would be to not promulgate these regulations. However, this alternative was rejected, as the Department believes this regulation will facilitate the Department's ability to respond to the evolving nature of this serious and ongoing communicable disease outbreak.

Federal Standards:

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

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

As part of ongoing efforts to address the COVID-19 pandemic, businesses and local government have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact on or cost to small business and local government.

Compliance Requirements:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Professional Services:

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

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, any adverse impacts are expected to be minimal.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

The following 44 counties have an estimated population of less than 200,000 based upon the 2019 United States Census county populations projections:

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
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Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the 2019 United States Census population projections:

Albany County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	
Monroe County	Orange County	

Reporting, recordkeeping, and other compliance requirements; and professional services:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of

COVID-19 within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, adverse impacts are expected to be minimal.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

JOB IMPACT STATEMENT

The Department of Health has determined that this regulatory change is necessary to prevent further complete closure of the businesses impacted, and therefore, while there may be lost revenue for many businesses, the public health impacts of continued spread of COVID-19 are much greater.

SUMMARY OF EXPRESS TERMS

These regulations are intended to implement section 2801-h of the Public Health Law (PHL) and section 461-u of the Social Services Law (SSL), as enacted by Chapter 108 of the Laws of 2021. These statutory amendments required the Commissioner of Health to promulgate regulations governing personal caregiving visitors in all licensed nursing homes and adult care facilities. According to the statute, a “personal caregiving visitor” means a family member, close friend, or legal guardian of a resident designated by such resident, or such resident’s lawful representative, to assist with personal caregiving or compassionate caregiving for the resident. Personal caregiving is defined as care and support of a resident to benefit such resident’s mental, physical, or social well-being, and compassionate caregiving is defined as personal caregiving provided in anticipation of the end of the resident’s life or in the instance of significant mental, physical or social decline or crisis (*see* PHL § 2801-h[1][a-c], SSL § 461-u[1][a-c]).

In accordance with the statutory directive, the new regulatory sections amend 10 NYCRR 415.3(d) to add new paragraphs (3), (4), and (5) concerning, respectively, personal caregiving visitation, additional provisions relating to compassionate caregiving, and authority for the Department of Health to review a nursing home’s personal caregiving visitation policies and procedures. Likewise, for adult care facilities, the regulation adds a new section 485.18 of 18 NYCRR to address general visitation rights in an adult care facility (section 485.18[b]), personal caregiving visitation (section 485.18[c]), additional provisions relating to compassionate caregiving (section 485.18[d]), and authority for the Department of Health to review an adult care facility’s personal caregiving visitation policies and procedures (section 485.18[e]).

More specifically, the regulatory amendments relating to personal caregiving visitation, as contained in the new 10 NYCRR 415.3(d)(3) and 18 NYCRR 485.18(c), provide that such

visitation shall be permitted in a nursing home and adult care facility during a public health emergency declared under section twenty-four or section twenty-eight of the Executive Law, notwithstanding general visitation restrictions in the facility, and subject to certain limitations, including the need to limit or temporarily suspend personal caregiving visitation due to an increase in local infection rates, temporary inadequate staff capacity, an acute emergency situation such as loss of an essential service, or because the personal caregiving visitor poses a threat to the safety and well-being of the resident or any resident or personnel in the facility. The regulations governing personal caregiving visitation further: (i) set forth procedures for residents or their lawful representatives to designate and change their designation of personal caregiving visitors; (ii) provide that a resident shall be entitled to designate at least two personal caregiving visitors; (iii) require that all personal caregiving visitors follow infection prevention safety protocols required for nursing home and adult care facility staff, such as communicable disease testing, health screenings, and donning appropriate personal protective equipment; and (iv) set forth standards for a facility to determine the maximum frequency and duration of personal caregiving visits and the total number of personal caregiving visitors allowed to visit the facility at any one time.

The new 10 NYCRR 415.3(d)(4) and 18 NYCRR 485.18(d) establish additional provisions for compassionate caregiving provided by personal caregiving visitors. These sections set forth the situations in which a resident is eligible for a compassionate caregiving visitor and the requirements for screening compassionate caregiving visitors prior to their entry into the facility.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2801-h and 2803 of the Public Health Law and sections 461, 461-e, and 461-u of the Social Services Law, Section 415.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended and a new Section 485.18 of Title 18 of the NYCRR is hereby added, to be effective publication of a Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (iv) of paragraph (2) of subdivision (d) of Section 415.3 of 10 NYCRR is amended to read as follows:

(iv) provide immediate access to any resident by the following:

* * *

(f) immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time; [and]

(g) personal caregiving visitors, as defined in subdivision (1) of section 2801-h of the Public Health Law and pursuant to criteria specified in paragraph (3) of this subdivision, including those providing compassionate caregiving, as defined in subdivision (1) of section 2801-h of the Public Health Law and pursuant to criteria specified in paragraph (4) of this subdivision; and

[(g)] (h) others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time;

Subdivision (d) of Section 415.3 of 10 NYCRR is amended to add new paragraphs (3), (4), and (5) to read as follows:

(3) Personal caregiving visitors.

(i) During a public health emergency declared under section twenty-four or section twenty-eight of the executive law, the facility must continue to allow residents to access their designated personal caregiving visitors, notwithstanding any restrictions or prohibitions relating to residential health care visitation resulting from the declared public health emergency, subject to the following restrictions:

(a) If a facility has reasonable cause to believe that a resident will not benefit from accessing their designated personal caregiving visitors, and such reasoning has been documented in the resident's individualized comprehensive plan of care, a facility may require a health or mental health professional duly licensed or certified in New York State under the Education Law, and who need not be associated with the nursing home, including but not limited to a physician, registered nurse, licensed clinical social worker, psychologist, or psychiatrist, to provide a written statement that the personal caregiving will substantially benefit the resident's quality of life, including a statement from such medical provider that the personal caregiving visitation will enhance the resident's mental, physical, or psychosocial well-being, or any additional criteria evidencing a benefit to quality of life as determined by the Department. Such written statements from the medical provider shall be maintained in the resident's individualized comprehensive plan of care.

(b) Notwithstanding any provision of this subparagraph (i), a facility may temporarily suspend or limit personal caregiving visitors to protect the health, safety and welfare of residents if: the declared public health emergency is related to a communicable disease and the Department determines that local infection rates are at a level that presents a serious risk of transmission of such communicable disease within local facilities; the

facility is experiencing temporary inadequate staffing and has reported such staffing shortage to the Department of Health and any other State or federal agencies as required by law, regulation, or other directive; or an acute emergency situation exists at the facility, including loss of heat, loss of elevator service, or other temporary loss of an essential service. Provided, however, that in the event a facility suspends or limits personal caregiving visitation pursuant to this clause, the facility shall notify residents, all designated personal caregiving visitors, and the applicable Department regional office of such suspension or limitation and the duration thereof within twenty-four hours of implementing the visitation suspension or limitation. Additionally, for each day of the suspension or limitation, the facility shall document the specific reason for the suspension or limitation in their administrative records. The facility shall further provide a means for all residents to engage in remote visitation with their designated personal caregiving visitor(s), including but not limited to phone or video calls, until such time that the suspension or limitation on personal caregiving visitation has ended.

(c) Notwithstanding any provision of this subparagraph (i), a facility may prohibit a personal caregiving visitor from entering if the facility has reasonable cause to believe that permitting the personal caregiving visitor to meet with the resident is likely to pose a threat of serious physical, mental, or psychological harm to such resident. In the event the facility determines that denying such personal caregiving visitor access to the resident is in the resident's best interests pursuant to this subparagraph, the facility must document the date of and reason for visitation refusal in the resident's individualized comprehensive plan of care, and on the same date of the refusal the facility shall communicate its decision to the resident and their designated representative. Further, a

facility may refuse access to or remove from the premises any personal caregiving visitor who is causing or reasonably likely to cause physical injury to any facility resident or personnel.

(ii) The facility shall develop written policies and procedures to ask residents, or their designated representatives in the event the resident lacks capacity, at time of admission or readmission, or for existing residents within fourteen days of the effective date of this paragraph, which individuals the resident elects to serve as their personal caregiving visitor during declared public health emergencies. A resident shall be entitled to designate at least two personal caregiving visitors at one time.

(iii) The facility shall maintain a written record of the resident's designated personal caregiving visitors in the resident's individualized comprehensive plan of care, and shall document when personal caregiving and compassionate caregiving is provided in the resident's individualized comprehensive plan of care.

(iv) As part of its ongoing review of a resident's comprehensive plan of care, the facility shall regularly inquire of all current residents, or their designated representative if the resident lacks capacity, whether the facility's current record of designated personal caregiving visitors remains accurate, or whether the resident, or their designated representative if the resident lacks capacity, wishes to make any changes to their personal caregiving visitor designations. The facility shall update the resident's individualized comprehensive plan of care with the date the facility sought updates from the resident and indicate any changes to the resident's personal caregiving visitor designations therein. Such inquiries shall be made no less frequently than quarterly and upon a change in the resident's condition; upon review of a facility's visitation policies and procedures,

the Department may also require the facility inquire of any resident whether the facility's current record of designated personal caregiving visitors remains accurate.

(v) The facility shall require all personal caregiving visitors to adhere to infection control measures established by the facility and consistent with any guidelines from the Department, or in the absence of applicable Department guidance, consistent with long term care facility infection control guidelines from the U.S. Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services. Such infection control measures may include, but need not be limited to:

(a) testing all personal caregiving visitors for any communicable disease that is the subject of the declared public health emergency, which may include rapid on-site testing or requiring the visitor to present a negative test result dated no more than seven days prior to the visit;

(b) checking the personal caregiving visitor's body temperature upon entry to the facility, and denying access to any visitor with a temperature above 100 degrees Fahrenheit;

(c) conducting health screenings of all personal caregiving visitors upon entry to the facility, including screenings for signs and symptoms of any communicable disease that is the subject of the declared public health emergency or any other communicable disease which is prevalent in the facility's geographic area, and recording the results of such screenings;

(d) requiring all personal caregiving visitors to don all necessary personal protective equipment appropriately, and providing such personal protective equipment to all personal caregiving visitors; and

(e) enforcing social distancing between persons during visitation, including personal caregiving visitation, except as necessary to provide personal caregiving by the personal caregiving visitor for the resident.

(vi) The facility shall establish policies and procedures regarding the frequency and duration of personal caregiving visits and limitations on the total number of personal caregiving visitors allowed to visit the resident and the facility at any one time. Such policies shall not be construed to limit access by other visitors that would otherwise be permitted under state or federal law or regulation. The facility shall ensure its policies and procedures respect resident privacy and take into account visitation protocols in the event a resident occupies a shared room. In establishing frequency and duration limits, the facility policy shall ensure that residents are able to receive their designated personal caregiving visitors for the resident's desired frequency and length of time, and any restrictions on that desired frequency and duration must be:

(a) attributable to the resident's clinical or personal care needs;

(b) necessary to ensure the resident's roommate has adequate privacy and space to receive their own designated personal caregiving visitors; or

(c) because the desired visitation frequency or duration would impair the effective implementation of applicable infection control measures, including social distancing of at least six feet between the visitors and others in the facility, having sufficient staff to effectively screen all personal caregiving visitors and monitor visits to ensure infection control protocols are being followed throughout, and having a sufficient supply of necessary personal protective equipment for all personal caregiving visitors.

(4) Compassionate caregiving.

(i) In the event a resident experiences a long-term or acute physical, mental, or psychosocial health condition for which, in the opinion of the resident, their representative, or a health care professional (including but not limited to a physician, registered nurse, licensed clinical social worker, psychologist, or psychiatrist), a compassionate caregiving visitor would improve the resident's quality of life, the resident or their representative shall designate at least two compassionate caregiving visitors at one time, and the facility shall record such designation in the resident's individualized comprehensive plan of care. A resident's designated personal caregiving visitors may also provide compassionate caregiving.

(ii) Situations in which a resident is eligible for a compassionate caregiving visitor include but are not limited to the following:

(a) end of life;

(b) the resident, who was living with their family before recently being admitted to an adult care facility, is struggling with the change in environment and lack of physical family support;

(c) the resident is grieving after a friend or family member recently passed away;

(d) the resident needs cueing and encouragement with eating or drinking, and such cueing was previously provided by family and/or caregiver(s), and the resident is now experiencing weight loss or dehydration; and

(e) the resident, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently (when the resident had rarely cried in the past).

(iii) Compassionate caregiving visitation shall be permitted at all times, regardless of any general visitation restrictions or personal caregiving visitation restrictions in effect in the facility.

Provided, however, that the facility shall require compassionate caregiving visitors to be screened for communicable diseases prior to entering the facility and visits must be conducted using appropriate social distancing between the resident and visitor if applicable based on guidance from the Department or the U.S. Centers for Disease Control and Prevention; if, however, personal contact would be beneficial for the resident's mental or psychosocial well-being, the facility shall establish policies and procedures to ensure that such necessary physical contact follows appropriate infection prevention guidelines, including the visitor's use of personal protective equipment and adhering to hand hygiene protocols before and after resident contact, and that the physical contact is limited in duration.

(5) The Department shall have discretion to review and require modifications to a facility's personal caregiving visitation and compassionate caregiving visitation policies and procedures to ensure conformity with paragraphs (3) and (4) of this subdivision and any applicable visitation guidelines issued by the Department or the Centers for Medicare and Medicaid Services.

A new Section 485.18 of 18 NYCRR, titled Personal and Compassionate Caregiving Visitation, is added to read as follows:

(a) This section shall apply to all adult care facilities, including every adult care facility regulated pursuant to Parts 487, 488 and 490 of this Title and Part 1001 of Title 10 of the NYCRR.

(b) Subject to the resident's right to deny or withdraw consent at any time, all adult care facilities must provide immediate access to any resident of visitors of their choice, including but not limited to immediate family or other relatives of the resident and any others who are visiting with the consent of the resident. Provided, however, that the facility may establish policies and

procedures to establish reasonable restrictions on such visitation, including but not limited to: setting forth visitation hours; denying access to any visitor suffering from a communicable disease; terminating visitation with any visitor causing a threat to the health or safety of any resident; and setting a cap on the number of visitors allowed in the facility at any one time. Any such restrictions or limitations on visitation shall be communicated in writing to residents.

(c) Personal caregiving visitors.

(1) During a public health emergency declared under section twenty-four or section twenty-eight of the executive law, the facility must continue to allow residents to access their designated personal caregiving visitors, as defined in subdivision (1) of section 2801-h of the Public Health Law, notwithstanding any restrictions or prohibitions relating to residential health care facility visitation resulting from the declared public health emergency, subject to the following restrictions:

(i) If a facility has reasonable cause to believe that a resident will not benefit from accessing their designated personal caregiving visitors, and such reasoning has been documented in the resident's case management record, a facility may require a health or mental health professional duly licensed or certified in New York State under the Education Law, and who is not associated with the facility, including but not limited to a physician, registered nurse, licensed clinical social worker, psychologist, or psychiatrist, to provide a written statement that the personal caregiving will substantially benefit the resident's quality of life, including a statement from such medical provider that the personal caregiving visitation will enhance the resident's mental, physical, or psychosocial well-being, or any additional criteria evidencing a benefit to quality of life

as determined by the Department. Such written statements shall be maintained in the resident's case management record.

(ii) Notwithstanding any provision of this paragraph, a facility may temporarily suspend or limit personal caregiving visitors to protect the health, safety and welfare of residents, if: the declared public health emergency is related to a communicable disease and the Department determines that local infection rates are at a level that presents a serious risk of transmission of such communicable disease within local facilities; the facility is experiencing temporary inadequate staffing and has reported such staffing shortage to the Department of Health any other State or federal agencies as required by law, regulation, or other directive; or an acute emergency situation exists at the facility, including loss of heat, loss of elevator service, or other temporary loss of an essential service. Provided, however, that in the event a facility suspends or limits personal caregiving visitation pursuant to this subparagraph, the facility shall notify residents, all designated personal caregiving visitors, and the applicable Department regional office of such suspension or limitation and the duration thereof within twenty-four hours of implementing the visitation suspension or limitation. Additionally, for each day of the suspension or limitation, the facility shall document the specific reason for the suspension or limitation in their administrative records. The facility shall further provide a means for all residents to engage in remote visitation with their designated personal caregiving visitor(s), including but not limited to phone or video calls, until such time that the suspension or limitation on personal caregiving visitation has ended.

(iii) Notwithstanding any provision of this paragraph, a facility may also prohibit a personal caregiving visitor from entering if the facility has reasonable cause to believe

that permitting the personal caregiving visitor to meet with the resident is likely to pose a threat of serious physical, mental, or psychological harm to such resident. In the event the facility determines that denying such personal caregiving visitor access to the resident is in the resident's best interests pursuant to this subparagraph, the facility must document the date of and reason for visitation refusal in the resident's case management record, and on the same date of the refusal the facility shall communicate its decision to the resident and their designated representative. Further, a facility may refuse access to or remove from the premises any personal caregiving visitor who is causing or reasonably likely to cause physical injury to any facility resident or personnel.

(2) The facility shall develop written policies and procedures to ask residents, or their designated representatives in the event the resident lacks capacity, at time of admission or readmission, or for existing residents within fourteen days of the effective date of this paragraph, which individuals the resident elects to serve as their personal caregiving visitor during declared local or state health emergencies. A resident shall be entitled to designate at least two personal caregiving visitors at one time.

(3) The facility shall maintain a written record of the resident's designated personal caregiving visitors in the resident's case management record, and shall document when personal caregiving and compassionate caregiving is provided in the case management record.

(4) As part of its ongoing review of a resident's case management needs, the facility shall regularly inquire of all current residents, or their designated representative if the resident lacks capacity, whether the facility's current record of designated personal caregiving visitors remains accurate, or whether the resident, or their designated representative if the resident lacks capacity, wishes to make any changes to their personal caregiving visitor designations. The facility shall

update the resident's case management record with the date the facility sought updates from the resident and indicate any changes to the resident's personal caregiving visitor designations therein. Such inquiries shall be made no less frequently than every six months and upon a change in the resident's condition; upon review of a facility's visitation policies and procedures, the Department may also require the facility inquire of any resident whether the facility's current record of designated personal caregiving visitors remains accurate.

(5) The facility shall require all personal caregiving visitors to adhere to infection control measures established by the facility and consistent with any guidelines from the Department, or in the absence of applicable Department guidance, consistent with long term care facility infection control guidelines from the U.S. Centers for Disease Control and Prevention. Such infection control measures may include, but need not be limited to:

- (i) testing all personal caregiving visitors for any communicable disease that is the subject of the declared public health emergency, which may include rapid on-site testing or requiring the visitor to present a negative test result from no more than seven days prior to the visit;
- (ii) checking the personal caregiving visitor's body temperature upon entry to the facility, and denying access to any visitor with a temperature above 100 degrees Fahrenheit;
- (iii) conducting health screenings of all personal caregiving visitors upon entry to the facility, including screenings for signs and symptoms of any communicable disease that is the subject of the declared public health emergency or any other communicable disease which is prevalent in the facility's geographic area, and recording the results of such screenings;

(iv) requiring all personal caregiving visitors to don all necessary personal protective equipment appropriately, and providing such personal protective equipment to all personal caregiving visitors; and

(v) enforcing social distancing between persons during visitation, including personal caregiving visitation, except as necessary to provide personal caregiving by the personal caregiving visitor for the resident.

(6) The facility shall establish policies and procedures regarding the frequency and duration of personal caregiving visits and limitations on the total number of personal caregiving visitors allowed to visit the resident and the facility at any one time. Such policies shall not be construed to limit access by other visitors that would otherwise be permitted under state or federal law or regulation. The facility shall ensure its policies and procedures respect resident privacy and take into account visitation protocols in the event a resident occupies a shared room. In establishing frequency and duration limits, the facility policy shall ensure that residents are able to receive their designated personal caregiving visitors for the resident's desired frequency and length of time, and any restrictions on that desired frequency and duration must be:

(i) attributable to the resident's clinical or personal care needs;

(ii) necessary to ensure the resident's roommate has adequate privacy and space to receive their own designated personal caregiving visitors; or

(iii) because the desired visitation frequency or duration would impair the effective implementation of applicable infection control measures, including social distancing of at least six feet between the visitors and others in the facility, having sufficient staff to effectively screen all personal caregiving visitors and monitor visits to ensure infection

control protocols are being followed throughout, and having a sufficient supply of necessary personal protective equipment for all personal caregiving visitors.

(d) Compassionate caregiving.

(1) In the event a resident experiences a long-term or acute physical, mental, or psychosocial health condition for which, in the opinion of the resident, their representative, or a health care professional (including but not limited to a physician, registered nurse, licensed clinical social worker, psychologist, or psychiatrist), a compassionate caregiving visitor would improve the resident's quality of life, the resident or their representative shall designate at least two compassionate caregiving visitors at one time, and the facility shall record such designation in the resident's case management record. A resident's designated personal caregiving visitors may also provide compassionate caregiving.

(2) Situations in which a resident is eligible for a compassionate caregiving visitor include but are not limited to the following:

(i) end of life;

(ii) the resident, who was living with their family before recently being admitted to an adult care facility, is struggling with the change in environment and lack of physical family support;

(iii) the resident is grieving after a friend or family member recently passed away;

(iv) the resident needs cueing and encouragement with eating or drinking, and such cueing was previously provided by family and/or caregiver(s), and the resident is now experiencing weight loss or dehydration; and

(v) the resident, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently (when the resident had rarely cried in the past).

(3) Compassionate caregiving visitation shall be permitted at all times, regardless of any general visitation restrictions or personal caregiving visitation restrictions in effect in the facility.

Provided, however, that the facility shall require compassionate caregiving visitors to be screened for communicable diseases prior to entering the facility and visits must be conducted using appropriate social distancing between the resident and visitor if applicable based on guidance from the Department or the U.S. Centers for Disease Control and Prevention; if, however, personal contact would be beneficial for the resident's well-being, the facility shall establish policies and procedures to ensure such physical contact follows appropriate infection prevention guidelines, including the visitor's use of personal protective equipment and adhering to hand hygiene protocols before and after resident contact, and that physical contact is limited in duration.

(e) The Department shall have discretion to review and require modifications to a facility's personal caregiving visitation and compassionate caregiving visitation policies and procedures to ensure conformity with subdivisions (c) and (d) of this section and any applicable visitation guidelines issued by the Department or the Centers for Medicare and Medicaid Services.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority is provided under sections 2801-h and 2803 of the Public Health Law (PHL) and sections 461, 461-e, and 461-u of the Social Services Law (SSL).

PHL § 2801-h and SSL § 461-u specifically authorize the New York State Department of Health (Department) to promulgate regulations relating to personal caregiving visitors and compassionate caregiving visitors in nursing homes and adult care facilities (ACFs).

SSL § 461 requires the Department to promulgate regulations establishing general standards applicable to ACFs. SSL § 461-e authorizes the Department to promulgate regulations to require ACFs to maintain certain records with respect to the facilities' residents and the operation of the facility.

Legislative Objectives:

The legislative objective of PHL § 2801-h and SSL § 461-u is to ensure residents' rights to visitation are respected by allowing residents of nursing homes and ACFs to have access to their designated personal caregiving visitors and compassionate caregiving visitors during a declared State or local public health emergency. Further, the legislative objective of SSL § 461 is to promote the health and well-being of residents of ACFs.

Needs and Benefits:

These regulations are necessary pursuant to the statutory directives in PHL § 2801-h and SSL § 461-u, which direct the Commissioner of Health to promulgate regulations governing personal caregiving visitation and compassionate caregiving visitation in nursing homes and ACFs during a declared State or local public health emergency.

These regulations are beneficial insofar as they will provide clarity to facility operators and administrators, residents, and their family members regarding whether certain visitors are permitted to access a nursing home or ACF during a declared local or State health emergency, notwithstanding any visitation restrictions currently in effect within the facility.

COSTS:

Costs to Regulated Parties:

There are no anticipated costs to regulated parties. The regulations require facilities to establish policies and procedures regarding personal caregiving visitation and compassionate caregiving visitation that comply with these regulations and the governing statutes, PHL § 2801-h and SSL § 461-u. Insofar as facilities are obligated to establish policies and procedures for other facility operations, this responsibility should be managed using existing resources.

Costs to Local and State Governments:

There are no anticipated costs to any regulated parties, including nursing homes and ACFs operated by a local or State government.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health. Any increased surveillance and enforcement activities relating to this regulation will be handled with existing resources.

Paperwork:

This regulation requires facilities to develop and maintain visitation policies relating to personal caregiving visitation and compassionate caregiving visitation. However, this requirement is expected to be of minimal burden to facilities, which are currently obligated to

develop and maintain other policies and procedures relating to facility operations, and the requirements for such visitation policies and procedures are thoroughly detailed in these regulations and the governing statutes, PHL § 2801-h and SSL § 461-u.

Local Government Mandates:

Nursing homes and ACFs operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28 or ACF licensed under SSL Article 7, Title 2. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two adult care facilities operated by county governments.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

There are no viable alternatives. The alternative of not issuing these regulations was rejected given the statutory directive to promulgate these regulations, pursuant to PHL § 2801-h and SSL § 461-u.

Federal Standards:

The federal Centers for Medicare & Medicaid Services (CMS) has issued visitation guidance applicable to Medicaid- and Medicare-enrolled nursing homes, titled “Nursing Home Visitation - COVID-19 (REVISED)” (QSO-20-39-NH), revised April 27, 2021. This visitation guidance discusses general visitation in nursing homes including compassionate care visitation. The Department has reviewed this CMS guidance and finds that the proposed regulations are consistent with the CMS guidance insofar as they both relate to compassionate care visitation in nursing homes. No other federal standards apply.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a nursing home or adult care facility (ACF). Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two ACFs operated by county governments (Chenango and Warren Counties). Additionally, to date, 79 nursing homes in New York qualify as small businesses given that they have 100 or fewer employees. There are also 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

This regulation requires nursing homes and ACFs to develop policies and procedures relating to compassionate caregiver visitation and personal caregiver visitation that are consistent with these regulations and the governing statutes, Public Health Law (PHL) § 2801-h and Social Services Law (SSL) § 461-u.

Professional Services:

No professional services are required by this regulation.

Compliance Costs:

There are no costs associated with this regulation.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with resident right standards and current CMS and Department visitation guidance. Therefore, the Department expects no adverse impact to facilities given that nursing homes and ACFs are currently required to comply with similar standards and are expected to have already developed policies and procedures in accordance with those existing standards. In any event, the Department is required by PHL § 2801-h and SSL § 461-u to promulgate these regulations; as such, any adverse impact on covered facilities cannot be avoided due to the statutory mandate.

Small Business and Local Government Participation:

Facilities were put on notice of the forthcoming promulgation of these regulations upon the enactment of PHL § 2801-h and SSL § 461-u, as enacted by Chapter 108 of the Laws of 2021. Additionally, the Department plans to advise all facilities, including those operated by small businesses and local governments, of the publication of these regulations and the opportunity to submit any questions relating to such regulations to the Department.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

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

The following counties have populations of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Both licensed nursing homes and ACFs are located in these identified rural areas.

Reporting, recordkeeping, and other compliance requirements; and professional services:

This regulation imposes no additional paperwork.

Compliance Costs:

There are no costs associated with this regulation.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with resident right standards and current CMS and Department visitation guidance. Therefore, the Department expects no adverse impact to facilities given that nursing homes and ACFs are currently required to comply with similar standards and are expected to have already developed policies and procedures in accordance with those existing standards. In any event, the Department is required by PHL § 2801-h and SSL § 461-u to promulgate these regulations; as such, any adverse impact on covered facilities cannot be avoided due to the statutory mandate.

Rural Area Participation:

Facilities were put on notice of the forthcoming promulgation of these regulations upon the enactment of PHL § 2801-h and SSL § 461-u, as enacted by Chapter 108 of the Laws of 2021. Additionally, the Department plans to advise all facilities, including those located in rural areas, of the publication of these regulations and the opportunity to submit any questions relating to such regulations to the Department.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Public Health Law Sections 225, 2800, 2803, 3612, and 4010, as well as Social Services Law Sections 461 and 461-e, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 2 is amended to add a new section 2.61, as follows:

2.61. Prevention of COVID-19 transmission by covered entities.

(a) Definitions.

- (1) “Covered entities” for the purposes of this section, shall include:
 - (i) any facility or institution included in the definition of “hospital” in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;
 - (ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies;
 - (iii) hospices as defined in section 4002 of the Public Health Law; and
 - (iv) adult care facility under the Department’s regulatory authority, as set forth in Article 7 of the Social Services Law.

(2) “Personnel,” for the purposes of this section, shall mean all persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.

(3) “Fully vaccinated,” for the purposes of this section, shall be determined by the Department in accordance with applicable federal guidelines and recommendations. Unless otherwise specified by the Department, documentation of vaccination must include the manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site, in one of the following formats:

(i) record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;

(ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner’s signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system; or

(iii) any other documentation determined acceptable by the Department.

(c) Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, absent receipt of an exemption as allowed below. Covered entities shall require all personnel to receive at least their first dose before engaging in activities covered under paragraph (2) of subdivision (a) of this section. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in subdivision (d) of this section.

(d) Exemptions. Personnel shall be exempt from the COVID-19 vaccination requirements set forth in subdivision (c) of this section as follows:

(1) Medical exemption. If any licensed physician, physician assistant, or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the health of member of a covered entity's personnel, based upon a pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be inapplicable only until such immunization is found no longer to be detrimental to such personnel member's health. The nature and duration of the medical exemption must be stated in the personnel employment medical record, or other appropriate record, and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services), and any reasonable accommodation may be granted and must likewise be documented in such record. Covered entities shall document medical exemptions in personnel records or other appropriate records in accordance with applicable privacy laws by: (i) September 27, 2021 for general hospitals and nursing homes; and (ii) October 7, 2021 for all other covered entities. For all covered

entities, documentation must occur continuously, as needed, following the initial dates for compliance specified herein, including documentation of any reasonable accommodation therefor.

(e) Upon the request of the Department, covered entities must report and submit documentation, in a manner and format determined by the Department, for the following:

- (1) the number and percentage of personnel that have been vaccinated against COVID-19;
- (2) the number and percentage of personnel for which medical exemptions have been granted;
- (3) the total number of covered personnel.

(f) Covered entities shall develop and implement a policy and procedure to ensure compliance with the provisions of this section and submit such documents to the Department upon request.

(g) The Department may require all personnel, whether vaccinated or unvaccinated, to wear an appropriate face covering for the setting in which such personnel are working in a covered entity. Covered entities shall supply face coverings required by this section at no cost to personnel.

Subparagraph (vi) of paragraph (10) of subdivision (b) of Section 405.3 of Part 405 is added to read as follows:

(vi) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation immediately available upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (5) of subdivision (a) of Section 415.19 of Part 415 is added to read as follows:

(5) collects documentation of COVID-19 or documentation of a valid medical exemption to such vaccination, for all personnel pursuant to section 2.61 of this title, in accordance with applicable privacy laws, and making such documentation immediately available upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (7) of subdivision (d) of Section 751.6 is added to read as follows:

(7) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (6) of subdivision (c) of Section 763.13 is added to read as follows:

(6) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making

such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (7) of subdivision (d) of Section 766.11 is added to read as follows:

(7) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (8) of subdivision (d) of Section 794.3 is added to read as follows:

(8) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (5) of subdivision (q) of Section 1001.11 is added to read as follows:

(5) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (18) of subdivision (a) of Section 487.9 of Title 18 is added to read as follows:

(18) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (14) of subdivision (a) of Section 488.9 of Title 18 is added to read as follows:

(14) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (15) of subdivision (a) of Section 490.9 of Title 18 is added to read as follows:

(15) Operator shall collect documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 225(5), 2800, 2803(2), 3612 and 4010 (4). PHL 225(5) authorizes the Public Health and Health Planning Council (PHHPC) to issue regulations in the State Sanitary Code pertaining to any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises.

PHL Article 28 (Hospitals), Section 2800 specifies that “hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.”

PHL Section 2803(2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

PHL Section 3612 authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies. PHL Section 4010 (4) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

Social Service Law (SSL) Section 461 requires the Department to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF). SSL Section 461-e authorizes the Department to promulgate regulations to require adult care facilities to maintain certain records with respect to the facilities residents and the operation of the facility.

Legislative Objectives:

The legislative objective of PHL Section 225 empowers PHHPC to address any issue affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises. PHL Article 28 specifically addresses the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 addresses the services rendered by certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional

curative care for the terminally ill. Lastly, the legislative objective of SSL Section 461 is to promote the health and well-being of residents of ACFs.

Needs and Benefits:

The vaccine mandate for health care workers, which required general hospital and nursing home personnel to receive their first dose of COVID-19 vaccine by September 27, 2021, and required all other covered entities to receive their first dose of COVID-19 vaccine by October 7, 2021, has greatly increased the percentage of health care workers who are vaccinated against COVID-19. COVID cases, hospitalizations, and deaths are decreasing in New York State, and the continuation of these regulations will help ensure that the epidemiology curve continues downward in furtherance of the New York State Department of Health’s mission to reduce morbidity and mortality. These regulations are helping New York State reduce sickness and death from COVID-19.

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen more than 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant. Recent New York State data show that unvaccinated individuals are approximately 5 times as likely to be diagnosed with COVID-19 compared to vaccinated individuals. Those who are unvaccinated have over 10 times the risk of being hospitalized with COVID-19.

The COVID-19 vaccines are safe and effective. They offer the benefit of helping to reduce the number of COVID-19 infections, including the Delta variant, which is a critical component to protecting public health. Certain settings, such as healthcare facilities and

congregate care settings, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve. Unvaccinated personnel in such settings have an unacceptably high risk of both acquiring COVID-19 and transmitting the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing unacceptably high risk of complications.

In response to this significant public health threat, through this regulation, the Department is requiring covered entities to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, and provide reasonable accommodations therefor to protect the wellbeing of the patients, residents and personnel in such facilities. Documentation and information regarding personnel vaccinations as well as exemption requests granted are required to be provided to the Department immediately upon request.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, as well as any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Cost to State and Local Government:

The State operates several healthcare facilities subject to this regulation. Most county health departments are licensed under Article 28 or Article 36 of the PHL and are therefore also subject to regulation. Similarly, certain counties and the City of New York operate facilities licensed under Article 28. These State and local public facilities would be required to ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. They must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations.

Although the costs to the State or local governments cannot be determined with precision, the Department does not expect these costs to be significant. State facilities should already be ensuring COVID-19 vaccination among their personnel, subject to State directives. Further, these entities are expected to realize savings as a result of the reduction in COVID-19 in personnel and the attendant loss of productivity and available staff.

Cost to the Department of Health:

There are no additional costs to the State or local government, except as noted above. Existing staff will be utilized to conduct surveillance of regulated parties and to monitor compliance with these provisions.

Local Government Mandates:

Covered entities operated by local governments will be subject to the same requirements as any other covered entity subject to this regulation.

Paperwork:

This measure will require covered entities to ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Duplication:

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

Alternative Approaches:

One alternative would be to require covered entities to test all personnel in their facility before each shift worked. This approach is limited in its effect because testing only provides a person's status at the time of the test and testing every person in a healthcare facility every day is impractical and would place an unreasonable resource and financial burden on covered entities if PCR tests couldn't be rapidly turned around before the commencement of the shift. Antigen tests have not proven as reliable for asymptomatic diagnosis to date.

Another alternative to requiring covered entities to mandate vaccination would be to require covered entities to mandate all personnel to wear a fit-tested N95 face covering at all times when in the facility, in order to prevent transmission of the virus. However, acceptable face coverings, which are not fit-tested N95 face coverings have been a long-standing requirement in these covered entities, and, while helpful to reduce transmission it does not prevent transmission and; therefore, masking in addition to vaccination will help reduce the numbers of infections in these settings even further.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

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

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Albany, NY 12237
(518) 473-7488
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REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a covered entity as defined in the emergency regulation. Currently, 5 general hospitals, 79 nursing homes, 75 certified home health agencies (CHHAs), 20 hospices and 1,055 licensed home care service agencies (LHCSAs), and 483 adult care facilities (ACFs) are small businesses (defined as 100 employees or less), independently owned and operated affected by this rule. Local governments operate 19 hospitals, 137 diagnostic and treatment facilities, 21 nursing homes, 12 CHHAs, at least 48 LHCSAs, 1 hospice, and 2 ACFs.

Compliance Requirements:

Covered entities are required to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department's understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small businesses and local governments were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity to provide comments during the notice and comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

The following 44 counties have an estimated population of less than 200,000 based upon 2020 United States Census data:

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon 2019 United States Census population projections:

Albany County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	
Monroe County	Orange County	

Reporting, recordkeeping, and other compliance requirements; and professional services:

Covered entities are required to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy

and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Compliance Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department’s understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity to provide comments during the notice and comment period.

JOB IMPACT STATEMENT

Nature of Impact:

Covered entities may terminate personnel who are not fully vaccinated and do not have a valid medical exemption and are unable to otherwise ensure individuals are not engaged in patient/resident care or expose other covered personnel.

Categories and numbers affected:

This rule may impact any individual who falls within the definition of “personnel” who is not fully vaccinated against COVID-19 and does not have a valid medical exemption on file with the covered entity for which they work or are affiliated.

Regions of adverse impact:

The rule would apply uniformly throughout the State and the Department does not anticipate that there will be any regions of the state where the rule would have a disproportionate adverse impact on jobs or employment.

Minimizing adverse impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department’s understanding that many facilities across the State

have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Pursuant to the authority vested in the Commissioner of Health by Public Health Law section 2803, Section 756.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended and Section 756.4 is repealed and replaced, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 756.3 is amended to read as follows:

The operator shall ensure that:

- (a) prior to performing the procedure, the patient receives a [complete physical examination] clinically relevant examination, which may be satisfied, when clinically appropriate, through a review of the patient's medical history and discussion of patient symptoms conducted through telemedicine. [with appropriate tests for a positive pregnancy diagnosis and sonography if there is a question of gestational age, and] T[t]he results [are] of such examination shall be documented in the patient's medical record;
- (b) after the procedure, an evaluation of the [physical and emotional] status of the patient is made and documented in the patient's medical record;
- (c) information and counseling about [alternative] methods of [birth control] contraception are made available [by a health care professional] to all patients who want such information;
- (d) referral is made to another facility for family planning services, if not available at the center, and if desired by the patient; and
- (e) [the determination of blood group and Rh type is made prior to the termination of pregnancy. The patient is evaluated for the risk of sensitization to Rho(D) antigen and,] a determination of blood group and Rh type, if clinically indicated, is made in accordance

with evidence based clinical guidelines. [i]If the use of Rh immune globulin is indicated and the patient consents, an appropriate dosage is administered within 72 hours after the termination of pregnancy.

Section 756.4 is REPEALED and a new section 756.4 is added to read as follows:

756.4 Health care practitioner services

The operator shall ensure that:

- (a) a health care practitioner licensed, certified, or authorized under title eight of the education law, acting within such practitioner's lawful scope of practice, performs the abortion; and
- (b) an abortion is performed only when, according to the practitioner's reasonable and good faith professional judgment based on the facts of the patient's case: the patient is within twenty-four weeks from the commencement of pregnancy, or there is an absence of fetal viability, or the abortion is necessary to protect the patient's life or health.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority is provided under Public Health Law (PHL) § 2803(2), which permits the Public Health and Health Planning Council (PHHPC), upon approval of the Commissioner of Health, to adopt rules necessary to effectuate the provisions and purposes of PHL Article 28.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost. Specifically, PHL § 2800 provides that “Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.”

Needs and Benefits:

The proposed regulatory changes are necessary to protect and promote the health of New Yorkers seeking to access abortion services, consistent with PHL § 2800. The proposed amendments will better enable abortion service clinics, as PHL Article 28 diagnostic and treatment centers, to provide safe, high-quality services by aligning the regulations with current clinical standards for providing abortion care. In particular, repeal of section 756.4, which limited provision of abortion care to physicians, and replacement with language that mirrors PHL § 2599-bb, is necessary in light of the passage of the Reproductive Health Act of 2019. Specifically, the Act affirmed that any health care provider—not merely physicians—licensed and certified under Title 8 of the Education Law and acting within their scope of practice may provide abortion care. The proposed regulatory changes will thus advance the purposes of the Reproductive Health Act, which aimed to codify into state law the fundamental protections relating to abortion access articulated in *Roe v. Wade* and ensure access to safe, legal abortion in New York State.

The proposed regulatory amendments are also necessary to conform New York's abortion regulations to recent federal case law relating to abortion access, including *Whole Women's Health v Hellerstedt* (579 U.S. ___, 136 S.Ct. 2292 [2016]), *June Medical Services LLC v Russo* (591 U.S. ___, Nos. 18-1323, 18-1460, [2020]), and *Am. Coll. of Obstetricians & Gynecologists v United States FDA* (2020 US Dist LEXIS 122017 [D Md July 13, 2020]). Specifically, section 756.4(b), which requires a physician with admitting privileges at a hospital to conduct an abortion, is unconstitutional according to a recent United States Supreme Court case in *June Medical Services*, which held that a similar Louisiana law requiring physician hospital admitting privileges in order to conduct an abortion poses an undue burden on a woman's right to abortion and is therefore unconstitutional.

With respect to the proposed amendments to section 756.3(a), which would permit clinically-relevant examinations to be conducted via telemedicine, this change is required for consistency with a recent ruling from the United States District Court for the District of Maryland. In that case, the court granted a nationwide preliminary injunction requiring that the U.S. Food and Drug Administration (FDA) temporarily suspend enforcement of the in-person dispensing requirements for the medication mifepristone, when used for medication abortion (*Am. Coll. of Obstetricians & Gynecologists v United States FDA*, 2020 US Dist LEXIS 122017, at *1 [D Md July 13, 2020]). The Court held that the FDA's requirement that mifepristone be dispensed in person during the COVID-19 emergency improperly infringed on access to constitutionally protected medication abortions.

Similarly, subdivisions (a) and (e) of section 756.3 unnecessarily subject all patients, regardless of clinical necessity, to COVID-19 risks by requiring in-person physical examinations and Rh factor testing in order to access abortion during the pandemic. Although the COVID-19 state of emergency will eventually resolve, subdivisions (a) and (e) of section 756.3 must be amended as proposed to ensure that current regulatory requirements do not create barriers to accessing abortion services when in-person visits are not clinically necessary.

COSTS:

Costs to Private Regulated Parties:

The private parties subject to the proposed regulations are licensed diagnostic and treatment centers (D&TCs). This proposal is expected to have minimal costs on D&TCs, because the amendments will bring the regulations in line with current clinical practices.

Costs to Local Government:

This proposal will not impact local governments.

Costs to the Department of Health:

The Department will utilize existing resources to review compliance with the amended regulatory requirements.

Costs to Other State Agencies:

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

Local Government Mandate:

No new local government program, project or activity is required by the proposed regulations.

Paperwork:

No new paperwork requirements would be imposed under the proposed regulatory changes.

Duplication:

These regulatory amendments do not duplicate existing State or federal requirements.

Alternatives:

The Department found no viable alternatives to the proposed regulations. Not amending the regulations was rejected as an option, because the existing regulations, adopted over 30 years ago, are not aligned with current clinical best practices. Failing to make the proposed regulatory changes would also place New York State at odds with federal law, to the extent that current regulations require that at least one physician in the clinic has admitting privileges at a hospital; similar admitting privileges requirements were found unconstitutional by the U.S. Supreme Court in 2016 and 2020 (*see Whole Women's Health v Hellerstedt*, 136 S.Ct. at 2292; *June Medical Services*, Nos. 18-1323, 18-1460).

Federal Standards:

The proposed regulations do not duplicate or conflict with any federal regulations. Indeed, this proposal will bring the Department's regulations in line with federal case law, including two recent U.S. Supreme Court decisions: *Whole Women's Health v Hellerstedt* (136 S.Ct. at 2292) and *June Medical Services* (Nos. 18-1323, 18-1460).

Compliance Schedule:

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

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(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

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

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

**STATEMENT IN LEIU OF
JOB IMPACT STATEMENT**

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



Project # 212009-E

Long Island Community Hospital and Hospice

Program: Hospital
Purpose: Establishment

County: Suffolk
Acknowledged: August 6, 2021

Executive Summary

Description

Brookhaven Memorial Hospital Medical Center, Inc. (Brookhaven) is the operator of Long Island Community Hospital, a 306-bed Article 28 hospital in Patchogue (Suffolk County), Long Island Community Hospital Home Care, an Article 36 certified home health care agency (CHHA) serving Suffolk County, and Long Island Community Hospital Hospice, an Article 40 hospice serving Suffolk County (collectively, LICH). This certificate of need (CON) application seeks approval to establish NYU Langone Health System, Inc. (NYU Langone), a not-for-profit corporation whose sole member is New York University, as the active parent and co-operator of LICH's Article 28 hospital and the parent of the Article 40 hospice. Additionally, upon Public Health and Health Planning Council (PHHPC) approval, Brookhaven will change its corporate name to Long Island Community Hospital at NYU Langone Health.

NYU Langone is also seeking approval from the Office of Mental Health (OMH), the Office of Addiction Services and Supports (OASAS), and their corresponding Behavioral Health Services Advisory Council to become the sponsor of Brookhaven's Article 31 and Article 32 beds and services. Approval from OMH and OASAS are contingencies on this CON.

Brookhaven and NYU Langone intend to submit a separate CON at a future date to seek establishment approval for the CHHA. Because this is a change in controlling person for an Article 36 home care agency, the applicant can submit the application within thirty days after the change in control for the CHHA pursuant to 10 NYCRR 760.15 (a), provided that when the

applicant files that application, an affidavit is included from the applicant that the applicant shall refrain from exercising control over the CHHA (a "no control" affidavit) pending the decision of PHHPC.

An Affiliation Agreement was executed by both parties on July 2, 2021, which is intended to enable NYU Langone and LICH to streamline the provision and coordination of the highest quality of patient care and improve financial stability.

LICH has served the communities of south and central Suffolk for 65 years, serving more than 400,000 patients, but with a breakeven operating margin, LICH lacks adequate cash flow to make significant investments in its campus and ambulatory programs. The proposed affiliation will provide LICH with access to additional capital and NYU Langone's operational efficiencies and strategies and afford LICH's patients' seamless access to tertiary and quaternary care.

NYU and LICH intend to jointly develop and refine master facilities and capital plans for LICH's primary and secondary areas that will include consideration of new service lines and healthcare-related acquisitions that will enhance needed health services throughout those service areas. NYU has committed \$100 million to transform LICH and to implement NYU Langone's enterprise-wide systems (including EPIC) and infrastructure improvements in LICH's inpatient and ambulatory facilities and programs that are intended to enhance quality metrics and patient outcomes.

The affiliation will be affected in two steps. In Phase One, the subject of this application and a future application regarding the CHHA, NYU Langone will become the sole corporate member and the active parent and co-operator of the LICH licensed facilities and agencies. As noted before, there will be a future CON to effectuate the change in control for the CHHA. In Phase Two of the affiliation, which will occur no later than three years after the completion of Phase One, LICH will, upon receipt of PHHPC and all other required approvals, merge with and into NYU Langone Hospitals (NYULH), the Article 28 facility of which NYU Langone Health System is the passive parent, with NYULH being the surviving corporation.

As the active parent and co-operator, NYU Langone Health System will have the rights, powers, and authorities with respect to LICH as described in 10 NYCRR 405.1(c).

OPCHSM Recommendation
Contingent Approval

Need Summary

The proposed affiliation is intended to enable LICH to streamline care and expand services while improving financial stability.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The submitted budget for LICH indicates an excess of revenues over expenses of \$38,014 and \$3,082,054 during the first and third years, respectively.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenue	\$260,823,014	\$288,561,554
Expense	<u>\$260,785,000</u>	<u>\$285,479,500</u>
Excess Revenues Over Expenses	\$38,014	\$3,082,054

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 from the Office of Mental Health, acceptable to the Department of Health (Department). [PMU]
2. Submission of documentation of approval from the Office of Addiction Services and Supports, acceptable to the Department. [PMU]
3. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Brookhaven Memorial Hospital Medical Center, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of NYU Langone Health System, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Council Action Date

December 9, 2021

Need and Program Analysis

Description

NYU Langone is an integrated health care delivery system that includes NYU Langone Health, NYU Grossman School of Medicine, NYU Long Island School of Medicine, and its affiliated hospitals, and other health care facilities.

NYU Langone currently operates 1,350 licensed beds in six inpatient facilities and over 350 ambulatory facilities throughout the NYC area and holds an Article 36 license to operate a certified home health agency and an Article 31 license to provide inpatient mental health services. In addition, NYU Langone Health System is the co-operator of a federally qualified health center, seven full-service primary care clinics, and over 45 school-based health centers.

LICH is a 306-bed hospital with six extension clinics. The hospital is certified for the following beds and services:

Bed Type	Bed Count
Coronary Care	7
Intensive Care	17
Medical / Surgical	252
Pediatric	10
Psychiatric	20

Service
Ambulatory Surgery - Multi Specialty
Cardiac Catheterization - Adult Diagnostic
Cardiac Catheterization - Electrophysiology (EP)
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)
Certified Mental Health Services O/P
Clinical Laboratory Service
Coronary Care
Emergency Department
Intensive Care
Lithotripsy
Medical Services - Other Medical Specialties

Service
Medical Services - Primary Care
Medical Social Services
Medical/Surgical
Nuclear Medicine - Diagnostic
Nuclear Medicine - Therapeutic
Pediatric
Primary Stroke Center
Psychiatric
Radiology - Diagnostic
Renal Dialysis - Acute
Renal Dialysis - Chronic
SAFE Center
Therapy - Speech Language Pathology

LICH's historical bed utilization is as follows:

LICH Utilization, Beds, and Average Daily Census									
		2017		2018		2019		2020*	
Services	Beds	ADC	Occ.	ADC	Occ.	ADC	Occ.	ADC	Occ.
Med/Surg**	276	184	66.67%	184	66.67%	170	61.59%	143	51.81%
Pediatric	10	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Psychiatric	20	21	105.00%	20	100.00%	17	85.00%	11	55.00%
Total	306	205	66.99%	204	66.67%	187	61.11%	154	50.33%

Source: SPARCS

*2020 was impacted by the COVID-19 pandemic

**includes Medical/Surgical, Coronary Care, and Intensive Care beds

Brookhaven Memorial Hospital Medical Center, Inc. d/b/a Long Island Community Hospital Hospice currently serves Suffolk County from an office located at 105 West Main Street, Patchogue, NY 11772. There will be no changes to the counties served or services provided.

<u>Service</u>
Audiology
Baseline Services - Hospice
Bereavement
Clinical Laboratory Service
Home Health Aide
Homemaker
Housekeeper
Inpatient Services
Medical Social Services
Medical Supplies Equipment and Appliances

<u>Service</u>
Nursing
Nutritional
Pastoral Care
Personal Care
Pharmaceutical Service
Physician Services
Psychology
Therapy - Occupational
Therapy - Physical
Therapy - Respiratory
Therapy - Speech Language Pathology

Upon approval of this application, the hospice will be known as Long Island Community Hospital at NYU Langone Health d/b/a Long Island Community Hospice at NYU Langone Health.

Currently, LICH lacks adequate cash flow to continue making significant investments in its campus and ambulatory programs. NYU Langone will incorporate its network and infrastructure for population health management, including its information technology platforms and health analytics arrangement, which is expected to reduce the average length of stay helping improve costs. Through this affiliation, NYU Langone will provide needed resources to help LICH expand health services to provide improved care to service area residents.

Character and Competence

The NYU Langone Health System board, comprised of 55 members, was subject to a Character and Competence review. The Trustees of NYU Langone Health System are:

<u>Name</u>
William Berkley
Susan Block-Casadin
Casey Box
Edgar Bronfman, Jr.
Walter Buckley
Kenneth Chenault
Melanie Clark
Gary Cohn
William Constantine
Fiona Drunkenmiller
Laurence Fink
Lori Fink
Luis Fraga
Pablo Fresco
Soraya Gage
Tracy Gottesman
Robert Grossman, MD
Andrew Hamilton
Mel Kazmazin

<u>Name</u>
Ken Langone
Sidney Lapidus
Thomas Lee
Martin Lipton
Stephen Mack
Roberto Mignone
Edward Minskoff
Thomas Montag
Thomas Murphy Sr.
Thomas Murphy Jr.
Frank Nickell
Debra Perelman
Ron Perelman
Isaac Perlmutter
Laura Perlmutter
Douglas Phillips
Stephanie Pianka
Michael Rafferty
Stephanie Rein

<u>Name</u>
Richard Richman
Linda Gosden Robinson
Edward Rosenwald, Jr.
Alan Schwartz
Bernard Schwartz
Larry Silverstein
Carla Solomon
William Steere
Daniel Sundheim
Chandika Tandon
Allen Thorpe
Alice Tisch
Thomas Tisch
Robert Valetta
Jan Vileck, MD
Bradley Wechsler
Anthony Welters

William Berkley has been the current Executive Chairman of the Board of W.R. Berkley Corporation where he is responsible for offering property-casualty insurance and reinsurance products. He is a Trustee of the Finance Committee, Executive Committee, and Investment and Debt Committee.

Susan Block Casdin is the Chair of the Board of KiDs of NYU, the Advisory Board of Pediatrics at NYU Langone Medical Center, which provides support for research and clinical activities across children's services at NYU Langone's Children's Hospital. She is also a Board Member of NYU Langone Medical Center and Advisory Board Member of the NYU Perlmutter Cancer Institute. She is the Founder and Co-Chair of The Hassenfield Committee, a charitable organization that funds psycho-social and emotional support services at the Children's Center for cancer and blood disorders. She is a Trustee of the Patient Care and Quality Assurance Operations Committee of the Perlmutter Cancer Institute and is a founder of the Hassenfield Child Health Innovation Institute and a member of the Advisory Board at Brown University. She also serves on the Board of Squash at the University of Pennsylvania.

Casey Box has been the Executive Director of Land is Life non-profit for over eight years where he is responsible for managing staff and fundraising. He has also been employed as the Managing Director of Kellar Investments, LLC, a finance company, for over 11 years where he is responsible for overseeing investment strategies and client relations. He is on the Board of Trustees of NYU Langone Health System and NYU Langone Hospitals.

Edgar Bronfman, Jr. is the Chairman of Waverly Capital, a private equity and investments business, where he is responsible for private investments in multiple sectors, including healthcare, biotechnology, financial services, and consumer goods. He has been the Executive Chairman of Facebank Group, a sports streaming service, and he has been the General Partner of Accretive, LLC, a private equity and investments firm. He was the previous CEO of Warner Music.

Walter Buckley has been retired since June 2016. Previously, he was the Co-founder, President, and CEO of Buckley Muething Capital Management Inc., an investment management firm, for over 28 years where he oversaw all company operations. Formerly, he was a Pension Fund Manager and Chairman of Bethlehem Steel Pension Fund Trustees. He has also served on the Lehigh University Finance Committee, and served on the Executive Committee, and was the Chairman of the Finance and Investment Committees of St. Luke's University Health Network. He is past Chairman of the Trustees of the Woodrow Wilson National Fellowship Foundation and has served as a Trustee of the National Episcopal Church.

Kenneth Chenault has been the Chairman and Managing Director for General Catalyst, a venture capital firm, where he is responsible for identifying companies with breakout characteristics, including those that are scaling quickly and have the potential to become significant global institutions. He was previously employed by American Express Company for over 37 years where he began in Strategic Planning in 1981, became President and COO in 1997, and CEO in 2001. He serves on the boards of Airbnb, Facebook, IBM, Proctor & Gamble, Harvard Corporation, and numerous nonprofit organizations.

Melanie Clark is a member of the KiDS of NYU Langone Advisory Board.

Gary Cohn is the Vice Chairman of IBM where his responsibilities include business development, client services, public advocacy, and client relationship management. He was the previous National Economic Council Director for the Federal Government and he was the President and COO of Goldman Sachs & Co.

William Constantine retired in December 2020 from the position of Managing Director of 19/19 Investment Counsel, LLC, where his responsibilities were overseeing portfolio construction and ongoing monitoring for individuals, families, foundations, endowments, and institutional clients. Previously, he was the Managing Director of Legg Mason Investment Counsel. In addition, he has served as a Trustee of NYU Langone Health System and a Trustee of NYU Langone Hospital. He has chaired the Audit and Compliance Committee, been the Co-chair of the Patient Care and Quality Assurance Operations Committee, and has been a member of the Finance Committee.

Fiona Druckenmiller is the Founder and President of FD Galleries where she is responsible for all hiring, investing, marketing, and sales. She was previously a Spiritual Counselor at Eleven Eleven Wellness Center and she was a Portfolio Manager at The Dreyfus Corporation. She also was a Foreign Securities Analyst for The Dreyfus Corporation and a Research Associate for Fred Alger Management. She is the Vice-Chairman of the America Museum of Natural History and is a Trustee of NYU Langone Medical Center.

Laurence Fink has been the CEO of BlackRock, Inc, an asset management company, for over 32 years where he is responsible for oversight of the company.

Lori Fink is the Chair of the Board of Directors of the Cancer Institute at NYU Langone Medicine where she takes an active leadership role including helping set strategic direction at the Cancer Institute. She has served as the Chairperson of the Campaign for Children's Health and Co-Chair of KiDS of NYU. She is also on the Board of Directors of Prep for Prep.

Luiz Fraga is the Founding Partner of Gavea Investimentos where he is responsible for hedge funds and private equity funds, regulated by the Brazilian Securities and Exchange Commission. He is the Co-chief Investment Officer and Deputy Chairman of the Investment Manager's Private Equity Committee. Previously, he was the President of Latinvest and Senior Partner of the parent Globalvest Management Company. He held multiple positions at Bear Sterns, including Director of Emerging Markets, Director of Brazilian Investments Banking Operations, Head of Fixed Income, and Head of Corporate Finance for Brazil. In addition, he was the Director of the New York branch of Unibanco and worked in Citibank's Corporate Banking Division in Brazil.

Paolo Fresco has been retired since 2003. He was previously employed as the Chairman of Fiat Automobiles and was the Vice-Chairman and Executive Officer of GE Headquarters Fairfield. He was also the Senior Vice President of GE International for DE London, and he was the Company Lawyer and CEO of CGE Italy, a division of GE.

Soraya Gage has been the Acting Executive Producer for NBC News Audio Unit for approximately one year where she is responsible for the lead development, production, marketing, and overseeing for the Audio Unit. She was the previous General Manager and Vice President of NBC News Learn of NBC News for approximately 10 years where she built and grew the start-up education platform based on archives of NBC News into a leading video-based education resource reaching six million students in 45 states. Previously she was the Vice President of Production of Peacock Production of NBC News, the General Manager of Education Nation of NBC News, and the Producer/Senior Producer of Dateline NBC.

Trudy Elbaum Gottesman is a Trustee of the Patient Care and Quality Assurance Operating Committee and is a member of the KiDS of NYU Langone Advisory Board.

Dr. Robert Grossman has been the CEO of NYU Langone Hospitals for over 13 years where he is responsible for the overall management of the hospital, including overseeing more than 40,000 faculty and staff across six inpatient locations and over 350 sites throughout New York and Florida.

Andrew Hamilton has been the President of New York University for over five years where he has increased the rate of applications on first-year admissions and diversity and has also increased research expenditures at a higher rate than other U.S. colleges or universities. Previously, he was the Vice-Chancellor of Oxford University.

Melvin Karmazin retired in January 2013 from his position as the CEO of Sirius XM Radio, where he pioneered deals with Ford and BMW to increase the accessibility of Sirius radio and was responsible for recruiting and attaining programming rights.

Kenneth Langone has been the President and CEO of Invermed Associates, LLC, a financial and asset management firm, for over 48 years where his responsibilities include exercising general oversight of the System and enforcing the Bylaws, presiding at all meetings of the Board, deciding all questions of order, fostering and maintaining productive and effective relations with the University, and have such additional powers and duties assigned to him by the Board of Trustees.

Sidney Lapidus has been retired since 2007. Previously he was the Managing Director at Warburg Picus LLC for approximately 40 years where he was responsible for private equities. He is a member of the Omohundro Institute's Board of Directors, Chair of the American Antiquarian Society, Chair of the American Jewish Historical Society, and a member of the Advisory Council of the Department of History at Princeton University.

Thomas Lee has been the President of Thomas H. Lee Capital LLC, a finance firm, for over 15 years where he is responsible for raising approximately \$22 billion of equity capital, investing in more than 100 businesses, and completing over 200 add-on acquisitions.

Martin Lipton is the Founding Partner and Practicing Attorney of Watchell, Lipton, Rosen & Katz where he advises major corporations on mergers, acquisitions, and matters affecting corporate policy and strategy.

Stephen Mack is the Founder, Partner, and Managing Member of Mack Real Estate Group, a real estate investment company, where he is responsible for making all major decisions and governance matters. In addition, he has also been a Managing Partner of Solon Mack Capital, LLC, where he conducts public and private investments for the Mack family.

Roberto Mignone is the Founder and Partner of Bridger Management where he manages a multi-billion dollar investment (approximately \$2B) management firm that specializes in long-term equity strategies. In his role there, he focuses on the healthcare sector.

Edward Minskoff is the Chairman and CEO of Edward L. Minskoff Equities, a real estate development and acquisition company, where he oversees all phases of properties, which include financing, design, development, management, and leasing.

Thomas Montag has been the COO of Bank of America Corporation for over 13 years where he is responsible for all of the businesses that serve companies and institutional investors, including middle-market commercial and large corporate clients, and institutional investor clients, such as Bank of America Global Research and the global market sales and trading business.

Thomas Murphy, Jr., is the Co-founder and Partner of Crestview Partners, a private equity firm, where he is responsible for investment origination.

Thomas Murphy, Sr., has been retired since February 1996. He is a Trustee of the Compensation and Benefits and Finance Committees.

Frank Nickell has been the Chairman of Kelso & Company, a private equity firm, for approximately 44 years where he oversees the extensive examination of the existing and potential portfolio of the company's industry sector, strategic position, operations, current and historical financial results, management and other relevant areas.

Debra Perelman has been the President and CEO of Revlon for over three years where she oversees corporate strategy and leads Revlon's digital platform, including forming a data and analytic group, establishing infrastructure, and deploying resources necessary to create a leading-edge e-commerce business. Previously, she was the COO of Revlon and was the Executive Vice President and Senior Vice President of MacAndrews and Forbes. She is Co-founder and Vice Chairman of the Child Mind Institute, serves as a Board Member of the Children's Hospital of Philadelphia, and is a member of the President's Advisory Council at Princeton University.

Ronald Perelman has been the Chairman of the Board and CEO of MacAndrews and Forbes for over 43 years where he is an investor with a diversified portfolio of public and private companies.

Isaac Perlmutter has been the Chairman of Marvel Brands for over 10 years where he is responsible for executive oversight of a worldwide company that is a subsidiary of The Walt Disney Company.

Laura Perlmutter has been the Director of The Laura and Isaac Perlmutter Foundation for approximately 24 years where she is responsible for general executive oversight of philanthropic giving.

Douglas Phillips has been CEO of GYST Advisors for over five years where he is responsible for management and client services. He has also been the Director of Peninsula at the Chapin Estate Homeowners Association for approximately 13 years where he is responsible for the management of the HOA. Previously, he was the Chairman and CEO of WeiserMazers LLP and he has been a Trustee of The New Food Economy.

Stephanie Pianka has been the Chief Financial Officer of New York University for over nine years where she is responsible for all aspects of NYU's fiscal strategy and financial operations. Previously, she was the Chief Financial Officer of Tanner Inc.

Michael Rafferty has been the CEO of Rafferty Holdings for over 22 years where he is responsible for managing the overall operations and resources of the company.

Dr. Stephanie Rein has been an Internal Medicine Physician and Clinical Instructor at NYU School of Medicine for over 22 years. She was previously employed as a Staff Physician at a Multispecialty Practice at NYU Langone Health. Dr. Rein completed her residency in Internal Medicine at NYU School of Medicine and is board-certified in Internal Medicine.

Richard Richman has been the Chairman of the Board of the Richman Group of Companies for approximately 34 years where he oversees all aspects of investment, financing, and development of the real estate.

Linda Robinson is retired. She was the Vice-Chairman, Senior Managing Director, and Global Head of Marketing and Communications of BlackRock for approximately 10 years. Additionally, she co-founded Robinson, Lerer & Montgomery, a strategic communications firm, and was the Chairman for 25 years. I

Edward Rosenwald, Jr., has been the Vice-Chairman of JP Morgan Chase & Co. for over 13 years where he is responsible for senior business relationships. He is a Member of the Board of Trustees of Brandeis University, Central Park Conservancy, Dartmouth College, Deerfield Academy, Environmental Defense Fund, Metropolitan Museum of Art, National Center on Addiction & Substance Abuse, National Organization on Disability, New York University, and Teachers College.

Alan Schwartz has been the Executive Chairman of Guggenheim Partners for approximately 12 years where he is responsible for investment management, investment advisory, investment banking, and capital market services.

Bernard Schwartz has been the Chairman and CEO of BLS Investments for approximately 15 years where he provides counsel on matters ranging from economic growth and competitiveness to job creation, investment in infrastructure, innovation, technology, and research and development.

Larry Silverstein has been the Chairman of Silverstein Properties for approximately 64 years where he is responsible for developing, owning, and managing office, residential, hotel, and retail space.

Carla Solomen has been the Principal of Anthos Media LLC for approximately 14 years where she identifies and helps develop documentary film projects and has responsibilities consistent with the Producers Guild of America definition of producer's tasks.

William Steere retired as the CEO and Chairman of Pfizer in 2001.

Daniel Sundheim is the CIO and Founder of D1 Capital where he invests in both public and private markets globally and focuses on companies within the consumer, business services, financial services, healthcare, industrial, real estate, technology, media, and telecommunication sectors. Previously, he was Co-CIO and Investment Analyst of Viking Capital.

Chandrika Tandon is the Founder and Chair of Tandon Capital Associates where she focuses on the measurable transformation of institutions to achieve excellence. She is also the Founder and Chair of the Krishnamurth Tandon Foundation where she conceives and funds philanthropic initiatives in education, the arts, and wellbeing. She is the Vice-Chairman on the Board of Trustees of NYU, Chair of the president's Global Council, Chair of the Board of NYU's Tandon School of Engineering, and a member of the Board of Overseers at the NYU Stern School of Business.

Allen Thorpe has been a Partner in Hellman & Friedman for approximately 22 years where he leads the Firm's New York office and their investment activities in the Healthcare and Finance sectors. He is a Director of MultiPlan, Pharmaceutical Product Development, Edelman Financial Engines, and a member of the Advisory Board of Grovesnor.

Alice Tisch is a Member and Former President of Kids of NYU. She is a Trustee and Former President of the Jewish Board of Child and Family Services, and a Trustee of Moma and the Board of NYU Langone. She serves on the Nominating and Patient Care Committees, and formerly served on the Operating Committee.

Thomas Tisch has been a Partner at Four Partners for approximately 41 years where he assists in managing and solving economic and financial problems.

Robert Valletta retired in 2018. He was previously a Partner at Pricewaterhouse Cooper LLC for over 37 years where he led all lines of service including assurance, tax, and advisory with revenue approaching \$1 billion. He served as a top national technical consultant for small, privately held corporations and complex, publicly held entities in the health care sector.

Dr. Jan Vilcek is a Research Professor and Professor of Emeritus at the New York University of Medicine. Previously, he was a Professor of Microbiology at New York University School of Medicine for approximately 42 years. Dr. Vilcek has devoted his scientific career to the study of cytokines and was one of the first scientists to investigate interferon. He subsequently focused on the tumor necrosis factor. His contributions to the understanding of proteins that control the body's defenses were instrumental in the development of Remicade.

Bradley Wechsler has been the Chairman of IMAX Corp. for over 12 years and he has also served as the CEO of IMAX for 15 years. He is responsible for entertainment technology and combined proprietary software. He was previously the CEO of Elysium Management.

Anthony Welters retired in 2012. Previously he was the Senior Advisor to the CEO of United Health Group. In addition, he was the CEO and Founder of AmeriChoice McLean. He is the Executive Chairman of the BlackIvy Group, which focuses on building and growing commercial enterprises in Sub-Saharan Africa. He is also Chairman of Somatus, Inc, a value-based care company. He is a member of the Board of Directors for Parachute Health, a healthcare technology platform for clinicians, insurance companies, and medical supply distributions.

Disclosures

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

Mrs. Stephanie Pianka disclosed Avaya, Inc. filed a Voluntary Chapter 11 bankruptcy petition in January 2017.

Edgard Bronfman, Jr. disclosed in 2009, APPAC, a minority shareholder group of Vivendi Universal, initiated an inquiry in the Paris Court of Appeal into various issues related to Vivendi. This included Vivendi's financial disclosures, the appropriateness of executive conversation, and trading in Vivendi

stock by certain individuals previously associated with Vivendi. This inquiry encompassed certain trading by Edgard Bronfman in Vivendi stock. Several individuals, including Edgard Bronfman, had been given the status of “mis en examen” in connection with the inquiry. Although there is no equivalent to “mis en examen” in the U.S. system of jurisprudence, it is a preliminary stage of proceedings that does not entail any filing of charges. In January 2009, the Paris public prosecutor formally recommended that no charges be filed and Edgard Bronfman not be referred for trial. On October 22, 2009, the investigation magistrate rejected the prosecutor’s recommendation and released an order referring him for trial. While the inquiry encompassed various issues, he was referred to trial solely with the respect to certain trading of Vivendi stock. On January 21, 2011, Edgard Bronfman was found guilty of insider trading, found not liable to the civil claimants, and was imposed a fine of 5 million euros and a suspended sentence of 15 months. Edgard Bronfman appealed the decision, and, in November 2013, he participated in a retrial before a new judicial panel as part of his appeal of the Trial Court’s 2011 ruling. In May 2014, the new judicial panel rendered its decision and affirmed the Paris Trial Court’s finding that Edgard Bronfman was guilty of insider trading, but stated that its finding would appear only in French judicial records and not public record, and removed the suspended sentence imposed by the Paris Trial Court and suspended 2.5 million Euros of the five million Euros. The new judicial panel affirmed the Paris Trial Court’s finding that Edgard Bronfman was not liable to civil claimants. Edgard Bronfman appealed the verdict and on April 20, 2017, the Appellate Court rejected the appeal. Edgard Bronfman believes his trading was proper and has the option of pursuing a challenge to the Appellate Court’s decision before the European Court of Human Rights, but the European Court of Human Rights declined to hear the challenge.

Mr. Frank Nickell disclosed that Kelso & Company, L.P., its affiliates, and Managing Directors, have been involved in a number of litigation matters over the course of Kelso acting as the manager of its investment funds and/or as a director of various Kelso portfolio companies. The following Kelso-related litigation and bankruptcy proceedings occurred in the past 10 years with respect to Kelso Investment Associates VII, L.P., Kelso Investment Associates VIII, L.P., Kelso Investment Associates IX, L.P., and Kelso Investment Associates X, L.P.

1. In September 2015, as part of an industry-wide review, Kelso received an information request from the SEC in regard to certain fees and expenses. Kelso has complied with SEC’s request for information. The matter has since been closed and Kelso has received no further communications from the SEC regarding this review.
2. In November 2018, Kelso was named in an employment dispute involving a subsidiary of Elara Claring (the “Company”). The Company filed a motion seeking dismissal of all parties except for CareCycle (the actual employer). The suit was subsequently amended to include only CareCycle and Jordan Health. Kelso has been removed from the case.
3. PowerTeam Services, LLC related litigations:
 - Kirk Mire v. T&D Solutions, LLC, PowerTeam Services, LLC, T&D Solutions Holding, LLC, Kelso & Company, Alex Graham, Chuck Chaddrick and Sammy Christian, Civil Suit No. 76310-A 13th Judicial District Parish of Evangeline, Louisiana. The case was filed in June 2016. The claim was settled and resolved in December 2017 with full releases and dismissals with prejudice.
 - Cory Close v. T&D Solutions Holdings, LLC, T&D Solutions, LLC, PowerTeam Services, LLC (“PowerTeam”), Kelso & Company, Civil Suit No. 253010-F, Ninth Judicial District Court, Parish of Rapides, Louisiana. The case was filed in May 2015. In April 2018, the court dismissed the action with prejudice.
 - Mick J. Dubea, Lintec, LLC, Linetec Services, LLC, and Linetec Services Power Holding, LLC (Third-party plaintiffs) v. Kelso & Company, T&D Solutions Holdings, LLC, and PowerTeam Services, LLC (Third part defendants), Cause No. B-198,838, 60th Judicial District, Jefferson County, Texas. The trial date, June 25, 2018, was continued and no new date has been selected. PowerTeam has filed a motion for summary judgment seeking dismissal of substantially all of Dubea’s claims. The motion has been fully briefed. Deposition discovery continues. There have been numerous settlement models proposed by both parties but none have been found acceptable. Settlement discussions will remain ongoing during discovery.
4. On July 12, 2011, Bob Moore (Plaintiff) brought an action in New York State Court against iGPS and certain individuals and entities, including certain individuals and entities related to Kelso (Defendants), in connection with the termination of his employment at iGPS and his equity

interests. In an order dated July 10, 2012, the Judge partially granted the Defendants' Motion to Dismiss and dismissed two claims for breach of fiduciary duty. On October 2, 2012, Moore filed a Second Amended Complaint against all Defendants. The Second Amended Complaint made several claims that Defendants breached the iGPS LLC Agreement and Mr. Moore's employment agreement. It also alleged the following claims: (1) tortious interference with his employment agreement; (2) fraudulent inducement; and (3) conspiracy to commit fraud. On February 23, 2015, the court dismissed the complaint with prejudice. The plaintiff appealed and the case was eventually moved to federal bankruptcy court due to iGPS filing for Chapter 11 bankruptcy and later remanded back to state court in relation to the claim for breach of the LLC Agreement for cancellation of Moore's shares. Ultimately, On January 25, 2018, a settlement was reached for \$500,000 and a release of any and all claims against the Defendants. Kelso's portion of the settlement was \$250,000.

5. Kelso was named as a defendant in *Olga Gunther v. Custom Building Products, Inc.* The Plaintiff alleged that the Defendants directly employed or exercised control over the Plaintiff's wages, hours, and/or working conditions and the Plaintiff was due compensation for overtime work. Plaintiff was never an employee of Kelso. An affiliate of Kelso holds a majority interest in CBP. Plaintiff sought monetary and punitive damages and the cost of suits. Kelso would be indemnified by CBP for any expenses incurred in connection with this action. Plaintiff & CBP settled the action for \$42,000 and a general release and waiver of any and all claims against the Defendants.
6. Bankruptcy Proceedings:
 - Pallet Company LLC (iGPS Company LLC) filed a Voluntary Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court District of Delaware. On November 14, 2013, the court confirmed the Second Amended Chapter 11 plan proposed by the Debtor and the Official Committee of Unsecured Creditors and the occurrence of the effective date, November 27, 2013.
 - Global Geophysical Services, Inc., filed a Voluntary Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court Southern District of Texas, Corpus Christi Division. On February 9, 2015, the effective date under the plan occurred and Global Geophysical Services, Inc. and the other debtors in possession in this case consummated the transactions contemplated under the Plan and Backstop Agreement.
 - Logan's Roadhouse, Inc., filed a Voluntary Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court for the District of Delaware. On November 23, 2016, the Effective Date of the Entry of Order Confirming Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Codes.
 - On December 14, 2016, Tervita Corporation and certain of its affiliates announced that the Company's previously announced recapitalization transactions became effective on December 14, 2016, upon implementation of a court-approved plan of arrangement under the Canada Business Corporations Act. The Recapitalization Transaction resulted in a reduction of Tervita's total debt from approximately C\$2.6 billion to approximately C\$475 million. The equity holders received a contingent right to participate in a portion of the net proceeds from a pre-existing lawsuit but Kelso's equity was extinguished in the Recapitalization Transaction. Kelso expects to receive little to no recovery. Tervita is a Fund VII portfolio company.

Compliance with Applicable Codes, Rules, and Regulations

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of Information are included in the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint inspections, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citation was properly corrected with appropriate remedial action.

Prevention Agenda

This affiliation will afford LICH access to NYULH's clinically integrated network and infrastructure for population health management, including its information technology platform and health analytics.

LICH is implementing interventions to support two priority areas of the 2019-2024 New York State Prevention Agenda:

Prevent Chronic Diseases

- New York State National Diabetes Prevention Program (NYS NDPP)
- American Diabetes Association Program
- Diabetes Self-Management Education Program (DSME)

Promote Well-Being and Prevent Mental and Substance Use Disorders

- Mental Health Family Education

The application states that LICH engaged the local health department and other local community partners in its Prevention Agenda efforts, including senior and community centers, civic associations, chambers of commerce, civic and service clubs, houses of worship, YMCA, Boys and Girls Club, local government health and social service programs, social service agencies, senior living communities, and public libraries. LICH cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Number of graduates of self-management workshops
- Number of views of online *Live Better* videos

In 2019, the organization NYU Langone Hospitals spent \$33,074,321 on community health improvement services, representing 0.718% of total operating expenses.

Conclusion

The proposed affiliation will enable LICH to streamline care and expand services while improving financial stability. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

The applicant has submitted their current year (2020) operating budget, and the first- and third-year budgets, in dollars, after approval.

	<u>Current Year (2020)</u>		<u>Year One (2022)</u>		<u>Year Three (2024)</u>	
	<u>Per Disch</u>	<u>Total</u>	<u>Per Disch</u>	<u>Total</u>	<u>Per Disch</u>	<u>Total</u>
<u>Inpt Revs</u>						
Comm FFS	\$18,638	\$3,373,554	\$20,442	\$4,395,107	\$21,553	\$4,978,739
Comm MC	\$36,809	\$32,907,424	\$40,372	\$38,151,361	\$43,376	\$45,197,759
Medicare FFS	\$13,671	\$51,186,038	\$14,714	\$66,067,727	\$15,514	\$73,690,775
Medicare MC	\$13,409	\$17,780,154	\$14,432	\$22,946,507	\$15,216	\$25,745,200
Medicaid FFS	\$13,614	\$4,778,473	\$14,652	\$5,128,349	\$15,448	\$5,762,286
Medicaid MC	\$10,607	\$13,407,307	\$11,416	\$17,295,551	\$12,036	\$19,318,493
Private Pay	\$1,586	\$139,583	\$0	\$0	\$0	\$0
Other	\$31,289	<u>\$4,974,950</u>	\$33,676	<u>\$5,556,521</u>	\$35,505	<u>\$6,284,471</u>
Total Inpt Rev.		\$128,547,483		\$159,541,123		\$180,977,723
<u>Outpt Revs</u>						
Comm FFS	\$334	\$4,036,089	\$350	\$4,203,592	\$367	\$4,475,018
Comm MC	\$1,935	\$42,020,301	\$1,972	\$41,421,821	\$2,080	\$44,096,441
Medicare FFS	\$307	\$20,191,986	\$307	\$19,979,334	\$325	\$21,269,405
Medicare MC	\$617	\$7,056,698	\$668	\$7,349,560	\$680	\$7,824,123
Medicaid FFS	\$621	\$4,892,338	\$628	\$4,899,851	\$660	\$5,216,236
Medicaid MC	\$465	\$7,517,650	\$489	\$7,829,642	\$505	\$8,335,204
Private Pay	\$197	\$760,600	\$203	\$792,166	\$206	\$843,317
OMH	\$95	<u>\$488,413</u>	\$94	<u>\$483,043</u>	\$96	<u>\$486,549</u>
Other	\$590	<u>\$10,626,854</u>	\$598	<u>\$11,067,882</u>	\$620	<u>\$11,782,538</u>
Total Outpt Rev		\$97,590,929		\$98,026,891		\$104,328,831
Other Op Rev		\$45,971,551		\$3,255,000		\$3,255,000
Total Revenue		\$272,109,964		\$260,823,014		\$288,561,554
<u>Inpt Exps</u>						
Operating	\$18,066	\$151,552,003	\$15,043	\$145,193,390	\$15,548	\$159,398,945
Capital	\$961	<u>\$8,061,606</u>	\$883	<u>\$8,521,500</u>	\$894	<u>\$9,162,180</u>
Inpt Expenses	\$19,027	\$159,613,609	\$15,926	\$153,714,890	\$16,442	\$168,561,125
<u>Outpt Exps</u>						
Operating	\$633	\$103,445,864	\$606	\$98,091,610	\$653	\$107,431,555
Capital	\$53	<u>\$8,617,126</u>	\$56	<u>\$8,978,500</u>	\$58	<u>\$9,486,820</u>
Outpt Expenses	\$686	\$112,062,990	\$662	\$107,070,110	\$711	\$116,918,375
Total Expenses		\$271,676,599		\$260,785,000		\$285,479,500
Excess Rev over Exp		<u>\$433,365</u>		<u>\$38,014</u>		<u>\$3,082,054</u>

	<u>Current Year (2020)</u>	<u>Year One (2022)</u>	<u>Year Three (2024)</u>
Discharges	8,389	9,652	10,252
Visits	163,460	161,841	164,541

The following is noted concerning the submitted operating budget:

- All inpatient and outpatient rates are based on all known contractual rates and known rate increases.
- Expense assumptions are based on the historical experience of the facility.
- Inpatient utilization is based on current and historical trends for 2022. This results in an increase of 1,263 additional discharges as compared to 2020 or an increase of 15.1%, due to the pandemic in 2020. Using these assumptions, the First Year 2022 estimated total volume for discharges is still lower than discharges from Fiscal Year 2019. For purposes of comparison, 2019 discharges were 10,566, therefore projections are 8.7% lower than 2019. Considering the current trends, the applicant believes 2022 is conservative as they gradually show improvement to pre-COVID conditions.
- For the Year Three Total Budget Net Revenue, volumes are estimated to increase by 6.2% over the 2022 estimated discharges or 600 discharges. This anticipates an opening of an additional Operating Room due to investments that will be made in the number of Specialty Physicians placed in LICH's catchment area via the NYU Affiliation. The applicant believes it is reasonable to assume an approximate 3% growth each year leading into 2024. As noted above for 2022, the estimated volumes for 2024 are 3% lower than 2019 actual volumes, again showing that they are being conservative as they gradually show improvement to pre-COVID conditions.
- Outpatient Utilization is based on current and historical trends and had a 1% decrease due to Covid. By Year Three the facility is projecting a 1.7% volume increase compared to Year One.

Utilization by payor during the current year, first year, and the third year is as follows:

<u>Inpatient</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	2.16%	2.23%	2.25%
Commercial MC	10.66%	9.79%	10.16%
Medicare FFS	44.63%	46.52%	46.33%
Medicare MC	15.81%	16.47%	16.50%
Medicaid FFS	4.18%	3.63%	3.64%
Medicaid MC	15.07%	15.70%	15.66%
Private Pay	1.05%	0%	0%
Charity Care	4.54%	3.96%	3.73%
Other	<u>1.90%</u>	<u>1.71%</u>	<u>1.73%</u>
Total	100.00%	100.00%	100.00%

<u>Outpatient</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	7.39%	7.41%	7.41%
Commercial MC	13.29%	12.98%	12.88%
Medicare FFS	40.28%	40.16%	39.81%
Medicare MC	7.00%	6.80%	6.99%
Medicaid FFS	4.82%	4.82%	4.80%
Medicaid MC	9.90%	9.89%	10.03%
Private Pay	2.37%	2.41%	2.49%
OMH	3.15%	3.18%	3.12%
Charity Care	.80%	.92%	.92%
Other	<u>11.00%</u>	<u>11.43%</u>	<u>11.55%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

There are no issues of capability as there are no project costs associated with this application. Upon completion, Brookhaven will remain a separate not-for-profit corporation and will maintain both its discrete Article 28 hospital Operating Certificate and Article 40 hospice Certificate of Approval

The submitted budget for LICH indicates an excess of revenues over expenses of \$38,014 and \$3,082,054 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

The Department reviewed the financial statements of NYU Langone Hospitals. The system is the sole corporate member of NYU Langone Hospitals and does not have any assets or income outside of the operation of the NYU Langone Hospitals so these are an accurate representation of the financial position of the health system. BFA Attachment A is the 2018-2020 certified and the 1/1/2021-5/31/2021 internal financial statements of NYU Langone Hospitals. As shown, the entity had average positive working capital and net asset positions from 2018 through 2020, and the entity achieved an excess of revenues over expenses of \$207,548,000 in 2018, \$580,603,000 in 2019, and \$351,016,000 in 2020. For the year ended August 31, 2020, NYU Langone Hospitals received \$461M in Provider Relief Funds, which was recognized as other revenues in the Consolidated Statement of Operations. In October of 2020, they received \$110.3M as an expedited payment from the New York State Division of Homeland Security and Emergency Services related to its submission to the Federal Emergency Management Agency (FEMA). The Internal Financial Statements show the facility achieving positive working capital and net asset positions and generating an excess of revenues over expenses of \$602,187,000 for the period 1/1/2021 - 5/31/2021. NYU Langone maintained a cash balance of \$1,771,743,000 as of this period.

BFA Attachment B is the 2019-2020 certified and the 1/1/2021-8/31/2021 internal financial statements of Brookhaven Health Care Services Corporation and Subsidiaries. As shown, the entity had an average positive working capital position and net asset positions from 2019 through 2020, and the entity achieved an excess of revenues over expenses of \$1,681,766 in 2019 and \$433,365 in 2020. LICH received \$44,415,148 in Provider Relief Funds through August 31, 2020 and an additional \$6,150,000 through December 31, 2020 for a total of \$50,565,148. The Internal Financial Statements show Brookhaven achieving positive working capital and net asset positions and deficiency of revenues over expenses of \$2,190,971 for the period 1/1/2021 -8/31/2021. As of this period, LICH had a cash balance of \$47,568,525.

Conclusion

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

Attachments

- | | |
|------------------|---|
| BFA Attachment A | Financial Summary – 2018-2020 Certified and the 1/1/21-5/31/21 Internal Financial Statements of NYU Langone Hospitals |
| BFA Attachment B | Financial Summary – 2019-2020 Certified and the 1/1/21-8/31/21 Internal Financial Statements of Brookhaven Health Care Services Corp and Subsidiaries |
| BFA Attachment C | Organizational Chart- Pre- and Post-Closing |



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). Upon approval by the Public Health and Health Planning Council (PHHPC), the center will do business as Village Med & Rehabilitation.

The proposed service area will be Queens County 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.

Eric Berger, M.D. will serve as Medical Director. CFR Advance Services, LLC has reached out to Long Island Jewish Forest Hills Hospital regarding a Transfer and Affiliation Agreement. Long Island Jewish Forest Hills Hospital is located approximately 1.4 miles, 9 minutes from the proposed site.

OPCHSM Recommendation

Contingent Approval

Need Summary

The D&TC will provide improved access to a variety of medical services for individuals residing in the neighborhood of Rego Park, and the surrounding areas in Queens County. The applicant projects 8,424 visits 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, Expenses, Net Income.

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 (Department). 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. [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 BAER Drawing Submission Guidelines DSG-1.0. [AER]
6. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER 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. This project must be completed by **February 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. Construction must start on or before **June 1, 2022**, and construction must be completed by **November 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. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: 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

December 9, 2021

Need and Program Analysis

Program Description

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

Analysis

The proposed service area will be Queens County 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%. According to Data USA, in 2019, 90.7% of the population of Queens County has health coverage as follows:

Employee Plans	43.4%
Medicaid	25.7%
Medicare	10.5%
Non-Group Plans	10.8%
Military or VA	0.3%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the primary service area is lower than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates: 2017	Service Area zip code 11374	New York State
All PQI's	1,265	1,431

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 where 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 and 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, where for the past five years he has performed cosmetic procedures and injectables. He also owned his own private medical practice Eric Berger, M.D., where he provides patient evaluation for musculoskeletal disorders. He was previously employed at NY Physician House Calls and previously employed at Berger Medical Aesthetics as a solo practitioner. He also 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 and 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 Department's Division of Hospitals and Diagnostic & Treatment Centers (DHDTTC) reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State's Office of Medicaid Management, 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.

Additionally, the staff from the DHDTTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department. 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 U.S. 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 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 costs 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

The applicant's financing plan is as follows: \$129,711 member's equity and a \$1,167,400 loan 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 loan. BFA attachment A is the net worth statement of Frederick Giovanelli, D.C., which indicates sufficient resources to meet the equity requirements of this application

Operating Budget

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

Revenues	Year One		Year Three	
	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	<u>144,050</u>	\$189.94	<u>285,100</u>
Total Revenue		\$1,185,787		\$2,346,872
Expenses				
Operating	\$106.63	\$898,173	\$99.94	\$1,666,298
Capital	<u>\$33.44</u>	<u>281,654</u>	<u>\$17.00</u>	<u>283,488</u>
Total Expenses	\$140.07	\$1,179,827	\$116.94	\$1,949,786
Net Income		<u>\$5,960</u>		<u>\$397,086</u>
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:

Payor	Year One		Year Three	
	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	<u>168</u>	<u>2%</u>	<u>333</u>	<u>2%</u>
Total	8,423	100%	16,673	100%

The following is noted regarding the submitted budget:

- The 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.
- The 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.
- The Medicaid Managed Care is assumed to be 75% of the Medicaid APG Fee for Service rate.
- The Commercial Insurance and Medicare Fee for Service is based on the Medicare Part B Fee Schedule.

Lease Agreement

BFA Attachment B is the exhibit of the submitted executed lease agreement financial terms, rate, and conditions, summarized. 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.

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

BHFP Attachment A	Map
BFA Attachment A	Net Worth of Frederick Giovanelli
BFA Attachment B	Lease Agreement
BFA Attachment C	Pro Forma Balance Sheet, CFR Advance Services, LLC



Project # 211132-B
Arena Care LLC

Program: Diagnostic and Treatment Center County: Suffolk
Purpose: Establishment and Construction Acknowledged: April 13, 2021

Executive Summary

Description

Arena Care, LLC (Arena Care), an existing New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) at 8 Maple Avenue, Bay Shore (Suffolk County). The center will convert an existing private practice to a D&TC in leased space. The applicant requests certification for primary and specialty medical care (cardiology and vascular services), behavioral health, x-ray, occupational therapy, physical therapy, and speech-language pathology services.

Arena Care, LLC will enter into a non-arm's length lease for the space with People Care Bayshore, LLC, a related entity owned by Abraham Goldberger and Mendel Kaff, which are two of the four Arena Care LLC owners.

The proposed ownership of Arena Care is:

Table with 2 columns: Member, %
Abraham Goldberger 55%
Mendel Kaff 25%
Mayer Goldberger 11%
Joel Goldberger 9%

Gary Dicano, D.O., who specializes in internal medicine, will serve as Medical Director. The proposed Center has negotiated a transfer agreement for backup and emergency services with Good Samaritan Hospital Medical Center (Good Samaritan), located 3.3 miles and seven (7 minutes travel time) from the proposed Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The proposed D&TC will provide additional access to a variety of medical services for the residents of North Babylon, West Islip, Islip, Bayshore, and the surrounding communities in Suffolk County.

The applicant projects 32,800 visits in the first year and 39,360 in the third year with Medicaid at 73.6% and charity care at 2%.

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 \$2,878,501 will be met via equity from the proposed members' personal resources. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three
Revenues \$4,661,497 \$5,593,966
Expenses 4,489,721 5,406,889
Net Income \$171,776 \$187,077

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 (Department). 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 also be uploaded into NYSECON. [PMU]
2. Submission of an executed building lease, acceptable to the Department. [BFA]
3. Submission of an executed photocopy of a Certificate of Amendment of Articles of Organization acceptable to the Department. [CSL]
4. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **March 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **June 1, 2022**, and construction must be completed by **December 1, 2022**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The 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. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: 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

December 9, 2021

Need and Program Analysis

Program Description

Proposed Operator	Arena Care LLC
To Be Known As	Arena Care
Site Address	8 Maple Avenue Bay Shore, New York 11706 (Suffolk County)
Services	Medical Services – Primary Care Medical Services-Other Medical Specialties Radiology Services (x-ray) Cardiology Vascular Behavioral Health (under Article 31 threshold) Physical Therapy Occupational Therapy Services Speech-Language Pathology
Hours of Operation	Monday through Friday; 8 AM to 8 PM
Staffing (1st Year / 3rd Year)	24.30 FTEs / 32.05 FTEs
Medical Director(s)	Gary Dicanio, D.O.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Good Samaritan Medical Center 3.3 miles / 7 minutes away

Analysis

The primary service area of the proposed D&TC consists of the area including North Babylon, West Islip, Islip, and Bay Shore in Suffolk County, and includes zip codes: 11703, 11706, 11717, 11718, 11729, 11751, and 11795. The population of Suffolk County in 2010 was 1,493,350 and is estimated to grow to 1,494,816 by 2025, a slight increase of 0.1%. According to Data USA, in 2019, 95.7% of the population of Suffolk County had health coverage, broken down as follows:

Employer Plans	58.7%
Medicaid	10.8%
Medicare	13.6%
Non-group Plans	12.1%
Military or VA Plans	0.5%

The number of projected visits is 32,800 in Year One and 39,360 in Year Three. The center is projecting Medicaid utilization of 73.6% and Charity Care of 2.0%. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the primary service area is higher than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs		
PQI Rates: 2017	*Service Area	New York State
All PQIs	1,628	1,431

*Service Area includes zip codes: 11703, 11706, 11717, 11718, 11729, 11751 and 11795.

Character and Competence

The members of Arena Care, LLC are:

Name	Interest
Abraham Goldberger	55%
Mendell Kaff	25%
Mayer Goldberger	11%
Joel Goldberger	9%
Total	100%

Abraham Goldberger has been the current CEO of United Staffing Solutions, Inc., a light industrial, education, administrative support, and medical staffing firm, for over 10 years. In this role, he is responsible for providing staffing and human resources personnel to hundreds of healthcare facilities, as well as, being involved in client operations and management of professional staff. He has been the CEO of YesPac, Inc, a packaging company, the Officer/Director of The Gold Group NY, LLC, which is a company that provides real estate development services, and an owner of PCHI Holdings, Inc., which became the 100% owner of Peoples Care, Inc., a LHCSA, in 2019. Due to the moratorium and subsequent pandemic, an affidavit of no control is in force until such time as the Department begins accepting LHCSA applications again.

Mendel Kaff has been the Executive Director for Home Attendant Service of Hyde Park, Inc., an LHCSA, for six years, where he is responsible for oversight of operational and fiscal goals. He directs the day-to-day operations of the organization while assuring quality patient care and patient satisfaction, and leads the organization to achieve and execute its mission. He has been the Principal of MK & Associates Consulting, Inc., a health care consulting business, for over seven years. He is well versed in the highly regulated health care industry with a focus on quality patient care and customer satisfaction. He also has close relationships with care-related organizations and various managed care organizations. He was the previous President and CEO of Platinum Home Health Care, Inc. where he was responsible for oversight and fiscal goals, as well as, directing the day-to-day operations while assuring quality patient care and patient satisfaction. He is an owner of PCHI Holdings, Inc., which became the 100% owner of Peoples Care, Inc., a LHCSA, in 2019. Due to the moratorium and subsequent pandemic, an affidavit of no control is in force until such time as the Department begins accepting LHCSA applications again.

Mayer Goldberger has been the Bookkeeper for Unite Staffing Solutions, Inc. for over four years. In this role, he maintains the day-to-day accounting functions, accruals financial statement preparations, and performs general accounting functions of the staffing agency. He has been the Principal of Emgo Management, Inc. where he oversees the operational aspects of commercial and residential properties. He is responsible for maintaining the premises and increasing the value. He has also been an instructor for the Congregation Tefila Lemoshe, where he lectures students in Talmudic studies and Jewish history.

Joel Goldberger has been a Consultant at Gold Associates of NY, Inc., a healthcare financial consulting service, for six years. In this role, he provides clients with strategic financial planning, debt capacity analysis, financial feasibility studies to support strategic planning and capital debt financing, transaction due diligence, and other functions. He was previously employed as a Billing Coordinator at United Staffing Solutions, a healthcare staffing agency, where he independently managed all billing functions by collecting and entering data into the financial system and creating invoices for submission, and a Pharmacy Technician at Health Mart Pharmacy. He is an owner of PCHI Holdings, Inc., which became the 100% owner of Peoples Care, Inc., a LHCSA, in 2019. Due to the moratorium and subsequent pandemic, an affidavit of no control is in force until such time as the Department begins accepting LHCSA applications again.

The proposed Medical Director, **Dr. Gary Dicano**, has been the Medical Director and Family Practice Physician of Quest Medical Care, P.C., a private family practice, for over 14 years. He has also been the Medical Director and Family Practice Physician of Health 1 Medical, P.C., an OB-GYN Attending Physician at Lincoln Medical and Mental Health Center, an Attending Physician and Associate Director of Residency at St. John's Episcopal Hospital, an OB-GYN in Ob/Gyn Associates of Northern New State and Bay Shore OBGYN P.C., and an OB-GYN Attending Physician at Brookhaven Medical Center. Prior

to becoming a doctor, he was a Physician's Assistant. He earned his medical degree from New York College of Osteopathic Medicine in Old Westbury and completed his residency in Obstetrics and Gynecology at Catholic Medical Center of Brooklyn and Queens and Family Practice at Peninsula Hospital Center. He is board-certified in Obstetrics and Gynecology and Family Practice.

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

Additionally, the staff from the DHDTTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval for this project will provide additional access to a variety of medical services for the residents of North Babylon, West Islip, Islip, Bayshore, and the surrounding communities in Suffolk 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 costs for leasehold improvements, renovations, and moveable equipment is \$2,878,501; broken down as follows:

Renovation & Demolition	\$1,848,000
Design Contingency	184,800
Construction Contingency	184,800
Architect /Engineering Fees	221,760
Other Fees	77,000
Moveable Equipment	344,407
CON Fee	2,000
Additional Processing Fee	<u>15,734</u>
Total Project Cost	\$2,878,501

The total project cost of \$2,878,501 will be financed via the proposed members' equity. The applicant has indicated that Joel and Mayer Goldberger will not contribute equity towards this project; however, their father, Abraham Goldberger, has provided a disproportionate share affidavit stating he will contribute resources disproportionate to his membership percentage in Arena Care, LLC. BFA Attachment A is the net worth statement of the members of Arena Care, LLC, which indicates sufficient resources to meet the equity requirements of this application.

Operating Budget

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

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$109	\$101,413	\$109	\$121,717
Commercial MC	\$92	207,210	\$92	248,634
Medicare FFS	\$98	185,576	\$98	222,613
Medicare MC	\$83	52,554	\$83	63,032
Medicaid MC	\$159	3,837,866	\$159	4,605,725
Private Pay	\$20	16,778	\$20	20,125
*All Other	\$180	<u>260,100</u>	\$180	<u>312,120</u>
Total Revenue		\$4,661,497		\$5,593,966
 <u>Expenses</u>				
Operating	\$119	\$3,912,400	\$122	\$4,808,945
Capital	<u>\$18</u>	<u>577,321</u>	<u>\$15</u>	<u>597,944</u>
Total Expenses	\$138	\$4,489,721	\$137	\$5,406,889
Net Income		<u>\$171,776</u>		<u>\$187,077</u>
Visits		32,800		39,360
Cost/Visit		\$137		\$137

* Other represents Workers' Compensation and No-Fault Insurance.

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	934	2.85%	1,121	2.85%
Commercial MC	2,246	6.85%	2,695	6.85%
Medicare FFS	1,894	5.77%	2,272	5.77%
Medicare MC	632	1.93%	758	1.93%
Medicaid MC	24,136	73.58%	28,965	73.59%
Private Pay	856	2.61%	1,027	2.61%
Charity Care	657	2.00%	788	2.00%
All Other	<u>1,445</u>	<u>4.41%</u>	<u>1,734</u>	<u>4.41%</u>
Total	32,800	100.0%	39,360	100.0%

The following is noted concerning the submitted budget:

- The expense and utilization assumptions are based upon the experience of the private practice (Quest Medical Care, P.C.) that will be converted to the Article 28 D&TC through this project.
- The number of FTEs, the mix of staff, and related operating expenses were determined based on a combination of the projected utilization, the experience of the applicant in providing similar services, industry standards, and the experience of similar D&TCs in New York State.
- The applicant plans to achieve the projected 20% increase in utilization in the proposed D&TC by year three by providing services that are not currently offered through the existing private practice, including cardiology, vascular medicine, behavioral health services, diagnostic radiology (x-ray), and speech therapy services. Additional outreach efforts will be put in place by the new Center, which includes outreach in places of worship and to schools and other health/social services agencies.

Lease Agreement

The applicant has submitted a non-arm's length draft lease agreement, as shown on BFA attachment B, and letters from two New York realtors attesting to the rent reasonableness.

Capability and Feasibility

Total project costs of \$2,878,501 will be met via equity from the proposed members' personal resources. Working capital requirements are estimated at \$901,148 based on two months of third-year expenses and will be satisfied via equity from the three members of Arena Care, LLC. BFA Attachment A provides the net worth of the proposed members, which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment C, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members' equity of \$3,779,649.

The submitted budget indicates the facility will generate a net income of \$171,776 and \$187,077, in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies for D&TCs. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Arena Care, LLC
BFA Attachment B	Lease Agreement
BFA Attachment C	Pro Forma Balance Sheet-Arena Care, LLC



Project # 211262-E
Montefiore Westchester Community Corp. t/b/k/a Montefiore Einstein Advanced Care

Program: Diagnostic and Treatment Center County: Westchester
Purpose: Establishment Acknowledged: July 9, 2021

Executive Summary

Description

Montefiore Westchester Community Corp. (MWCC), a New York not-for-profit corporation, requests approval to be established as an Article 28 Diagnostic & Treatment Center (D&TC) and certify as their clinic a site that is currently an extension clinic of Winifred Masterson Burke Rehabilitation Hospital (Burke) located at 555 Taxter Road in Elmsford (Westchester County). MWCC is affiliated with Montefiore Health System, Inc. (MHS), the sole member and passive parent of MWCC. The clinic will continue to provide the outpatient therapy services currently provided by Burke, as well as adding physician services for psychiatry, sports medicine/orthopedics, and allergy specialties. Upon PHHPC approval, the applicant intends to change the corporate name of the applicant to Montefiore Einstein Advanced Care (MEAC).

Burke is a member hospital of MHS. MHS, the sole member and passive parent of the applicant, is a fully integrated healthcare delivery system serving patients residing in the New York City and Hudson Valley regions, with member and affiliate locations spanning the Bronx, Westchester, Rockland, and Orange counties. MHS's regional integrated delivery system offers patients clinical expertise for primary, specialty, and tertiary care. The establishment of the D&TC is part of MHS's Westchester and Hudson Valley regional strategy to collaborate with their ambulatory network to provide specialty and sub-specialty care to serve patients from various entities within the Montefiore health system, but not be associated with exclusively with any one hospital in the system. The proposed D&TC is

expected to be the first of several possible locations in the Westchester and Hudson Valley.

The D&TC will occupy leased space that was previously constructed to Article 28 specification under CON #201078. Subsequent to the approval of this CON, Burke will submit a closure plan for the extension clinic site.

Ythan Goldberg, M.D., who is Board-certified in Internal Medicine will be the Medical Director of MEAC. The applicant provided a draft agreement between Montefiore Medical Center (MMC) and MWCC to provide the medical director services. MWCC provided an executed Transfer and Affiliation Agreement with White Plains Hospital located 4.7 miles (10 minutes travel time) from the center.

OPCHSM Recommendation

Contingent Approval

Need Summary

Through this project, the residents of Westchester County will receive uninterrupted access to therapy services, as well as, increased access to physician specialty care, including psychiatry, sports medicine/orthopedics, and allergy services.

The applicant projects 27,494 visits in Year One and 32,376 in Year Three with 7.5% Medicaid utilization and 2% Charity Care.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,611,218	\$3,424,010
Expenses	2,483,654	3,164,351
Gain	\$127,564	\$259,659

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Assignment and Assumption of Lease Agreement, acceptable to the Department of Health (Department). [BFA]
2. Submission of an executed Sub-Lease Agreement, acceptable to the Department. [BFA]
3. Submission of an executed Rehabilitation Services Agreement, acceptable to the Department. [BFA]
4. Submission of an executed Medical Specialty Services Agreement, acceptable to the Department. [BFA]
5. Submission of an executed Medical Director Services Agreement, acceptable to the Department. [BFA]
6. Submission of a signed and executed Assignment and Assumption of Lease Agreement acceptable to the Department (CSL)
7. Submission of a signed and dated Sublease agreement acceptable to the Department. [CSL]
8. Submission of a signed and dated Lease agreement acceptable to the Department. [CSL]
9. Submission of amended Bylaws acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]
2. 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. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

December 9, 2021

Need and Program Analysis

Program Description

Proposed Operator	Montefiore Westchester Community Corp. Upon approval, the corporation name will change to: Montefiore Einstein Advanced Care
Site Address	555 Taxter Road Elmsford, NY (Westchester County)
Services	Medical Services-Other Medical Specialties Physiatry Sports Medicine/Orthopedics Allergy Physical Therapy Occupational Therapy Speech-Language Pathology
Hours of Operation	Monday, Wednesday, Friday: 7:30 am – 5:00 pm Tuesday, Thursday: 7:30 am – 6:00 pm
Staffing (1st Year / 3rd Year)	17.0 FTEs / 17.4 FTEs
Medical Director(s)	Ythan Goldberg, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by White Plains Hospital 3.8 miles / 12 minutes away

The clinic, after the establishment of the new operator, will focus on the provision of physician and therapy services in lower Westchester County and the Hudson Valley region. The center will continue to provide physical therapy, occupational therapy, and speech-language pathology services. In addition to the rehabilitative services, the new operator will add physician specialty services at this site, including physiatry, sports medicine/orthopedics, and allergy services. The applicant projects 27,494 visits in the first year and 32,376 in the third year with 7.5% Medicaid utilization and 2% charity care. The applicant has committed to serving all persons in need without regard to the ability to pay or source of payment. According to Data USA, in 2019, 95.5% of the population of Westchester County had health coverage, broken down as follows:

Employee Plans	55.8%
Medicaid	13.8%
Medicare	13.3%
Non-group Plans	12.3%
Military or VA Plans	0.33%

Character and Competence

The Board of Montefiore Westchester Community Corp. is as follows:

<u>Name</u>	<u>Title</u>
Andrew Racine, M.D., PhD	President
Christopher S. Panczner	Secretary
Jeffrey B. Short.	Treasurer

Dr. Andrew Racine has been the System Senior Vice President and Chief Medical Officer of Montefiore Health System for over five years and the Executive Director of Montefiore Medical Group in Montefiore Medical Center for over eight years. He is a Professor of Clinical Pediatrics at Albert Einstein College of Medicine and is the Acting Director of Pediatrics at Jacobi Medical Center. He is also a Research Associate at the National Bureau of Economic Research. Previously, he was an Instructor in the Department of Pediatrics at Columbia College, a Lecturer in Clinical Pediatric Nurse Practitioner courses at Columbia School of Nursing, and a Lecturer in Epidemiology and Biostatistics at Columbia College. Dr.

Racine received his medical degree from the New York University of Medicine, completed his Pediatric residency at Boston Children's Hospital, and completed his Ph.D. at the New York University Graduate School of Arts and Sciences. He is board-certified in Pediatrics.

Christopher Panczner has been the Senior Vice President and General Counsel of Montefiore Medicine and Montefiore Health System-Academic Health System for over 12 years. This role includes providing legal counsel to the board of directors, chairmen of the board, CEO, and other senior management.

Christopher Panczner disclosed offices held in the following healthcare facilities:

Montefiore Health System, Inc	2008-present
Montefiore Medical Center	2008-present
Montefiore New Rochelle Hospital	2013-present
Montefiore Mount Vernon Hospital	2013-present
Schaffer Extended Care Center	2013-present
White Plains Hospital Medical Center	2014-present
The Winifred Masterson Burke Rehabilitation Hospital	2015-present

Jeffrey Short has been the Vice President, Transformation Officer, Chief of Staff, and Leader of Faculty Practice of Montefiore health System and Einstein College of Medicine for over seven years. As the Transformation Officer, he is responsible for organization-wide strategic and operational transformation with \$500M in annual operating improvements identified. As the Head of Faculty Practice group, he leads 5,000 employees, a 1,900 physician faculty practice, a call center receiving 2.5M calls annually, and professional billing. Previously, he was the Senior Director of Strategy and Business Development at NYU Langone Medical Center He was also the previously the Director of Pricewaterhouse Cooper.

The proposed Medical Director, **Dr. Ythan Goldberg**, is a Cardiologist at Montefiore Medical Center. He is an Assistant Professor of Medicine at Albert Einstein College of Medicine. Dr. Goldberg completed his medical degree at the University of Medicine and Dentistry in New Jersey and his residency in Internal Medicine and Cardiology at Montefiore Medical Center. He is board-certified in Cardiology.

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

Additionally, the staff from the DHDTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

- The Department issued a Stipulation and Order (S&O) dated November 14, 2017, and fined Montefiore Medical Center Henry and Lucy Moses Campus \$2,000 based on findings from a survey completed on May 19, 2017. The deficient practice was cited in the areas of Patient Rights and Infection Control.
- The Department issued a Stipulation and Order (S&O) dated October 2, 2017, and fined Montefiore Mount Vernon Hospital \$2,000 based on findings from a survey completed on October 7, 2016. The deficient practice was cited in the area of Patient Rights.
- The Department issued a Stipulation and Order (S&O) dated August 17, 2017, and fined Montefiore Medical Center \$2,000 based on findings from a survey completed on April 11, 2017. The deficient practice was cited in the area of Patient Rights.

Conclusion

Approval for this project will provide for continued access to rehabilitative services and the addition of physician specialties for the residents of Westchester 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

Operating Budget

The applicant has provided an operating budget, in 2021 dollars, for the first and third years:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$116.35	\$782,539	\$129.56	\$1,026,120
Commercial MC	\$116.37	360,271	\$129.57	472,413
Medicare FFS	\$85.77	942,326	\$95.50	1,235,643
Medicare MC	\$85.77	211,329	\$95.49	277,109
Medicaid FFS	\$84.89	3,820	\$96.33	5,009
Medicaid MC	\$85.75	171,242	\$95.51	224,544
Private Pay	\$85.36	8,536	\$95.67	11,193
All Other	\$85.78	<u>131,155</u>	\$95.49	<u>171,979</u>
Total Revenues		\$2,611,218		\$3,424,010
<u>Expenses</u>				
Operating	\$82.46	\$2,267,209	\$90.64	\$2,934,570
Capital	<u>7.87</u>	<u>216,445</u>	<u>7.10</u>	<u>229,781</u>
Total Expenses	\$90.33	\$2,483,654	\$97.74	\$3,164,351
Net Income		<u>\$127,564</u>		<u>\$259,659</u>
Visits		27,494		32,376

The following is noted for the submitted budget:

- The payor rates are based on the rates Burke received at the extension clinic site.
- Commercial rates are based on contractual rates, which have been negotiated with commercial carriers. The applicant projects an average rate based on the percentage of commercial revenue, the number of plans, and the average rate per plan.
- The Medicare and Medicaid rates are based on the downstate rates for the proposed services.
- Charity Care projections are based on Montefiore Health Systems' experience and the current experience of the Burke extension clinic.
- All Other includes Workers' Compensation visits and revenues.
- Expense projections are based on the current experience of the hospital extension clinic.
- The applicant projects first-year rehabilitative services and medical specialty visits to be 13,500 and 13,994, respectively, and third-year visits to be 15,800 for rehabilitative services and 16,576 for medical specialties.
- Direct staffing is based on the need for an executive director, LPNs, and a human resource manager. Physical therapy, occupational therapy, and speech therapy will be provided via the Rehabilitative Services Agreement with Burke Rehabilitation Hospital and physician specialists will be provided via the Medical Specialty Services Agreement with Montefiore Medical Center. The applicant projects 17.4 FTEs in year three of operations.

- Utilization by payor source is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	24.46%	24.46%
Commercial MC	11.26%	11.26%
Medicare FFS	39.96%	39.96%
Medicare MC	8.97%	8.97%
Medicaid FFS	0.16%	0.16%
Medicaid MC	7.26%	7.26%
Private Pay	0.36%	0.36%
Charity Care	2.01%	2.01%
All Other	<u>5.56%</u>	<u>5.56%</u>
Total	100.00%	100.00%

Agreements and Contracts

BFA Attachment B contains the following:

- A draft Rehabilitation Services Agreement. The Winifred Masterson Burke Rehabilitation Hospital, Inc. will be providing all the therapy services. MWCC retains ultimate control in all final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.
- A draft Medical Specialty Services Agreement. Montefiore Medical Center will be providing all the physician specialty services. MWCC retains ultimate control in all final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.
- A draft Medical Director Services Agreement between MMC and MWCC
- An executed Master Lease Agreement between GHP Taxter LLC and MMC.
- A draft Assignment and Assumption of the Lease Agreement between MMC and MHS.
- A draft Sublease Agreement between MHS and MWCC.

Capability and Feasibility

There are no project costs for this application. The submitted budget projects a net income of \$127,564 and \$259,659 during Years One and Three of operations, respectively.

The working capital requirement of \$527,392 is based on two months of the third-year expenses and will be satisfied by an interest-free loan from MHS for \$593,723. MHS provided a letter indicating the working capital loan is expected to be paid back in three years, but if the D&TC's operations do not facilitate this timeline, MHS and MWCC/MEAC will arrange for an appropriate time frame for repayment. If the estimated working capital is insufficient to meet the needs of MWCC/MEAC, MHS is prepared to provide additional money to the principal. BFA Attachment C provides the Pro-forma balance sheet as of the first day of operation with \$593,723.

MHS's December 31, 2020, certified financial statements show the organization maintained a positive working capital and positive net asset position (BFA Attachment D). The \$42,735,000 deficiency of revenue over expenses for this period includes approximately \$678.1M of federal stimulus program revenue. MHS's 2020 performance was negatively impacted by a decline in volume and revenue from the Covid-19 pandemic, as many hospitals in New York experienced due to temporary mandated service closures and residual hesitancy by patients to seek care.

MHS's June 30, 2021, internal financial statements show the organization maintained a positive working capital and positive net asset position with a \$112,436,000 deficiency of revenue over expenses for this period (BFA Attachment E). MHS has identified and started the implementation of strategies to accelerate the system's financial recovery from the pandemic and has maintained a stable cash position to make this investment. MHS's December 31, 2020, certified Financial Statements reflect 55 days cash on hand that increased to 108 days cash on hand as of the June 30, 2021, internal financial statements. In addition,

the June 30, 2021, internal financial statements note current assets exceeded current liabilities by \$1.8B and \$2.8B in cash, cash equivalents, marketable, and other securities.

Conclusion

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

Attachments

- BFA Attachment A Organizational Chart
- BFA Attachment B Agreements and Contracts
- BFA Attachment C Montefiore Westchester Community Corp - Pro Forma Balance Sheet
- BFA Attachment D Montefiore Health System, Inc. 2020 Certified Financial Statements
- BFA Attachment E Montefiore Health System, Inc. Internal Financial Statements as of June 30, 2021



Project # 211270-B

Samaritan Daytop Health, Inc.

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment and Construction **Acknowledged:** July 29, 2021

Executive Summary

Description

Samaritan Daytop Health, Inc. (SDH), a to-be-formed not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) at 362 East 148th Street, Bronx (Bronx County). The applicant has indicated that they intend to apply for designation as a Federally Qualified Health Center (FQHC) after becoming a D&TC. The proposed D&TC will be certified for medical services - primary care with a focus on delivering primary care and basic mental health counseling.

SDH seeks to launch a primary care model responsive to the needs of homeless individuals and those with mental illness and/or substance use disorder and have co-occurring physical health needs. In addition to this primary focus, the D&TC will also serve the surrounding community of low-income, medically underserved residents of the South Bronx.

Gregory Bunt, MD, who is the current Medical Director at Samaritan Daytop Village, will serve as the Medical Director of SDH. The facility will enter into a transfer and affiliation agreement with Lincoln Hospital, which is located .5 miles (6 minutes) from the proposed site, and will enter into an administrative services agreement with Samaritan Daytop Village, Inc.

SDH has no legal affiliates. However, Samaritan Daytop Foundation and Samaritan Daytop Village will support SDH through

contractual arrangements. Samaritan Daytop Village offers a rich array of programs including treatment for substance use (Article 32), innovative services for veterans, and programs for homeless individuals, women and children, seniors, and families. Samaritan Daytop Foundation has agreed to provide financial support to SDH in the form of a loan and/or grant. Samaritan Daytop Village will enter into an employee lease agreement with SDH to provide limited administrative staff.

OPCHSM Recommendation

Contingent Approval

Need Summary

Bronx residents will benefit from increased access to outpatient primary care services, especially those suffering from homelessness, addiction, and mental illness, which is the focus of the SDH. Portions of Bronx County are HRSA-designated as Health Professional Shortage Areas and as a Medically Underserved Area/Population.

The applicant projects 10,500 visits in the first year and 12,578 in the third year, with 95% Medicaid utilization.

Program Summary

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

Financial Summary

The total project cost of \$3,511,706 will be met via a grant of \$560,752 from Samaritan Daytop Foundation and \$2,950,954 of work already completed by the landlord. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,985,444	\$2,884,828
Expenses	<u>2,645,904</u>	<u>2,797,405</u>
Net Income	(\$660,460)	\$87,423

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 of Health. [HSP]
3. Submission of an executed administrative services agreement that is acceptable to the Department.
4. Submission of an executed sublease agreement that is acceptable to the Department. [BFA]
5. Submission of the grant via Samaritan Daytop Foundation that is acceptable to the Department.
6. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
7. Submission of a copy of an amended and fully executed Lease Agreement. [CSL]
8. Submission of a copy of a fully executed Amended Certificate of Incorporation, acceptable to the Department. [CSL]
9. Submission of a copy of an executed Services and Consulting agreement, acceptable to the Department. [CSL]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
11. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **March 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **June 1, 2022**, and construction must be completed by **December 1, 2022**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The 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. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: 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

December 9, 2021

Need and Program Analysis

Program Description

Proposed Operator	Samaritan Daytop Health, Inc.
To Be Known As	Samaritan Daytop Health
Site Address	362 East 148 th Street Bronx, New York 10455 (Bronx County)
Services	Medical Services – Primary Care Mental Health (below Article 31 threshold)
Hours of Operation	Monday through Friday 9 AM to 5 PM
Staffing (1st Year / 3rd Year)	16.2 FTEs / 16.2 FTEs
Medical Director(s)	Gregory Blunt, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by NYC H+H Lincoln 0.2 miles / 7 minutes away

Analysis

The primary service area is the neighborhood of Hunts Point/Mott Haven in Bronx County. Areas of Bronx County are designated as a Health Professional Shortage Area (HPSA) or as a Medically Underserved Area/Population as follows (Source-HRSA):

- High Bridge- HPSA for Primary Care and Mental Health Services: Medicaid Eligible
- Morrisana- Medically Underserved Area

According to Data USA, in 2019, 92.1% of the population of Bronx County had health coverage, broken down as follows:

Employee Plans	31.3%
Medicaid	42.3%
Medicare	6.97%
Non-group Plans	11%
Military or VA Plans	0.405%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition and shows that the PQI rate for the primary service area* is significantly higher than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs		
2017 PQI Rates	Service Area*	New York State
All PQIs	2,756	1,431

*Service area includes zip codes 10451,10454,10455,10459,10474

The applicant projects 10,500 visits in the first year and 12,578 in the third year, with 95% Medicaid utilization. The applicant states they are committed to serving all persons in need without regard to the ability to pay or source of payment.

Character and Competence

The board of Samaritan Daytop Health, Inc is as follows:

Name	Title
Rogelio Thomas, MD	Board Chair
Carol Murphy	Treasurer
Anna Flattau, MD	Secretary

Dr. Anna Flattau has been the Vice-Chair of Clinical Services and the Director of Strategic Development in the Department of Family and Social Medicine at Montefiore Medical Center for over three years. Previously, she was the Chief Clinical Officer at OneCity Health in NYC Health + Hospitals, a Family Physician, Founder and Director of the Wound Healing Program, Medical Director of the Hyperbaric Oxygen Program, and Chair of the Living Donor Advocacy Committee at Montefiore Medical Center, and the Medical Director of the Wound Healing Program at Columbia University Medical Center. She completed her medical degree at Harvard Medical School and her residency in Family Medicine at Columbia University Medical Center. She is board-certified in Family Medicine.

Carol Murphy has been the CEO of Sacopee Valley Health Center, an FQHC in Porter, ME, for over one year where she is responsible for the financial, quality, regulatory operations, and leadership for an FQHC in rural ME. In this role, she increased revenue, quality, patient and staff satisfaction, and staffing to meet community needs, in addition to, successfully implementing telehealth, which has continued in a hybrid model. Previously, she was a Strategic Leadership Consultant for Healthcare Consulting where she consulted with FQHCs to improve quality and achieve sustainability. She was also the COO/CNO of Bright Point Health, and she was Executive Director for a Program for All-Inclusive Care for Elders.

Dr. Rogelio Thomas has been the President/CEO of Special Care Medical Associates P.C. for over 25 years. In addition, he is the Medical Director and a founding member, of Hands on Health Associates, LLC. Previously, he was the Medical Director of Samaritan Daytop Village, the Medical Director Consultant of Veritas, Inc, the Medical Director Consultant of Care for the Homeless, the Medical Director for Project Samaritan Health Services, Inc., the Medical Director of Bronx Lebanon Special Care Center, and the Medical Director of H.E.L.P. He also held various roles at SUNY Downstate. Dr. Thomas completed his medical degree at Harvard Medical School and his residency in Internal Medicine and General Preventative Medicine at Mount Sinai Medical Center. He is board-certified in Internal Medicine and Addiction Medicine.

Dr. Gregory Bunt is the proposed Medical Director and has been the current Medical Director of Samaritan Daytop Village for over five years. Previous positions he has held are the Vice President of Samaritan Daytop Village, Medical Director of Daytop Village, Director of Mental Health of Daytop Village, and Medical Director of the Outpatient Alcoholism Clinic at Gracie Square Hospital. He was in Private Practice at the Faculty Practice Division of NYU School of Medicine and was an Attending Psychiatrist at the Dual Diagnosis Unit. He was also an Attending Psychiatrist at Holliswood Hospital and Stony Lodge Hospital. In addition to these roles, he was a Psychiatrist in private practice for over 10 years. Dr. Bunt received his medical degree from NYU School of Medicine and completed his residency in Psychiatry at the Albert Einstein School of Medicine and a fellowship in Addiction Psychiatry at NYU School of Medicine.

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

Dr. Anna Flattau disclosed one pending malpractice case. In 2015, it was alleged that a child had a delay in receiving a neurological appointment. Dr. Flattau had seen the child once for WIC paperwork. The case is pending.

Additionally, the staff from the DHDTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval for this project will improve access to a variety of medical services for the residents of the neighborhood of Hunts Point/Mott Haven and the surrounding communities in Bronx County, especially those who experience homelessness, substance abuse, and/or mental health issues. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for planning consultant fees and the acquisition of moveable equipment, is estimated at \$3,511,706, and distributed as follows:

New Construction	\$2,487,836
Renovation and Demolition	10,717
Temporary Utilities	9,514
Asbestos Abatement or Removal	3,858
Design Contingency	292,687
Construction Contingency	146,343
Planning Consultant Fees	150,000
Architect/Engineering Fees	9,000
Other Fees (Consultant)	238,652
Moveable Equipment	126,863
Telecommunications	19,261
CON Fee	1,250
Additional Processing Fee	<u>15,726</u>
Total Project Cost	\$3,511,706
Total Reimbursable Cost	\$560,752

Project costs are being funded through a \$560,752 grant from Samaritan Daytop Foundation and \$2,950,954 in work already completed by and paid for by the landlord. Therefore, reimbursable costs are limited to \$560,752.

Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for the first and third years of operation.

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$65.00	\$13,650	\$64.88	\$16,349
Medicare FFS	\$56.25	\$5,906	\$167.98	\$21,165
Medicaid FFS	\$181.84	\$381,864	\$237.18	\$298,612
Medicaid MC	\$104.97	\$826,675	\$237.60	\$2,539,899
Private Pay	\$35.00	\$7,349	\$34.93	\$8,803
Grants Revenue		<u>\$750,000</u>		<u>\$0</u>
Total Revenues		\$1,985,444		\$2,884,828
<u>Expenses</u>				
Operating	\$211.95	\$2,225,502	\$188.98	\$2,377,003
Capital	<u>\$40.04</u>	<u>\$420,402</u>	<u>\$33.42</u>	<u>\$420,402</u>
Total Expenses	\$251.99	\$2,645,904	\$222.40	\$2,797,405
Net Income		(\$660,460)		\$87,423
Utilization (Visits)		10,500		12,578

The following is noted concerning the submitted operating budget:

- The applicant projected patients and utilization patterns specific to the unique health concerns for individuals suffering from severe mental illness and/or addiction, which is a population that historically requires a higher frequency of visits and treatment plans that require more touchpoints with providers to assure compliance and better health outcomes.
- Expense assumptions were based on staffing ratios for clinical support teams to comply with best practices and requirements stated for Federally Qualified Health Centers. FQHCs also require robust patient support services (health education, outreach, and eligibility assistance).
- Revenue assumptions were based on a regular first-year DTC rate and an FQHC rate in the third year.
- Grant revenue of \$750,000 will come from Samaritan Daytop Foundation.

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	2.00%	2.00%
Medicare FFS	1.00%	1.00%
Medicaid FFS	20.00%	10.00%
Medicaid MC	75.00%	84.99%
Private Pay	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Agreements

BFA Attachment A contains the following:

- A draft administrative services agreement. While Samaritan Daytop Village, Inc. will provide the administrative services listed, Samaritan Daytop Health as the Licensed Operator, retains ultimate authority, responsibility, and control of the operations. The applicant has submitted an executed attestation acknowledging with statutory and regulatory required reserve powers that can't be delegated, and that they will not willfully engage in any illegal delegation of authority
- A draft sublease agreement. The applicant submitted two real estate letters attesting to the rent reasonableness of the per square foot rental.

Capability and Feasibility

The total project cost of \$3,511,706, will be met via a grant of \$560,752 from the Samaritan Daytop Foundation and work already completed by the landlord to build out space for \$2,950,954.

Working capital requirements are estimated at \$466,234, equivalent to two months of third-year expenses. The applicant will be gifted \$233,117 via Samaritan Daytop Foundation and the remainder, \$233,117, will be provided in the form of an unrestricted loan from Samaritan Daytop Foundation, Inc. at an interest rate of 3.5% for a five-year term. The applicant has submitted a letter of interest regarding the financing. BFA Attachment B is the June 30, 2019, and June 30, 2020, certified financial statements of Samaritan Daytop Foundation, which indicates the availability of sufficient funds to meet the total project cost and working capital equity requirements. BFA Attachment C is the Pro-Forma balance sheet of Samaritan Daytop Health, which indicates a positive net asset position of \$793,869 as of the first day of operation,

The submitted budget indicates an excess of revenues over expenses of (\$660,460) and \$87,423 during the first and third years, respectively. The first-year loss will be offset via working capital funds and a grant from Samaritan Daytop Foundation. Revenues are based on a regular DTC rate in the first year and an FQHC rate in the third year. The budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Agreements
BFA Attachment B	June 30, 2019, and June 30, 2020, certified financial statements of Samaritan Daytop Foundation, Inc.
BFA Attachment C	Pro Forma Balance Sheet



Project # 212015-B
RiverSpring Project Corp. t/b/k/a RiverSpring DTC Corp.

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: July 23, 2021

Executive Summary

Description

RiverSpring Project Corp., an existing New York State, not-for-profit entity, seeks approval to establish and construct a diagnostic and treatment center (D&TC) and a D&TC extension clinic to serve the Programs of All-Inclusive Care for the Elderly (PACE) Program of ElderServe Health, Inc. The Article 28 D&TC will be co-located with the PACE program, with the main site at 673 Livonia Avenue, Brooklyn (Kings County), and the extension clinic at 63 Marcus Garvey Boulevard, Brooklyn (Kings County). The applicant requests certification for Medical Services – Primary Care for both sites. The main D&TC is expected to open in March 2023 and the extension clinic in March 2025.

ElderServe Health Inc. is the sole member and passive parent of RiverSpring Project Corp. which will change its name to RiverSpring DTC Corp. upon approval of the Public Health and Health Planning Council.

This Certificate of Need (CON) application is only for the Article 28 D&TC; the PACE program approval for ElderServe Health, Inc. is a separate process under Article 44 of the NYS Public Health Law.

On June 7, 2021, ElderServe Health, Inc. executed a Contract of Sale to purchase a building located at 673 Livonia Avenue in Brooklyn which will house the D&TC main site. Upon completion of the sale, ElderServe Health, Inc. will renovate the building which will house the PACE Program and the Article 28 D&TC. RiverSpring DTC Corp. will lease the space for the D&TC from ElderServe Health, Inc.

The New York City Housing Authority (NYCHA) owns the land, located at 63 Marcus Garvey Boulevard, on which a new 10-story building will be built. The 1st floor of this new building will house ElderServe Health, Inc's PACE Program and Article 28 D&TC extension clinic.

Jonathan Gold, M.D., who is Board-Certified in Internal Medicine, will serve as Medical Director. The applicant provided a draft Transfer and Affiliation Agreement with Woodhull Medical and Mental Health Center (Woodhull), which is part of New York City Health + Hospital's safety-net healthcare system and is located 4.2 miles (28 minutes travel time) from the D&TC main site, and 0.3 miles (3 minutes travel time) from the D&TC extension clinic.

OPCHSM Recommendation

Contingent Approval

Need Summary

Both the main D&TC and extension clinic will provide primary care services exclusively to the PACE Program of Elderserve Health, Inc. in Kings County.

Program Summary

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

Financial Summary

The total project cost of \$1,942,643 will be met through equity of \$1,253,300 from ElderServe Health, Inc. and a Statewide Health Care Facility Transformation Program grant with RiseBoro Community Partnership, Inc. for \$689,343. The table below indicates the submitted budget project's first and third-year net losses of \$300 and \$600, respectively. ElderServe Health, Inc. provided a letter indicating a willingness to fund

all expenses of the D&TC. RiverSpring DTC Corp. will invoice ElderServe Health Inc. monthly for the expenses of the D&TC and operate the PACE Program at break-even.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$541,446	\$1,821,477
Expenses	\$541,746	\$1,822,077
Gain/(Loss)	(\$300)	(\$600)

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 of Health (Department). [HSP]
3. Submission of an executed Lease Agreement for the main D&TC site located at 673 Livonia Avenue, acceptable to the Department. [BFA]
4. Submission of an executed Building Space Sub-Lease Agreement for the D&TC extension clinic located at 63 Marcus Garvey Boulevard, acceptable to the Department. [BFA]
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [BFA]
6. Submission of documentation confirming final approval of the Statewide Health Care Facility Transformation executed grant contract awarded to RiseBoro Community Partnership, Inc., acceptable to Department. [BFA]
7. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of RiverSpring Project Corp., acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Administrative Services Agreement between RiverSpring DTC Corp. and ElderServe Health, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of a complete and executed Lease between RiverSpring DTC Corp. and ElderServe Health, Inc. for the site to be located at 673 Livonia Avenue, Brooklyn, NY, acceptable to the Department. [CSL]
10. Submission of a photocopy of a complete and executed SubLease between RiverSpring DTC Corp. and ElderServe Health, Inc. for the site to be located at 63 Marcus Garvey Boulevard, Brooklyn, NY, acceptable to the Department. [CSL]
11. Submission of a photocopy of a complete and executed Lease between ElderServe Health, Inc. and RiseBoro Community Partnership Inc., for the site to be located at 63 Marcus Garvey Boulevard, Brooklyn, NY, acceptable to the Department. [CSL]
12. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
13. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **April 30, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **June 1, 2022**, and construction must be completed by **January 31, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

December 9, 2021

Need and Program Analysis

Program Description

Proposed Operator	RiverSpring Corp.
To Be Known As	Livonia PACE
Site Addresses	
<u>Main Site</u>	673 Livonia Avenue Brooklyn, New York 11207 (Kings County)
<u>Extension Site</u>	63 Marcus Garvey Boulevard Brooklyn, New York 11206 (Kings County)
Services	Medical Services – Primary Care
Hours of Operation	Initially, two days per week 10:00 AM to 3:00 PM; then Monday through Friday 9:00 AM to 5:00 PM
Staffing (1st Year / 3rd Year)	2.30 FTEs / 5.35 FTEs
Medical Director(s)	Jonathon Gold, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Woodhull Medical & Mental Health Center 4.2 miles / 28 minutes away

Analysis

The primary service area is Kings County, which had a population of 2,504,200 in 2010 with 287,633 individuals (11.5%) who are 65 and older, which is the primary population for PACE services. Per projection data, this population group (65 and older) is estimated to grow to 439,296 by 2025 and represent 15.6% of the projected county population of 2,810,876. According to Data USA, in 2019, 93.7% of the population of Kings County had health coverage, broken down as follows:

Employee Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-group Plans	10.5%
Military or VA Plans	0.22%

The Program of All-Inclusive Care for the Elderly (PACE) provides comprehensive medical and social services to community-dwelling elderly individuals, most of whom are dually eligible for Medicare and Medicaid benefits. An interdisciplinary team of health professionals provides PACE participants with coordinated care with the intent of enabling the individuals to remain in the community rather than receive care in a nursing home.

The applicant projects the PACE program will grow from 306 to 2,710 visits during the first three years of operation. The operations at the main D&TC site are expected to begin in March 2023. The applicant anticipates D&TC extension clinic will be implemented in March 2025 coinciding with the main D&TC's third year of operation. During the third year, the applicant is projecting its D&TC extension clinic will generate 306 visits, while the main D&TC site is projected to generate 2,404 visits.

Character and Competence

The Board of Trustees of RiverSpring Corp. is as follows:

Name	Membership
Michael Greenberg, Esq	Board Member
James Shifren, Esq	Board Member
David Sable	Board Member

Michael Greenberg, Esq. is the current CEO and General Counsel of Level Group, Inc. He is responsible for communicating, on behalf of the company, with government entities and the public; leading the development of the company's short- and long-term strategies; evaluating the work of other executive leaders within the company; maintaining awareness of the competitive market landscape, expansion opportunities and industry developments; assessing the risks to the company and ensuring they are monitored and minimized; and setting strategic goals and ensuring they are measurable and describable. He is semi-retired from KLG Luz and Greenberg, LLP legal firm. He has been a Trustee of Hebrew Homes and its affiliates and serves on the Managed Care Committee.

David Sable retired in 2019. He was the previous Chairman and CEO at Young and Rubicam, an advertising firm, for approximately eight years. In those roles, he was responsible for developing the strategic objectives and direction of the company; implementing proposed plans; budgeting and forecasting, setting the annual budget. He was also responsible for public relations as the face of the company; he communicated with the Board of Directors; he tracked company performance relative to other competitors; and he established the working culture as a safe and healthy working environment. In addition, he was previously employed as the Vice Chairman of Wunderman, an advertising firm, for approximately 11 years.

James Shifren has been the President of Buckland Partners, an equity/long-short hedge fund firm, for over 17 years, where his responsibilities include venture capitalism and private equity as a General Partner. He was previously employed as a Partner at Stroock & Stroock & Lavan, LLP and previously employed as an Associated Litigator at Stroock & Stroock & Lavan, LLP. He was a Law Clerk for the Hon. Judith S. Kay, and was a Project Manager at the New York City Department of Housing Preservation and Development.

Dr. Jonathon Gold is the proposed Medical Director and has been a Consultant Physician at RiverSpring Health for over 11 years. He was previously the Vice President for Medical Affairs and Comprehensive Care Management at Beth Abraham Family of Health Services and was the Medical Director of Comprehensive Care Management, before retiring in 2010. He was the Director of the Department of Medicine at Bronx Lebanon Hospital and held various positions at Memorial Sloan Kettering. Dr. Gold received his medical degree from Columbia University College of Physicians and Surgeons and completed his residency in Internal Medicine at The New York Hospital. He is board-certified in Internal Medicine and Infectious Disease.

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

Michael Greenberg disclosed that in 2015 he commenced a suit in the New York State Court for breach of contract. His firm, Level Group, entered into a brokerage agreement, which the other party breached. The matter was settled in 2018.

Additionally, the staff from the DHDTTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval of this project will fulfill the requirement for primary care services for Elderserve Health, Inc.'s PACE program in Kings 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

The total project cost for renovations is estimated at \$1,942,643; broken down as follows:

	Total	Main Site	Extension Clinic
Land Acquisition	\$419,393	\$419,393	\$0
New Construction	539,246	\$0	539,246
Renovation & Demolition	436,170	436,170	0
Asbestos Abatement or Removal	14,070	14,070	0
Design Contingency	97,434	43,509	53,925
Construction Contingency	113,980	87,018	26,962
Architect/Engineering Fees	117,050	52,340	64,710
Other Fees (Consultant, etc.)	8,907	4,407	4,500
Movable Equipment	183,778	91,889	91,889
Application Fee	2,000	0	0
Additional Processing Fee	<u>10,615</u>	<u>0</u>	<u>0</u>
Total Project Cost	\$1,942,643	\$1,148,796	\$781,232

The financing for this project will be as follows:

Cash	\$ 1,253,300
Government Grants – SHCFTP	<u>689,343</u>
Total	\$1,942,643

The construction for the main D&TC site will be completed by ElderServe Health, Inc., which will lease the D&TC space to RiverSpring DTC Corp. The construction of the D&TC extension clinic will be completed by RiseBoro Community Partnership, Inc., which will utilize the \$689,343 of Statewide Health Care Facility Transformation Grant award to construct and furnish the Article 28 D&TC. RiseBoro Community Partnership, Inc. will lease space to ElderServe Health, Inc., which will sub-lease the D&TC space to RiverSpring DTC Corp. Letters from two New York State licensed realtors have been provided attesting to the rental rate being of fair market value.

Operating Budget

The applicant has provided an operating budget, in 2021 dollars, for the first and third year, after the change of ownership. The budget is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
MLTCP – PACE Program	\$1,769.43	\$541,446	\$672.13	\$1,821,477
Total Revenue		\$541,446		\$1,821,477
<u>Expenses</u>				
Operating	\$1,563.06	\$478,295	\$622.60	\$1,687,243
Capital	<u>\$207.35</u>	<u>\$63,451</u>	<u>\$49.75</u>	<u>\$134,834</u>
Total Expenses	\$1,770.41	\$541,746	\$672.35	\$1,822,077
 Net Income (Loss)		 <u>(\$300)</u>		 <u>(\$600)</u>
 Total Visits		 306		 2,710

The following is noted concerning the submitted budget:

- The projected utilization, expenses, and revenues for this D&TC project are based on the experience of similar PACE-focused D&TCs in New York State, as well as, the projected utilization of the PACE Program overall.
- ElderServe Health, Inc. is reimbursed by Medicare and Medicaid for the care of its PACE Program patients, including those who chose to be served by the D&TC. The D&TC will invoice ElderServe Health, Inc. for expenses of the D&TC resulting in a near break-even operation each year.
- The number and mix of staff were determined by the experience of the individuals at ElderServe Health, Inc., in operating PACE Programs in the past, and on industry norms for D&TCs associated with PACE Programs.

Agreements and Contracts

BFA Attachment D contains the following:

- A draft Administrative Services Agreement. The facility operator retains ultimate control in all final decisions associated with the services. The applicant has submitted an attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated to a third party, the applicant will not willfully engage in any illegal delegations of authority, and understands that the Department will hold the applicant accountable.
- An executed contract of sale of premises located at 673 Livonia Avenue.
- A draft lease agreement memorandum for 673 Livonia Avenue, Brooklyn. The applicant has provided an affidavit stating that the lease agreement is not an arm's length agreement, as the lessor and the lessee have overlapping Board Members. Letters from two New York State licensed realtors have been provided attesting to the rental rate being of fair market value.
- A draft lease agreement memorandum for 63 Marcus Garvey Boulevard, Brooklyn. Letters from two New York State licensed realtors have been provided attesting to the rental rate being of fair market value. The applicant has provided an affidavit stating that the lease agreement is not an arm's length agreement, as the sub-lessor and the sub-lessee have overlapping Board Members. The affidavit further indicates the following with respect to the proposed D&TC extension clinic:
 - There will be a Ground Lease Agreement from the New York City Housing Authority to Sumner Senior Community Housing Development Fund Corporation (HDFC) and Sumner Senior Partners, Inc.
 - There will be a Ground Sub-Lease from Sumner Senior Partners, Inc. to RiseBoro Community Partnership, Inc.
 - There will be a Building Space Lease from RiseBoro Community Partnership, Inc. as lessor to ElderServe Health, Inc. as lessee.
 - There will be a building Space Sub-Lease from ElderServe Health, Inc. as sub-lessee/sub-lessor to Riverspring DTC Corp. as sub-lessee.

Capability and Feasibility

The total project cost of \$1,942,643 and will be met through equity of \$1,253,300 from ElderServe Health, Inc. and a Statewide Health Care Facility Transformation Program grant with RiseBoro Community Partnership, Inc. for \$689,343. Working capital requirements are estimated at \$303,680 based on two months of third-year expenses.

BFA Attachment A is the 2020 audited financial statements of ElderServe Health, Inc., which shows the entity maintained a positive working capital, and net asset position during the year and reported an operating income of \$26,781,493. BFA Attachment B is the 2021 internal financial statements for ElderServe Health, Inc. for the period ended June 30, 2021, which shows the entity maintained positive working capital and net asset position and reported a positive operating income of \$204,576. ElderServe Health, Inc. has sufficient resources overall to fund the equity requirements. BFA Attachment C is the Pro-Forma balance sheet for RiverSpring DTC Corp., which shows the operation will start with \$500,073 in net equity.

The submitted budget projects a net loss of \$300 and \$600 during Years One and Three of operations, respectively. ElderServe Health, Inc. provided a letter indicating a willingness to fund all expenses of the D&TC, including but not limited to salary, fringe benefits, supplies, utilities, and rent. RiverSpring DTC Corp. will invoice ElderServe Health, Inc. monthly for the expenses of the D&TC, effectively operating the PACE Program at break-even. The budget appears reasonable.

Conclusion

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

Attachments

- BFA Attachment A 2020 Audited Financial Statements – ElderServe Health, Inc.
- BFA Attachment B June 2021 Internal Financial Statements – ElderServe Health, Inc.
- BFA Attachment C Pro Forma Balance Sheet of RiverSpring DTC Corp.
- BFA Attachment D Agreements and Contracts



Project # 212032-B
Emes Vision Center LLC

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: September 14, 2021

Executive Summary

Description

Emes Vision Center LLC, an existing New York State limited liability company, whose sole member is Benzion Herbst, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 5202-5204 16th Avenue, Brooklyn (Kings County). The applicant requests certification for Medical Services – Other Medical Specialties and Optometry services. The scope of services will include ophthalmologic and optometric care, and consist of adult, pediatric and diabetic eye exams, amblyopia, cataract evaluation, eye injuries or trauma, glaucoma evaluation and monitoring, macular degeneration, retinal detachment, and strabismus.

Lawrence Jacobson, M.D., a board-certified ophthalmologist will be the Medical Director. The D&TC has a transfer and affiliation agreement with Maimonides Medical Center, which is located 1.0 miles (8 minutes) from the center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The Borough Park neighborhood in Brooklyn will be the primary service area and is designated by the U.S. Health Resources & Services Administration (HRSA) as a Medically

Underserved Area with only five private/group practices providing ophthalmology services.

The applicant projects 5,408 visits in the first year and 8,112 in the third year with Medicaid utilization at 49% and charity care at 4%.

Program Summary

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

Financial Summary

The total project cost of \$616,055 will be met via accumulated funds.

The submitted budget projects a net loss of \$18,565 and net income of \$149,633 during the first and third years, respectively. The submitted budget appears reasonable and is as follows:

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues (\$668,158, \$1,002,237), Expenses (\$686,723, \$852,604), Net Income (Loss) (\$18,565, \$149,633)

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 (Department). 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 a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **November 1, 2022**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **June 1, 2022**, 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. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The 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. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: 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

December 9, 2021

Need and Program Analysis

Program Description

Proposed Operator	Emes Vision Center LLC
To Be Known As	Emes Vision Center LLC
Site Address	5202-5204 16 th Brooklyn, New York 11204 (Kings County)
Services	Medical Services-Other Medical Specialties Ophthalmology Optometry O/P
Hours of Operation	Sunday through Thursday 9:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	5.50 FTEs / 6.75 FTEs
Medical Director(s)	Dr. Lawrence Marc Jacobson, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 1.0 miles / 8 minutes away

The proposed site currently accommodates MS Optical LLC, an optical dispensary owned by Benzion Herbst, the proposed member. The proposed D&TC and the optical dispensary each have their own distinct physical space and the operations, staffing, and resources of each entity will remain separate.

Analysis

The primary service area is the Borough Park neighborhood in Kings County. The new D&TC will provide ophthalmologic care, including but not limited to: adult, pediatric, and diabetic eye exams; amblyopia; cataract evaluation; dry eyes; eye injuries or trauma; eyelid conditions; glaucoma evaluation and monitoring; macular degeneration (AMD); red eyes; refractive errors; retinal detachment and disease; and strabismus. The center will also provide optometric services.

The population of Kings County in 2010 was 2,504,700 and is estimated to grow to 2,810,876 by 2025, an increase of 12.2%. This area of Kings County is designated by HRSA as a Medically Underserved Area/Population (Medicaid Eligible) with only five private/group practices providing ophthalmology services to a population that has a higher prevalence of myopia and other genetic eye disorders. According to Data USA, in 2019, 93.7% of the population of Kings County had health coverage, broken down as follows:

Employee Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-group Plans	10.5%
Military or VA Plans	0.222%

The applicant projects 5,408 visits in Year One and 8,112 in Year Three. The applicant is committed to providing services to all patients needing care, regardless of their ability to pay or the source of payment.

The Prevention Quality Indicators (PQIs) listed below are rates of admission to the hospital consisting of conditions for which eye care outcomes may be affected, or for which early intervention can prevent complications or more severe disease. The proposed Primary Service Area (PSA) is the Borough Park neighborhood in Brooklyn, NY, and the primary ZIP code is 11219.

The PQI data presented in this analysis represents the ZIP code 11219. The following indicators were observed higher than expected in the most recent year of data (2017):

Zip code 11219 (2017)	Expected	Observed
Diabetes Long-Term Complications	1,363	1,431
Heart Failure	285.85	322.22
Dehydration	103	123.06
Lower-Extremity Amputation among Patients with Diabetes	14.98	25.91
Prevention Quality Chronic Composite	136.32	147.34
Prevention Quality All Diabetes Composite	327.2	349.74

Character and Competence

The sole member of Emes Vision Center LLC is Benzoin Herbst

Benzoin Herbst is a Licensed Optician who has been the Owner and Manager of MS Optical LLC for over 26 years. He received his degree in Ophthalmic Dispensing from the ASA College and TCI College in New York.

Dr. Lawrence Jacob, proposed Medical Director, has been an Attending Surgeon at New York Eye and Ear Infirmary for over 25 years. He has also been a surgeon at a private practice dedicated to ophthalmology and ophthalmic surgery for over 26 years. He has also been an Assistant Professor at New York University Medical Center and Bellevue Hospital, instructing residents on cataract and glaucoma surgery, and a Clinical Instructor at New York Eye and Ear Infirmary. He was the previous Chief of Ophthalmology and President of the Medical Board at Gouverneur Hospital. He received his medical degree from Tufts University in Boston and completed his residency in Ophthalmology at New York University. He is board-certified in Ophthalmology.

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

Additionally, the staff from the DHDTTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department. 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. Jacobson disclosed being named in a malpractice suit dated November 11, 2016. The lawsuit was brought by a patient who required intra-ocular lens placement and alleged that there was a failure to consider their loose zonules (anchoring structure of the eye) and failure to perform proper lens calculations. These failures lead to corneal edema, and ultimately, vision loss in the left eye, due to further procedures, which were necessary due to lens dislocation. The matter was settled by insurance for business reasons without any admission of negligence by Dr. Jacobson.

Conclusion

Approval for this project will improve access to a variety of ophthalmologic services for the residents of the Borough Park neighborhood and the surrounding communities in Kings 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

The total project cost for renovations and movable equipment, estimated at \$616,055, will be financed with cash.

Renovation & Demolition	\$277,350
Design Contingency	27,735
Construction Contingency	27,735
Architect/Engineering Fees	25,625
Other Fees (Consultant, etc.)	46,125
Movable Equipment	206,126
Application Fee	2,000
Additional Fee	<u>3,359</u>
Total Project Cost	\$616,055

Operating Budget

The applicant has submitted an operating budget, in 2021 dollars, that is summarized below, for Years One and Three:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$150.22	\$8,112	\$150.22	\$12,168
Commercial MC	\$150.00	202,800	\$150.00	304,200
Medicare FFS	\$119.81	38,937	\$119.93	58,406
Medicare MC	\$120.18	32,448	\$119.88	48,672
Medicaid MC	\$115.00	304,741	\$115.00	457,111
Private Pay	\$149.94	<u>81,120</u>	\$150.04	<u>121,680</u>
Total Revenue		\$668,158		\$1,002,237
<u>Expenses</u>				
Operating	\$108.88	\$588,800	\$92.72	\$752,175
Capital	<u>18.10</u>	<u>97,923</u>	<u>12.38</u>	<u>100,429</u>
Total	\$126.98	\$686,723	\$105.10	\$852,604
Net Income / (Loss)		<u>(\$18,565)</u>		<u>\$149,633</u>
Total Visits		5,408		8,112
Cost per Visit		\$126.98		\$105.10

The following is noted concerning the submitted budget:

- The mix of ophthalmology and optometry visits is 65% and 35%, respectively, which is reflected in the per-visit average rate by the payor.
- The Medicaid Fee for Service rate is conservatively estimated based on the Medicaid freestanding APG base rate of \$169.02 as obtained from the Department's Bureau of D&TC Reimbursement.
- The Managed Care rates are based on contractual rates that have been negotiated with Managed Care Organizations.
- Staffing is based on expected utilization and the experience of similar practices.
- Expenses include labor costs for the staffing model that includes 5.50 FTEs during Year One and 6.75 FTEs during Year Three, as well as, professional fees, medical supplies, and rent expenses, as documented by the lease agreement.
- The utilization is projected based on the target community experiencing a shortage of eye care providers and whose residents demonstrate a higher prevalence of genetic eye disorders.

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	1.0%	1.0%
Commercial MC	25.0%	25.0%
Medicare FFS	6.0%	6.0%
Medicare MC	5.0%	5.0%
Medicaid MC	49.0%	49.0%
Private Pay	10.0%	10.0%
Charity	4.0%	4.0%
Total	100.0%	100.0%

Lease Agreement

The applicant has submitted an executed lease agreement, the terms of which are summarized in BFA Attachment B. The applicant submitted an affidavit indicating the sole member of Emes Vision Center LLC is the managing member of both 5202 16th Ave LLC and 5204 16th Avenue LLC. The layout of the building is such that the proposed D&TC will utilize a part of each address 5202 and 5204 16th Avenue. The lease agreement between the landlord and the tenant is not an arm's-length arrangement.

Capability and Feasibility

The project cost of \$616,055 will be met through accumulated funds. Working capital requirements are estimated at \$142,101, based on two months of third-year expenses. BFA Attachment A is the member's personal net worth statement, which indicates sufficient resources overall to fund the equity requirements.

BFA Attachment C is the Pro-Forma balance sheet for Emes Vision Center LLC, which shows the operation will start with \$142,101 in member equity.

The submitted budget projects a net loss of \$18,565 and a net income of \$149,633, during the first and third years, respectively. Emes Vision Center LLC has provided an affidavit that they will cover the projected first-year loss. The budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement of Emes Vision Center LLC
BFA Attachment B	Lease Agreement
BFA Attachment C	Pro-Forma Balance Sheet



Project # 211107-E

Northern Lights Home Health Care

Program: Certified Home Health Agency
Purpose: Establishment

County: St. Lawrence
Acknowledged: May 14, 2021

Executive Summary

Description

Northern Lights Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care (Northern Lights) requests approval to transfer 25% interest in the Article 36 Certified Home Health Agency (CHHA) from one withdrawing member (Hospice of St. Lawrence Valley, Inc.) to the remaining members equally.

Northern Lights is located at 91 Main Street, Canton (St. Lawrence County), and is certified to provide the following services to St. Lawrence County residents: Home Health Aide, Personal Care, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, and Speech-Language Pathology.

The applicant, Northern Lights Health Care Partnership, Inc., is a New York Not-For-Profit Corporation. Currently, there are four members, each with a 25% interest:

- Canton-Potsdam Hospital
- Claxton-Hepburn Medical Center
- United Helpers Management Company, Inc.
- Hospice of St. Lawrence Valley, Inc.

This application seeks to permit the withdrawal of Hospice of St. Lawrence Valley, Inc., and the

equal redistribution of the membership interest to the three remaining members. After approval, there will be three members, each with a 33% interest:

- Canton-Potsdam Hospital
- Claxton-Hepburn Medical Center
- United Helpers Management Company, Inc.

OPCHSM Recommendation

Approval

Need Summary

There will be no change to services or counties served as a result of this application.

Program Summary

Northern Lights Home Health Care is an existing CHHA that has established relationships with hospitals and other health providers in its service area and has an existing patient base.

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 conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date.
[PMU]

Council Action Date

December 9, 2021

Need and Program Analysis

Program Description

The current members of Northern Lights Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care are Hospice of St. Lawrence Valley, Inc. (25%), Claxton-Hepburn Medical Center (25%), United Helpers Management Company, Inc. (25%), and Canton – Potsdam Hospital (25%).

With this application, Hospice of St. Lawrence Valley, Inc. seeks to withdraw and transfer its membership interest to the remaining members equally. Upon approval of this application, the ownership of Northern Lights Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care will be Claxton-Hepburn Medical Center (33.33%), United Helpers Management Company, Inc. (33.33%), and Canton – Potsdam Hospital (33.33%).

Northern Lights Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care currently serves St. Lawrence County from an office located at 91 North Main Street, Canton, New York 13617. The services currently offered are Home Health Aide, Personal Care, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, and Speech-Language Pathology. This application will have no impact on the counties served or services provided by Northern Lights Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care.

Character and Competence Review

All the entities affiliated with this application are not-for-profit corporations previously approved by the Public Health and Health Planning Council as members of the CHHA. Under Public Health Law § 3611-a(1) and Title 10 of the New York Codes, Rules, and Regulations Part 760, a character and competence review is not required when an application seeks to transfer a membership interest from a previously approved member to another previously approved member. As such, a character and competence review is not required as part of this project.

The information provided by the Department's 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.

CHHA Quality of Patient Care Star Ratings as of September 23, 2021	
CHHA Name	Quality of Care Rating
Northern Lights Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care	3.5 out of 5 stars

Conclusion

Northern Lights Home Health Care is an existing CHHA that has established relationships with hospitals and other health providers in its service area and has an existing patient base. The change in operator will result in no changes to the service area or the services being provided by the CHHA.

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application. Hospice of St. Lawrence Valley, Inc., will evenly gift its membership among the three remaining members in Northern Lights Health Care Partnership, Inc.

BFA Attachment B, Northern Lights Health Care Partnership, Inc. certified financial statements for 2018 and 2019, shows positive working capital and positive net assets. Annual utilization between 2018 and 2020 was approximately 19,000 visits. The CHHA was considered an essential business and did not shut down from March 23, 2020, to May 20, 2020, due to the Governor's COVID-19 pandemic executive order. The organization had a net loss in 2018 of (\$183,738) and a net income of \$481,497 in 2019. Member contributions in 2019 were \$626,209 per the certified financial statement in that fiscal year.

The applicant has indicated a plan to continue strengthening operations by right-sizing staffing levels to demand and increasing referrals from members and other sources. BFA Attachment C, Northern Lights Health Care Partnership, Inc. December 31, 2020 internal financial statement shows positive working capital, positive net assets, and net income of \$393,983.

In May 2020, they received a loan of \$384,830 from the Small Business Administration under the Paycheck Protection Program of the Coronavirus Aid, Relief and Economic Security (CARES) Act. Some or all of the loan may be forgiven if certain criteria are met. Otherwise, the loan is unsecured, has a deferment on payments for 6 months, then is payable over 18 months, and bears interest at 1%.

Conclusion

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

Attachments

BFA Attachment A	Northern Lights Health Care Partnership, Inc. - Health Care Staffing Agreement
BFA Attachment B	Northern Lights Health Care Partnership, Inc – 2018 and 2019 certified financial statements
BFA Attachment C	Northern Lights Health Care Partnership, Inc – December 31, 2020 internal financial statements



Project # 211169-E
OGL Holdings, LLC d/b/a Mount Sinai at Home

Program: Certified Home Health Agency
Purpose: Establishment

County: Nassau
Acknowledged: May 19, 2021

Executive Summary

Description

OGL Holdings, LLC, a to-be-formed limited liability company, requests approval to become the new operator of an existing Article 36 certified home health agency (CHHA), South Nassau Communities Hospital, located at 1000 South Oyster Road, Hicksville (Nassau County). Upon approval of this application, the CHHA will operate under the assumed name Mount Sinai at Home.

South Nassau Communities Hospital, Inc. d/b/a Mount Sinai South Nassau (MSSN) is the current operator of the CHHA. On April 7, 2021, MSSN and OGL Holdings, LLC entered into an asset contribution agreement whereby OGL Holdings, LLC will purchase certain assets of the CHHA from MSSN. The transaction will keep the CHHA in the Mount Sinai Health System and OGL Holdings, LLC will develop an expanded business model, with enhanced community outreach and connections to new health care entities, to create a stronger referral system. In addition, the applicant will enter into an administrative services agreement with MSSN for the provision of administrative services.

The proposed ownership is as follows

OGL Holdings, LLC	
One Gustave L. Levy Place, LLC	100%
Care Continuum Ventures, Inc. (49%)	
Contessa Health Holding Company, LLC (51%)	

Contessa Health Holding Company, LLC's sole member is Contessa Health, Inc. (Contessa), a

Delaware Corporation. Care Continuum Ventures, Inc. is a New York State not-for-profit corporation and is an affiliate of the Mount Sinai Health System. CHHA Attachment A shows the proposed organizational chart.

OPCHSM Recommendation

Contingent Approval

Need Summary

South Nassau Communities Hospital is certified to provide services in Nassau, Suffolk, and Queens Counties. This change of ownership to OGL Holdings, LLC will not result in any changes to the counties being served or to the services being provided by the CHHA.

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

The purchase price for the operation is \$9,263,265 and will be met via equity from the operations of Contessa Health Holding Company, LLC. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,471,557	\$12,365,354
Expenses	<u>10,250,933</u>	<u>11,761,770</u>
Net Income	\$220,624	\$503,584

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 sublease agreement that is acceptable to the Department of Health (Department). [BFA]
2. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA]
3. Submission of a photocopy of an executed Certificate of Assumed Name, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of OGL Holdings, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Amended and Rested Operating Agreement of OGL Holdings, LLC, acceptable to the Department. [CSL]
6. Submission of photocopy of an executed Sublease Agreement, between South Nassau Communities Hospital and OGL Holdings, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Administrative Services Agreement between South Nassau Communities Hospital and OGL Holdings, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Employee Leasing Agreement between South Nassau Communities Hospital and OGL Holdings, LLC, acceptable to the Department. [CSL]
9. Submission of a complete Asset Contribution Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the project approval expiration date. [PMU]

Council Action Date

December 9, 2021

Need and Program Analysis

Program Description

The proposed ownership is as follows:

OGL Holdings, LLC – Operator	
One Gustave L. Levy Place, LLC	100%
Contessa Health Holding Company, LLC (51%)	
Care Continuum Ventures, Inc. (49%)	

Care Continuum Ventures, Inc. is a New York State not-for-profit corporation and is an affiliate of the Mount Sinai Health System.

The sole member of Contessa Health Holding Company, LLC is Contessa Health, Inc., a business corporation formed in Delaware. On June 27, 2021, Contessa Health, Inc. and Amedisys Holding, LLC entered into an Agreement and Plan of Merger whereby Amedisys Holdings, LLC became the 100% shareholder of Contessa Health, Inc. Amedisys, Inc., a publicly-traded business corporation formed in Delaware, is the sole member of Amedisys Holding, LLC.

South Nassau Communities Hospital is a CHHA serving the following counties: Queens, Suffolk, and Nassau. The services currently offered are home health aide; medical social services; medical supplies, equipment, and appliances; nursing; nutritional; occupational therapy; physical therapy; and speech-language pathology therapy. There are no changes to counties served or services provided associated with this application. Upon approval of this project, the CHHA will use the assumed name Mount Sinai at Home.

The applicant proposes to enter into an Administrative Services Agreement with South Nassau Communities Hospital, Inc. for the provision of administrative services. These services include employee health services, patient financial services, development of infection prevention and control procedures, nursing education and development, surveys, and performance management and improvement.

Character and Competence Review

The boards of managers of OGL Holdings, LLC and One Gustave L. Levy Place, LLC are identical, as follows:

Margaret A. Pastuszko

Chief Operating Officer, Chief Strategy Officer, Executive Vice President, Mount Sinai Health Systems

Denise B. Prince

Senior Vice President and Chief Operating Officer, Population Health, Mount Sinai Health System

Affiliations

- Vitaline Home Infusion Pharmacy Services East (2011 – 2016, PA)
- Vitaline Home Infusion Pharmacy Service (2011 – 2016, PA)
- Geisinger Home Health (2011 – 2016, PA) (Home Health Agency)
- Geisinger Hospice (2011 – 2016, PA)
- Sun Home Health and Hospice (2014 – 2016) (Home Health Agency and Hospice)
- Life Geisinger (2011 – 2016, PA) (PACE Program)

Rob Sharma, MD

Chief Medical Officer, South Nassau Communities Hospital

Sarah L. Brannan

Vice President of Operations, Contessa Health
Administrator, Operations, New Hanover Regional Medical Center

Travis Messina

Co-Founder, Chief Executive Officer, Contessa Health

Robert Moskowitz, MD (TN, FL)

Corporate Medical Director, Contessa Health
Emergency Medicine Physician, TriStar Centennial Medicine
Chief Medical Officer, Satchel Health

Aaron Stein

Chief Operating Officer, Contessa Health

The board of Care Continuum Ventures, Inc. is as follows:

Jeremy H. Boal, MD

Executive Vice President and Chief Clinical Officer, Mount Sinai Health System
President, Mount Sinai Beth Israel and Downtown

Margaret Pastuszko

Disclosed above

Denise B. Prince

Disclosed above

The board of Contessa Health Holding Company, LLC is as follows:

Paul B. Kusserow – President

President and Chief Executive Officer, Amedisys, Inc.

Scott G. Ginn – Vice President & Treasurer

Chief Financial Officer, Amedisys, Inc.

Jennifer R. Guckert, Esq. (MS, FL, LA, TN) – Secretary

Senior Vice President of Legal, Deputy General Counsel, Corporate Secretary, Amedisys, Inc.

The board of Contessa Health, Inc. is as follows:

Paul Kusserow

Disclosed above

The board of Amedisys Holding, LLC is as follows:

Paul Kusserow – President

Disclosed above

Scott Ginn – Vice President & Treasurer

Disclosed above

Jennifer R. Guckert – Secretary

Disclosed above

The board of Amedisys, Inc. is as follows:

Vickie L. Capps

Retired

Molly J. Coye

Executive in Residence, AVIA

Julie D. Klapstein

Retired

Teresa L. Kline

Self-employed

Affiliations

- SaVida Health (August 2017 – Present)
- Presbyterian Health Care Services (10/2015 – Present) (New Mexico)
- Henry Ford Health System (November 2016 – June 2019) (Michigan)

Paul Kusserow – Chairman & CEO

Disclosed above

Richard A. Lechleiter – Lead Independent Director

President, Catholic Education Foundation

Bruce D. Perkins

Self-Employed

Jeffrey A. Rideout, MD (CA)

Chief Executive Officer, Integrated Healthcare Association

Chief Executive Officer, Rideout Advisors LLC

Ivanetta Davis Samuels, Esq. (TN)

Senior Vice President, General Counsel & Corporate Secretary, Meharry Medical College

Amedisys, Inc. has stated that as a large, publicly-traded company they are party to various civil-administrative actions, most of which are covered by insurance and are not material to Amedisys, Inc.'s consolidated financial operations as a whole.

Amedisys, Inc. disclosed the following legal actions:

- Amedisys, Inc. entered into a settlement agreement with the United States Department of Justice on April 23, 2014, with no admissions of liability. Concurrently, Amedisys, Inc. also entered into a Corporate Integrity Agreement (“CIA”) with the Office of Inspector General (“OIG”). The CIA had a term of five years, which ended on April 21, 2019. On May 5, 2020, Amedisys, Inc. received notice from the OIG that the five-year CIA had been completed.
- Compassionate Care Hospice entered into a CIA with the OIG on January 30, 2015. The CIA had a term of five years, which ended on January 30, 2020. On May 5, 2020, the Company received notice from the OIG that the five-year CIA had been completed.
- On July 25, 2012, a class action complaint was filed in the United States District Court for the District of Connecticut against Amedisys, Inc. The complaint alleged wage and hour law violations in violation of the Federal Fair Labor Standards Act (“FLSA”), as well as, the Pennsylvania Minimum Wage Act. On June 10, 2015, Amedisys and the plaintiffs participated in a mediation whereby they agreed to fully resolve all of the plaintiffs’ claims in the lawsuit for eight million dollars. The court approved the final settlement of this case on February 29, 2016, and the settlement became effective on February 26, 2016.
- On April 2, 2015, Frontier Home Health and Hospice, LLC filed a complaint against Amedisys in the United States District Court for the District of Connecticut alleging breach of contract, negligent misrepresentation, and unfair and deceptive trade practices. The litigation was resolved for \$2.9 million on December 31, 2016.
- Between June 10 and July 28, 2010, several putative securities class action complaints were filed in the United States District Court for the Middle District of Louisiana against Amedisys and certain former senior executives. On June 12, 2017, Amedisys reached an agreement-in-principle to settle this matter. All parties executed a binding term sheet that, subject to final documentation and court approval, provided in part for a settlement payment of approximately \$43.7 million, and the dismissal with prejudice of the litigation. On December 19, 2017, the court entered the final order and judgement on the case.

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.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

Facility Compliance/Enforcement

A compliance review was conducted of all out-of-state healthcare facilities affiliated with Amedisys, Inc. as part of CON# 192109, which received final Public Health and Health Planning Council approval on March 26, 2021. The following compliance information was disclosed as part of CON#192109:

The West Virginia Department of Health and Human Resources reports as follows:

- Amedisys West Virginia, LLC d/b/a Amedisys Hospice of Vienna had condition-level findings for violations of 42 CFR 418.78 and was on a 90-day termination track in November 2015. The agency was found to be back in compliance following a revisit survey on January 11, 2016, and the termination track was lifted.
- Amedisys West Virginia, LLC d/b/a Amedisys Hospice of Bluefield had condition-level findings for violations of 42 CFR 418.72 and was on a 90-day termination track in April 2012. The agency was found to be back in compliance following a revisit on May 29, 2012, and the termination track was lifted.

The Texas Department of Health and Human Services reports as follows:

- Compassionate Care Hospice of Central Texas, LLC was fined \$1,000 for survey findings on May 1, 2017, and the penalty was paid in full on July 27, 2017.
- Compassionate Care Hospice of Bryan Texas, LLC was fined \$750 for survey findings on December 19, 2017, and the fine was paid on May 14, 2018. This agency was also fined \$750 for survey findings on March 29, 2018, and the fine was paid on September 13, 2018.
- Amedisys Hospice, LLC d/b/a Amedisys Hospice of San Antonio was fined \$650 for survey findings on March 22, 2019, and the penalty was paid in full on July 29, 2019.

In CON# 192109, nine states did not respond to the requests for compliance information. Amedisys, Inc. submitted affidavits attesting to the compliance history of the health care facilities in the following states: Missouri, Michigan, District of Columbia, Arkansas, Indiana, Connecticut, Kentucky, Ohio, and Massachusetts. Amedisys, Inc. reported that any statements of deficiencies issued have been resolved and no fines were assessed.

As part of the current project, an out-of-state compliance review was conducted for all healthcare facilities acquired by Amedisys, Inc. since March 26, 2021. The applicant submitted affidavits attesting to the compliance history of facilities in states which did not respond. The following findings were reported:

The Delaware Department of Health and Social Services, Division of Substance Abuse and Mental Health, reports as follows:

- Savida Health Dover and Savida Health Newark are currently not in compliance, based on survey findings. The State of Delaware reports that the agency has participated in the Corrective Action Plan process and continues to refine its focus in Delaware to align more closely with its national strengths.

The state of Texas reports as follows:

- Hospice Holdings DFW, LLC d/b/a Asana Hospice was fined an administrative penalty for \$1,250 based on violations found during a survey on March 14, 2018, and the fine was paid in full on August 22, 2018.

Amedisys, Inc. submitted affidavits attesting to the compliance history of all of the out-of-state healthcare facilities in which they have ownership from March 26, 2021, until the present. Amedisys, Inc. reports that no fines have been assessed or enforcement actions taken against these facilities.

The information provided by the Department's 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.

CHHA Quality of Patient Care Star Ratings as of October 22, 2021	
CHHA Name	Quality of Care Rating
<u>Subject CHHA</u>	
South Nassau Communities Hospital, Inc. d/b/a South Nassau Communities Hospital CHHA	2.5 out of 5 stars
<u>Applicant's Affiliated CHHAs</u>	
Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care, an Amedisys Company (Medford)	4.5 out of 5 stars
Tender Loving Care Health Care Services of Nassau Suffolk, LLC d/b/a Tender Loving Care, an Amedisys Company (Garden City)	4.5 out of 5 stars
Tender Loving Care Health Care Services of Erie Niagara LLC d/b/a Amedisys Home Health Care (Amherst)	4.5 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 operating budget, in 2021 dollars, during the current year and the first and third years, summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Commercial FFS	\$2,439,380	\$2,225,926	\$2,628,453
Medicare FFS	8,469,225	7,728,000	9,125,664
Medicare MC	11,549	10,538	12,444
Medicaid FFS	44,731	40,817	48,198
Medicaid MC	165,329	150,862	178,143
Other	<u>345,660</u>	<u>315,414</u>	<u>372,452</u>
Total Revenues	\$11,475,874	\$10,471,557	\$12,365,354
<u>Expenses</u>			
Operating	\$10,381,332	\$9,768,291	\$11,247,691
Capital	<u>0</u>	<u>482,642</u>	<u>514,079</u>
Total Expenses	\$10,381,332	\$10,250,933	\$11,761,770
Net Income	\$1,094,542	\$220,624	\$603,584
<u>Utilization</u>			
Visits	66,012	55,318	61,392
Hours	27,600	23,129	25,894

The following is noted concerning the submitted operating budget:

- Revenues are based on current reimbursement methodologies and historical experience.
- Expense and utilization assumptions are based on historical experience.
- The applicant's proposed operating budget for the first year reflects a slight decrease in utilization, operating revenues, and operating expenses, as compared with the current year (2020). This decrease is due to the disruptive impact of COVID-19, which affected the CHHA's

overall operations. Specifically, many of the CHHA FTEs were diverted to MSSN's hospital operations to assist with COVID-19 related duties, which resulted in the hospital absorbing these payroll costs, and also consequently, resulted in a decrease in the CHHA's utilization and revenues. The applicant's proposed operating budget assumes a return to normalized operations by the third year.

- The CHHA's forecasted third-year utilization (61,932 visits) reflects a 12% increase in utilization over the first year. The applicant is confident that home care will be highly utilized in the post-COVID environment and return to pre-COVID levels, but the applicant has chosen to be conservative in its utilization projections. Although the number of visits and hours is projected to decrease in the third year (compared with the current year), the CHHA's projected revenue in the third year is increasing. This is because the projected average rate of reimbursement in the third year (\$199.66) is higher than that of the current year (\$173.84). The proposed operating budget assumes an average reimbursement rate of \$189.30 for the first year, which is reflective of the CHHA's average rate of reimbursement experienced in 2020, plus 2.7%. The applicant's projected third-year reimbursement rate reflects a 2.7% annual increase over the first-year projected rate.

Utilization, broken down by payor source during the current year, year one, and year three after the change in operator, is summarized below:

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	20.48%	20.48%	20.48%
Medicare FFS	75.17%	73.50%	73.51%
Medicare MC	0.08%	0.08%	0.09%
Medicaid FFS	0.64%	0.64%	0.64%
Medicaid MC	1.76%	1.76%	1.76%
Charity Care	0.34%	2.01%	2.00%
Other	<u>1.53%</u>	<u>1.53%</u>	<u>1.53%</u>
Total	100.00%	100.00%	100.00%

Agreements and Contracts

BFA Attachment C includes the following:

- A draft sublease agreement for the site that they will occupy. The applicant has submitted two real estate letters in support of the reasonableness of the rent per square foot, and an affidavit indicating that the lease agreement will be a non-arm's length lease arrangement.
- A draft administrative services agreement. The agreement is between related parties, as there is common ownership between the two entities.
- An executed asset purchase agreement for the acquisition of the operation. Pursuant to the Asset Contribution Agreement, Mount Sinai South Nassau will contribute the operating assets of the CHHA to OGL Holdings, LLC, which will be the new operator of the CHHA. The fair market value of these operating assets is \$18,163,625. Contessa Health Holding Company, LLC's parent company, Contessa Health, will contribute cash in the amount of \$9,263,265 from its existing cash reserves of One Gustave L Levy Place, LLC (the sole member of OGL Holdings, LLC) as consideration paid for its share of the operating assets contributed to OGL Holdings, LLC by Mount Sinai South Nassau. These funds will not be paid to Mount Sinai South Nassau. The purpose of Contessa Health's \$9,263,265 cash contribution is to support the CHHA's operations and to invest in the future success of the CHHA. As such, One Gustave L Levy Place, LLC will make the \$9,263,265 available to OGL Holdings, LLC as needed for the successful operation of the CHHA, and any working capital needs will be funded from this \$9,263,265 cash contribution.
 - The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 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. Currently, the facility has no outstanding Medicaid liabilities as of June 2, 2021.

Capability and Feasibility

The purchase price of \$9,263,265 will be met via equity from the operations of Contessa Health Holding Company and will be used as a cash contribution to OGL Holdings, LLC.

Working capital requirements are estimated at \$1,960,295, based on two months of third-year expenses, and will be met via equity from Contessa Health Holding Company, LLC.in the form of their cash contribution to OGL Holdings, LLC. BFA Attachment A is the March 31, 2021, internal financial statements of Contessa Health Holding Company, LLC, which indicates sufficient funds for the purchase price and the working capital requirements.

The submitted budget indicates a net income of \$220,604 and \$603,584 from the first and third years after the change in operator. Revenues are based on current reimbursement methodologies for CHHA services. The submitted budget appears reasonable.

BFA Attachment B is the 2020 revenues and expenses for Mount Sinai South Nassau Home Care. As shown, the CHHA achieved a net income of \$744,411 during 2020.

Conclusion

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

Attachments

CHHA Attachment A	Proposed Organizational Chart
BFA Attachment A	March 31, 2021 internal financial statements of Contessa Health Holding Company, LLC
BFA Attachment B	2020 revenues and expenses of Mount Sinai South Nassau Home Care
BFA Attachment C	Agreements and Contracts
CHHA Attachment B	Amedisys, Inc. Healthcare Facilities



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *Kathy Marks*
General Counsel

Date: November 2, 2021

Subject: Hudson River HealthCare, Inc.; Name Change Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(1)

Hudson River HealthCare, Inc., a New York not-for-profit corporation and established operator of one diagnostic and treatment center, thirty-eight diagnostic and treatment center extension clinics, three mobile diagnostic and treatment center extension clinics, and one school-based diagnostic and treatment center extension clinic, is requesting approval to change its corporate name to "Sun River Health, Inc."

Hudson River HealthCare, Inc. is requesting the name change to better reflect its affiliation with the assumed name, Sun River Health, and variations thereof, under which it currently operates.

Hudson River HealthCare, Inc. was formerly known as Peekskill Ambulatory Health Care Center, Inc. from August 5, 1975 to April 11, 1978, and Peekskill Area Health Center, Inc., from April 12, 1978 to January 8, 1999. It changed its corporate name to Hudson River HealthCare, Inc. on January 9, 1999. All previous corporate name changes were made with the approval of the Public Health and Health Planning Council (PHHPC).

Approval of PHHPC is required under the Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11(a)(1).

There is no legal objection to the corporate name change and the Certificate of Amendment of the Certificate of Incorporation of Hudson River HealthCare, Inc. is legally acceptable.

Attachments.



MEMORANDUM

TO: Lisa Thomson
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

FROM: Kerri Tily, Senior Attorney
Division of Legal Affairs, Bureau of Health Facility Planning and Development

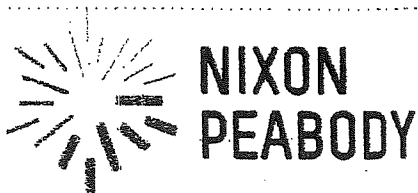
DATE: November 2, 2021

SUBJECT: Hudson River HealthCare, Inc.; Name Change Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(1)

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel.
- 2) Letter from Jena M. Grady, counsel for the applicant, dated March 18, 2021, requesting the change.
- 3) A copy of the proposed Certificate of Amendment of the Certificate of Incorporation of Hudson River HealthCare, Inc.
- 4) A copy of the Certificate of Amendment of Hudson River HealthCare, Inc., dated May 12, 2021.
- 5) A copy of the Restated Certificate of Incorporation of Hudson River HealthCare, Inc., dated December 13, 2018.
- 6) A copy of the Certificate of Merger of Brightpoint Health into Hudson River HealthCare, Inc., dated December 11, 2018.
- 7) A copy of the Certificate of Amendment of the Certificate of Incorporation of Hudson River HealthCare, Inc., dated February 6, 2012.
- 8) A copy of the Restated Certificate of Incorporation of Peekskill Area Health Center, dated January 8, 1999.
- 9) A copy of a Certificate of Amendment of the Certificate of Incorporation of Peekskill Area Health Center, dated January 8, 1999.
- 10) A copy of the Certificate of Amendment of the Certificate of Incorporation of Peekskill Area Health Center, Inc., dated June 19, 1987.
- 11) A copy of the Certificate of Amendment of the Certificate of Incorporation of Peekskill Ambulatory Health Care Center, Inc., dated November 22, 1978.
- 12) A copy of the Certificate of Incorporation of Peekskill Ambulatory Health Care Center, Inc., dated August 5, 1975.



NIXON PEABODY LLP
ATTORNEYS AT LAW

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Tower 46 |
55 West 46th Street
New York, NY 10036-4120 |
212-940-3000 |

March 18, 2021

Via E-Mail

Barbara DelCogliano
Director
NYS Department of Health
Bureau of Project Management
Corning Tower
ESP, Room 1842
Albany, New York 12237

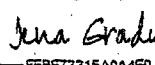
RE: Sun River Health

Dear Ms. DelCogliano:

Enclosed for your review is a Certificate of Amendment of the Certificate of Incorporation of Hudson River HealthCare, Inc. (the "Corporation"). The certificate changes the name of the Corporation to Sun River Health, Inc. Also attached is the Corporation's Resolutions of the Board of Directors for reference. Please let me know if you have any questions and if you need any additional information for this request to be placed on the next Public Health and Health Planning Council agenda for Council approval.

Thank you for your attention to this matter.

Sincerely,

DocuSigned by:

FFBF73315A0A4ED...
Jena M. Grady |
Associate |

Enclosures

Attachment 3

Attachment 2

Attachment 1

- 13) A copy of the Bylaws of Hudson River HealthCare, Inc. dated April 13, 2021; and
- 14) A copy of the Resolution of the Board of Directors of Hudson River HealthCare, Inc., dated March 9, 2021, consenting to the corporate name change.

Attachments

cc: B. DelCogliano, M. Ngwashi

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
HUDSON RIVER HEALTHCARE, INC.**

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, in order to amend the Corporation's Certificate of Incorporation, certifies that:

FIRST: The name of the Corporation is Hudson River HealthCare, Inc. (the "Corporation"). The name under which the Corporation was formed is Peekskill Ambulatory Health Care Center, Inc.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on August 5, 1975, pursuant to the Not-for-Profit Corporation Law of the State of New York.

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL.

FOURTH: The Certificate of Incorporation is hereby amended to affect the following:

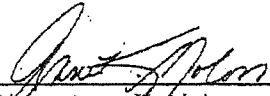
Paragraph 1 of the Corporation's Certificate of Incorporation relating to the name of the Corporation is hereby amended to read in its entirety as follows:

"1. The name of the Corporation is Sun River Health, Inc."

FIFTH: This amendment of the Certificate of Incorporation was duly authorized by majority vote of the entire Board of Directors. The Corporation has no members.

SIXTH: The Secretary of State of the State of New York is hereby designated as an agent of the Corporation upon whom service of process against it may be served, and the post office address to which the Secretary of State of the State of New York shall mail a copy of any process against it served upon him is: 1037 Main Street, Peekskill, NY 10566.

IN WITNESS WHEREOF, I have made and subscribed this certificate and hereby affirm under the penalties of perjury that its contents are true this 9th day of March 2021.



Name: Anne K. Nolon
Title: Chief Executive Officer

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
HUDSON RIVER HEALTHCARE, INC.**

Under Section 803 of the New York Not-for-Profit Corporation Law

Filed by:

Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604

Attachment 4

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number 210512000473 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

210512000 473

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
HUDSON RIVER HEALTHCARE, INC.**

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, in order to amend the Corporation's Certificate of Incorporation, certifies that:

FIRST: The name of the Corporation is Hudson River HealthCare, Inc. (the "Corporation"). The name under which the Corporation was formed is Peekskill Ambulatory Health Care Center, Inc.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on August 5, 1975, pursuant to the Not-for-Profit Corporation Law of the State of New York.

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL.

FOURTH: The Certificate of Incorporation is hereby amended to affect the following:

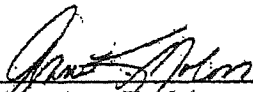
Paragraph 1 of the Corporation's Certificate of Incorporation relating to the name of the Corporation is hereby amended to read in its entirety as follows:

"1. The name of the Corporation is Sun River Health, Inc."

FIFTH: This amendment of the Certificate of Incorporation was duly authorized by majority vote of the entire Board of Directors. The Corporation has no members.

SIXTH: The Secretary of State of the State of New York is hereby designated as an agent of the Corporation upon whom service of process against it may be served, and the post office address to which the Secretary of State of the State of New York shall mail a copy of any process against it served upon him is: 1037 Main Street, Peekskill, NY 10566.

IN WITNESS WHEREOF, I have made and subscribed this certificate and hereby affirm under the penalties of perjury that its contents are true this 9th day of March 2021.


Name: Anne K. Nolon
Title: Chief Executive Officer



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

May 10, 2021

Jena M. Grady, Esq.
Associate
Nixon Peabody
Tower 4B
55 West 46th Street
New York, NY 10036-4120

Re: Certificate of Amendment of Certificate of Incorporation of Hudson River Healthcare Foundation

Dear Ms. Grady:

The above-referenced Certificate of Amendment, signed by Andrew S. Richter, Board Chair, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-For-Profit Corporation Law, because the entity is not a licensed entity. Therefore, a name change or filing of documents with the Department of State does not require the consent of the Public Health and Health Planning Council or the Commissioner of Health.

There is no legal objection to the Certificate of Amendment being filed with the New York State Department of State.

Sincerely,

Mark A. Schweitzer, Senior Attorney
Bureau of Health Facility Planning and
Development, Division of Legal Affairs

210512000 473

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
HUDSON RIVER HEALTHCARE, INC.

Under Section 803 of the New York Not-for-Profit Corporation Law

RECEIVED

MAY 12 PM 2:00

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAY 12 2021

TAX \$
BY: h

UNI-37

DRAWDOWN

Filed by:

Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604

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FILED

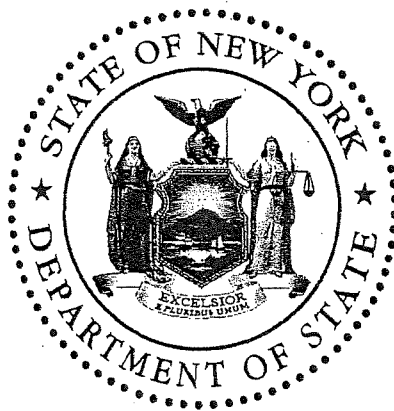
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Attachment 5

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number 181213000441 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

181213000441

**RESTATED CERTIFICATE OF INCORPORATION
OF
HUDSON RIVER HEALTHCARE, INC.**

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the Chief Executive Officer of Hudson River Healthcare, Inc. (the "Corporation"), for the purpose of 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 Hudson River Healthcare, Inc. The name under which the Corporation was formed was Peekskill Ambulatory Health Care Center, Inc.
- (2) The Certificate of Incorporation of the Corporation was filed by the New York Department of State on August 5, 1975 under Section 402 of the N-PCL.
- (3) This restatement of the Certificate of Incorporation was authorized by the Board of Directors as required by N-PCL Section 805.
- (4) The Certificate of Incorporation of the Corporation is hereby restated in its entirety without any amendments to read as follows:

FIRST: The name of the Corporation is Hudson River Healthcare, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of § 102 of the Not-for-Profit Corporation Law (hereinafter referred to as "N-PCL") and a charitable corporation under § 201 of the N-PCL.

THIRD: The purposes for which the Corporation is formed are as follows:

(i) To establish, operate and maintain one or more diagnostic and treatment centers for the prevention, diagnosis, and treatment of human disease, pain, injury, deformity or physical condition;

(ii) To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate;

(iii) 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;

(iv) To assist community-based providers of health-related services in identifying the needs of persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive;

(v) To promote the delivery of health-related services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive;

(vi) To assist community-based health care providers to provide educational programs and services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive, regarding health-related matters; and

(vii) To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, excepted as restricted herein.

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in New York State Not-for-Profit Corporation Law § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THREE hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof. Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in N-PCL § 404 (a-v) except to the extent that such purposes or activities have been expressly approved via an Operating Certificate or Consent to File.

FIFTH: The office of the Corporation in the State of New York is to be located in the City of Peekskill, County of Westchester, State of New York.

SIXTH: Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as "I.R.C."), as an organization described in I.R.C. § 501(c)(3) and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2).

SEVENTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under I.R.C. §

501(c)(3). Except as may otherwise be permitted by I.R.C. § 501(h) or any other provision of the Internal Revenue Code of 1986, as amended, and the corresponding laws of the State of New York, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempt to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition of any candidate for public office, (including publishing or distributing statements).

EIGHTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article THIRD hereof, and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in this Certificate of Incorporation.

NINTH: Upon the dissolution of the Corporation, its Board of Directors, after making provisions for the payment of all of the liabilities of the Corporation, shall arrange for either the direct distribution of all of the assets of the Corporation for the tax-exempt purposes of the Corporation (as set forth in Article THIRD hereof), or distribution to one or more organizations that then qualify for exemption under the provisions of I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3), subject to the laws of the State of New York.

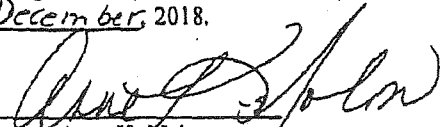
TENTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her is:

Hudson River HealthCare, Inc.
1037 Main Street
Peekskill, New York 10566

ELEVENTH: All references herein to "I.R.C." shall be deemed to include both amendments thereto and statutes which succeed such provisions (i.e., the corresponding provisions of the United State Internal Revenue Laws).

(No Further Text. Signature Page Follows.)

IN WITNESS WHEREOF, the undersigned has signed this certificate and hereby affirms
it as true under penalties of perjury this 13th day of December, 2018.


Name: Anne K. Nolon
Title: Chief Executive Officer/President

CM

UNI-37

RESTATED CERTIFICATE OF INCORPORATION
OF
HUDSON RIVER HEALTHCARE, INC.

Under Section 805 of the Not-for-Profit Corporation Law

FILED
2018 DEC 13 PM 11:58

RECEIVED
2018 DEC 13 PM 12:34

Filed By:
Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604

ca

STATE OF NEW YORK
DEPARTMENT OF STATE

ref # New 50 06150

FILED DEC 13 2018

TAXS _____
BY: *[Signature]*

Callisto

DRAWDOWN

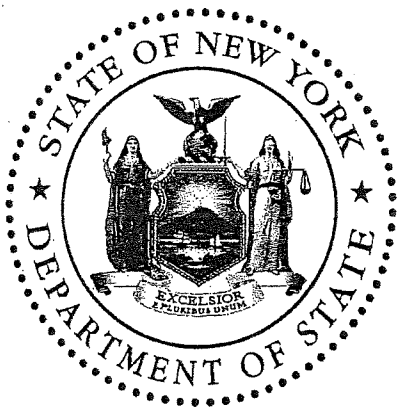
107

Attachment 6

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number 181211000570 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

181 211000

570

CERTIFICATE OF MERGER
OF
BRIGHTPOINT HEALTH
INTO
HUDSON RIVER HEALTHCARE, INC.

Under Section 904 of the Not-for-Profit Corporation Law

The undersigned being respectively the President and Chief Executive Officer of Brightpoint Health and the Chief Executive Officer/President of Hudson River Healthcare, Inc., certify:

1. The names of the constituent corporations are Brightpoint Health ("BPH") and Hudson River Healthcare, Inc. ("HRHC").

2. The surviving corporation is Hudson River Healthcare, Inc.

3. The Certificate of Incorporation of BPH was filed by the New York Department of State on January 27, 2000. The name under which BPH was formed was H.E.L.P./Project Samaritan Services Corp.

4. The Certificate of Incorporation of HRHC was filed by the New York Department of State on August 5, 1975. The name under which HRHC was formed was Peekskill Ambulatory Health Care Center, Inc.

5. The amendments or changes in the certificate of incorporation of HRHC, as the surviving corporation, which are to be effected by the merger are as follows:

(A) Paragraph SECOND of the certificate of incorporation of HRHC, with respect to the type of corporation, is amended in its entirety to read as follows:

"SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of § 102 of the Not-for-Profit Corporation Law (hereinafter referred to as "N-PCL") and a charitable corporation under § 201 of the N-PCL."

(B) Paragraph THIRD of the certificate of incorporation of HRHC, with respect to the purposes of the corporation, is amended in its entirety to read as follows:

"THIRD: The purposes for which the Corporation is formed are as follows:

(i) To establish, operate and maintain one or more diagnostic and treatment centers for the prevention, diagnosis, and treatment of human disease, pain, injury, deformity or physical condition;

(ii) To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate;

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(iii) 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;

(iv) To assist community-based providers of health-related services in identifying the needs of persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive;

(v) To promote the delivery of health-related services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive;

(vi) To assist community-based health care providers to provide educational programs and services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive, regarding health-related matters; and

(vii) To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, excepted as restricted herein."

(C) Paragraph FOURTH of the certificate of incorporation of HRHC, with respect to the powers of the corporation, is amended in its entirety to read as follows:

"FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in New York State Not-for-Profit Corporation Law § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THREE hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof. Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in N-PCL § 404 (a-u) except to the extent that such purposes or activities have been expressly approved via an Operating Certificate or Consent to File."

(D) Paragraph EIGHTH of the certificate of incorporation of HRHC, with respect to the net earnings of the corporation, is amended in its entirety to read as follows:

"EIGHTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments

and distributions may be made in furtherance of the purposes set forth in Article THIRD hereof, and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in this Certificate of Incorporation."

(E) Paragraph NINTH of the certificate of incorporation of HRHC, with respect to the initial directors of the corporation, is omitted in its entirety.

(F) Paragraphs TENTH through TWELFTH of the certificate of incorporation of HRHC, are renumbered accordingly.

6. HRHC's Board of Directors approved the Agreement and Plan of Merger, and authorized filing of a Certificate of Merger by majority vote of the Board in accordance with Section 903 of the Not-for-Profit Corporation Law ("N-PCL") at a meeting duly noticed and held on September 4, 2018.

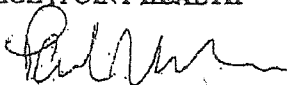
7. BPH's Board of Directors approved the Agreement and Plan of Merger, and authorized filing of a Certificate of Merger by majority vote of the Board in accordance with Section 903 of the N-PCL at a meeting duly noticed and held on September 6, 2018.

8. There are no outstanding certificates evidencing capital contributions or subventions.

9. The merger shall be effective on December 13, 2018.

IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, signed this certificate and caused it to be verified on the dates specified below.

BRIGHTPOINT HEALTH

By: 
Name: Paul Vitale
Title: President and Chief Executive Officer

Dated: _____

HUDSON RIVER HEALTHCARE, INC.

By: _____
Name: Anne K. Nolan
Title: Chief Executive Officer/President

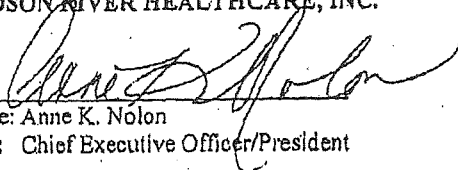
Dated: _____

IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, signed this certificate and caused it to be verified on the dates specified below.

BRIGHTPOINT HEALTH

HUDSON RIVER HEALTHCARE, INC.

By: _____
Name: Paul Vitale
Title: President and Chief Executive Officer

By: 
Name: Anne K. Nolan
Title: Chief Executive Officer/President

Dated: _____

Dated: December 10, 2018

RECEIVED

2018 DEC 11 PM 1:18

ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of the Application of

BRIGHTPOINT HEALTH

And

HUDSON RIVER HEALTHCARE, INC.

For an Order Approving an Agreement and Plan of Merger
under Section 907-b of the Not-For-Profit Corporation Law and
Authorizing the Filing of a Certificate of Merger under Section
904 of the Not-For-Profit Corporation Law

ATTORNEY GENERAL
APPROVAL

AG #: 2018-44

1. By Petition verified on December 7th 2018 by Paul Vitale, the President and Chief Executive Officer of Brightpoint Health ("Brightpoint"), and Anne K. Nolon, the Chief Executive Officer/President of Hudson River HealthCare, Inc. ("HRHCare"; together with Brightpoint, the "Corporations"), the Corporations applied to the Attorney General pursuant to Article 9 of the New York Not-for-Profit Corporation Law for approval of an application to merge.
2. The name of the surviving corporation is Hudson River HealthCare, Inc.
3. Following the merger HRHCare as the surviving organization will continue to operate its existing facilities ("HRHCare Facilities") and will assume operations of the existing Brightpoint facilities with the exception of two (2) mobile vans ("Brightpoint Facilities").
4. There are no immediate changes planned with respect to the operations or staff reductions at either the HRHCare Facilities or the Brightpoint Facilities upon the effective date of the merger.
5. Brightpoint's two (2) mobile vans will be sold to another healthcare provider. The mobile vans are parked in various locations throughout NYC and do not have a consistent daily presence in any area of NYC. As such, the mobile vans have not provided, and were not intended to provide, ongoing or routine care to patients. The purpose of the mobile vans was to provide intermediate care and then refer patients to full service clinics for routine and ongoing care.

Patients that visited the mobile vans have been given notice that Brightpoint will be ceasing operation of the mobile vans.

6. Pursuant to the Agreement and Plan of Merger, during the one (1) year following the effective date of the merger, HRHCare will undertake a review of the combined operations of the HRHCare Facilities and the Brightpoint Facilities to develop a plan for streamlining administrative and clinical operations to produce greater efficiency at lesser costs. Any changes to clinical operations such as closing or consolidating clinic locations will require New York State Department of Health approval. As indicated above and as required by the Agreement and Plan of Merger, there will be no reduction in services, facilities or bed count during this one-year period.

7. As set forth in the petition, Brightpoint agreed to pay Mr. Vitale a transaction award in the amount of \$1,102,500 (equal to 18 months of his base salary) if he remained in continuous employment with Brightpoint through the date of the merger (the "Transaction Payment"). The amount of the Transaction Payment was supported by a reasonableness opinion, which was included as an exhibit to the petition, and was approved by unanimous vote of the Board of Directors of Brightpoint because Mr. Vitale consistently performed at a high level that exceeded the standards and expectations of Brightpoint's employees with respect to growth, development, and mission fulfillment of Brightpoint, as well to recognize the value Mr. Vitale provided to Brightpoint through the merger process.

8. During the Attorney General's review of the merger transaction, concerns regarding the amount of the Transaction Payment were raised and the Attorney General requested that the Transaction Payment be reduced to an amount equal to no more than six (6) months of Mr. Vitale's base salary.

9. After reviewing the Attorney General's position and extensive discussions, Brightpoint and Mr. Vitale agreed to decrease the amount of the Transaction Payment to \$367,500 (the "Modified Transaction Payment") which is equal to six (6) months of Mr. Vitale's base salary.

10. Based on a review of the Petition and its attachments, and the verifications of Paul Vitale, the President and Chief Executive Officer of Brightpoint, and Anne K. Nolon, the Chief Executive Officer/President of HRHCare, the Attorney General has determined that the Corporations have complied with the provisions of Article 9 of the Not-For-Profit Corporation Law applicable to the merger of the not-for-profit corporations, and neither of the constituent corporations nor any third party raised with the Attorney General any objections to the proposed merger, and it appearing to the satisfaction of the Attorney General that the interests of the constituent corporations and the public interest will not be adversely affected by the merger, the Agreement and Plan of Merger is approved and the Certificate of Merger is authorized to be filed with the Department of State.

11. Any charitable gift transferred after the anticipated merger of Brightpoint and HRHCare which is contained in any will or other instrument, in trust or otherwise, made before or after the consolidation, directed to or for the benefit of Brightpoint shall inure to or for the benefit of and be transferred to HRHCare for use by HRHCare to support its charitable purposes, provided HRHCare is at the time of said disposition an organization recognized by the Internal Revenue Service as described in Section 501(c)(3) of the Code; and so far as it is necessary for that purpose HRHCare shall be deemed the successor to Brightpoint, provided, however, that such disposition shall be devoted by the successor corporation to the purposes intended by the testator, donor or grantor.

12. A copy of the Certificate of Merger, as filed with the Department of State shall be sent to the Attorney General's office within 10 days of its filing.

Barbara D. Underwood
Attorney General of the State of New York

By: Sandra Giorno-Tocco
Assistant Attorney General
SANDEA GIORNO-TOCO

Dated: 12/10, 2018



Department
of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

October 9, 2018

Ms. Meghan McNamara
Attorney
Hinman & Straub
121 State Street
Albany, New York 12207

Re: 182036-C
Hudson River Healthcare, Inc.
(Bronx County)
Certify ten (10) extension clinics in Brooklyn,
Bronx, Jamaica, New York, and Staten Island
which are currently operated by Brightpoint
Health

Dear Ms. McNamara:

The Department of Health approves the above application in accordance with the administrative review provisions set forth in 10 NYCRR section 710.1(c)(3).

The Department approves this application with the enclosed condition(s).

In accordance with 10 NYCRR 710.9, upon completion of the project an onsite inspection may be conducted by the Department to assure that all aspects of the project are in accordance with the governing codes and regulations. In order to ensure reimbursement and/or receive a revised operating certificate, you must contact the Regional Office using the "Regional Office" tab in NYSE-CON. The "Regional Office" tab enables applicants to propose pre-opening survey dates and request Department staff to schedule surveys. Additionally, the tab enables entry of applicant contact information and electronic communications during the pre-opening process. If appropriate, the Regional Office will schedule an on-site visit within sixty (60) days of receiving your request. If you have any questions, please contact the following Regional Office:

Metropolitan Area Regional Office
14th Floor
90 Church Street
New York, New York 10007
(212) 417-5550

You are responsible for ensuring that this project complies with all applicable statutes, codes, rules and regulations. Should violations be found when reviewing documents, or at the time of on-site inspections or surveys, you will be required to correct them. Additional costs incurred to address any violations will not be eligible for reimbursement without the prior approval of the Department. Also, in accordance with 10 NYCRR section 710.5, any change in the scope of this project requires prior approval from the Department and may require a new or amended application.

UNI-37

570

CERTIFICATE OF MERGER
OF
BRIGHTPOINT HEALTH
INTO
HUDSON RIVER HEALTHCARE, INC.

Under Section 904 of the New York Not-For-Profit Corporation Law

FILED
DEC 11 PM 1936

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 11 2018
TAX \$
BY: *R*

Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604

Ref# Huds099803

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4812-6403-0029

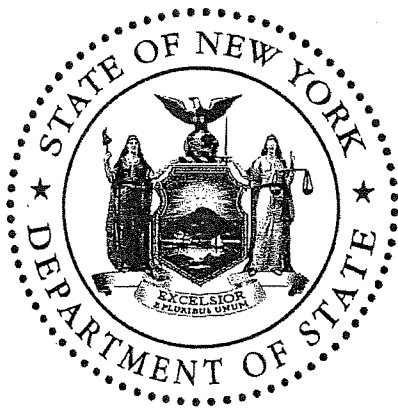
593

Attachment 7

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number 120206000297 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
HUDSON RIVER HEALTHCARE, INC.

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is Hudson River HealthCare, Inc. (the "Corporation"). The name under which the Corporation was formed is Peekskill Ambulatory Health Care Center, Inc.

SECOND: The date of filing of the original Certificate of Incorporation with the Department of State is August 5, 1975. The law under which the Corporation was formed is the New York Not-for-Profit Corporation Law.

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law. The Corporation is a Type B corporation. The Corporation shall remain a Type B corporation.


FOURTH: The amendments effected by this Certificate of Amendment are as follows. Article SIXTH of the Certificate of Incorporation of the Corporation, relating to the service area of the Corporation, is hereby deleted, and Articles SEVENTH through FOURTEENTH are renumbered accordingly.

FIFTH: The Certificate of Amendment was authorized by the unanimous vote of the directors present at a duly called meeting held on January 17, 2012, a quorum being present (and the Corporation having no members within the meaning of Section 601 of the Not-for-Profit Corporation Law).

SIXTH: The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is 1037 Main Street, Peekskill, New York 10566.

* * * *

IN WITNESS WHEREOF, I have signed this certificate and affirm it as true under penalties of perjury on this 17th day of January, 2012.


Name: Alan Steiner
Title: Chairman

NCR-26

120206000297

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
HUDSON RIVER HEALTHCARE, INC.
UNDER SECTION 803 OF THE
NOT-FOR-PROFIT CORPORATION LAW

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1CC
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
FEB -6 2012

TAX \$ _____
BY: *[Signature]* _____

Manatt, Phelps & Phillips, LLP
7 Times Square, 23rd Floor
New York, NY 10036

West

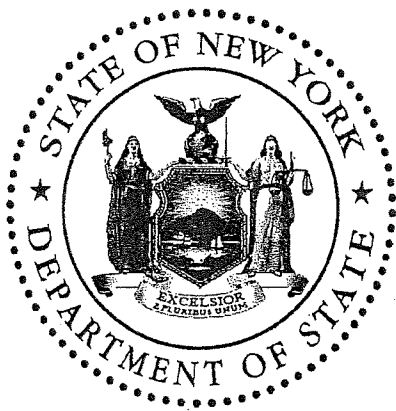
Drawdown

Attachment 8

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number 990108000328 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

F990108000 328

RESTATED

CERTIFICATE OF INCORPORATION

OF

HUDSON RIVER HEALTHCARE, INC.

Pursuant to Section 402
of the Not-For-Profit Corporation Law

The Undersigned, natural persons of the age of nineteen years or over, desiring to form a corporation pursuant to the provisions of the Not-For-Profit Corporation Law of the State of New York, hereby certify as follows:

FIRST: The name of the Corporation is Hudson River HealthCare, Inc. It was incorporated under the laws of New York State on August 5, 1975 under the name Peekskill Area Ambulatory Health Center, Inc.

SECOND: The Certificate of Incorporation is Restated to read as follows:

FIRST: The name of the corporation is Hudson River 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 (hereinafter referred to as "N-PCL") and is a Type B Corporation under N-PCL § 201.

THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

- A. To establish, operate and maintain one or more diagnostic and treatment centers for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and
- B. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof. Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities not otherwise authorized or approved pursuant to N-PCL § 404(a)-(v).

FIFTH: The office of the Corporation in the State of New York is to be located in the City of Peekskill, County of Westchester, State of New York.

SIXTH: The health services area of the corporation shall be the Hudson Valley Region, including Westchester, Putnam, Dutchess, Rockland, Ulster, Sullivan and Orange Counties.

SEVENTH: Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as "I.R.C."), as an organization described in I.R.C. § 501(c)(3) and (ii) contributions to which are deductible under I.R.C. § § 170(c)(2), 2055(a)(2) and 2522(a)(2).

EIGHTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under I.R.C. § 501(c)(3). Except as may otherwise be permitted by I.R.C. § 501(h) or any other provision of the Internal Revenue Code

of 1986, as amended, and the corresponding laws of the State of New York, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

NINTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article THIRD hereof, and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article TENTH.

TENTH: Upon the dissolution of the Corporation, its Board of Directors, after making provisions for the payment of all of the liabilities of the Corporation, shall arrange for either the direct distribution of all of the assets of the Corporation for the tax-exempt purposes of the Corporation (as set forth in Article THIRD hereof), or distribution to one or more organizations that then qualify for exemption under the provisions of I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3), subject to the laws of the State of New York.

ELEVENTH: The names and addresses of the initial directors, until the first annual meeting of the Corporation are:

NAME

ADDRESS

Jeannette J. Phillips

100 Smith Street
Peekskill, New York 10566

Charles F. Harrienger

Peekskill Community Hospital
Crompond Road
Peekskill, New York 10566

Robert B. Polhill

1490 Elm Street
Peekskill, New York 10566

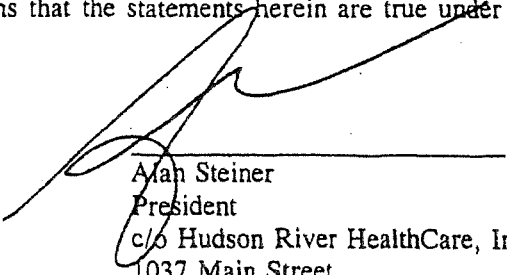
TWELFTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

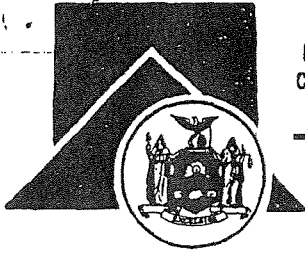
Hudson River HealthCare, Inc.
1037 Main Street
Peekskill, New York 10566

THIRTEENTH: All references herein to "I.R.C." shall be deemed to include both amendments thereto and statutes which succeed such provisions (i.e., the corresponding provisions of future United States Internal Revenue Laws).

FOURTEENTH: This Restatement to the Certificate of Incorporation was authorized by the Board of Directors of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 25 day of August, 1998, and affirms that the statements herein are true under the penalties of perjury.


Alan Steiner
President
c/o Hudson River HealthCare, Inc.
1037 Main Street
Peekskill, NY 10566



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

November 23, 1998

Ms. Anne Kauffman Nolon, M.P.H.
President and CEO
Peekskill Area Health Center, Inc.
1037 Main Street
Peekskill, New York 10566

Re: Restated Certificate of Incorporation of Hudson River HealthCare, Inc.

Dear Ms. Nolon:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of November, 1998, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Hudson River HealthCare, Inc., dated August 25, 1998.

Sincerely,


Karen S. Westervelt
Executive Secretary

RESOLUTION

RESOLVED, that the Public Health Council, on this 20th day of November, 1998, approves the filing of the Restated Certificate of Incorporation of Hudson River Healthcare, Inc. dated August 25, 1998.

I, Peter P. Rosato, JSC., a Justice of the Supreme Court of the State of New York, Ninth Judicial District, hereby approve the foregoing Restated Certificate of Incorporation of Hudson River Healthcare, Inc. and consent that the same be filed.

Dated: December 14, 1998
White Plains, NY


Justice of the Supreme Court
State of New York
Ninth Judicial District
PETER P. ROSATO, JSC

990108000 328

RESTATED
CERTIFICATE OF INCORPORATION
OF
PEEKSKILL AREA HEALTH CENTER
UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

lcc.

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JAN 08 1999
TAX \$
BY: PSZ

West

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Jan 7 12 55 PM '99

FILED BY:
KALKINES, ARKY, ZALL & BERNSTEIN LLP
1675 BROADWAY
NEW YORK, NY 10019

REF
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990108000 345

Attachment 9

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number 990108000316 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

F 990108000 316

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
PEEKSKILL AREA HEALTH CENTER

Under Section 803
of the Not-For-Profit Corporation Law

We, the undersigned being the President and Secretary of the Peekskill Area Health Center ("Corporation") do hereby certify:

- (1) The Corporation was formed under the name "Peekskill Area Ambulatory Health Center, Inc."
- (2) The Certificate of Incorporation was filed by the Department of State on the 5th day of August, 1975. The said Corporation was formed under the Not-For-Profit Corporation Law and the Public Health Law of the State of New York.
- (3) An amendment to the Certificate of Incorporation, which was filed by the Department of State on November 22, 1978, changed the Corporation's name to "Peekskill Area Health Center, Inc." An amendment to the Certificate of Incorporation, which was filed by the Department of State on June 19, 1987, modified the purposes of the Corporation.
- (4) The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-For-Profit Corporation Law and is a corporation under section 201 of said law.

(5) The Certificate of Incorporation is being amended to change the name of the corporation. To accomplish the foregoing paragraph First shall read as follows:

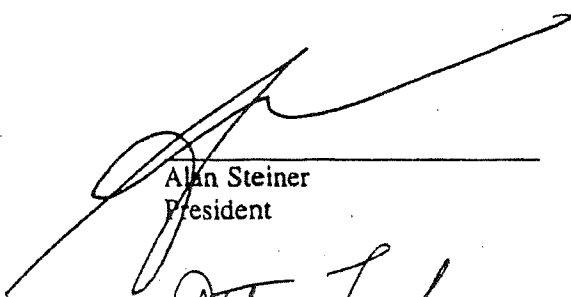
FIRST: The name of the corporation is Hudson River HealthCare, Inc. (hereinafter referred to as the "Corporation").

(6) This amendment to the Certificate of Incorporation was authorized by the Board of Directors of the Corporation.

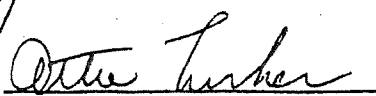
(7) The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is 1037 Main Street, City of Peekskill, Westchester County, New York, 10566, Attention: Office of the President.

IN WITNESS WHEREOF, the undersigned have executed this certificate this 25 day of August, 1998.

It is affirmed that the statements made herein are true under the penalties of perjury.



Alan Steiner
President



Attie Tucker
Secretary

STATE OF NEW YORK)
) ss.:
COUNTY OF West.)

On this 25 day of August, 1998, before me personally came Alan Steier to me known and known to me to be the persons described in and who executed the foregoing Certificate of Amendment of Certificate of Incorporation and they duly acknowledged to me that they severally and independently executed the same.

Marie D. Forsyth
Notary Public

MARIE D. FORSYTH
Notary Public, State of New York
No. 4970345
Qualified in Westchester County
Commission Expires August 13, 1999

STATE OF NEW YORK)
)
COUNTY OF Westchester) ss.:

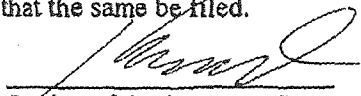
Attie Tucker On this 25 day of August, 1998, before me personally came to me known and known to me to be the persons described in and who executed the foregoing Certificate of Amendment of Certificate of Incorporation and they duly acknowledged to me that they severally and independently executed the same.

Marie D. Forsyth
Notary Public

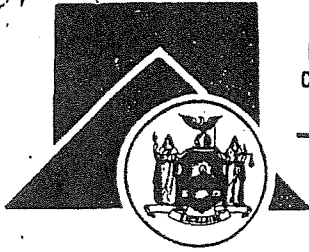
MARIE D. FORSYTH
Notary Public, State of New York
No. 4870345
Qualified in Westchester County
Commission Expires August 13, 1999

HON. KENNETH W. RUDOLPH, a Justice of the Supreme Court of the
I, J.S.C.
State of New York, Ninth Judicial District, hereby approve the foregoing
Certificate of Amendment of Peekskill Area Health Center changing name
to Hudson River Healthcare, Inc. and consent that the same be filed.

Dated: DECEMBER 11, 1998


Justice of the Supreme Court
State of New York
Ninth Judicial District

HON. KENNETH W. RUDOLPH
J.S.C.



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

DEC 1 - 1998
PUBLIC HEALTH COUNCIL

November 23, 1998 .

Ms. Anne Kauffman Nolon, M.P.H.
President and CEO
Peekskill Area Health Center, Inc.
1037 Main Street
Peekskill, New York 10566

Re: Certificate of Amendment of the Certificate of Incorporation of
Peekskill Area Health Center

Dear Ms. Nolon:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of November, 1998, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Peekskill Area Health Center, dated August 25, 1998, hereafter to be known as Hudson River HealthCare, Inc..

Sincerely,

Karen S. Westervelt
Executive Secretary

6

RESOLUTION

RESOLVED, that the Public Health Council, on this 20th day of November, 1998, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Peekskill Area Health Center, Inc. (The "Center") to change the center's name to Hudson River Healthcare, Inc., dated August 25, 1998.

F990108000 316

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
PEEKSKILL AREA HEALTH CENTER
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

ICC

**BILLED
DELANEY – 30**

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 08 1999

TAX \$ _____
BY: *[Signature]*

west

RECEIVED

JAN 7 12 05 PM '99

FILED BY:
KALKINES, ARKY, ZALL & BERNSTEIN LLP
1675 BROADWAY
NEW YORK, NY 10019

REF
DEL01/07/99

8

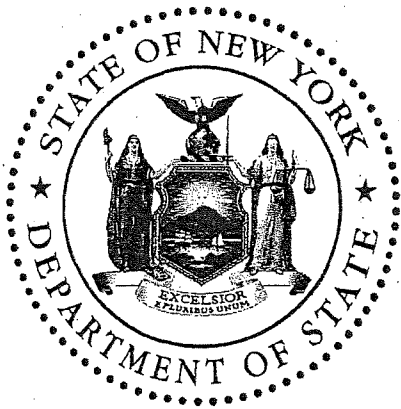
990108000 332

Attachment 10

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number B511350-8 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

8511350



The University of the State of New York

STATE OF NEW YORK:
: SS.:
COUNTY OF ALBANY :

In accordance with the provisions of section 804 of the Not-for-Profit Corporation Law, consent is hereby given to the change of purposes of PEEKSKILL AREA HEALTH CENTER, INC. contained in the annexed certificate of amendment to the certificate of incorporation.

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 8th day of June, 1987.

Gordon M. Ambach
Commissioner of Education

By: *James H. Whitney*

James H. Whitney
Acting Counsel



1

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
PEEKSKILL AREA HEALTH CENTER, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT
CORPORATION LAW

We, the undersigned, being the President and Secretary of
the Peekskill Area Health Center, Inc., do hereby certify:

(1) The name of the corporation is the Peekskill Area Health
Center, Inc. The name under which the corporation was
formed is Peekskill Ambulatory Health Care Center, Inc.

(2) The certificate of incorporation of the Peekskill Area
Health Center, Inc. was filed by the Department of State on
the 5th day of August, 1975. The said corporation was
formed under the Not-For-Profit Corporation Law of the State
of New York.

(3) The Peekskill Area Health Center, 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. The corporation shall
hereafter continue to be a Type B corporation under section
201 of the Not-for-Profit Corporation Law.

(4) Paragraph 3 of the certificate of incorporation of the Peekskill Area Health Center, Inc., which sets forth the purposes of the corporation, is hereby amended by adding the following:


To engage in other activities designed to stabilize and improve the health and lives of elderly and lower income people in the Health Service Area, including the provision of decent, safe and sanitary housing, provided however that nothing stated herein shall authorize the corporation directly or indirectly to engage in any of the activities mentioned in Section 404(b) of the Not-for-Profit Corporation Law.

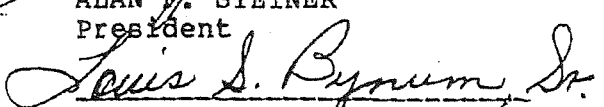
(5) The amendment to the certificate of incorporation of the Peekskill Area Health Center, Inc., was authorized by an affirmative vote of a quorum of the members of the Board of Directors on the 14th day of January, 1986. The corporation is not a membership corporation.

(6) The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against this corporation served upon him as agent of

this corporation is 1037 Main Street, City of Peekskill,
County of Westchester, State of New York 10566.

IN WITNESS WHEREOF, the undersigned have executed this
certificate this 5th day of June, 1987.

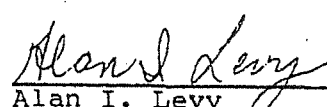

ALAN F. STEINER
President


LOUIS S. BYNUM, SR.
Secretary

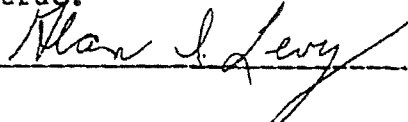
STATE OF NEW YORK)

COUNTY OF WESTCHESTER)


ss.:


Alan I. Levy
Second Vice President.

I, Alan I. Levy being duly sworn, depose
and state that I am the Second Vice-President of Peekskill
Area Health Center, Inc.,
the corporation named in and described in the foregoing
certificate and that I have read the foregoing certificate and
know the contents thereof to be true, except as to the matters
therein stated to be alleged upon information and belief, and as
to those matters I believe them to be true.


Alan I. Levy

Sworn to before me this 5th
day of June 19 87.


Rose Ann DiPietro Kassa
Notary Public

ROSE ANN DIPIETRO KASSA
Notary Public, State of New York
Offd. Westchester County # 4817736
Commission Expires March 30, 1988

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

by:

June 11, 1987

ROBERT ABRAMS, ATTORNEY GEN.,
STATE OF NEW YORK

by: [Signature]
[Signature]

Date: _____

HON. ALVIN B. RUSKIN
J.S.C.

I,

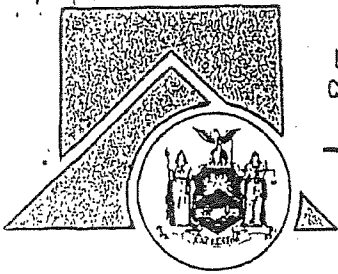
, a Justice

of the Supreme Court of the State of New York for the *North* Judicial District do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of PEEKSKILL AREA HEALTH CENTER, INC. and consent that the same be filed.

Date: *6/12/87*
White Plains NY

Alvin B. Ruskin
JSC
HON. ALVIN B. RUSKIN
J.S.C.

5



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

Morton P. Hyman
Chairman

June 8, 1987


Ms. Rosemarie Noonan, Esq.
Nolon and Nichols
Attorneys at Law
18 Hamilton Place
Tarrytown, NY 10591

Re: Certificate of Amendment
Peekskill Area Health
Center, Inc.

Dear Ms. Noonan:

The proposed certificate of amendment of the certificate of incorporation, of the above referenced corporation, does not require the approval of the Public Health Council for filing with the Department of State, since the certificate neither alters the corporation's purposes under Article 28 of the Public Health Law nor changes its name.

Sincerely,


Karen S. Westervelt
Acting Executive Secretary

6

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

CESAR A. PERALES
Commissioner



DAVID EMIL
Deputy Commissioner
and General Counsel

June 8, 1987

Rosemarie Noonan, Esq.
Nolon & Nichols
Attorneys at Law
18 Hamilton Place
Tarrytown, New York 10591

Re: Peekskill Area Health
Center, Inc.

Dear Ms. Noonan:

This is with respect to the certificate of amendment of the certificate of incorporation of the above-named organization which was forwarded to this Department for review and/or approval. The certificate has been given careful consideration and I have the following comments:

The certificate does not require the approval of this Department. If otherwise in correct form, it will undoubtedly be received for filing by the Secretary of State, provided that all other necessary consents, approvals or waivers are attached. The pertinent language in the certificate reads as follows:

"To engage in other activities designed to stabilize and improve the health and lives of elderly and lower income people in the Health Services Area, including but not limited to, the provision of decent, safe and sanitary housing, provided however that nothing stated herein shall authorize the corporation directly or indirectly to engage in any of the activities mentioned in Section 404(b) of the Not-for-Profit Corporation Law."

This letter is not to be construed as an approval by the State Department of Social Services, or any Office of the Department, but only as a statement that no such approval is necessary for a certificate containing the above-recited language.

Very truly yours,

A handwritten signature in cursive script that reads "Bridget Eadon".

Bridget Eadon
Deputy Counsel
Bureau of Adult
Services Law

BE/dn

4

511350

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

PEEKSKILL AREA HEALTH CENTER, INC.

NFP

PROCESSED 11-22-78

West. Co

L# A 532353-7

1037 Main St. Peekskill Ny.

FILER:
ROSEMARIE NOONAN, ESQ.
18 HAMILTON PLACE
TARRYTOWN NY 10591

Type B

orig Peekskill Ambulatory Health Care Center, Inc.

8-5-75

orig A 251349-12

969176

JUN 13 10 01 AM '87

JB

03711

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED - JUN 19 1987

AMT. OF CHECK \$ 60
FILING FEE \$ 30
TAX \$ _____
COUNTY FEE \$ _____
COPIES \$ _____
CERT \$ _____
REFUND \$ 20
SPEC HANDLES \$ 10

BY: [Signature]
- West
Type B

JUN 13 10 01 AM '87

Attachment 11

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number A532303-7 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF THE PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC., UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW.

1. The name of the corporation is the Peekskill Ambulatory Health Care Center, Inc. This name has never been changed to date.

2. The date of the filing of the certificate of incorporation in the office of the Secretary of State of the State of New York, is August 5, 1975, and the Certificate of Incorporation was filed under Section 402 of the Not-For-Profit Corporation Law.

3. The corporation is a corporation defined in Section 102(a) (5) of the Not-For-Profit Corporation Law; the corporation is a Type B Corporation under Section 201 of the Not-For-Profit Corporation Law; the corporation purposes are not changed hereby.

4. The post office address within or without the State to which the Secretary of State shall mail a copy of any notice required by law is 1037 Main Street, City of Peekskill, County of Westchester, State of New York.

5. The Certificate of Incorporation is amended by changing the name of said Corporation to Peekskill Area Health Center, Inc.

6. The undersigned have been authorized to execute and file this Certificate by the unanimous vote of a quorum of the due notice pursuant to Section 605 of the Not-For-Profit Corporation Law, as more fully appears by the Affidavit of the undersigned, hereto annexed.

7. Prior delivery to the Department of State for filing, all approvals or consents required by law, will be endorsed upon or annexed to this Certificate.

1

8. This change has been submitted for approval to the Public Health Counsel and the State Education Department.

IN WITNESS WHEREOF, the undersigned have made, subscribed and acknowledged this Certificate the 12th day of April, 1978.

Legal mailing address: 1037 Main Street, Peekskill, New York.

Rev. Dr. Edward W. Castner
REV. DR. EDWARD W. CASTNER,
President

Louis Sinclair Bynum
LOUIS SINCLAIR BYNUM,
Secretary

On the 12th day of April, 1978, before me personally came REV. DR. EDWARD W. CASTNER, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

ALAN F. STEINER
NOTARY PUBLIC, State of New York
No. 4507473
Qualified in Putnam County
Commission Expires May 30, 1979

Alan F. Steiner

On the 12th day of April, 1978, before me personally came LOUIS SINCLAIR BYNUM, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

ALAN F. STEINER
NOTARY PUBLIC, State of New York
No. 4507473
Qualified in Putnam County
Commission Expires March 30, 1979

Alan F. Steiner

3

REV. DR. EDWARD W. CASTNER and LOUIS SINCLAIR BYNUM,
being duly sworn, deposes and say, and each for himself, deposes
and says that REV. DR. EDWARD W. CASTNER is the President and
LOUIS SINCLAIR BYNUM is Secretary of the Peekskill
Ambulatory Health Care Center, Inc., the Corporation described
in the foregoing Certificate, that a Special Meeting of members
of the Corporation was held on the 21st day of February, 1978,
upon notice pursuant to Section 605 of the Not-for-Profit
Corporation Law of the State of New York; that a quorum of the
members of the Corporation were present in person or by proxy at
said meeting; and that at said meeting the deponents were authorized
to execute and file the foregoing Certificate by the unanimous
vote of all the members of the Corporation present at said
meeting.

Rev. Dr. Edward W. Castner
REV. DR. EDWARD W. CASTNER,
President

Louis Sinclair Bynum
LOUIS SINCLAIR BYNUM
Secretary

Sworn to before me on April 12, 1978

Alan F. Steiner

ALAN F. STEINER
NOTARY PUBLIC, State of New York
No. 4502277
Qualified in Putnam County
Commission Expires March 30, 1979

B

The foregoing Certificate of Amendment of the Certificate
of Incorporation of the Peekskill Ambulatory Health Care
Center, Inc., is hereby approved.

White Plains, N.Y.
September 8, 1978

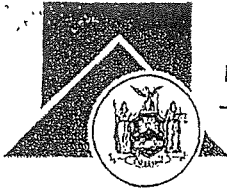
HON. William A. Walsh
Justice of the Supreme Court
of the 9th ~~10th~~ Judicial
District of the State of New
York.

New York, New York
September 5, 1978

THE UNDER SIGNED
OFFICER OF THE
OFFICE OF JUSTICE
ADMINISTRATION
STATUTORY NOTICE
COUNTY CLERK
Attorney General
State of New York

Bernard Bowen

5-A



May 29, 1978

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 26th day of May, 1978, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of the Peekskill Area Ambulatory Health Care Center, Inc. is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS
Secretary

Sent to: Alan Labwohl-Steiner, Esq.
Candee and Hilpert
220 Tate Avenue
Buchanan, New York 10511

cc: Mr. Carter R. Perry, Director
Peekskill Ambulatory Health Care Center
1037 Main Street
Peekskill, New York 10566

RECEIVED MAY 31 1978

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
BLONEVA P. BOND
GORDON E. BROWN
JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST
Robert H. Randles, M.D.

MORTON P. HYMAN
MSGR. CHARLES J. FAHEY
W. KENNETH RILAND, D.O.
JEANNE E. JONAS
Mary C. McLaughlin, M.D.
Robert J. Collins, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
KENNETH W. WOODWARD, M.D.
COMMISSIONER OF HEALTH
ROBERT F. WHALEN, M.D.
EX OFFICIO

NOTICE OF ENTRY

PLEASE TAKE NOTICE THAT THE WITHIN IS A (CERTIFIED) COPY OF A ...

Yours, etc.,

for Office and Post Office Address

for

NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE THAT AN ORDER ...

THE WITHIN IS A TRUE COPY WILL BE PRESENTED ...

TO JUDGES OF THE WITHIN NAMED COURT, AT

day of 19 M.

Yours, etc.,

for Office and Post Office Address

for

Index No. Year 19

A532303

-7

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC., UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW.

STATE OF NEW YORK DEPARTMENT OF STATE TAX \$ none FILING FEE \$ 30

NOV 22 1978

Handwritten signature

Secretary of State

CANDEE & HILPERT

Attorneys for Office and Post Office Address, Telephone

220 TATE AVENUE BUCHANAN, NEW YORK 10511 914:737-6038 914:739-8289

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Handwritten notes: 11/15/78, Typ B, 125 Kingston Ave, Peekskill, NY, 10570, 11/22/78, 11/24/78, 11/25/78, 11/26/78, 11/27/78, 11/28/78, 11/29/78, 11/30/78, 12/1/78, 12/2/78, 12/3/78, 12/4/78, 12/5/78, 12/6/78, 12/7/78, 12/8/78, 12/9/78, 12/10/78, 12/11/78, 12/12/78, 12/13/78, 12/14/78, 12/15/78, 12/16/78, 12/17/78, 12/18/78, 12/19/78, 12/20/78, 12/21/78, 12/22/78, 12/23/78, 12/24/78, 12/25/78, 12/26/78, 12/27/78, 12/28/78, 12/29/78, 12/30/78, 1/1/79, 1/2/79, 1/3/79, 1/4/79, 1/5/79, 1/6/79, 1/7/79, 1/8/79, 1/9/79, 1/10/79, 1/11/79, 1/12/79, 1/13/79, 1/14/79, 1/15/79, 1/16/79, 1/17/79, 1/18/79, 1/19/79, 1/20/79, 1/21/79, 1/22/79, 1/23/79, 1/24/79, 1/25/79, 1/26/79, 1/27/79, 1/28/79, 1/29/79, 1/30/79, 1/31/79, 2/1/79, 2/2/79, 2/3/79, 2/4/79, 2/5/79, 2/6/79, 2/7/79, 2/8/79, 2/9/79, 2/10/79, 2/11/79, 2/12/79, 2/13/79, 2/14/79, 2/15/79, 2/16/79, 2/17/79, 2/18/79, 2/19/79, 2/20/79, 2/21/79, 2/22/79, 2/23/79, 2/24/79, 2/25/79, 2/26/79, 2/27/79, 2/28/79, 2/29/79, 2/30/79, 3/1/79, 3/2/79, 3/3/79, 3/4/79, 3/5/79, 3/6/79, 3/7/79, 3/8/79, 3/9/79, 3/10/79, 3/11/79, 3/12/79, 3/13/79, 3/14/79, 3/15/79, 3/16/79, 3/17/79, 3/18/79, 3/19/79, 3/20/79, 3/21/79, 3/22/79, 3/23/79, 3/24/79, 3/25/79, 3/26/79, 3/27/79, 3/28/79, 3/29/79, 3/30/79, 3/31/79, 4/1/79, 4/2/79, 4/3/79, 4/4/79, 4/5/79, 4/6/79, 4/7/79, 4/8/79, 4/9/79, 4/10/79, 4/11/79, 4/12/79, 4/13/79, 4/14/79, 4/15/79, 4/16/79, 4/17/79, 4/18/79, 4/19/79, 4/20/79, 4/21/79, 4/22/79, 4/23/79, 4/24/79, 4/25/79, 4/26/79, 4/27/79, 4/28/79, 4/29/79, 4/30/79, 5/1/79, 5/2/79, 5/3/79, 5/4/79, 5/5/79, 5/6/79, 5/7/79, 5/8/79, 5/9/79, 5/10/79, 5/11/79, 5/12/79, 5/13/79, 5/14/79, 5/15/79, 5/16/79, 5/17/79, 5/18/79, 5/19/79, 5/20/79, 5/21/79, 5/22/79, 5/23/79, 5/24/79, 5/25/79, 5/26/79, 5/27/79, 5/28/79, 5/29/79, 5/30/79, 5/31/79, 6/1/79, 6/2/79, 6/3/79, 6/4/79, 6/5/79, 6/6/79, 6/7/79, 6/8/79, 6/9/79, 6/10/79, 6/11/79, 6/12/79, 6/13/79, 6/14/79, 6/15/79, 6/16/79, 6/17/79, 6/18/79, 6/19/79, 6/20/79, 6/21/79, 6/22/79, 6/23/79, 6/24/79, 6/25/79, 6/26/79, 6/27/79, 6/28/79, 6/29/79, 6/30/79, 7/1/79, 7/2/79, 7/3/79, 7/4/79, 7/5/79, 7/6/79, 7/7/79, 7/8/79, 7/9/79, 7/10/79, 7/11/79, 7/12/79, 7/13/79, 7/14/79, 7/15/79, 7/16/79, 7/17/79, 7/18/79, 7/19/79, 7/20/79, 7/21/79, 7/22/79, 7/23/79, 7/24/79, 7/25/79, 7/26/79, 7/27/79, 7/28/79, 7/29/79, 7/30/79, 7/31/79, 8/1/79, 8/2/79, 8/3/79, 8/4/79, 8/5/79, 8/6/79, 8/7/79, 8/8/79, 8/9/79, 8/10/79, 8/11/79, 8/12/79, 8/13/79, 8/14/79, 8/15/79, 8/16/79, 8/17/79, 8/18/79, 8/19/79, 8/20/79, 8/21/79, 8/22/79, 8/23/79, 8/24/79, 8/25/79, 8/26/79, 8/27/79, 8/28/79, 8/29/79, 8/30/79, 8/31/79, 9/1/79, 9/2/79, 9/3/79, 9/4/79, 9/5/79, 9/6/79, 9/7/79, 9/8/79, 9/9/79, 9/10/79, 9/11/79, 9/12/79, 9/13/79, 9/14/79, 9/15/79, 9/16/79, 9/17/79, 9/18/79, 9/19/79, 9/20/79, 9/21/79, 9/22/79, 9/23/79, 9/24/79, 9/25/79, 9/26/79, 9/27/79, 9/28/79, 9/29/79, 9/30/79, 10/1/79, 10/2/79, 10/3/79, 10/4/79, 10/5/79, 10/6/79, 10/7/79, 10/8/79, 10/9/79, 10/10/79, 10/11/79, 10/12/79, 10/13/79, 10/14/79, 10/15/79, 10/16/79, 10/17/79, 10/18/79, 10/19/79, 10/20/79, 10/21/79, 10/22/79, 10/23/79, 10/24/79, 10/25/79, 10/26/79, 10/27/79, 10/28/79, 10/29/79, 10/30/79, 10/31/79, 11/1/79, 11/2/79, 11/3/79, 11/4/79, 11/5/79, 11/6/79, 11/7/79, 11/8/79, 11/9/79, 11/10/79, 11/11/79, 11/12/79, 11/13/79, 11/14/79, 11/15/79, 11/16/79, 11/17/79, 11/18/79, 11/19/79, 11/20/79, 11/21/79, 11/22/79, 11/23/79, 11/24/79, 11/25/79, 11/26/79, 11/27/79, 11/28/79, 11/29/79, 11/30/79, 12/1/79, 12/2/79, 12/3/79, 12/4/79, 12/5/79, 12/6/79, 12/7/79, 12/8/79, 12/9/79, 12/10/79, 12/11/79, 12/12/79, 12/13/79, 12/14/79, 12/15/79, 12/16/79, 12/17/79, 12/18/79, 12/19/79, 12/20/79, 12/21/79, 12/22/79, 12/23/79, 12/24/79, 12/25/79, 12/26/79, 12/27/79, 12/28/79, 12/29/79, 12/30/79, 12/31/79.

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated, Yours, etc.,

Attorney for Office and Post Office Address

To Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19 at M.

Dated, Yours, etc.,

Attorney for Office and Post Office Address

To Attorney(s) for

Index No. Year 19

A532303

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC., UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW.

STATE OF NEW YORK DEPARTMENT OF STATE TAX \$ none FILING FEE \$ 35

NOV 22 1978

Handwritten signature

Secretary of State

CANDEE & HILPERT

Attorney for Office and Post Office Address, Telephone

220 TATE AVENUE BUCHANAN, NEW YORK 10511 914:737-6038 914:739-8289

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Handwritten notes: 7, Received, 11/25/78, Type B, not paid, Bruce L. Bogerman, Esq., Peekskill, NY, new memo, attached, pitted

Attachment 12

STATE OF NEW YORK
DEPARTMENT OF STATE

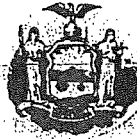
I hereby certify that the annexed copy for SUN RIVER HEALTH, INC., File Number A251349-12 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 29, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



The University of the State of New York

251349

9

STATE OF NEW YORK :

SS.

COUNTY OF ALBANY :

Pursuant to the provisions of Section 216 of the Education Law and Section 404, subdivision (d) of the Not-For-Profit Corporation Law, consent is hereby given to the filing of the annexed certificate of incorporation of

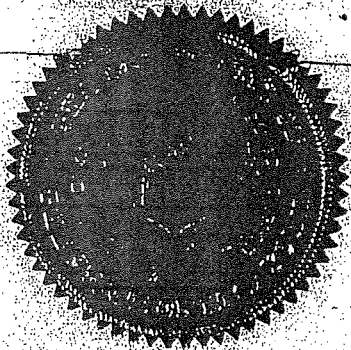
PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC.

as a not-for-profit corporation.

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon the conditions set forth on the reverse side of this form.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 18th day of June, 1975.



Ewald B. Nyquist
Commissioner of Education

By: [Signature]
John W. Jehu
Associate Counsel

This consent to filing is granted with the understanding that nothing contained in the annexed certificate of incorporation shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 5 of Section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to use any title restricted by such law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services.

This consent to filing is granted with the further understanding that nothing contained in the certificate of incorporation shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to Section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a private business school in accordance with the provisions of Section 5002 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents pursuant to the provisions of Section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of Section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to Section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

CERTIFICATE OF INCORPORATION

OF

PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC.

Pursuant to Section 402 of the
Not-For-Profit Corporation Law

The Undersigned, natural persons of the age of nineteen years or over, desiring to form a corporation pursuant to the provisions of the Not-For-Profit Corporation Law of the State of New York, hereby certify as follows:

FIRST: The name of the corporation is: PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC., hereinafter sometimes called "the Corporation".

SECOND: That it 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. That its purposes are not for pecuniary profit or financial gain and no part of the income of the Corporation shall inure to the benefit of any member, director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no member, 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.

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THIRD: The Corporation seeks to carry out the public objective of providing certain specified medical services, and to that end the purposes for which the Corporation is formed are:

To establish and maintain in the City of Peekskill, County of Westchester, an independent, out of hospital facility where qualified persons may undertake the examination of, care, counseling, treatment and nursing for persons in need thereof. To refer such persons where appropriate to licensed physicians and other licensed facilities. To disseminate educational and informational material on health care and preventive medicine.

To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-For-Profit Corporation Law.

FOURTH: Subject to the limitations prescribed by the statute and in furtherance of its corporate purposes, the Corporation shall have the following powers, which shall not be deemed to be exclusive of any other powers provided by law:

To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated; to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its property, or any interest therein, wherever situated; to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities.

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To make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the Corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated; to lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

To be a member, associate or manager of other non-profit activities or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

To exercise such powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred or conducive to the attainment of the purposes of the Corporation.

In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 202 N-PCL, together with the power to solicit grants and contributions for corporate purposes.


Nothing herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in the Not-For-Profit Corporations Law, Section 404(b)-(p) or Executive Law, Section 757.

FIFTH: The office of the Corporation in the State of New York is to be located in the City of Peekskill, County of Westchester, State of New York.

SIXTH: The territory in which the operations of the Corporation are principally to be conducted is the County of Westchester, State of New York, but the Corporation may do any one or more of the acts herein set forth as its purposes within or without the State of New York, the United States of America or in any part of the world.

SEVENTH: Nothing contained in the Certificate of Incorporation shall authorize the Company to carry on propaganda or otherwise attempt to influence legislations, or to participate in, or intervene in (including the publishing or distributing of statements), and political campaign on behalf of any candidate for public office.

EIGHTH: The names and addresses of the initial directors, until the first annual meeting of the Corporation are:

<u>NAME</u>	<u>ADDRESS</u>
Jeannette J. Phillips	100 Smith Street Peekskill, New York 10566
 Charles F. Harrienger	Peekskill Community Hospital Compond Road Peekskill, New York 10566
Robert B. Polhill	1490 Elm Street Peekskill, New York 10566

NINTH: The address within the State to which the Secretary of State shall mail a copy of any notice required by law is c/o Bruce L. Roseman, Esq. 45 Belding Avenue, County of Westchester and State of New York.

TENTH: Notwithstanding any other provision of this Certificate, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation except from Federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or (b) by a

4-6

corporation, contributions to which are deductible under Section 170 (c) (2) of such Code. Furthermore, for those periods (if any) during which the Corporation is a private foundation within the meaning of Section 509 of such Code, the income of the Corporation shall be distributed at such time and in such manner as not to subject the Corporation to tax under Section 4942 of such Code, and the Corporation shall not engage in any act of self-dealing (as defined in Section 4941 (d) of such Code), shall not retain any excess business holdings (as defined in Section 4943 (c) of such code, shall not make any investments in such manner as to be subject to tax under Section 4944 of such Code, and shall not make any taxable expenditures (as defined in Section 4945 (d) of such Code). In the event of dissolution, all of the remaining assets and property of the Corporation shall after necessary expenses thereof be distributed to such organizations as shall qualify under Section 501 (c) 3 of the Internal Revenue Code of 1954 as amended, subject to an order of a Justice of the Supreme Court of the State of New York. All of the foregoing references to sections of the Internal Revenue Code of 1954 are intended to apply to corresponding provisions of any future United States Internal Revenue Law.

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ELEVENTH: All approvals required by the Not-For-Profit Corporation Law are annexed hereto.

IN WITNESS WHEREOF, the undersigned have signed and acknowledged this certificate this 5th day of

April, 1974.

NAME

ADDRESS

Jeanette J. Phillips
Jeanette J. Phillips

100 Smith Street
Peekskill, New York 10566

Charles F. Harrieger
Charles F. Harrieger

Peekskill Community Hospital
Crompond Road
Peekskill, New York 10566

Robert B. Polhill
Robert B. Polhill

1490 Elm Street
Peekskill, New York 10566

Handwritten mark

STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

On this 5th day of April, 1974 before me personally came Jeannette J. Phillips to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation and she duly acknowledged to me that she executed the same.

DOROTHY LOUISE RYDER
Notary Public, State of New York
No. 60-8728815
Qualified in Westchester County
Term Expires March 30, 1978

Dorothy Louise Ryder
Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

On this 5th day of April, 1974 before me personall came Charles F. Harrienger to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation and he duly acknowledged to me that he executed the same.

DOROTHY LOUISE RYDER
Notary Public, State of New York
No. 60-8728815
Qualified in Westchester County
Term Expires March 30, 1978

Dorothy Louise Ryder
Notary Public

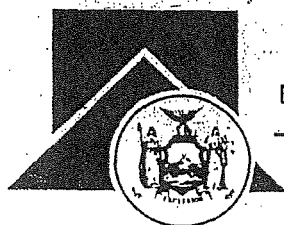
STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

On this 5th day of April, 1974 before me personally came Robert B. Polhill, to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation and he duly acknowledged to me that he executed the same.

DOROTHY LOUISE RYDER
Notary Public, State of New York
No. 60-8728815
Qualified in Westchester County
Term Expires March 30, 1978

Dorothy Louise Ryder
Notary Public

9



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

May 5, 1975



20548

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after due inquiry and investigation at a meeting of the Public Health Council held on the 2nd day of May, 1975, I hereby certify that the Certificate of Incorporation of Peekskill Ambulatory Health Care Center, Inc. is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS
Secretary

Sent to: Mr. Carter R. Perry, Director
Peekskill Area Ambulatory
Health Care Center
1037 Main Street
Peekskill, New York 10566

Bruce L. Bozeman, Esq.
45 Balding Avenue
White Plains, New York 10603

COUNCIL

NORMAN S. MOORE, M.D.
Eduard H. ALTMAN, M.D.
GEORGE BAEHR, M.D.
BLONEVA R. BOND
DETLEV BRONK, Ph. D.
GORDON E. BROWN
Verna G. Cave, M.D.

MORTON P. HYMAN
GERALD B. MANLEY, M.D.
GEORGE METCALF
JAMES F. X. O'ROURKE, M.D.
W. KENNETH RILAND, D.O.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
Robert P. White, M.D.
HOLLIS INGRAHAM, M.D.
EX OFFICIO

EX OFFICIO

The undersigned has no objection to judicial approval being granted. Notice waived.

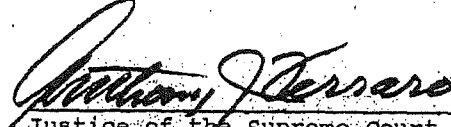
Louis J. Lefkowitz
Attorney General
State of New York

Date:

By _____

HON. ANTHONY J. FERRARO, JUSTICE, a Justice of the Supreme Court of the State of New York, *Ninth* Judicial District, do hereby approve the foregoing Certificate of Incorporation of PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC. and consent that the same be filed:

Dated: *7/23/75.*



Justice of the Supreme Court
of the State of New York

HON. ANTHONY J. FERRARO, JUSTICE

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: *JULY 16, 1975*

LOUIS J. LEFKOWITZ
Attorney General

By 
Assistant Attorney General

Proposed Incorporation of
Re: Peekskill Ambulatory
Health Care Center, Inc.

Notice of Application Waived
(This is not to be deemed an
approval on behalf of any
Department or Agency of the
State of New York, nor an
authorization of activities
otherwise limited by law.)

Dated: _____

LOUIS J. LEFKOWITZ
Attorney General

By _____

Assistant Attorney General



251349

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J Type B
Public Health Council
Ed Council

CERTIFICATE OF INCORPORATION

OF

PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC.

7/28/75
[Signature]

Bruce L. Bozeman, Esq.
45 Belding Avenue
White Plains, New York 10603

STATE OF NEW YORK
DEPARTMENT OF STATE
TAX \$: none
FILING FEE \$: 5.00
FILED AUG 5 - 1975

[Signature]
Secretary of State

P. G. West
Type B

12
[Signature]

Attachment 13

**AMENDED AND RESTATED BY-LAWS OF
HUDSON RIVER HEALTHCARE, INC. (DOING BUSINESS AS SUN RIVER HEALTH)**

ADOPTED: MAY 9, 1989

REVISED: APRIL 12, 1990

REVISED: APRIL 12, 1994

REVISED: NOVEMBER 19, 1996

REVISED: JUNE 16, 1998

REVISED: JANUARY 27, 2003

REVISED: APRIL 10, 2012

REVISED: MARCH 27, 2015

REVISED: APRIL 3, 2018

REVISED: DECEMBER 13, 2018

REVISED: APRIL 13, 2021

**AMENDED AND RESTATED BY-LAWS OF
HUDSON RIVER HEALTHCARE, INC. (DOING BUSINESS AS SUN RIVER HEALTH)**

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Amendment of By-Laws
Indemnification
Dissolution

**AMENDED AND RESTATED BY-LAWS OF
HUDSON RIVER HEALTHCARE, INC. (DOING BUSINESS AS SUN RIVER HEALTH)**

ARTICLE I

Name and Service Area; Members

1. The name of this corporation, organized under the Not-for-Profit Corporation Law of the State of New York, is "**Hudson River HealthCare, Inc.**" (the "Corporation" or "Center"). The Corporation currently does business under the name "Sun River Health" (the "Assumed Name"). The Corporation is taking steps to change its legal name to the Assumed Name. This name change will be effective upon the filing of a Certificate of Amendment to the Corporation's Certificate of Incorporation.
2. The service areas covered by the operations of the Corporation shall be Westchester, Putnam, Dutchess, Rockland, Ulster, Sullivan, Columbia, Nassau, Suffolk, Orange, New York, Kings, Queens, Bronx and Richmond Counties in the State of New York. Such areas shall hereinafter be referred to as the "Health Services Area."
3. The Corporation shall not have corporate or other "members" as defined under State law. The term "member," as used in these By-Laws, shall refer solely to members of the Board of Directors ("Directors") and/or members of Board committees.

ARTICLE II

Mission: To increase access to comprehensive primary and preventive health care and to improve the health status of our community, especially for the underserved and vulnerable.

Subject to the Corporation's Certificate of Incorporation (as amended or restated from time to time, the "Certificate of Incorporation"), the purposes for which the Corporation is organized are:

1. To provide high quality comprehensive primary health care services to the residents of the Health Service Area regardless of insurance status or the ability of any individual or family to pay.
2. To promote accessibility of health services by providing health services at reasonable cost, in a location easily available to the target population and in a manner that is sensitive and respectful of the needs of the underserved.
3. To improve the health status of community residents, emphasizing prevention and health maintenance by employing appropriate staff who will render quality health services including health education, counseling and guidance to meet the needs of the community and special populations.
4. To effectively work with other providers and agencies in the community for referral

purposes to assure that patients' health needs are adequately addressed.

5. To engage in other activities designed to stabilize and improve the health and lives of elderly, lower income and homeless people in the Health Services Area, including, but not limited to, the provision of decent, safe and sanitary housing, provided, however, that nothing stated herein shall authorize the corporation directly or indirectly to engage in any of the activities mentioned in Section 404(b) of the Not-for-Profit Corporation Law.
6. To engage in any other activities authorized by the Certificate of Incorporation.

ARTICLE III Board of Directors

1. Authority
The Board of Directors of the Corporation (referred to hereinafter as the "Board of Directors" or the "Board") has authority for the establishment of policy in the conduct of the Corporation and specifically as stated in Article V hereof, Powers and Duties of the Board of Directors.
2. Size
The Corporation shall have a Board of Directors of not less than nine (9) nor greater than twenty-five (25) members. The entire Board of Directors shall be the number of Directors that were elected as of the most recent elections. The Directors shall be designated by the Board of Directors in each year before the Annual Meeting of the Corporation, provided that only those Directors whose terms have expired or will expire (which shall be approximately one-third of the entire Board of Directors) shall be eligible for reelection or replacement each year at the Annual Meeting for a new three (3) year term or until their successors are elected, subject to procedures hereinafter set forth in Article VII, Section 8 of these By-Laws and in accordance with Section 3 of this Article III. In the event of an increase or decrease in the number of Directors, additional Directors may be elected to terms of one (1), two (2), or three (3) years as may be necessary to ensure that the number of Directors in each staggered term remains as equal in number as possible.
3. Composition
 - a. The majority of the Directors shall be individuals who are served by the Center and who, as a group, represent the individuals being served in terms of demographic factors such as race, ethnicity and sex ("Consumers"). The Center may also consider Consumer members' representation in terms of other factors such as socioeconomic status, age, and other relevant demographic factors. Consumers must be current registered patients of the Center and must have accessed the Center in the past twenty-four (24) months to receive at least one or more service(s) that generated a Center visit, where both the service(s) and the site at which the service(s) was received are within Corporation's federally-approved scope of project. A legal guardian of a Consumer who is a dependent child or adult, a person who has legal authority to make health care decisions on

behalf of a patient, or a legal sponsor of an immigrant, may also be considered a Consumer.

- b. No more than one-half of the remaining non-Consumer members of the Board will be individuals who derive more than 10 percent of their annual income from the health care industry.
 - c. The remaining non-Consumer members of the Board shall be representative of the Health Services Area, either by living or working in the Health Services Area, or by having a demonstrable connection to the Health Services Area, and shall be selected for their expertise in community affairs, government, finance and banking, legal affairs, trade unions, and the commercial and industrial concerns, health care, or social service agencies within the community.
 - d. No member of the Board shall be an employee or contractor of the Center or spouse or child, parent, brother or sister, by blood, adoption, or marriage, of such an employee or contractor.
 - e. In no event shall Directors nominated by a third party(ies) serve as the Board Chair, constitute a majority of the Board or constitute a majority of the non-Consumer members of the Board.
4. Vacancies
Vacancies occurring on the Board of Directors, including those caused by any increase in the number of Directors or for any other reason, may be filled for the unexpired terms by the Board of Directors as set forth in Article VII, Section 8 of these By-Laws.
5. Honorary Directors
Honorary Directors may be elected for life, or for such term as the Board of Directors sees fit, by the Board of Directors upon a majority vote of those present at any regular meeting of the Board of Directors. Any person who has rendered distinguished service in the work or development of the Corporation may be made an Honorary Director by such a vote of the Board. Honorary Directors shall not have voting rights or legal status as Directors of the Corporation, but upon request and approval by the Board, Honorary Directors may attend Board meetings and take part in deliberations of the Board.
6. Removal from Office
Any member of the Board of Directors may be removed for cause by the majority vote of the Directors then in office. "For Cause" includes, but is not limited to, misfeasance, nonfeasance, or three (3) unexcused absences from duly held Board meetings in any one year. A decision to remove a Director for cause is at the discretion of the Board of Directors.
7. Resignation of Director
Any Director may resign at any time by delivering a written resignation to the Chair of the Board of Directors. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof.

ARTICLE IV Meetings of the Corporation

1. Meetings of the Board of Directors shall be held at the principal office or other locations of the Corporation or at such other place or places as may from time to time be determined by the Chair of the Board. At a minimum, the Board shall hold a regular monthly meeting at which a quorum exists. Regular meetings of the Board shall be held monthly on the second Tuesday, excluding holidays and subject to exception for good cause, at such time and place as is fixed by resolution of the Board, or, in the absence of such resolution, determined by the Chair of the Board who shall advise the Board on such locations and times. All members of the Board of Directors shall be given written or electronic notice not less than three (3) days before the meeting. Minutes shall be kept of all meetings that verify and document the Board's functioning. Minutes are approved by vote of the Board at the next monthly Board meeting. Once approved, a copy of all the minutes will be filed in hardcopy format in the Administrative Offices of the Corporation. A backup copy will be filed offsite in electronic format. Perpetual retention is required.
2. A Director may participate in a meeting of the Board or a committee of the Board by telephone or by any other means of communication so long as all Directors who are participating in the meeting can participate fully in all matters before the Board, including, without limitation, the ability to propose, object to and vote upon a specific action to be taken by the Board or committee.
3. An organizational meeting of the Board of Directors will be held each year in conjunction with the Annual Meeting of the Board for the purpose of electing officers and transacting such other business as may properly come before the Board.
4. Special Meetings of the Board of Directors may be called at any time by the Chair or a Vice-Chair. Special Meetings shall also be called by the Chair or a Vice-Chair upon written request from one-third of the existing Directors, which said request shall specify the purpose of the proposed Special Meeting.
5. The Annual Meeting of the Corporation shall be held in the last quarter of the Corporation's fiscal year as set forth in Article XI, Section 6, and notice shall be provided in accordance with Section 1 of this Article IV.
6. One-third (1/3) of the Directors in office shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at any meeting at which there is a quorum shall be the acts of the Board, except as otherwise required by these By-Laws, the Corporation's Articles of Incorporation, or the laws of the State of New York. If all of the Directors shall individually and/or collectively consent in writing or electronically to any action, such action shall be as valid as if authorized at a meeting of the Board.
7. Directors may be reimbursed for actual, reasonable expenses of attendance at meetings of the Board. Directors who have an annual family income below \$10,000 or who are single and have incomes below \$7,000 may be reimbursed for wages lost by reason of participating in Board activities.

8. The Order of Business at all Regular Meetings of the Board of Directors shall be as follows:
 - a. Call to Order
 - b. Approval of Minutes
 - c. Reports of Committees
 - d. Report of the Chief Executive Officer
 - e. Executive Reports
 - f. Old Business
 - g. New Business
 - h. Adjournment

9. The Board of Directors may conduct all or any part of a meeting in Executive Session for such purposes as it deems necessary, including, but not limited to, discussion of litigation (actual or threatened), evaluation of personnel or discussion of personnel issues, or receipt of the results of an annual audit. The Chair may invite such other persons as he/she deems appropriate to attend an Executive Session provided that in the event that the Chair wishes to invite a member of the staff personnel of the Corporation, he/she will direct such invitation through the Chief Executive Officer. The public and staff personnel are excluded from Executive Sessions except when invited to give testimony or advice subject to the foregoing sentence, after which they will be excused. In addition to excluding the public and staff personnel from Executive Sessions, the Chair shall have the right to exclude the public and/or staff personnel from any regular or special meeting of the Board in his or her sole discretion.

10. Unless specifically set forth in these By-Laws, the right of a Director to vote and all of his/her other rights, titles and/or interests in the Corporation shall cease upon the termination of his/her membership on the Board of Directors.

11. No individual Director shall act for the Board of Directors except as may be specifically authorized by the Board. Directors shall refrain from giving personal advice or directives to any staff personnel of the Corporation and shall direct any such advice or directive to the Chief Executive Officer.

12. The Board of Directors shall establish, adopt, and periodically update a written corporate policy that establishes procedures for disclosing and addressing conflicts of interest or the appearance of conflicts of interest by Directors, officers, employees, consultants, and/or agents who provide services or furnish goods to the Corporation, and for maintaining confidentiality of the Corporation's proprietary information.

ARTICLE V

Powers and Duties of the Board of Directors

1. The Board of Directors shall establish policy for the conduct of the Corporation and shall approve programs and expenditures of the Corporation. The Board of Directors shall

review and, as appropriate, update new policy and procedure changes to the Corporation's policies and By-Laws on no less than an annual basis. All corporate powers, except such as are otherwise provided for in the Certificate of Incorporation, these By-Laws or the laws of the State of New York are vested in and shall be exercised by the Board.

2. The Board of Directors shall have the power to veto any action of the Officers and Committees.
3. Without limiting the other responsibilities set forth herein and as required by law, the Board of Directors shall be responsible for compliance with all requirements imposed upon federally qualified health centers, as set forth in Section 330 of the Public Health Service Act, its implementing regulations, and in guidance (the "HRSA Standards"), along with its fiduciary responsibilities, including, but not limited to, reviewing, hiring, firing and compensation of the Chief Executive Officer.
4. The Board of Directors shall establish general policies and procedures for the Center that are consistent with the HRSA Standards and grants management requirements.
5. The Board of Directors shall establish personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures and equal opportunity practices. The Board of Directors shall adopt policy for financial management practices, including a system to assure accountability for grant-related resources, approval of the annual budget (including the uses of the federal grant and non-grant funds), approval of applications related to the health center project, Center priorities, eligibility for services (including eligibility criteria for sliding fee discount and partial payment schedules pursuant to the sliding fee discount program), and long-range financial planning.
6. The Board of Directors shall evaluate Center activities including service utilization patterns, productivity of the Center, patient satisfaction, achievement of objectives and annual and long-term goals.
7. The Board of Directors shall cause the Corporation to conduct long-term strategic planning at least once every three years, which shall address financial management and capital expenditure needs and include regularly updating the Center's mission, goals, and plans, as appropriate.
8. The Board of Directors shall develop and implement a process for hearing and resolving patient grievances.
9. The Board of Directors shall assure that the Center is operated in compliance with applicable Federal, State and local laws and regulations.
10. The Board of Directors shall adopt health care policies, including scope and availability of services, location and hours of services, quality-of-care audit procedures and other policies that establish Center's Quality Improvement/Assurance Program;

11. The Board of Directors shall evaluate itself periodically for efficiency, effectiveness, and compliance with the HRSA Standards.
12. The Board of Directors shall monitor the financial status of the Corporation, including selecting an independent auditor, reviewing and officially accepting the annual audit report and ensuring that appropriate follow-up actions are taken.
13. No other individual, entity, or committee (including, but not limited to, the Executive Committee) shall have approval authority or have veto power over the Board with regard to the Board's powers and duties set forth in this Article V.

ARTICLE VI

Officers of the Corporation

1. The Corporation shall have the following six (6) Officers, each of whom shall be Directors of the Corporation: Chair, First Vice-Chair, Second Vice-Chair, Third Vice-Chair, Secretary and Treasurer. The Board of Directors may also, in its discretion, elect an Assistant Secretary and/or Assistant Treasurer, or such other additional Officers as it deems necessary.
2. All Officers of the Corporation shall be elected annually, for terms of one (1) year, at each Annual Meeting of the Corporation. No individual may hold more than one office at any time. An Officer may be removed at any time, with or without cause, by the Board of Directors by a two-thirds vote of the Directors present and voting at any special meeting called for such purpose. An Officer may resign at any time by giving written notice to the Chair. If the Chair is the resigning officer, the written notice shall be given to the Secretary.
3. Per Article III, Section 3(d), no Director may be an employee or contractor of the Center or immediate family member of an employee or contractor by blood, marriage, or adoption. Following an individual's service as Chair of the Corporation, such individual shall be designated Immediate Past Chair. The Immediate Past Chair shall serve as advisor to his/her successor, and shall carry out such other duties that the Board of Directors may delegate to him/her. The Immediate Past Chair shall hold such position until he/she is elected to hold any office of the Corporation, or until the end of the term as Chair of his/her successor, whichever occurs first. In the event the Immediate Past Chair is not a Director of the Corporation, he/she shall be entitled to attend all meetings of the Board of Directors, the Executive Committee, and the Finance Committee, but shall not have a vote.
4. The Chair shall preside at all meetings of the Board of Directors. He/She shall perform such duties as may be required by the By-Laws and by the Board of Directors. He/She shall be a member ex-officio of all Standing and Special Committees.
5. In the event of a vacancy in the Chairmanship or during the Chair's absence, or incapacity to act, his/her duties and powers shall devolve upon the First Vice-Chair next in order of succession and the First Vice-Chair shall serve as Chair until the next annual election.

6. Each Vice-Chair shall perform such duties as may be required by the Board of Directors.
7. The Secretary shall keep the Minutes of the meetings of the Board of Directors, and of the Executive Committee. He/She shall give notice of all meetings of the Board of Directors, and of the Executive Committee, and shall, in general, perform the duties incident to the Office of Secretary, subject to the control of the Board of Directors, and to such other instructions as may be given to him/her by the Board of Directors.
8. The Treasurer shall oversee the fiscal affairs of the Corporation, report on the financial condition of the Corporation to the Board of Directors at its regular meetings, the Annual Meeting and at such other times as the Board may require.

ARTICLE VII Committees

1. Standing Committees

The Standing Committees of the Board of Directors shall be the (a) Executive Committee, (b) Finance Committee, (c) Human Resources Committee, (d) By-Laws Committee, (e) Compliance Committee, (f) Nominating Committee, (g) Quality Management Committee, (h) Audit Committee and (i) Compensation Committee. The Board may establish such other Special Committees, Standing Committees or Ad Hoc Committees as the Board of Directors may authorize from time to time as set forth in Section 12 of this Article VII. Committees shall routinely take minutes and maintain them on file at the Corporation's offices. Only the Executive Committee shall be authorized to act on behalf of the Board. All standing committees shall operate in a manner which is consistent with the policies of the Board of Directors. A majority of the voting members of each Standing Committee shall be comprised of Directors.

2. Committee Members

As soon as practicable after the Annual Meeting of the Corporation, the Chair shall appoint the members of the Standing Committees and designate the chairpersons thereof. All such appointments shall be subject to confirmation by the Board of Directors. The members of such Standing Committees shall hold office until their successors have been appointed and confirmed.

3. Executive Committee

The Executive Committee shall consist of all Officers of the Corporation, and such other members as may be designated by the Board Chair with the approval of the Board of Directors. The Board Chair shall serve as chairperson of the Executive Committee. Under no circumstances shall a majority of the members of the Executive Committee consist of Directors appointed or nominated by a third party(ies). A majority of the members of the Executive Committee shall constitute a quorum and the vote of the majority of the members present shall be the action of the committee. The Executive Committee shall have the power to transact all business of the Corporation during the interim between the meetings of the Board of Directors, provided any action taken shall not conflict with the practices

and express wishes of the Board of Directors.

4. Finance Committee

The Finance Committee shall be chaired by the Treasurer with additional members appointed by the Board Chair. It shall be responsible for monitoring and making recommendations to the Board regarding the management and investment of all funds of the Corporation, the general accounting system, and financial policies. The Finance Committee shall review periodically the monthly financial statements and it shall recommend a yearly budget. The Finance Committee shall have supervision of the Corporation's insurance program including the care and custody of all insurance policies.

5. Human Resources Committee

The Human Resources Committee shall be responsible for making recommendations to the Board of Directors on all personnel policies of the Corporation, employment practices, salary scales and employee benefits, and personnel relations, and for reporting on issues related to compliance of the policies with all Federal, State, and local laws.

6. Quality Management Committee

In addition to Director representatives, the Quality Management Committee shall include the Chief Medical Officer of the Corporation (or his/her designee) and/or other staff clinicians. Also, this Committee shall include the Corporation's Compliance Officer, Chief of Population Health and Risk Manager, and other individuals as necessary. This Committee shall:

- a. Recommend to the Board of Directors all rules and regulations for the governance of the Medical Staff, or amendments thereto, necessary to insure the effective delivery of clinical quality of care to patients of the Corporation;
- b. Monitor and make recommendations for the implementation and improvement of the Corporation's quality management plan and risk management plan;
- c. Receive and make recommendations to the Board of Directors respecting any communications, requests or recommendations presented by the quality improvement system;
- d. Receive reports from staff as described in the quality management plan and risk management plan which may include minutes, reports, summaries, or other information, either provided by internal or external sources that relate to quality or risk management; and
- e. Receive and consider all reports on work of the staff, and make recommendations to the Board of Directors with respect thereto.

7. By-Laws Committee

The Bylaws Committee shall consist of not less than three (3) members duly appointed. It shall review the By-laws as deemed advisable and shall recommend By-law revisions and amendments as are deemed from time to time necessary, appropriate or desirable.

8. Nominating Committee

The Nominating Committee shall present a slate of candidates, by at least the last Regular Meeting before the Annual Meeting, for election as members of the Board of Directors to

replace directors whose terms have expired (and, when necessary, recommend candidates for election to vacant or new Board seats as vacancies or openings occur) subject to the Board composition requirements set forth in Article III, Section 3 of these By-Laws. It shall also submit nominations for Officers to be elected at the Organizational Meeting of the Board of Directors.

9. Compliance Committee

The Compliance Committee shall be responsible for monitoring and making recommendations for the implementation and improvement of the corporate compliance program of the Corporation. In addition to Director representatives, the Committee shall include the Corporation's Compliance Officer and other individuals as necessary.

10. Audit Committee

The Audit Committee shall oversee the procurement of audit services and present the full Board with recommendations on the selection of the Corporation's auditor, pursuant to applicable federal, state and local law. The Committee will review the audit report and highlight key elements to the Board, in addition to the full Board's review of said report.

11. Compensation Committee

The Compensation Committee shall review the annual compensation of the Corporation's executives and other key employees on a yearly basis (including review of a fair market value analysis of such compensation) in order to ensure compliance with applicable federal and state regulations and guidelines.

12. Special Committees

These Committees and members thereof may be appointed by the Chair, with concurrence of the Board of Directors, for such special tasks as circumstances warrant. Such Special Committees shall limit their activities to the purposes for which they are created, and shall have no power to act except as specifically conferred upon them. Members of such Special Committees shall hold office until the completion of the task for which they were appointed or until the next Organizational Meeting of the Board of Directors, whichever event first occurs. Such Special Committees may be appointed from time to time, to address the particular health care needs of particular communities and constituencies served by the Corporation.

**ARTICLE VIII
STANDARDS OF CONDUCT**

1. The Board has adopted and will periodically review "Standards of Conduct" addressing conflicts of interest or the appearance of such conflicts (including the disclosure of conflicts or potential conflicts and related recusals) by Directors, officers, employees, contractors, agents and others providing services/goods to the Corporation. Such standards shall prohibit individuals with a real or apparent conflict of interest with respect to a specific transaction from participating in the selection, award and/or administration of such transaction. Such standards shall also establish policies and procedures limiting or prohibiting nepotism, bribery, and the offer or solicitation of gifts, gratuities, favors or anything of monetary value for private financial gain, set forth a written corporate policy for maintaining the confidentiality of proprietary and other corporate information (i.e. any information received as the result of being a Director, employee, contractor or other agent of the Corporation) and set forth disciplinary actions for violations of the standards.
2. Each Director has a fiduciary duty to the Corporation and his or her actions must be in the best interests of the Corporation. Except as specifically authorized by the By-Laws, individual Directors may not speak on behalf of the entire Board or the Corporation without authorization from the Board of Directors. Requests from any third party for information or statements regarding the Corporation shall be referred to the Chief Executive Officer.
3. Directors, officers, employees and representatives of the Corporation are prohibited from taking any action or carrying on any activity by or on behalf of the Corporation not permitted to be taken or carried on by a tax exempt organization, including the participation in, or intervention in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

**ARTICLE IX
Medical and Other Professional Staff**

1. The Board of Directors shall formally appoint and privilege Medical and Professional Staffs composed of physicians and qualified professionals who are graduates of accredited schools, and legally licensed to practice their professions in the State of New York, and shall see that they are organized into a responsible administrative unit, and adopt such by-laws, rules and regulations for governance of their practice in the Corporation, as the Board of Directors deems to be the greatest benefit to the care of clients of the Corporation. In the case of the individual patient, the physician duly appointed to the Medical Staff shall have full authority and responsibility for the care of that patient, subject only to such limitations as the Board of Directors may formally impose and to the by-laws, rules and regulations of the Medical Staff recommended by the Medical Staff and adopted by the Board of Directors.
2. All applications for appointment to the Medical Staff shall be in writing, and submitted in accordance with the requirements of the by-laws of the Medical Staff.

ARTICLE X
Administration

1. The Board of Directors shall select and employ a Chief Executive Officer, who shall serve at the pleasure of the Board, and who shall be its direct executive representative in the management of the Corporation. The Chief Executive Officer shall be given the necessary authority and held responsible for the administration of the Corporation in all its activities and departments, subject only to such policies as may be adopted and such orders as may be issued by the Board of Directors, or by any of its Committees to which the Board of Directors has delegated the power for such action. The Chief Executive Officer shall act as a fully authorized representative of the Board of Directors in all matters in which the Board of Directors has not formally designated some other person for that specific purpose. The Chief Executive Officer's performance shall be evaluated regularly by the Board of Directors.

2. The Chief Executive Officer shall have the authority and duties:
 - a. To carry out all policies established by the Board of Directors;
 - b. To perfect and submit to the Board of Directors for approval, a plan of the organization of the personnel and others concerned with the operation of the Corporation;
 - c. To prepare an annual estimated budget showing expected receipts and expenditures as required by the Finance Committee;
 - d. To select, employ, control and discharge all employees, being mindful of the fact that major personnel changes should be subject to discussion with the Chair when possible, and to implement personnel policies and practices for the Corporation in cooperation with the Board of Directors;
 - e. To see that all physical properties are kept in a good state of repair and operating condition;
 - f. To supervise all business affairs and to insure that all funds are collected and expended to the best possible advantage;
 - g. To work with the clinical staff and with all those concerned with the rendering of professional service, to the end that the best possible care may be rendered to all patients;
 - h. To submit regularly to the Board of Directors or its authorized Committees periodic reports showing the professional service and other activities of the Corporation, and to prepare and submit such special reports as may be required from time to time by the Board of Directors;
 - i. To attend all meetings of the Board of Directors and provide for appropriate Committees participation by executive leadership;
 - j. To perform any other duty that may be necessary in the interest of the Corporation;
 - k. To serve as liaison officer for all official communications between the Board of Directors or any of its Committees and the Medical Staff; and
 - l. To promote at all times good public relations, good publicity, and the public

confidence in the Corporation.

ARTICLE XI
Financial Matters/Safekeeping of Assets

1. Securities
All bonds, stocks and other securities shall be deposited for safekeeping, with such banks, or trust companies, or other legally approved depositories as may be designated by the Board of Directors, to be held for the account of the Corporation, and subject to the joint control and order of two officers, one of whom must be the Chair or the Treasurer. The sale or approval of any securities shall be subject to the approval of the Board of Directors, and shall require a certified copy of the resolution authorizing the sale, and the signature of two Officers, one of whom must be the Chair or the Treasurer.
2. Seal
The Corporation may have a seal which shall be inscribed thereon the name of the Corporation, the State of Incorporation, and the words "Corporate Seal". The seal may be used by causing it or a facsimile to be imprinted, affixed, reproduced, or otherwise.
3. Bond
The Board of Directors of the Corporation may require any agent (including, without limitation, employees) to give bond for the faithful discharge of his duty and for the protection of the Corporation, in such sum and with such surety or sureties as the Board may deem advisable.
4. Checks and Other Instruments
All checks, drafts or demands for money and notes of the Corporation shall be signed by such Officer or Officers or such other persons as the Board of Directors may from time to time designate
5. Contracts
The Board of Directors may in any instance designate the Officers and agents who shall have authority to execute any contract, conveyance, or other instrument on behalf of the Corporation, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the Chair, Vice Chair or the Chief Executive Officer may execute the same in the name and behalf of this Corporation and may affix the corporate seal thereto.
6. Books, Records, Annual Reports and Audits/Fiscal Year
The Officers, agents and employees of the Corporation shall maintain such books, records and accounts of the Corporation's business and affairs as shall be appropriate to the business and affairs of the Corporation or required by the Board or required by the laws of the State of New York. The Board shall annually cause a true statement of the operations and properties of the Corporation for the preceding fiscal year to be made by an independent certified public accounting firm within six (6) months after the end of the fiscal year. The fiscal year shall be the calendar year.

7. Borrowing and Financial Transactions

The following transactions shall be authorized only by vote of the Board of Directors of the Corporation, provided that, subject to Section 9 of this Article XI, the Board of Directors may delegate some or all of these authorities to the Chief Executive Officer, or other Officers as determined by the Board:

- a. Any transaction to borrow money for the Corporation that either causes the Corporation debt to equity ratio to exceed 0.4 and/or exceeds \$3 Million.
- b. Any mortgage of or other creation of a security interest in the property of the Corporation, excepting purchase money security instruments, unless such money security instruments exceed \$500,000.
- c. Any sale of the real estate of the Corporation.

8. Fee Splitting

All referrals to other agencies or clinicians shall be made on the basis of availability and willingness to accept clients. Patients will be given freedom of choice. There shall be no financial agreement between the Center, its clinicians and the referral entity to split fees.

9. Real Property

No purchase, sale, mortgage or lease of real property shall be made unless properly authorized by the Board of Directors in accordance with law.

10. Investment of Funds

Subject to the limitations and conditions contained in any gift, devise, bequest or statute of the State of New York, the Corporation may invest its funds in such mortgages, bonds, debentures, shares of preferred or common stock, and other securities as the Board of Directors shall deem advisable.

**ARTICLE XII
Amendment of By-Laws**

1. The determination of the Board of Directors shall be conclusive on all questions of construction of these By-Laws.
2. These By-Laws may be amended by the Board of Directors but no amendment shall be made unless notice that such amendment will be proposed shall have been given at the last preceding meeting of the Board of Directors, or in the notice of the meeting.

**ARTICLE XIII
Indemnification**

The Corporation shall indemnify each member of the Board at any time in office, whether prior or subsequent to the adoption of these By-Laws, who was or is a party to, or is threatened to become a party to, a pending or completed action, suit or proceeding, whether

civil, criminal, administrative or investigative, by reason of the fact that he/she is or was a Director or officer of the Corporation, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interest of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he/she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was unlawful. The foregoing right of indemnification shall not preclude any indemnification of any such Director, or any employee or other person acting for or in the interest of the Corporation, to which such Director, Officer, employee, or other person may be entitled by law or by virtue of any document or agreement, or which may be legally provided or afforded by or under any action by the Directors of this Corporation. All rights of indemnification shall inure to the benefit of the heirs, executors and administrators of the person involved.

ARTICLE XIV Dissolution

Upon dissolution, the net assets of the Corporation shall be distributed to one or more organizations, to be selected by the Board of Directors of the Corporation serving at the time of dissolution, provided that each such distributee, at the time of distribution:

1. is then conducting activities in the field of health care;
2. is then an organization described in Section 501 (c)(3) of the Internal Revenue Code as heretofore or hereafter amended, or the equivalent provisions of any future Internal Revenue Code; and,
3. is an organization described in Section 509(a)(1), 509(a)(2) or 509(a)(3) of the Internal Revenue Code.

APPROVED AND ACCEPTED BY THE BOARD OF DIRECTORS.

Attachment 14

**RESOLUTIONS
OF THE
BOARD OF DIRECTORS
OF
HUDSON RIVER HEALTHCARE, INC.**

WHEREAS, Hudson River HealthCare, Inc. (the "Corporation") is a New York not-for-profit corporation; and

WHEREAS, the Corporation has expanded its activities over the past several years and in 2020 began using "Sun River Health" as an assumed name to more accurately reflects its expanded operations; and

WHEREAS, the Board of Directors now desires to officially changes the corporate name to "Sun River Health, Inc."; and

WHEREAS, the Board of Directors has determined that it is in the best interests of the Corporation to amend its Certificate of Incorporation to change its corporate name.

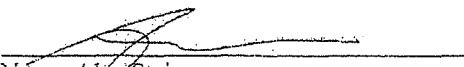
NOW, THEREFORE, it is

RESOLVED: that the Corporation shall file a Certificate of Amendment, in substantially the form presented at this meeting, to amend its corporate name to "Sun River Health, Inc."; and it is further

RESOLVED: that the officers of the Corporation, acting individually, are hereby authorized to execute and deliver and take such other actions as may be necessary to carry out the foregoing resolution.

I certify that the above resolutions were adopted by the Board of Directors of Hudson River HealthCare, Inc. at a meeting duly held on March 9, 2021.

Dated: March 9, 2021


Name: Alan Steiner
Title: Chairperson

VOTING INFORMATION

Total # of Directors: 16
Directors Present: 12
Votes Approving: 12
Votes Against: 0
Votes Abstained: 0



MEMORANDUM

To: Public Health and Health Planning Council
From: Kathy Marks, General Counsel *Kathy Marks*
Date: November 2, 2021
Subject: Proposed Dissolution of Buena Vida Corporation

The Buena Vida Corporation (“The Corporation”) requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law (NPCL) § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

The Corporation is a New York not-for-profit corporation incorporated on November 21, 1994 by its sole member, RiseBoro Community Partnership Inc. The Corporation was formed to increase the residential health care capacity in New York City and help alleviate the problem of minority access to institutional long-term care experienced throughout New York City’s health care system by operating a skilled nursing home facility (Buena Vida Continuing Care & Rehabilitation Center) pursuant to the terms and provisions of Article 28 of the Public Health Law.

On May 16, 2018, The Corporation and Buena Vida SNF, LLC entered into an Asset Purchase Agreement where Buena Vida SNF, LLC agreed to purchase assets, including the skilled nursing home facility from The Corporation. Subsequent to this sale, on August 12, 2019 Buena Vida SNF, LLC was approved by PHHPC in Project 182060-E to be the new operator of the Buena Vida Continuing Care & Rehabilitation Center. As a result of these asset transfers, including the sale of the nursing home facility and approval of the new operator, The Corporation has decided to dissolve.

On March 18, 2020, the Supreme Court issued approval of the Petition for the Plan of Dissolution of The Corporation. On July 31, 2020, the Board of Directors of The Corporation resolved to effect a voluntary dissolution pursuant to Article 10 of the NPCL. A Verified Petition for approval of the Plan of Dissolution and Distribution of Assets will be submitted to the Attorney General’s Office of Charities Bureau, subsequent to approval of the Corporation’s dissolution by PHHPC.

The Corporation currently holds assets legally required to be used for a particular purpose pursuant to NPCL § 1002. The Plan of Dissolution and Distribution of Assets provide for distribution of approximately \$14.7 Million Dollars in cash and for any liabilities to be discharged in accordance with said Plan.

The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of The Corporation and resolution of the board of directors of The Corporation authorizing the dissolution as well as the list of assets and liabilities and plan of distribution are included for

PHHPC's review. The March 18, 2020 Supreme Court approval of the Petition and Plan of Dissolution and a letter from The Corporation's consultant, Frank M. Cicero advocating for dissolution are also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution.

Attachments

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.state.ny.us

June 7, 2021

Mr. Frank Cicero
Cicero Consulting Associates
925 Westchester Avenue, Suite 201
White Plains, New York 10604

Re: Certificate of Dissolution of Buena Vida Corp.

Dear Mr. Cicero:

I have received your letter May 28, 2021, requesting approval of the Certificate of Dissolution of Buena Vida Corp. under Section 1003 of the Not-For-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

You will be notified when this request has been approved, or if additional information is required. Division of Legal Affairs staff may be reached at (518) 473-3303 if you have any questions.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

cc: DLA

/cl

Cicero Consulting Associates VCC, Inc.

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Maiale
Patrick Clemente

925 Westchester Ave. • Suite 201 • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

Albany Unit
William B. Carmello
Joseph F. Poffit
Albert L. D'Amato
Mark Van Guysling
Rosemarie Porco
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg
Martha H. Poffit
Frank T. Cicero, M.D.
Rose Murphy

May 28, 2021

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
NEW YORK STATE DEPARTMENT OF HEALTH
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

RE: BUENA VIDA SNF LLC
(Kings County)
Proposed Dissolution of Buena Vida Corp.

Dear Ms. Leonard:

Buena Vida Corp. requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law Sections 1002(c) and 1003, as well as 10 NYCRR Part 650.

In Project 182060-E, Buena Vida SNF LLC d/b/a Buena Vida Rehabilitation and Nursing Center was approved to be the new operator of Buena Vida Continuing Care & Rehabilitation Center, which was previously operated by Buena Vida Corp. On May 16, 2018, Buena Vida Corp. and Buena Vida SNF LLC entered into an Asset Purchase Agreement (APA) whereby Buena Vida SNF LLC agreed to purchase the operations of the RHC and certain other assets from Buena Vida Corp. As a result of Project No. 182060-E and the APA, Buena Vida Corp. decided to dissolve.

The proposed Certificate of Dissolution is enclosed. The approval of the Certificate of Dissolution by PHHPC is required for the New York State Attorney General to provide consent to the Plan of Dissolution.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

Frank M. Cicero

Frank M. Cicero

cc: Michael Gurman, Esq., Partner, Abrams, Fensterman, et al.



Division of Corporations,
State Records and
Uniform Commercial Code

New York State
Department of State
DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF DISSOLUTION
OF
Buena Vida Corp.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Buena Vida Corp.

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed with the Department of State on:

November 21, 1994

THIRD: The name and address of each officer and director of the corporation is:

Virginia Torres (Director, Secretary): 54 Boerum Street, #14H, Brooklyn, NY 11206

Patricia Francis (Director): 13 Melton Drive East, Rockville Centre, NY 11570

Scott Short (Director, Chief Executive Officer): 235 Lincoln Place, Apt 6A, Brooklyn, NY 11217

Francis Russo (Director, Treasurer): 173 Woodcutters La, Staten Island, NY 10306

Barbara Tallon-Reilly (Director): 415 Crystal Avenue, Staten Island, NY 10314

FOURTH: The corporation is a: *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.

no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

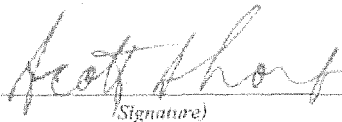
SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X


(Signature)

Scott Short

(Print or Type Name of Signer)

President & CEO

(Capacity of Signer)

CERTIFICATE OF DISSOLUTION
OF

Buena Vida Corp.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Michael Gurman

Company, if applicable: Abrams, Fensterman, et. al.

Address: 3 Dakota Drive, Suite 300

City, State and Zip Code: Lake Success, New York 11042

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only

ATTORNEY GENERAL OF THE STATE OF NEW YORK
120 Broadway, 3rd Floor
New York, NY 10271-0332

COUNTY OF NEW YORK

-----X
In the matter of the Application of

BUENA VIDA CORP.,

VERIFIED PETITION
AG# _____

Petitioner,

For Approval of Plan of Dissolution and
Distribution of Assets, pursuant to
Section 1002 of the Not-For-Profit Corporation Law

-----X

Petitioner, Buena Vida Corp., by Scott Short, CEO of Petitioner for its Verified Petition herein, respectfully alleges:

1. Petitioner, Buena Vida Corp., was formed on November 21, 1994 by its sole member, RiseBoro Community Partnership, Inc. ("RiseBoro"), pursuant to Section 402 of the New York Not-for-Profit Law of the State of New York. The Petitioner's Certificate of Incorporation, as amended, and By-Laws, as amended and restated, are attached hereto as Exhibits A-1 and A-2, respectively.

2. The names, addresses and titles of Petitioner's directors and principal officers are as follows:

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
Virginia Torres	Director, Secretary	54 Boerum Street, #14H, Brooklyn, NY 11206
Patricia Francis	Director	13 Melton Drive East, Rockville Centre, NY 11570
Scott Short	Director, Chief Executive Officer	235 Lincoln Place, Apt 6A, Brooklyn, NY 11217
Francis Russo	Director, Treasurer	173 Woodcutters La, Staten Island, NY 10306

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
Barbara Tallon-Reilly	Director	415 Crystal Avenue, Staten Island, NY 10314

3. Pursuant to the Certificate of Incorporation, Petitioner was formed, inter alia, to increase the residential health care capacity in New York City and help alleviate the problem of minority access to institutional long-term care experienced throughout New York City's health care system and to this end, to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of Article 28 of the Public Health Law.

4. The Petitioner is a charitable corporation.

5. Petitioner plans to dissolve and distribute its assets and pay its liabilities in accordance with the Plan of Dissolution and Distribution of Assets attached hereto as Exhibit B (the "Plan").

6. A special meeting of the Board of Directors of the Petitioner was held pursuant to duly given notice on July 31, 2020 at which a resolution was duly passed by all of directors of the Petitioner adopting a Plan of Dissolution for the Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-For-Profit Corporation Law. A copy of the accepted resolutions and unanimous written consent are attached hereto as Exhibit C.

7. The Corporation is dissolving due to the fact that it has sold the nursing home that it had operated and is no longer best positioned to continue performing its corporate purposes.

8. A special meeting of the Member of the Petitioner was held pursuant to duly given notice on July 31, 2020 at which a resolution was duly passed by the sole member of the Petitioner

adopting a Plan of Dissolution for the Distribution of Assets and approving this Petition. A copy of the accepted resolutions and unanimous written consent are attached hereto as Exhibit D.

9. The required governmental approvals from (i) the New York State Department of Health, Public Health and Health Planning Council and (ii) New York State Supreme Court to sell the nursing home have been obtained and are attached hereto as Exhibit E. No other approvals were necessary.

10. The corporation is registered with the Charities Bureau of the Office of the Attorney General and its registration number is: 05-74-15. The corporation is up to date with its filings and most recently filed its annual report with the Charities Bureau for its fiscal year ended December 31, 2018.

11. There has been no previous application for approval of the Certificate of Dissolution.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Buena Vida Corp., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Petitioner has caused this Petition to be executed this ____ day of _____, 2020.

BUENA VIDA CORP.

By: _____
Scott Short, CEO

Verification

STATE OF NEW YORK}

} ss

COUNTY OF _____}

Scott Short, being duly sworn, deposes and says:

I am the CEO of Buena Vida Corp., the corporation named in the above Petition. I make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Scott Short, CEO

On this _____ day of _____, 2020, before me personally appeared _____ to me personally known, who, being duly sworn, did say that he is the _____ of Buena Vida Corp. and that he duly executed the foregoing instrument for and on behalf of Buena Vida Corp. being duly authorized to do so and that said individual acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

Printed Name: _____

My Commission Expires:

Exhibit B

PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS
OF
BUENA VIDA CORP.

The Board of Directors (the "Board") and Members (the "Members") of Buena Vida Corp., a New York not-for-profit corporation (the "Corporation"), considered the advisability of voluntarily dissolving the Corporation. All of the Board and the Members determined that dissolution of the Corporation is advisable and in the best interests of the Corporation. They adopted the following plan (the "Plan"):

1. The sole assets of the Corporation are cash in the amount set forth on Exhibit A.
2. The Corporation has liabilities, which are fully described and itemized on Exhibit A¹. In addition, Exhibit A estimates those liabilities which the Corporation expects to incur in the process of administering the Plan and dissolving the Corporation.
3. Subject to any satisfaction of any unpaid liabilities, the assets of the Corporation shall be distributed to an organization with substantially similar purposes to those of the Corporation, which qualify as an exempt organization(s) pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, in the proportions or amounts, as set forth on Exhibit B hereto. Attached hereto as Exhibit C are the following documents for the proposed recipient:
 - a. Certificate of Incorporation
 - b. Most recent financial report
 - c. An affidavit from a director or officer of such recipient stating (i) the purposes of the organization, (ii) that such organization is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code, and (iii) that it is up to date in its registration and annual financial filings
4. Approval of the sale of the nursing home was obtained from the New York State Department of Health and the New York State Public Health and Health Planning Council (collectively "DOH"), whose approvals are attached as Exhibit D. No additional approvals are necessary.

[Signature Page Follows]

¹ The Corporation has other liabilities. However, all other liabilities except as set forth on Exhibit A were assumed by the Buena Vida SNF LLC in connection with the sale of the nursing home.

CERTIFICATION

I, Scott Short, CEO of Buena Vida Corp., (the "Corporation") hereby certify under penalties for perjury that a special meeting of the Board of Directors and members of the corporation was duly held at ____ pm on _____ via teleconference at which a resolution was duly passed by unanimously adopting a Plan of Dissolution for the Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-For-Profit Corporation Law.

Dated: _____, 2020

Scott Short, CEO

Exhibit A

Assets

1. Cash in Bank Accounts in Buena Vida's name: \$13,491,445.05
2. Cash in Escrow being held in connection with seeking VCAP: \$1,297,365.77²

Liabilities

1. Wind -Up Costs – final tax return, legal costs, if any (estimated at about \$50,000)

² This amount will be used to pay for the VCAP but until such amount is determined by the IRS, this full amount is held in escrow and will be eventually be partially released to Buena Vida.

Exhibit B

Distribution of Assets

Following the satisfaction of the debts and liabilities of the Corporation, the Corporation will distribute the remaining balance of the assets of the Corporation (the "Balance") will be distributed as follows:

- (i) One hundred percent (100%) of the Balance will be distributed to RiseBoro Community Partnership, Inc. ("RiseBoro"). RiseBoro who will be required to use the funds received to further the missions similar to the missions of the Corporation. Such distributions to RiseBoro shall be required to be used for the following delineated purposes which are consistent with the Petitioner's corporate purposes:
 - a. provide activities, health and wellness and cultural programs and education, and nutritional services to provide access to, or assistance to diminish the need for, institutional long term care for elderly, infirm or others that may have needed skilled nursing services;
 - b. provide adult day care services to provide access to, or assistance to diminish the need for, institutional long term care;
 - c. provide homecare services to provide access to, or assistance to diminish the need for, institutional long term care; or
 - d. provide affordable housing to provide access to, or assistance to diminish the need for, institutional long term care for elderly, infirm or others that may have needed skilled nursing services.

Exhibit C

SECRETARY'S CERTIFICATE
RISEBORO COMMUNITY PARTNERSHIP INC.

I HEREBY CERTIFY that I am the Secretary of BUENA VIDA CORP., a New York not-for-profit corporation (the "Corporation"); that the attached is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of the Corporation on July 31, 2020 (collectively, the "Resolutions"); further, that such meeting was called in compliance with all applicable laws and the requirements of the corporate charter and by-laws and constitution of the Corporation; that the Resolution does not conflict with the corporate charter or by-laws and constitution of the Corporation, nor has the Resolution been in any way altered, amended, or repealed, and that it is in full force and effect, unrevoked and unrescinded, as of this day, and has been entered upon the regular minute book of the Corporation, as of the aforementioned date, and that the Board of Directors of the Corporation has, and at the time of adoption of the Resolution, had, full power and lawful authority to adopt the Resolution and to confer the powers thereby granted to the officer(s) therein named who have full power and lawful authority to exercise the same.

BUENA VIDA CORP.

By: 

Name: Virginia Torres

Title: Secretary

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**RESOLUTIONS OF THE DIRECTORS OF
BUENA VIDA CORP.
TO APPROVE THE DISSOLUTION OF
BUENA VIDA CORP.**

The Board of Directors of **BUENA VIDA CORP.**, a New York not-for-profit corporation (the "Corporation"), does hereby consent to the following resolutions, pursuant to a duly called meeting of the Board of Directors held on July 31, 2020, proper notice which was given to or waived by each of the Directors:

WHEREAS, the Board of Directors (the "Board") has reviewed the Plan of Dissolution of the Company and the Verified Petition for the dissolution of the Company (collectively, the "Meeting Package"), which was distributed to each meeting attendee via e-mail; and

WHEREAS, The officers of the Corporation are as follows:

<u>NAME</u>	<u>TITLE</u>
Virginia Torres	Director, Secretary
Patricia Francis	Director
Scott Short	Director, Chief Executive Officer
Frank Russo	Director, Treasurer
Barbara Tallon-Reilly	Director

WHEREAS, the Directors of the Board have determined that dissolution of the Corporation is advisable and in the best interests of the Corporation; and

WHEREAS, the Corporation is dissolving due to the fact that it has sold the nursing home that it had operated and is no longer best positioned to continue performing its corporate purposes.

WHEREAS, the required governmental approvals from (i) the New York State Department of Health, Public Health and Health Planning Council and (ii) New York State Supreme Court to sell the nursing home have been obtained; and

WHEREAS, an in-depth discussion of each document within the Meeting Package was held, aided by Counsel, each of whom answered questions posed by the Directors of the Board; and

WHEREAS, upon due deliberation and a motion having been made, the following resolutions were adopted by unanimous vote of the Board;

RESOLVED, that the form, terms and provisions of the Plan of Dissolution and Distribution of Assets of the Corporation (the "Plan"), and the Verified Petition (the "Petition"), are hereby approved, authorized and adopted in all respects and the activities and transaction contemplated by the Petition and the Plan; and be it further

RESOLVED, that the Corporation is hereby authorized and empowered to consummate the transactions contemplated by the Petition and the Plan and, in connection therewith, to execute and deliver any and all documents as shall be required in connection with the consummation of the transactions contemplated by the Petition and Plan, including, without limitation, a Certification of the Plan, and a Certificate of Dissolution (collectively, the "Plan Documents"), each containing such terms and conditions as the officers of the Corporation executing the same shall deem appropriate or necessary in their judgment and discretion; and be it further

RESOLVED, the Board submits its recommendation to dissolve the Corporation to the sole member of the Corporation, the RiseBoro Community Partnership Inc., (the "Member") and requests that the Member approves the dissolution of this Corporation in accordance with the Plan; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to execute the Plan Documents in the name and on behalf of the Corporation and to deliver the same once executed, the execution and delivery thereof to be deemed conclusive evidence of the approval by the Corporation of the terms, conditions and provisions thereof; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to take any and all actions as shall be required in connection with the consummation of the transactions contemplated by the Plan; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is authorized, empowered and directed to do or cause to be done all such acts, deeds and things and to make, executed and deliver, or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates, in the name and on behalf of the Corporation otherwise, as he or she may deem necessary, advisable or appropriate to effectuate or fulfill the purposes and intent of the foregoing resolutions; and be it further

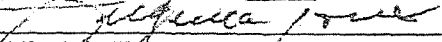
RESOLVED, that any acts of the officer and Directors of the Corporation, which acts would have been authorized by any of the foregoing resolutions except that such acts were taken prior to the adoption of the foregoing resolutions, shall be, and hereby are, severally ratified, confirmed, approved and adopted as acts in the name and on behalf of the Corporation.

Exhibit D

SECRETARY'S CERTIFICATE
RISEBORO COMMUNITY PARTNERSHIP INC.

I HEREBY CERTIFY that I am the Secretary of RISEBORO COMMUNITY PARTNERSHIP INC., a New York not-for-profit corporation (the "Corporation"); that the attached is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of the Corporation on July 31, 2020 (collectively, the "Resolutions"); further, that such meeting was called in compliance with all applicable laws and the requirements of the corporate charter and by-laws and constitution of the Corporation; that the Resolution does not conflict with the corporate charter or by-laws and constitution of the Corporation, nor has the Resolution been in any way altered, amended, or repealed, and that it is in full force and effect, unrevoked and unrescinded, as of this day, and has been entered upon the regular minute book of the Corporation, as of the aforementioned date, and that the Board of Directors of the Corporation has, and at the time of adoption of the Resolution, had, full power and lawful authority to adopt the Resolution and to confer the powers thereby granted to the officer(s) therein named who have full power and lawful authority to exercise the same.

**RISEBORO COMMUNITY
PARTNERSHIP INC.**

By: 
Name: Virginia Torres
Title: Secretary

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**RESOLUTIONS OF THE DIRECTORS OF
RISEBORO COMMUNITY PARTNERSHIP INC.
TO APPROVE THE DISSOLUTION OF
BUENA VIDA CORP.**

The Board of Directors of RISEBORO COMMUNITY PARTNERSHIP INC., a New York not-for-profit corporation (the "Member"), being the sole member of the Buena Vida Corp. (the "Corporation") does hereby consent to the following resolutions, pursuant to a duly called meeting of the Member Board of Directors held on July 31, 2020, proper notice which was given to or waived by each of the Member Directors:

WHEREAS, the Member Board of Directors (the "Member Board") has reviewed the Plan of Dissolution of the Company and the Verified Petition for the dissolution of the Company (collectively, the "Meeting Package"), which was distributed to each meeting attendee via e-mail; and

WHEREAS, The officers of the Corporation are as follows:

<u>NAME</u>	<u>TITLE</u>
Virginia Torres	Director, Secretary
Patricia Francis	Director
Scott Short	Director, Chief Executive Officer
Frank Russo	Director, Treasurer
Barbara Tallon-Reilly	Director

WHEREAS, the Corporation is dissolving due to the fact that it has sold the nursing home that it had operated and is no longer best positioned to continue performing its corporate purposes.

WHEREAS, the required governmental approvals from (i) the New York State Department of Health, Public Health and Health Planning Council and (ii) New York State Supreme Court to sell the nursing home have been obtained; and

WHEREAS, the Directors of the Member Board have determined that dissolution of the Corporation is advisable and in the best interests of the Corporation; and

WHEREAS, an in-depth discussion of each document within the Meeting

Package was held, aided by Counsel, each of whom answered questions posed by the Directors of the Member Board; and

WHEREAS, upon due deliberation and a motion having been made, the following resolutions were adopted by unanimous vote of the Member Board;

RESOLVED, that the form, terms and provisions of the Plan of Dissolution and Distribution of Assets of the Corporation (the "Plan"), and the Verified Petition (the "Petition"), are hereby approved, authorized and adopted in all respects and the activities and transaction contemplated by the Petition and the Plan; and be it further

RESOLVED, that the Corporation is hereby authorized and empowered to consummate the transactions contemplated by the Petition and the Plan and, in connection therewith, to execute and deliver any and all documents as shall be required in connection with the consummation of the transactions contemplated by the Petition and Plan, including, without limitation, a Certification of the Plan, and a Certificate of Dissolution (collectively, the "Plan Documents"), each containing such terms and conditions as the officers of the Corporation executing the same shall deem appropriate or necessary in their judgment and discretion; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to execute the Plan Documents in the name and on behalf of the Corporation and to deliver the same once executed, the execution and delivery thereof to be deemed conclusive evidence of the approval by the Corporation of the terms, conditions and provisions thereof; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to take any and all actions as shall be required in connection with the consummation of the transactions contemplated by the Plan; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is authorized, empowered and directed to do or cause to be done all such acts, deeds and things and to make, executed and deliver, or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates, in the name and on behalf of the Corporation otherwise, as he or she may deem necessary, advisable or appropriate to effectuate or fulfill the purposes and intent of the foregoing resolutions; and be it further

RESOLVED, that any acts of the officer and Directors of the Corporation, which acts would have been authorized by any of the foregoing resolutions except that such acts were taken prior to the adoption of the foregoing resolutions, shall be, and hereby are, severally ratified, confirmed, approved and adopted as acts in the name and on behalf of the Corporation.

Exhibit E

At the Supreme Court of the State of New York, held in and for the County of Kings, on the 18 day of March, 2020.

P R E S E N T
Hon. Dawn Jimenez-Salta
Hon: Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- x

In the matter of the Application of
BUENA VIDA CORP.,

Petitioner,

For Approval to Sell All or Substantially All
of Petitioner's Assets, pursuant to Sections 510 and 511
of the Not-For-Profit Corporation Law

: Index No. 503677/2020
: ORDER
: Mot Seq # 1

----- x

Petitioner, Buena Vida Corp. ("Buena Vida", or "Petitioner"), by its attorney, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, having moved this court for an order, pursuant to Sections 510 and 511 of the Not-for-Profit Corporation Law, seeking approval to sell all or substantially all of the assets of the Petitioner as described in the petition herein, and said application having regularly come on to be heard,

WHEREAS, Pursuant to the Asset Purchase Agreement, (the "Asset Purchase Agreement"), dated May 16, 2018, as amended on April 24, 2019 and January 16, 2020, by and between Petitioner and Buena Vida SNF LLC, a Delaware limited liability company (the

“Operational Assets Purchaser”), the Operational Assets Purchaser is purchasing certain of Petitioner’s assets, including without limitation, the following (the “Operational Assets”):

- all cash, deposits, cash equivalents and short term investments on-hand as of the Closing Date (as defined in the Asset Purchase Agreement), hereinafter referred to as the “APA Closing Date”;
- all accounts receivable outstanding as of the APA Closing Date;
- all inventory;
- all tangible personal property;
- all rights of Petitioner with respect to prepaid expenses, credits, security deposits, advance payments, bid and performance bonds made or paid by Petitioner;
- all Healthcare Reimbursement Payor Contracts (as defined in the Asset Purchase Agreement), including, without limitation, the Medicare and Medicaid provider numbers and Medicare and Medicaid Provider Agreements related to the operation of the Nursing Home; and
- all other assets owned by Petitioner that are used in, or necessary for, the operation of the Nursing Home, as set forth in the Asset Purchase Agreement.

Additionally, Operational Assets Purchaser shall assume certain liabilities and obligations of Petitioner (the “Assumed Liabilities”), from and after the Closing Date (as defined in the Purchase and Sale Agreement as hereinafter defined), hereinafter referred to as the “PSA Closing Date,” which shall take place on the date that is forty-five (45) days following the satisfaction of certain conditions precedent specified within the Purchase and Sale Agreement including without limitation:

- all Accounts Payable of Seller whether accruing prior to, on or after May 1, 2018 (the “APA Effective Date”);
- all liabilities of Petitioner arising under assigned contracts which relate to the operation of the Nursing Home in respect of any period prior to, on or after the APA Effective Date;
- all liabilities of Petitioner relating to any Operational Assets in respect of any period prior to, on or after the APA Effective Date; and
- any and all liabilities and obligations of Petitioner arising from or relating to the operation of the Nursing Home and/or the nursing facility prior to, on or after the APA Effective Date.

WHEREAS, to the Purchase and Sale Agreement, (the "Purchase and Sale Agreement," and together with the Asset Purchase Agreement, the "Purchase Agreements"), dated May 16, 2018, as amended on April 24, 2019 and January 16, 2020, by and between Petitioner and 48 Cedar Street LLC (the "Real Estate Purchaser" and together with the Operational Assets Purchaser, the "Purchasers"), the Real Estate Purchaser is purchasing Petitioner's property located at 48 Cedar Street, Brooklyn, New York 11221, Block #3232, Lot #1 (the "Property"), free and clear of all liens and encumbrances, other than certain permitted encumbrances as reflected in the Purchase and Sale Agreement, including without limitation, the following:

- the parcel of land located at 48 Cedar Street, Brooklyn, New York 11221;
- the building and improvements located on the land;
- any and all fixtures, machinery, equipment, supplies and other tangible personal property owned by Petitioner;
- all transferable guaranties, warranties, floor plans and specifications and other intangible personal property related to the Property;
- the parking lot; and
- all transferable permits, leases, licenses, registrations, logos, naming rights, approvals and certificates, if any, held for use in connection with all or any portion of the parcel of land and improvement, and/or the development, contribution, ownership, use or operation thereof.

WHEREAS, the names, addresses and percentage interests held by the members of the Operational Assets Purchaser are as follows:

Name	Percentage Interests
FBH Healthcare Group, LLC ¹	50%
Jay Zelman	10%
Zevi Kohn	40%

¹ Owned wholly by Sarah Rosenfeld

WHEREAS, the names, addresses and percentage interests held by the members of the Real Estate Purchaser are as follows:

Name	Percentage Interests
FBH Healthcare Group, LLC	50%
Scheiner Holdings LLC ²	20%
Gamfal LLC ³	20%
Zevi Kohn	10%

WHEREAS, based on the analysis of Cushman & Wakefield (the "Appraiser"), the going concern value of Petitioner's assets to be sold pursuant to the Purchase Agreements is an amount equal to \$41,500,000.

WHEREAS, the purchase price under the Purchase Agreements is equal to \$54,500,000

WHEREAS, the Petitioner exercised its option under the Purchase Agreements to sell the parking lot associated with the Property for an additional \$4,250,000;

WHEREAS, the aggregate consideration (the "Purchase Price") to be paid to Petitioner pursuant to the Purchase Agreements is \$58,750,000 in the form of cash and assumption of liabilities, subject to certain prorations and adjustments.

WHEREAS, the Purchase Price to be paid in connection with the Purchase and Sale Agreement is to be paid in cash in an amount equal to the difference between \$58,750,000, the Purchase Price less, \$16,585,825, which equates to the agreed upon value of the Assumed Liabilities plus a \$1,000,000 credit for working capital and \$5,000,000 representing an agreed

² Owned wholly by Scheiner Family 2012 Trust. The trustees of the trust are Heather Scheiner and Zevi Kohn.
³ Owned wholly by Lichtschein Family 2012 Trust. The trustees of the trust are Julie Lichtschein and Zevi Kohn.

upon Nursing Home related "NPV credit". Specifically, Real Estate Purchaser shall pay to Petitioner \$42,164,175 in cash on the PSA Closing Date.

WHEREAS, the Purchase Price to be paid in connection with the Asset Purchase Agreement is to be paid by Operational Assets Purchaser by assuming the Assumed Liabilities which have a value equalling or exceeding \$10,585,825.

WHEREAS, certain Purchase Price increases and decreases, as detailed in Section 9.04 of the Purchase and Sale Agreement shall be apportioned between Petitioner and Real Estate Purchaser on the PSA Closing Date with respect to the Property and the net aggregate amount thereof either shall be paid by Real Estate Purchaser to Petitioner or credited to Real Estate Purchaser towards the Purchase Price, as the case may be, at the PSA Closing.

WHEREAS, the net Purchase Price paid to Buena Vida to be received from Purchaser, after all applicable adjustments, is calculated to be \$42,164,175 ("Net Purchase Price"). The Net Purchase Price will be used to pay off certain outstanding debts and obligations of Buena Vida.

WHEREAS, Buena Vida will pay retained liabilities totaling an approximate amount of \$29,932,695 which are comprised of the following liabilities: (a) DASNY Bonds \$19,030,000 (or lesser outstanding balance), (b) Legal Costs \$220,000, (c) Riseboro Loans of \$7,609,810 (plus interest), (d) VCAP and Interest Escrow of \$3,045,000 and (e) broker costs of \$397,577.

WHEREAS, the net proceeds, being the Net Purchase Price less the above outstanding debts and liabilities (the "Net Proceeds"), are calculated to be \$11,861,788 and are intended to be distributed to Riseboro for its use as set forth below.

WHEREAS, the Petitioner contemplates distributing the Net Proceeds to Riseboro Community Partnership Inc. ("Riseboro") who will be required to use such funds for the following delineated purposes which are consistent with the Petitioner's corporate purposes of providing: activities, health and wellness and cultural programs and education, nutritional services, adult day care services; homecare services, or affordable housing to provide access to, or assistance to diminish the need for, institutional long term care for elderly, infirm or others that may have needed skilled nursing services.

WHEREAS, Purchaser agreed to accept a restriction on the Deed to operate the Property as a nursing home for not less than seven (7) years and Operational Assets Purchaser has accepted a similar obligation to continue operations as a nursing home for seven (7) years.

WHEREAS, Petitioner contemplates dissolution within a year after the APA Closing Date.

WHEREAS, the Court finds the proposed conveyance and distribution of Petitioner's assets as described in the Petition to be fair and reasonable and in furtherance of the purposes of the Petitioner.

Now upon reading and filing the verified petition dated January 22, 2020, the petitioner duly verified on January 22, 2020, in support of the application, and after due deliberation having been held thereon, and it appearing that the purposes of the petitioner, Buena Vida will be promoted thereby,

Now, upon motion of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, Attorneys for Petitioner, it is hereby:

ORDERED, that the Petitioner, Buena Vida Corp., be and is hereby authorized to sell substantially all of its assets and real property as described in the Petition herein, for the aggregate

sum of \$58,750,000, subject to certain prorations and adjustments, pursuant to the Purchase Agreements; and it is further

ORDERED, that the Purchase Price shall be used to pay off all outstanding debt and liabilities of Petitioner and the Net Proceeds be distributed to RiseBoro. Petitioner contemplates dissolution within a year after the simultaneous PSA Closing Date and APA Closing Date. At the consummation of the transactions contemplated by the Purchase Agreements, Petitioner shall distribute the Net Proceeds pursuant to Article 10 of New York's Not-for-Profit Law to RiseBoro, who, as sole member of the Petitioner, is a not-for profit organization with similar purposes and activities; and it is further

ORDERED, that a copy of the signed order shall be served on the New York State Attorney General ("Attorney General"), and that the Attorney General shall receive written notice that the transaction has been completed, if the transaction has been abandoned, or if the transaction is still pending ninety (90) days after this court order; and it is further

ORDERED, that the Court will retain jurisdiction of this matter for purposes of enforcing this Order.

ENTER:

Dawn J. J. [Signature]
Hon. Dawn J. J. [Signature]
Justice of the Supreme Court
3/18/20

Date

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN, HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE, AND DEMANDS SERVICE OF ALL PAPERS SUBMITTED HEREIN INCLUDING ALL ORDER, JUDGMENTS AND ENDORSEMENTS OF THE COURT. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

Paula J. Bellman 2-6-20
ASSISTANT ATTORNEY GENERAL DATE

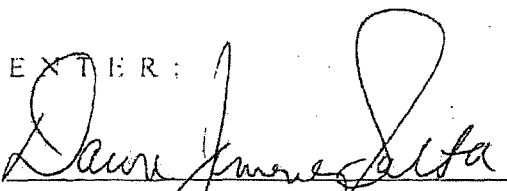
Paula J. Bellman

sum of \$58,750,000, subject to certain prorrations and adjustments, pursuant to the Purchase Agreements; and it is further

ORDERED, that the Purchase Price shall be used to pay off all outstanding debt and liabilities of Petitioner and the Net Proceeds be distributed to RiseBoro. Petitioner contemplates dissolution within a year after the simultaneous PSA Closing Date and APA Closing Date. At the consummation of the transactions contemplated by the Purchase Agreements, Petitioner shall distribute the Net Proceeds pursuant to Article 10 of New York's Not-for-Profit Law to RiseBoro, who, as sole member of the Petitioner, is a not-for profit organization with similar purposes and activities; and it is further

ORDERED, that a copy of the signed order shall be served on the New York State Attorney General ("Attorney General"), and that the Attorney General shall receive written notice that the transaction has been completed, if the transaction has been abandoned, or if the transaction is still pending ninety (90) days after this court order; and it is further

ORDERED, that the Court will retain jurisdiction of this matter for purposes of enforcing this Order.

EXTER:


Hon. Dawn Jimenez-Salta
Justice of the Supreme Court

3/18/20
Date

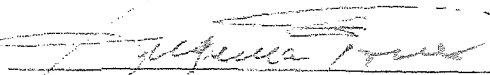
BY SIGNING THIS ORDER, I HEREBY AFTER AS HEREIN
ACKNOWLEDGE TO THE GRANTING OF
JUDICIAL ORDER, I PERSONALLY ACKNOWLEDGE
HEREBY TO STATUTOR, I NOTICE AND DEMANDS
SERVED ON ALL PARTIES SUBMITTED HEREIN
BY FILING ALL ORDERS, JUDGMENTS AND
ENDORSEMENTS OF THE COURT, AND NO OBJECTION
IS COMPLETED ON SUBMISSION OF THE MATTER
TO THE COURT WITHIN 90 DAYS HEREAFTER.

ASSISTANT ATTORNEY GENERAL DATE

SECRETARY'S CERTIFICATE
RISEBORO COMMUNITY PARTNERSHIP INC.

I HEREBY CERTIFY that I am the Secretary of RISEBORO COMMUNITY PARTNERSHIP INC., a New York not-for-profit corporation (the "Corporation"); that the attached is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of the Corporation on July 31, 2020 (collectively, the "Resolutions"); further, that such meeting was called in compliance with all applicable laws and the requirements of the corporate charter and by-laws and constitution of the Corporation; that the Resolution does not conflict with the corporate charter or by-laws and constitution of the Corporation, nor has the Resolution been in any way altered, amended, or repealed, and that it is in full force and effect, unrevoked and unrescinded, as of this day, and has been entered upon the regular minute book of the Corporation, as of the aforementioned date, and that the Board of Directors of the Corporation has, and at the time of adoption of the Resolution, had, full power and lawful authority to adopt the Resolution and to confer the powers thereby granted to the officer(s) therein named who have full power and lawful authority to exercise the same.

**RISEBORO COMMUNITY
PARTNERSHIP INC.**

By: 
Name: Virginia Torres
Title: Secretary

[Remainder of Page Intentionally Left Blank]

Facility Id. 6248
Certificate No. 7001035N

Certified Beds - Total 240
RHC 240

State of New York
Department of Health
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Residential Health Care Facility - SNF
Buena Vida Rehabilitation and Nursing Center
48 Cedar Street
Brooklyn, New York 11221

Effective Date: 05/05/2020
Expiration Date: NONE

Operator: Buena Vida SNF LLC
Operator Class: Proprietary LLC

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Baseline

20200604

Deputy Commissioner, Office of Primary
Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.

Commissioner

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

BUENA VIDA SNF LLC

AND

BUENA VIDA CORP.

DATED AS OF MAY 16, 2018

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of May 16, 2018 (the "Execution Date") by and between BUENA VIDA SNF LLC, a Delaware limited liability company ("Purchaser") and BUENA VIDA CORP., a New York not-for-profit corporation ("Seller"). Purchaser and Seller are sometimes referred to herein as, collectively, the "Parties"; individually as a "Party."

WHEREAS, Seller is engaged in the business of operating that certain skilled nursing facility with 240 skilled nursing facility (the "Facility") beds known as "Buena Vida Continuing Care & Rehab Center" (the "Business"), that is situated on property located at 48 Cedar Street, Brooklyn, New York 11221 (the "Real Property");

WHEREAS, concurrently herewith, Seller and 48 Cedar Street LLC, a Delaware limited liability company (the "Real Property Purchaser"), are entering into that certain Purchase and Sale Agreement (the "Real Property Purchase Agreement") pursuant to which, subject to the terms and conditions contained therein, Seller will sell the Property (as defined in the Real Property Purchase Agreement) to the Real Property Purchaser and the Real Property Purchaser will purchase the Property from Seller; and

WHEREAS, Purchaser desires to purchase the assets used in or necessary for the Business (other than the Property) from Seller and to assume certain liabilities incurred in connection therewith, and Seller desires to sell such assets to Purchaser, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, mutual covenants, agreements, representations, and warranties herein contained, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01 Certain Definitions.

- (a) The following terms, when used in this Agreement, will have the following respective meanings:

"Accounts Payable" means all accounts payable and trade payables resulting from the operation of the Business and/or the Facility in the Ordinary Course of Business.

"Accounts Receivable" means all trade and other accounts receivable, notes receivable and other receivables of any kind related to services rendered by Seller and/or the Facility, regardless of when billed.

"Affiliate" means, with respect to any Person: (a) if such Person is an individual, (i) the spouse of such Person, (ii) the biological or adopted children of such person and any such children's spouse and children, (iii) the parents of such Person or of such Person's spouse, and (iv)

the siblings of such Person, and (b) whether or not such Person is an individual, any Person directly or indirectly controlling, controlled by, or under common control with, such Person at any time during the period for which the determination of affiliation is being made. For purposes of this definition, the term "control" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of management policies of such person, whether through the ownership of voting securities or by contract or otherwise. The term "Affiliate" shall include but not be limited to any Person who would be considered a single employer with a Party pursuant to Sections 414(b)(and (c) of the Internal Revenue Code or Section 4001(b)(3) of ERISA.

"Application" means the completed Certificate of Need application seeking the approval of the New York State Department of Health (the "DOH") and/or the New York State Public Health and Health Planning Counsel (the "PHHPC"), as applicable, for the establishment and licensure of Purchaser as the operator of the Facility (the "Approval").

"Books and Records" means all (i) books, records, files, lists, price lists, documents and correspondence with or related to customers and vendors of the Business (including all customer and vendor lists and related purchase and sale information), (ii) manufacturing and engineering drawings and specifications, work papers (including underlying documents), patterns, programs, and program maps, (iii) service, maintenance and warranty records, procedure manuals, computer records and other technical and business records, (iv) environmental reports, assessments and records, (v) business and marketing plans and proposals, and (vi) other types or forms of information relating in any manner to the Business or the operations or financial or statistical history of Seller, in each case, whether in paper, electronic or magnetic form.

"Business Day" means any day except a Saturday, Sunday, or a day on which banks in the State of New York are required or permitted by applicable Law to close.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985.

"Code" means the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Contract" means any agreement, contract, lease, franchise, permit, license, promissory note, mortgage, pledge, instrument, or other document evidencing a right or obligation, in each case whether written (including in electronic form) or oral.

"Credited Assumed Liabilities" means collectively those certain Assumed Liabilities which expressly decrease the REAPA Purchase Price as identified in the Real Property Purchase Agreement in Section 9.04, items 1 through 6 under the heading "Purchase Price Decreases."

"Disclosure Schedules" means the schedules relating to this Agreement and referenced herein.

"Effective Date" means May 1, 2018.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, as interpreted by the rules and regulations thereunder, all as the same may be in effect from time to time, with any references to specific sections of ERISA construed also to refer to any predecessor or successor sections thereof.

"Escrow Agent" means the Title Company (as defined in the Real Property Purchase Agreement).

"Financial Statements" means, collectively, (a) Seller's audited financial statements as of December 31, 2016, December 31, 2015 and December 31, 2014, together with the related reviewed statements of income, retained earnings, and cash flows of Seller for the periods then ended (including the notes thereto and any other information included therein), and (b) Seller's interim, unaudited balance sheet as of March 31, 2018 and the related unaudited statements of income, retained earnings, and cash flows for the three-month period ending March 31, 2018.

"Governmental Authorizations" means all licenses, permits, certificates, and other authorizations and approvals of any Governmental Entity required under any applicable Law to carry on the Business as currently conducted in the ordinary course.

"Governmental Entity" means any United States or other local, state, national, federal or other government, including each of their respective branches, departments, bureaus, agencies, courts, bodies, authorities, instrumentalities or other subdivisions.

"Healthcare Program Liabilities" means any debt, Liability, obligation or assessment in connection with or under any Healthcare Reimbursement Payor Laws or any Healthcare Reimbursement Payor Contract, including, without limitation, (a) any obligations for settlement and retroactive adjustments relating to the Business under the Medicare and Medicaid programs, (b) any obligations or liabilities relating to the Business arising by reason of any failure to comply with the rules and regulations of any Healthcare Reimbursement Payor, (c) all obligations which may hereafter exist with respect to any payment or reimbursement owed to any Healthcare Reimbursement Payor or other payor which is attributable to the Business, (d) any debt, liability, obligation or assessment to or by any Healthcare Reimbursement Payor for overpayments and other financial obligations arising from adjustments or reductions in reimbursement attributable to the Business along with all cash receipts assessments liabilities relating to any of the same, and (e) any civil monetary penalties or impositions assessed against the Facility by any Healthcare Reimbursement Payor.

"Healthcare Reimbursement Payor" means Medicare, Medicaid, any other federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)), any other state sponsored reimbursement program, and any other health care reimbursement program, payment intermediary, third party payor or other private payor.

"Healthcare Reimbursement Payor Laws" means the Laws governing Healthcare Reimbursement Payors, including but not limited to: 42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a-7b and 1395nn; the False Claims Act (31 U.S.C. § 3729 *et seq.*); the False Statements Act (18 U.S.C. § 1001 *et seq.*); the Program Fraud Civil Penalties Act (31 U.S.C. § 3801 *et seq.*); the anti-fraud and abuse provisions of the Health Insurance Portability and Accountability Act of 1996 (18

U.S.C. § 1347, 18 U.S.C. § 669, 18 U.S.C. § 1035, 18 U.S.C. § 1518); and similar or the corresponding provisions, including, but not limited to, fraud and abuse, false claims and anti-self-referral Laws of any other Governmental Entity.

“Indemnifiable Damages” means all Liabilities and Losses described in Sections 7.01 and 7.02, as the case may be, for which an Indemnified Party is entitled to indemnification pursuant to Sections 7.01 or 7.02.

“Indemnified Party” means a Purchaser Indemnified Party or Seller Indemnified Party, as applicable, claiming indemnification pursuant to Article VII.

“Indemnifying Party” means a Party from whom indemnification is sought pursuant to Article VII.

“Indemnity Escrow Agreement” means a duly executed Indemnity Escrow Agreement in the form attached hereto as Exhibit F which the Parties agree to execute and deliver if required pursuant to the terms of Section 2.10(a) or (c)(iii) herein.

“Intellectual Property” means all intellectual property in any jurisdiction that is owned or used by Seller and used in or necessary for the Business, including: all right, title, and interest in and to any patents, trademarks, copyrights, service marks and tradenames, whether or not registered, and any pending applications for registration of any patents, trademarks, copyrights, service marks and tradenames, brand names, domain names, websites and web designs, software, trade dress, formulae, processes, manufacturing and development know-how, advertising campaigns and layouts, promotional materials, trade secrets, inventions, designs, product ideas, products under development, marketing plans, models, technology, and any other similar intellectual property rights used in or necessary for the Business, together with the goodwill thereof symbolized thereby for the Business, including, without limitation, the name “Buena Vida Continuing Care & Rehab Center” and any variation thereof.

“Inventory” means all of Seller’s inventory of supplies, promotional materials, and all other items of inventory of whatever kind used or usable at the Facility.

“Knowledge of Seller”, “Seller’s Knowledge” or “Known to Seller” means the actual knowledge of Scott Short after Reasonable Due Inquiry. Notwithstanding the foregoing, “Knowledge of Seller”, “Seller’s Knowledge” or “Known to Seller” shall mean, for purposes of the definition of Excluded Known and Undisclosed Liabilities, the actual knowledge of Scott Short the Facility’s administrator, director of nursing, director of rehabilitation, chief financial officer and controller. For purposes of this definition, “Reasonable Due Inquiry” shall mean, where applicable, inquiry with the Facility’s administrator and/or chief financial officer.

“Law” means any applicable law, including common law, statute, ordinance, rule, regulation, code, order, judgment, injunction, decree or judicial or administrative doctrine that is promulgated or issued by any Governmental Entity.

“Liability” means any direct or indirect indebtedness, liability, contest, claim, demand, assessment, action, cause of action, complaint, litigation, damage, deficiency, obligation or

responsibility, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, accrued, absolute, contingent or otherwise.

“Lien” means any mortgage, lien, claim, charge, restriction, right, option, adverse interest or other encumbrance of any kind.

“Losses” means Liabilities, losses, charges, suits, proceedings, interest, penalties and reasonable costs and expenses associated therewith (including reasonable attorneys’ fees, litigation costs, fines, penalties, and expenses of investigation), whether asserted by a Party to this Agreement or by a third party.

“Material Adverse Effect” means any fact, circumstance, event or other condition that is or would reasonably be expected to be materially adverse to the business, assets, liabilities, properties, prospects, condition (financial or otherwise) or results of operations of the Business taken as a whole.

“Notice of Claim” means a certificate signed by the Indemnified Party or its authorized representative: (i) stating the estimated Indemnifiable Damages to which the Indemnified Party is entitled to indemnification pursuant to Article VII and the amount thereof (to the extent then known, which amount shall not be conclusive of the final amount of such claim and demand); and (ii) the basis upon which Indemnifiable Damages are claimed.

“Ordinary Course of Business” shall mean the ordinary course of conducting the Business and the operation of the Facility, consistent with past custom and practice or industry standards.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a Governmental Authority.

“Post-Effective Date Healthcare Program Liabilities” means any Healthcare Program Liabilities which relates to the operation of the Business or the services rendered by the Facility during any period of time on or after the Effective Date, including, without limitation, (a) any obligations for repayment, settlement and/or retroactive adjustments relating to the Business under any Healthcare Reimbursement Payor Programs which relate to the operation of the Business or the services rendered by the Facility during any period of time on or after the Effective Date, (b) any obligations or Liabilities arising by reason of any failure to comply with the rules and regulations of any Healthcare Reimbursement Payor which relates to the operation of the Business or the services rendered by the Facility during any period of time on or after the Effective Date, (c) all obligations now existing or which may hereafter exist with respect to any payment or reimbursement owed to any Healthcare Reimbursement Payor or other payor which relates to the operation of the Business or the services rendered by the Facility during any period of time on or after the Effective Date, including, without limitation, any surcharges owed pursuant to the New York Health Care Reform Act of 1996, as may be amended from time to time, and (d) any debt, Liability, obligation, assessment or surcharge to or by any Healthcare Reimbursement Payor for overpayments and other financial obligations arising from adjustments or reductions in reimbursement attributable to events, transactions, circumstances, or conditions occurring or existing on or after the Effective Date, but only to the extent such adjustments or reductions relate

to the operation of the Business or the services rendered by the Facility during periods on or after the Effective Date.

"Pre-Effective Date Healthcare Program Liabilities" any Healthcare Program Liabilities which relates to the operation of the Business or the services rendered by the Facility during any period of time before the Effective Date, including, without limitation, (a) any obligations for repayment, settlement and/or retroactive adjustments relating to the Business under any Healthcare Reimbursement Payor Programs which relate to the operation of the Business or the services rendered by the Facility during any period of time before the Effective Date, (b) any obligations or Liabilities arising by reason of any failure to comply with the rules and regulations of any Healthcare Reimbursement Payor which relates to the operation of the Business or the services rendered by the Facility during any period of time before the Effective Date, (c) all obligations now existing or which may hereafter exist with respect to any payment or reimbursement owed to any Healthcare Reimbursement Payor or other payor which relates to the operation of the Business or the services rendered by the Facility during any period of time before the Effective Date, including, without limitation, any surcharges owed pursuant to the New York Health Care Reform Act of 1996, as may be amended from time to time, and (d) any debt, Liability, obligation, assessment or surcharge to or by any Healthcare Reimbursement Payor for overpayments and other financial obligations arising from adjustments or reductions in reimbursement attributable to events, transactions, circumstances, or conditions occurring or existing before the Effective Date, but only to the extent such adjustments or reductions relate to the operation of the Business or the services rendered by the Facility during periods prior to the Effective Date.

"Purchaser Indemnified Parties" means, collectively, Purchaser and its Affiliates, and the respective members, managers, officers, representatives and agents of each of the foregoing.

"REAPA Closing" means the "Closing" as such term is defined in the Real Property Purchase Agreement.

"REAPA Purchase Price" means the "Purchase Price" as such term is defined in the Real Property.

"Seller Benefit Plan" means any pension, profit-sharing, severance, incentive, bonus, equity-based, deferred compensation, group life and health insurance, and other "employee benefit plan" (within the meaning of section 3(3) of ERISA), workers' compensation, disability, vacation, leave of absence, severance, change-in-control or retention plan, program or agreement, stock option, deferred compensation, bonus or incentive, or other employee benefit plan, policy, agreement, arrangement or program which is maintained, contributed to or required to be contributed to by Seller or any Affiliate of Seller on behalf of any current or former employee or officer of Seller.

"Seller Indemnified Parties" means, collectively, Seller and their Affiliates, member, representatives, directors, officers and agents.

"Tangible Personal Property" means any and all fixtures, equipment, supplies and other tangible personal property owned by Seller and used in or necessary for the Business in all its forms, including, but not limited to, motor vehicles, furniture, furnishings, equipment, tools, computers, computer equipment, machinery, parts, testing equipment, office equipment, components, trade fixtures, attachments and accessions, wherever located; provided, any asset that constitutes Inventory shall not constitute Tangible Personal Property.

"Taxes" means any taxes levied or imposed by any Governmental Entity, including income, gross receipts, windfall profits, value added, severance, production, sales, use, license, excise, franchise, employment, environmental, real property, personal property, transfer, alternative minimum, estimated, withholding or other taxes, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, whether or not disputed or contested.

"Tax Returns" means all reports and returns required to be filed with respect to Taxes in any jurisdiction, including all attachments thereto.

"Transaction Documents" means all other agreements and documents contemplated by this Agreement or executed in connection herewith regardless of which Party is required to execute or deliver any such agreement or document.

"US GAAP" means accounting principles generally accepted in the United States of America.

Section 1.02 Interpretation In this Agreement, unless the context otherwise requires:

- (a) the words "herein," "hereof" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (b) references to "Article" or "Section" are to the respective Articles and Sections of this Agreement, and references to "Exhibit" or "Schedule" are to the respective Exhibits and Schedules annexed hereto;
- (c) references to a "third party" or "third person" means a Person not party to this Agreement;
- (d) the word "or" is not exclusive;
- (e) the masculine pronoun includes the feminine and the neuter, and vice versa, as appropriate in the context;
- (f) wherever the word "include," "includes" or "including" is used in this Agreement, it will be deemed to be followed by the words "without limitation";
- (g) references to any Law means such Law as amended from time to time and includes any successor Law thereto and any regulations promulgated thereunder, including any amendments to such regulations or successor regulations;

- (h) references to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and by this Agreement; and
- (i) any exception to a representation or warranty of this Agreement set forth in the Schedules shall relate to any representation or warranty only if the exception expressed on the Schedule specifically refers to or cross references the particular representation or warranty of this Agreement to which it pertains.

ARTICLE II. PURCHASE, SALE AND ASSUMPTION

Section 2.01 Purchase and Sale of Business Assets. Upon the terms and conditions of this Agreement, at the Closing (as defined herein), Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase from Seller, all of Seller's respective right, title and interest, as of the Effective Time, in and to the following assets (collectively, the "Business Assets"):

- (a) all cash, deposits, cash equivalents and short term investments on-hand as of the Closing Date;
- (b) all Accounts Receivable outstanding as of the Closing Date;
- (c) all checking, savings and operating accounts of Seller related to the Business;
- (d) all Inventory;
- (e) all Intellectual Property and Seller's right to use any intellectual property of any kind owned by others excluding the name "Buena Vida Continuing Care & Rehab Center" and any intellectual property rights related thereto;
- (f) all Books and Records of Seller except as provided in Section 2.02(a);
- (g) all Contracts pursuant to which Seller is a party that are in effect at the time of Closing and relating to the Business, other than the Collective Bargaining Agreement (the "Assigned Service Contracts");
- (h) all Tangible Personal Property;
- (i) to the extent their transfer is permitted by applicable Law, all Governmental Authorizations held by Seller and all applications therefor, provided, however, that if any Governmental Authorization cannot be transferred under applicable Law, Seller agrees to cooperate with and reasonably assist Purchaser in obtaining such Governmental Authorization;
- (j) all rights of Seller with respect to prepaid expenses, credits, security deposits, advance payments, bid and performance bonds made or paid by Seller;

- (k) all prepaid state and local personal property Taxes that are imposed directly with respect to any of the Business Assets;
- (l) insurance proceeds that Seller has the right to receive that relate to any of the Business Assets or the Assumed Liabilities, other than such proceeds from liability insurance that relate exclusively to Excluded Liabilities;
- (m) all rights of Seller or under warranties relating to the Business Assets or any products sold by Seller to the extent the same are transferable;
- (n) all goodwill owned by Seller that is associated with the Business or any of the foregoing assets;
- (o) subject to Section 2.06, all Healthcare Reimbursement Payor Contracts, including, without limitation, the Medicare and Medicaid provider numbers and Medicare and Medicaid Provider Agreements related to the Business (the "Assigned Payor Contracts", and collectively with the Assigned Service Contracts, the "Assigned Contracts");
- (p) all other revenue, payments, refunds, rebates, reimbursements, receipts or fees received on or after the Effective Date relating to the Business including, without limitation, (i) all Universal Settlement Proceeds (as defined below) and (ii) all refunds for taxes, fees, assessments and charges with respect to the Business; and
- (q) all other assets owned by Seller that are used in, or necessary for, the operation of the Business, as set forth on Schedule 2.01(q).

Section 2.02 Excluded Assets. Notwithstanding anything herein to the contrary, Seller shall retain all of their respective right title and interest in and to, and the Business Assets shall not include, the following (collectively, the "Excluded Assets"):

- (a) all Tax Returns, tax records, and financial statements of Seller and its Affiliates, corporate minute books, stock ledgers, and other books and records related thereto; provided, that Seller shall make available to Purchaser copies of all such documents to the extent related to the Business; further provided, that such obligation to make documents available shall last for the time period of the applicable statute of limitations period (or, if different, any period during which a third party could bring a claim against Purchaser relating to the matters wherein such documents would be relevant);
- (b) the Property, Excluded Property (as defined in the Real Property Purchase Agreement) and any other real property, including without limitation, any related rights thereto and/or thereon, owned by Seller;
- (c) All Intellectual Property rights related to the usage of the name "Buena Vida Continuing Care & Rehab Center";
- (d) The REAPA Purchase Price; and

- (e) the assets set forth on Schedule 2.02(d).

Section 2.03 Assumed Liabilities. Subject to Section 2.04, from and after the REAPA Closing, Purchaser shall assume only the following Liabilities and obligations of Seller (such Liabilities and obligations, the "Assumed Liabilities"):

- (a) all Accounts Payable of Seller whether accruing prior to, on or after the Effective Date;
- (b) all Liabilities of Seller arising under the Assigned Contracts which relate to the operation of the Business in respect of any period prior to, on or after the Effective Date;
- (c) all Liabilities of Seller relating to any Business Assets in respect of any period prior to, on or after the Effective Date;
- (d) any and all Liabilities and obligations of Seller arising from or relating to the operation of the Business and/or the Facility prior to, on or after the Effective Date, including without limitation (i) any Liability not otherwise covered by insurance, including without limitation any premium or deductible in connection therewith, arising from or relating to claims of medical malpractice and/or other professional liability of any of employees, agents or independent contractors of the Facility, arising out of or relating to any period or events or omissions in connection with events occurring prior to the Closing Date, (ii) all Post-Effective Date Healthcare Program Liabilities, (iii) all Pre-Effective Date Healthcare Program Liabilities, (iv) all vacation, sick and personal days, accrued and payable pursuant to Seller's benefit plans, for each Hired Employee (as defined herein) (the "Hired Employee PTO Benefits"), including any applicable payroll Taxes arising from or related to the Hired Employees PTO Benefits, and (v) those Liabilities set forth on Schedule 2.03(d); and
- (e) all Liabilities expressly assumed by Purchaser herein.

Section 2.04 Excluded Liabilities. Notwithstanding anything herein to the contrary, Purchaser is not assuming any of the following Liabilities:

(a) Any Liabilities (including Pre-Effective Date Healthcare Program Liabilities and Overpayment Obligations) that are, to the Knowledge of Seller, outstanding, accrued or contingent as of the Effective Date and not set forth on the Disclosure Schedules, including without limitation Schedule 4.06, the Financial Statements or otherwise disclosed to Purchaser in writing on or prior to the Execution Date and/or the Credited Assumed Liabilities (collectively, the "Excluded Known and Undisclosed Liabilities");

(b) Except with respect to (i) debt service or default payments between the Effective Date and REAPA Closing Date under any loans secured by the Facility, which shall be Assumed Liabilities or (ii) Liabilities which are Credited Assumed Liabilities, any Liabilities of Seller under any loan documents, debt instruments or any loan guarantees, including related and/or intercompany loans, payables, or other obligations;

(c) Any Liabilities arising as a result of Seller's failure to perform any covenant or breach of any of its representations or warranties contained in this Agreement, any Transaction Document, the Real Property Purchase Agreement or any document delivered in connection with the Real Property Purchase Agreement; and

(d) Any Liabilities of Seller that are unrelated to the operation of the Business or ownership of the Real Property.

Section 2.05 Consideration. The consideration to be paid by Purchaser to Seller for the Business Assets shall be the assumption by Purchaser of the Assumed Liabilities.

Section 2.06 Medicare and Medicaid Provider Agreements.

(a) At Purchaser's election, Seller's rights and interests in and to the Medicare and Medicaid provider numbers and Medicare and Medicaid provider reimbursement agreements (individually a "Provider Agreement" and collectively the "Provider Agreements") shall be assigned to Purchaser at the Closing; provided, that, such assignment and assumption shall be permissible under applicable Law. If Purchaser elects to assume any Provider Agreement, such Provider Agreement shall be considered an "Assigned Contract" under this Agreement.

(b) As of the REAPA Closing, Purchaser shall be liable and responsible for all Medicaid overpayments and/or Medicaid audit liabilities to the State of New York with respect to the period of time prior to, on and subsequent to the Closing Date. The foregoing shall not in any way be deemed to modify, reduce or otherwise affect Seller's obligations and liabilities or their indemnification obligations to Purchaser with respect Excluded Known and Undisclosed Liabilities.

Section 2.07 Revenues; Accounts Receivable and Payable.

(a) Use of Revenues. All cash of Seller shall be retained as cash and shall be used for the operation of the Business and for the payment of Accounts Payable incurred by the Facility at any time on and after the Effective Date.

(b) Post-Closing Date Receivables. Monies received by Seller subsequent to the Closing Date arising from the operation of the Business, whether prior to or on or after the Effective Date, shall be held by Seller for the benefit of Purchaser and shall be paid over to Purchaser within seven (7) days of the receipt thereof, together with all statements and supporting documentation related thereto.

Section 2.08 Resident Trust Funds. Unless a Receiver has been appointed and such receivership has been effectuated, on or prior to the Closing Date, Seller shall (i) provide to Purchaser a schedule of all residents' property and funds delivered to Seller and/or the Facility by residents and held in trust for such residents by Seller for residents at the Facility ("Resident Trust Funds"), as of a date fifteen (15) days prior to the Closing Date and (ii) assign, transfer and deliver to Purchaser all such Resident Trust Funds and property, to be held by Purchaser for the benefit of the designated residents, regardless of whether such Resident Trust Funds or property appear on the schedule delivered by Seller to Purchaser pursuant to this Section 2.08. As of the earlier of the

Receivership Date or the Closing, Purchaser shall assume all Liability with respect to such Resident Trust Funds.

Section 2.09 Universal Settlement. Notwithstanding anything herein to the contrary all monies related to or arising from the universal settlement agreement by and between the Facility and/or Seller and the State of New York by and through the New York State Department of Health the Office of the Medicaid Inspector General and the New York State Division of Budget (the "Universal Settlement") received on or after the Effective Date shall be considered Business Assets. For the purposes of clarity, all amounts to be paid by New York State to the Facility and/or Seller on or after the Effective Date, as set forth on Appendix A of the Universal Settlement (the "Universal Settlement Proceeds"), whether related to litigation settlements or not, shall be considered Business Assets. Seller shall have no interest in, or right to receive, any of the Universal Settlement Proceeds payable or pursuant to and in accordance with the Universal Settlement. To the extent possible, and as reasonably requested by Purchaser, Seller shall take all commercially reasonable steps to ensure that the Universal Settlement Proceeds are paid directly to the Purchaser or its designee.

Section 2.10 Overpayments, Underpayments and Appeals.

(a) Responsibility for Healthcare, Medicare or Medicaid Overpayments and Audits. Seller acknowledges that the DOH or other third party payors may collect the Pre-Effective Date Healthcare Program Liabilities by lump sum or by decreasing the third party payments that are otherwise payable to the Business on or after the Effective Date (collectively, "Overpayment Obligations"). In respect of unpaid Overpayment Obligations that constitute Excluded Known and Undisclosed Liabilities ("Excluded Overpayment Obligations"), the Parties agree that at the REAPA Closing, Seller shall deposit with the Escrow Agent an amount equal to such Excluded Overpayment Obligations to be held and released pursuant to the terms of the Indemnity Escrow Agreement and Article VII herein and upon deposit of such funds with the Escrow Agent, the applicable Excluded Overpayment Obligations shall be deemed an Assumed Liability hereunder; provided, that, if such Excluded Overpayment Obligations are final, after exhaustion of all appeals, at the time of the REAPA Closing, the Real Property Purchaser shall receive at the REAPA Closing a credit against the REAPA Purchase Price in an amount equal to such final and non-appealable Excluded Overpayment Obligations, and upon receipt of such credit, the same shall be deemed an Assumed Liability hereunder. If the Parties cannot agree upon whether the subject Overpayment Obligations are Excluded Overpayment Obligations, the Seller shall deposit the full amount of such alleged Excluded Overpayment Obligations with the Escrow Agent as required above. In the event that such Overpayment Obligations are determined to be Excluded Overpayment Obligations, then the Escrow Agent shall release such escrowed funds to the Purchaser. In the event that such Overpayment Obligations are not deemed to be Excluded Overpayment Obligations, then the Escrow Agent shall return such escrowed amount to Seller.

(b) Right to Appeal. Each Party shall retain the sole and absolute right to protest, contest or appeal any Medicaid or Medicare rate determinations or any other third Party reimbursement and to make all filings necessary to recover all assessments or amounts withheld relating solely to the services rendered by the Facility, with respect to Seller, during any period prior to the Effective Date and, with respect to Purchaser, during any period on or after the Effective Date, and to receive

and retain any additional reimbursement resulting therefrom; limited, however, to the reimbursement for services rendered by the Business during such Party's period as set forth above. Each Party agrees to cooperate with each other in connection with any such appeals.

(c) Retroactive Payment Adjustments. If any retroactive adjustment in payments is made as a result of an audit, rate appeal or otherwise, with respect to Medicaid or Medicare rate payments or other liabilities to the State of New York or any other third party reimbursement paid or owing relating to the services rendered by the Business before the Effective Date and such adjustment is made by increasing or decreasing the Medicare, Medicaid or other third party payments made by such payor to the Business on or after the Effective Date, then:

- (i) prior to Closing, Seller shall promptly notify Purchaser of such retroactive adjustment and after Closing, Purchaser shall promptly notify Seller of such retroactive adjustment;
- (ii) in the case of an increase, the monies received by Purchaser attributable to such increase relating to the rates in effect or the Services rendered by the Business during any period of time shall be deemed Business Assets belonging to Purchaser;
- (iii) in the case of a decrease, any such retroactive adjustment shall be deemed an Assumed Liability and Seller shall have no obligation to reimburse Purchaser for any money withheld or otherwise recovered from payments due to Purchaser with respect to the same; provided, that, if any such retroactive adjustment constitutes an unpaid Excluded Known and Undisclosed Liability (an "Excluded Retroactive Adjustment"), the Parties agree that at the REAPA Closing, Seller shall deposit with the Escrow Agent an amount equal to such Excluded Retroactive Adjustment to be held and released pursuant to the terms of the Indemnity Escrow Agreement and Article VII herein and upon deposit of such funds with the Escrow Agent, the applicable Excluded Retroactive Adjustment shall be deemed an Assumed Liability hereunder; provided, further that if such Excluded Retroactive Adjustment is final, after exhaustion of all appeals, at the time of the REAPA Closing, the Real Property Purchaser shall receive at the REAPA Closing a credit against the REAPA Purchase Price in an amount equal to such final and non-appealable Excluded Retroactive Adjustment, and upon receipt of such credit, the same shall be deemed an Assumed Liability hereunder. If the Parties cannot agree upon whether a retroactive adjustment is an Excluded Retroactive Adjustment, the Seller shall deposit the full amount of such alleged Excluded Retroactive Adjustment with the Escrow Agent as required above. In the event that such retroactive adjustment is determined to be an Excluded Retroactive Adjustment, then the Escrow Agent shall release such escrowed funds to the Purchaser. In the event that such retroactive adjustment is not deemed to be an Excluded retroactive Adjustment, then the Escrow Agent shall return such escrowed funds to the Seller.

(d) Claim Notice. After the Closing Date, if either Party receives a notice relating to any audit, rate appeal, retroactive rate adjustment, or other rate determination, or of the results of any protest, contest or appeal thereof, which is attributable in whole or in part to pre-Effective Date periods

(the "Claim Notice") the receiving Party shall deliver to the other Party, within ten (10) days of such receipt, a true and correct copy of any such Claim Notice.

(e) Rate Appeals. On and after the Closing Date, Purchaser shall have the sole right to protest, contest or appeal any Medicaid or Medicare rate determinations or any third Party reimbursement relating to the Business at Purchaser's sole cost and expense.

(f) Survival. The provisions of this Section 2.10 shall survive the Closing.

Section 2.11 Receivership. Promptly following the Effective Date, but in no event later than two (2) days thereafter, the Parties shall seek to obtain DOH approval of the appointment of Purchaser as the voluntary receiver of the Facility (in such capacity, the "Receiver") (the date of the foregoing, the "Receivership Date"), and the assumption of the operation of the Facility by the Receiver pursuant to such receivership. Purchaser and Seller shall in cooperation with each other expeditiously file all submissions with the DOH in connection with such receivership, including, without limitation, the form of receivership agreement substantially in the form of Exhibit A hereto (the "Receivership Agreement"), and shall diligently pursue such DOH approval.

Section 2.12 Lease. It is anticipated that the REAPA Closing will occur prior to the Closing hereunder. As such, a lease may be entered into between Real Property Purchaser and Seller pursuant to the terms of the real property Purchase Agreement (the "Lease Agreement"). For the avoidance of doubt, all Liabilities of Seller under the Lease Agreement from the commencement date thereof until the Closing (or earlier termination of this Agreement) shall be deemed Assumed Liabilities hereunder.

ARTICLE III. CLOSING

Section 3.01 Closing. The consummation of the purchase and sale of the Business Assets (the "Closing") shall take place remotely via the exchange of payment, documents, and signatures on the date that is thirty (30) days following the satisfaction or waiver of the conditions precedent specified in Section 3.02(b). The date on which the Closing occurs is called the "Closing Date." Except as otherwise set forth in this Agreement, all transactions contemplated hereby will be deemed to have occurred simultaneously and will become effective and legal title, equitable title and risk of loss with respect to the Business Assets will transfer to Purchaser at 12:01 a.m. on the Closing Date (the "Effective Time").

Section 3.02 Conditions to the Obligations of Purchaser and Seller. The obligations of Purchaser and Seller to effect the Closing are subject to the satisfaction or waiver in writing in whole or in part by Purchaser and Seller prior to Closing of each of the following conditions:

(a) No Investigations, Injunctions, or Similar Impediments. No Governmental Entity of competent jurisdiction will have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, or judgment, decree, injunction or other order that is in effect on the Closing Date and prohibits or prevents the Closing or the consummation of the transactions contemplated by this Agreement, nor initiated any investigation that is ongoing pursuant to which such order would reasonably be expected to be issued.

(b) Approval.

- (i) Purchaser shall have received or obtained the non-contingent, unconditional final Approval for Purchaser to operate the Facility.
- (ii) Seller shall have received final approval from the Supreme Court of the State of New York and/or the New York State Attorney General's office, in each case, as necessary, authorizing the consummation of the transactions contemplated by this Agreement.
- (iii) Such other approvals as set forth on Schedule 3.02(b)(iii).

Section 3.03 Further Conditions to the Obligation of Purchaser. The obligation of Purchaser to effect the Closing is subject to the satisfaction by Seller or waiver by Purchaser prior to the Closing of each of the following further conditions:

- (a) Representations and Warranties. The representations and warranties of Seller contained herein shall have been true and correct in all material respects when made and, where applicable and specifically referenced, as of the Closing, and Seller shall have delivered to Purchaser a certificate to such effect executed by Seller and dated as of the Closing Date.
- (b) Covenants. All covenants and agreements of Seller under this Agreement to be performed in all material respects at or prior to the REAPA Closing shall have been duly performed, and Seller shall have delivered to Purchaser a certificate to that effect executed by Seller and dated as of the Closing Date.
- (c) Real Property Purchase Agreement. The closing under the Real Property Purchase Agreement shall have occurred.
- (d) Documents to be delivered to Purchaser by Seller. At the Closing, Seller shall have delivered to Purchaser:
 - (i) A Bill of Sale in substantially the form of Exhibit B, duly executed by Seller;
 - (ii) An Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), substantially the form of Exhibit C, duly executed by Seller;
 - (iii) A certificate, in form and substance reasonably acceptable to Purchaser, executed by Seller, dated the Closing Date, and certifying that attached thereto is a true and complete copy of the certificate of incorporation, bylaws, and necessary resolutions authorizing this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, as applicable, of Seller, as in effect as of the Closing Date;
 - (iv) The certificates required by Sections 3.03(a) and (b);

- (v) Such documents as Purchaser may reasonably request to fully vest the ownership of the Business Assets in Purchaser free and clear of all Liens (other than Permitted Encumbrances), including without limitation, UCC-3s and Lien releases with respect to any Liens covering any of the Business Assets (other than Permitted Encumbrances);
- (vi) A Medical Records Custody Agreement (the "Medical Records Custody Agreement"), in a form attached hereto as Exhibit D, duly executed by Seller;
- (vii) Notwithstanding the fact that Seller shall retain ownership of the name "Buena Vida Continuing Care & Rehab Center" and the use of any name or phrase including the word "Buena Vida", as of the Closing Date and for a period of six (6) months thereafter, (the "License Termination Date"), the Seller shall grant an exclusive license and shall permit Purchaser to use the name "Buena Vida" in connection with Purchaser's operation of the Facility pursuant to the terms of a License Agreement to be on terms mutually acceptable to the Parties and executed on the Closing Date. As of the License Termination Date, the License Agreement shall automatically terminate and all rights of Purchaser to use the name "Buena Vida" shall be terminated thereunder. The form of License Agreement shall be in substantially similar form as set forth on Exhibit E.
- (viii) At the Closing Date, if and only to the extent that an existing insurance policy of Seller is on a claims made basis, Seller shall procure, at Purchaser's expense, a "tail" policy to insure against malpractice or other professional Liability committed or allegedly committed by Seller, its directors, officers, employees and agents with respect to matters occurring prior to the Closing Date, which insurance shall contain terms and conditions no less advantageous than are contained in Seller's current insurance policies (the "Tail Policy"). The Tail Policy shall be retroactive such that it covers all periods prior to the Closing Date and shall remain in effect for not less than three (3) years after the Closing;
- (ix) a duly executed Seller Guaranty; and
- (x) Such other certificates and documents as Purchaser or their counsel may reasonably request.

Section 3.04 Further Conditions to the Obligation of Seller. The obligation of Seller to effect the Closing is subject to the satisfaction by Purchaser or waiver by Seller prior to the Closing of each of the following further conditions:

- (a) Representations and Warranties. The representations and warranties of Purchaser contained herein shall have been true and correct in all material respects when made and as of the Closing Date and Purchaser shall have delivered to Seller a certificate to such effect executed by Purchaser and dated as of the Closing Date.
- (b) Covenants. All covenants and agreements of Purchaser under this Agreement have been performed in all material respects on or prior to the Closing Date shall have been duly

performed and Purchaser shall have delivered to Seller a certificate to that effect executed by Purchaser and dated as of the Closing Date.

- (c) Written Assurance. Seller shall have received written assurance from 1199 SEIU (the "Multiemployer Plan") that the transactions contemplated by this Agreement will not result in Seller incurring complete or partial withdrawal liability from the Multiemployer Plan ("Withdrawal Liability").
- (d) Real Property Purchase Agreement. The closing under the Real Property Purchase Agreement shall have occurred prior to the Closing.
- (e) Documents to be delivered to Seller by Purchaser. At the Closing, Purchaser shall have delivered to Seller (or certain of them) as applicable, the following:
 - (i) The Medical Records Custody Agreement, duly executed by Purchaser;
 - (ii) The Assignment and Assumption Agreement, duly executed by Purchaser;
 - (iii) The certificates required by Sections 3.04(a) and (b); and
 - (iv) Such other certificates and documents as Seller or their counsel may reasonably request.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES BY SELLER

To induce Purchaser to enter into this Agreement, Seller hereby represents, warrants and covenants to Purchaser that, except as set forth on the Disclosure Schedules, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the following representations are true and complete in all material respects as of the Effective Date, except as otherwise indicated. The Disclosure Schedules shall be arranged in sections corresponding to the numbered and lettered sections and subsections contained in this Article IV, and the disclosures in any section of the Disclosure Schedules shall qualify other sections and subsections in this Article IV to the extent it is reasonably apparent from the reading of the disclosure that such disclosure is applicable to such other sections and subsections:

Section 4.01 Organization. As of the Execution Date and the Closing Date, Seller is a not-for-profit corporation duly incorporated and validly existing under the Laws of the State of New York. Subject to the Receivership Agreement, Seller has all requisite corporate right, power, and authority to own or lease and to operate its properties and to carry on its business as now being conducted.

Section 4.02 Authority. As of the Execution Date and the Closing Date, Seller has the right, power, and authority to execute and deliver this Agreement and the Transaction Documents to which such Seller is a Party and to carry out such Seller's obligations hereunder and thereunder; the execution, delivery, and performance of this Agreement and each Transaction Document to which Seller is a Party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the directors and the member of Seller; and this Agreement and each

of the Transaction Documents, when executed and delivered by each Seller and when executed and delivered by Purchaser will be the legal, valid, and binding obligation of each Seller enforceable against each Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium, fraudulent conveyance and other similar laws of general application affecting the rights of creditors and applicable laws, regulations, and principles of equity which may restrict the enforcement of certain equitable remedies.

Section 4.03 Approvals. As of the Execution Date and the Closing Date, except as set forth in Schedule 4.03, no consent, approval, order, or authorization of, or notification, registration, declaration, or filing with, any Governmental Entity or third Party is required in connection with the execution and delivery of this Agreement and the Transaction Documents by Seller or the consummation of the transactions contemplated hereby or thereby.

Section 4.04 Non-Contravention. As of the Execution Date and the Closing Date, subject to the receipt of the third party consents set forth on Schedule 4.04, the execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby will not: (a) violate any provision of the certificate of incorporation or bylaws of Seller; and (b) to Seller's Knowledge, violate or conflict with any other material restriction or any Law to which Seller, or any of its property, is subject.

Section 4.05 Financial Statements. Attached hereto as Schedule 4.05 are true, complete and correct copies of the Financial Statements available as of the Effective Date. Except as set forth in Schedule 4.05, all of the Financial Statements are true, correct, and complete in all material respects, are in accordance with the Books and Records of Seller, have been prepared in accordance with US GAAP consistently applied throughout the periods indicated, and present fairly the financial position of Seller at the dates indicated and the results of operations of Seller for the periods indicated.

Section 4.06 Undisclosed Liabilities. To Seller's Knowledge, Seller has not incurred any material liability or obligation (absolute, accrued, contingent, or otherwise) of any nature (other than contractual liabilities and contractual obligations incurred in the ordinary course of business) that has not been properly reflected or reserved against in the Financial Statements or described on Schedule 4.06.

Section 4.07 Absence of Certain Changes. Except to the extent specifically set forth on Schedule 4.07, since September 30, 2017 there has been no Material Adverse Effect, and Seller has not:

- (a) amended its certificate of incorporation or bylaws;
- (b) other than in the Ordinary Course of Business (i) purchased, sold, assigned, or transferred any material tangible or intangible assets or property; (ii) mortgaged, pledged, granted, or suffered to exist any Lien on any material tangible or intangible assets or properties, except for Liens for taxes not yet due; or (iii) waived any rights of material value or canceled any material debts or claims; or

- (c) incurred any material obligation or liability (absolute or contingent), except current liabilities and obligations incurred in the ordinary course of business, or paid any material liability or obligation (absolute or contingent) other than current liabilities and obligations incurred in the ordinary course of business.

Section 4.08 Tax Returns; Taxes.

- (a) Seller has filed with the appropriate Governmental Entities all material Tax Returns required to be filed in connection with or affecting Seller or the operation of the Facility or the Business, and has paid the Taxes shown on such Tax Returns or otherwise assessed, levied or due and payable by Seller, including related penalties and/or interest, to the extent that such Taxes, penalties and/or interest have become due.
- (b) There is no issue or question Known to Seller relating to any such Tax Return that, if determined adversely to Seller would result in the assertion of any material deficiency for any tax or interest, improper filing or penalties. Except to the extent specifically set forth on Schedule 4.08, neither the Internal Revenue Service nor any other taxing authority or agency is now asserting or, to the Knowledge of Seller, is threatening to assert against Seller any deficiency or claim for additional Taxes or interest thereon or improper filing penalties.

Section 4.09 Title to and Condition of the Assets of Seller.

- (a) Except as set forth on Schedule 4.09: (i) Seller owns all of the tangible assets and properties used or held by it in connection with the Business as presently being conducted, and all of such assets and properties are reflected in the Financial Statements; and (ii) Seller has good title to Business Assets, free and clear of all Liens.
- (b) The Tangible Personal Property reflected on the Financial Statements and the Tangible Personal Property owned by Seller as of the Execution Date are in good, merchantable, usable, and working condition. The Tangible Personal Property and Inventory included in the Business Assets is sufficient for Seller to conduct its Business consistent with past practice.

Section 4.10 Payor Compliance. Except as otherwise provided in Schedule 4.10, Seller has timely filed all claims, returns, invoices, and other forms seeking payment from Healthcare Reimbursement Payor programs in a manner that is consistent with Seller's Ordinary Course of Business, applicable Law, and applicable payor requirements. Purchaser has been provided with true and correct copies of the Seller's Medicare and Medicaid cost reports in relation to the Business for the years ending 2014, 2015 and 2016 (the "Cost Reports"). All Cost Reports filed or to be filed by or on behalf of the Seller applicable to the Business have been and will be prepared in all material respects in compliance with all applicable government rules and regulations, are and will be accurate in all material respects and have been or will be timely filed subject to any extension filed in the ordinary course. Except as set forth on Schedule 4.10, there are no claims, actions, payment reviews or appeals pending before any Governmental Entity, including, without limitation, any intermediary or carrier, or the Centers for Medicare & Medicaid Services with respect to any Medicaid or Medicare claim filed by the Seller on or before the Effective Date. No

action has been taken or recommended in writing by any Governmental Entity either to revoke, withdraw or suspend the Seller's license to operate the Business or to terminate or decertify any participation of the Business in the Medicare or Medicaid programs, or to take any action of any other type (other than actions applicable to long-term care facilities generally) which would have a Material Adverse Effect on the Business. Neither the Seller nor its officers, members, managers and directors, nor to the Knowledge of the Seller, any persons who provide professional services under agreements with the Seller have, in connection with their activities directly or indirectly related to the Seller, engaged in any activities which are prohibited under Healthcare Laws, or the regulations promulgated pursuant to such Healthcare Laws or which are prohibited by rules of professional conduct, in each case which would have or could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Contracts.

- (a) Schedule 4.11(a) contains a complete and correct list of all Contracts of every type to which Seller is a party or by which Seller or its assets are bound except: (i) customer purchase orders entered into in the Ordinary Course of Business of Seller involving no more than Five Thousand Dollars (\$5,000); (ii) vendor purchase orders entered into in the ordinary course of business, other than vendor purchase orders involving more than Five Thousand Dollars (\$5,000), having a term of greater than twelve (12) months, or obligating Seller to purchase all of its requirements for any item from one vendor; (iii) maintenance or service contracts which are terminable by Seller without penalty or under which the remaining obligation of Seller is less than Five Thousand Dollars (\$5,000); and (iv) license agreements for general use, prepackaged software which is widely available on a retail or free basis (except where such software is incorporated into product sold or licensed by Seller to third parties).
- (b) Purchaser have been given access to complete and correct copies of all Contracts listed on Schedule 4.11(a), together with all amendments and side letters thereto.
- (c) Except as identified on Schedule 4.11(a), Seller is not a party to any Contract with an Affiliate of Seller.

Section 4.12 Litigation.

- (a) Except as set forth on Schedule 4.12, there are no actions, suits, proceedings, investigations, or inquiries pending or, to Seller's Knowledge, threatened against Seller or affecting Seller or the Business Assets at law or in equity in any court or before any arbitration tribunal or Governmental Entity that would have a material adverse effect on the Business.
- (b) Seller is not in default in respect of any judgment, order, writ, injunction, or decree of any Governmental Entity.

Section 4.13 Employee Matters.

- (a) Schedule 4.13(a) contains a true, correct, and complete list of the name, title, date of hire and current monthly compensation, base salary or hourly remuneration rate of each Person employed by Seller as of the date of this Agreement, together with a statement of the full amount and nature of any other remuneration, whether in cash or kind, paid to each such Person during the 2016 and 2017 calendar years.
- (b) Except for the collective bargaining agreement described in Schedule 4.13(b) (the "Collective Bargaining Agreement") or as otherwise set forth in Schedule 4.13(b), (i) Seller is not a party to any collective bargaining agreement, (ii) no Business Employee is presently a member of a collective bargaining unit and there are no threatened or contemplated attempts to organize for collective bargaining or joint negotiation purposes any of the Business Employees, (iii) there are no unremedied or outstanding unfair labor practice charges, unlawful practices, unlawful occupational safety practices or any charges, complaints or actions alleging a violation of any local, city, State or federal discrimination safety or employment-related law, statute or regulation, (iv) Seller has not experienced any strikes, disruptions, labor disputes or other work-stoppages, and (v) Seller has materially complied with all legal requirements relating to the employment of personnel and labor, payment of wages and other amounts, occupational safety, plant closing, layoffs, collective bargaining and federal contracting, and has withheld all amounts required by statute, regulation or agreement to be withheld from wages, salaries or other compensation of employees.

Section 4.14 Insurance. All of Seller's insurance policies are listed on Schedule 4.14, such policies are in full force and effect, all premiums due thereon have been paid (or any installments have been paid), and Seller has complied in all material respects with the provisions of such policies.

Section 4.15 Intellectual Property. Schedule 4.15 contains a complete and accurate list (including, where applicable, registration numbers and dates of filing, renewal, and termination) of all patents, trademarks, copyrights, service marks and trade names, whether or not registered, brand names, domain names and software constituting Intellectual Property.

Section 4.16 Rates and Reimbursement Policies. Except as otherwise provided in Schedule 4.16, Seller has no reimbursement or payment rate appeals, disputes or contested positions currently pending or threatened before any Governmental Entity or any administrator of any Healthcare Reimbursement Payor program with respect to the Business.

Section 4.17 Government Authorizations; Compliance with Laws. Seller is currently established and licensed by the DOH, pursuant to the Public Health Law of the State of New York, to operate the Business as a 240 bed dually certified long-term nursing facility. Seller has all Governmental Authorizations necessary for it to conduct the Business, and Schedule 4.17 lists all such Governmental Authorizations. Such Governmental Authorizations are valid, and Seller has not received any notice that any Governmental Entity intends to cancel, terminate, or not renew any such Governmental Authorization. To Seller's Knowledge, Seller has complied with and is in compliance with all Laws applicable to it or any of its properties, assets, operations, and Business, and there does not exist any basis for any claim of default under or violation of any such

Law, except for such noncompliance which is not reasonably expected to have a Material Adverse Effect on the Business. The Business participates as a provider in the Medicare and Medicaid programs pursuant to Medicare and Medicaid provider agreements.

Section 4.18 No Brokers. As of the Execution Date and the Closing Date, except as set forth on Schedule 4.18, all negotiations relating to this Agreement, the Transaction Documents, and the transactions contemplated hereby and thereby, have been carried on by Seller without the intervention of any Person in such manner as to give rise to any valid claim against any of the Parties for a brokerage commission, finder's fee or similar compensation.

Section 4.19 Surveys. A copy of the most recent DOH survey or inspection report of the Business and accepted plan of correction, if any, have been provided by the Seller to Purchaser. Except as may be set forth in such survey or report or in Schedule 4.9, there are no material violations, orders or deficiencies issued or recommended in writing by any regulatory agency, intermediary or authority or licensing organization, and, to the Knowledge of the Seller, there are no inspections, license reviews, investigations or proceedings of any sort pending by or before any such regulatory agency, intermediary or authority or licensing organization that relate to the Business. Except as set forth on Schedule 4.19, all deficiencies and violations cited in any survey or inspection report have been corrected or addressed by a plan of corrective action or are expected to be corrected in the ordinary course of the survey process. There are no bans, remedies, sanctions, prohibitions on payment, or limitations in effect, pending or to the knowledge of the Seller, threatened with respect to admissions to the Business, or any licensure curtailments in effect, pending or to the knowledge of the Seller, threatened with respect to the Business.

Section 4.20 Undocumented Immigrants. There are no undocumented immigrants receiving services from the Facility for which Seller is not receiving reimbursement from the Medicaid program or other third party payor.

Section 4.21 No Tenants. As of the Execution Date, there are no tenants or other Persons occupying any portion of the Facility other than Seller and the Facility's residents.

Section 4.22 No Other Sale Agreements. As of the Execution Date, there are no outstanding contracts or options to purchase any of the Business Assets or the Property, other than the Real Property Purchase Agreement, and no pending certificate of need application relating to the Business.

ARTICLE V. REPRESENTATIONS AND WARRANTIES BY PURCHASER

Purchaser represents and warrants to Seller that:

Section 5.01 Organization. Purchaser is a New York limited liability company, duly formed and validly existing under the Laws of the State of New York. Purchaser has all requisite limited liability company right, power, and authority to own or lease and to operate its properties and to carry on its business as now being conducted.

Section 5.02 Authority. Purchaser has the right, power, and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to carry out its obligations

hereunder and thereunder. The execution, delivery, and performance of this Agreement and each Transaction Document to which Purchaser is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by managers and members of Purchaser, as applicable, and no other proceeding, authorization or approval on the part of Purchaser is necessary to authorize the execution and delivery of this Agreement or any Transaction Document or the performance by Purchaser of any of the transactions contemplated hereby or thereby. This Agreement and each of the Transaction Documents, when executed and delivered by Purchaser, and when executed and delivered by Seller, will be the legal, valid, and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium, fraudulent conveyance and other similar laws of general application affecting the rights of creditors and applicable laws, regulations, and principles of equity which may restrict the enforcement of certain equitable remedies.

Section 5.03 Approvals. Except as set forth on Schedule 5.03, no consent, approval, order, or authorization of, or notice or registration, declaration, or filing with, any Governmental Entity or third Party is required in connection with the execution and delivery by any Purchaser of this Agreement or the Transaction Documents to which Purchaser is a party, or the consummation by Purchaser of the transactions contemplated hereby or thereby.

Section 5.04 Non-Contravention. The execution and delivery by Purchaser of this Agreement and the Transaction Documents to which Purchaser is a party and the consummation of the transactions contemplated hereby and thereby will not: (a) violate any provision of the certificate of formation or operating agreement of Purchaser; (b) violate any material provision of, or result in the breach or the acceleration of, or entitle any party to terminate or accelerate (whether after the giving of notice or lapse of time or both), any material obligation under any Contract to which Purchaser is a party or by which it or any of its assets is bound; (c) violate any Lien upon any property of Purchaser; or (d) violate or conflict with any other restriction or any Law to which Purchaser or any of its property is subject.

Section 5.05 Litigation.

- (a) Except as set forth in reasonable detail on Schedule 5.05, there are no actions, suits, proceedings, investigations, or inquiries pending or, to Purchaser's knowledge, threatened against Purchaser or affecting Purchaser at law or in equity in any court or before any arbitration tribunal or Governmental Entity.
- (b) Purchaser is not in default in respect of any judgment, order, writ, injunction, or decree of any Governmental Entity.

Section 5.06 Assets Exceed Liabilities. No transfer of property is being made by Purchaser and no obligation is being incurred by Purchaser in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of Seller.

Section 5.07 "AS-IS" Sale. Purchaser hereby expressly acknowledges and agrees that it has conducted, or caused to be conducted by Purchaser's advisors, a due diligence review of Seller, the Facility, the Business Assets and the Business and such other matters as Purchaser deems to

be necessary and appropriate for it to enter into this Agreement and complete the transactions set forth herein on the terms as set forth herein, and it is acquiring the Business Assets without any representation or warranty, express or implied, of any type or nature whatsoever, all other such warranties being hereby expressly disclaimed except for those representations and warranties that Seller is making under this Agreement and the other Transaction Documents. Purchaser has such knowledge and experience in financial and business matters, and has such knowledge and experience in the business of managing skilled nursing facilities, that it is capable of fully evaluating the merits and risks of its purchase of the Business Assets.

Section 5.08 No Brokers. All negotiations relating to this Agreement and the Transaction Documents, and the transactions contemplated hereby and thereby, have been carried on by Purchaser without the intervention of any Person in such manner as to give rise to any valid claim against any of the Parties for a brokerage commission, finder's fee or similar compensation.

Section 5.09 Availability of Funds. Purchaser has sufficient cash and/or access to available credit facilities to pay all Assumed Liabilities and any amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

ARTICLE VI. COVENANTS

Section 6.01 Access. During the period from the date hereof to the Closing, Seller shall: (i) permit Purchaser and its representatives to have reasonable access to the Books and Records of Seller, including accountants' work papers and any records required to be maintained by any Governmental Entity, and to the locations at which the Business is conducted or at which any Books and Records are located; (ii) furnish or otherwise make available to Purchaser any financial and operating data and other information that is available with respect to Seller as Purchaser from time to time may reasonably request; and (iii) cause its employees, counsel, independent accountants, and financial advisors to reasonably cooperate with Purchaser in connection with the foregoing.

Section 6.02 Conduct of Business. During the period from the date hereof to the Receivership Date, Seller shall conduct the Business only in the Ordinary Course of Business, and use its commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships, to retain the services of its employees, and to maintain existing relationships with licensors, licensees, suppliers, subcontractors, distributors, customers, and others having business relationships with Seller.

Section 6.03 Reasonable Efforts; Further Assurances.

- (a) During the period from the date hereof to the Closing, Seller and Purchaser will cooperate and use commercially reasonable efforts to: (i) fulfill the conditions precedent to Purchaser's obligations hereunder (in the case of Seller) and Seller's obligations hereunder (in the case of Purchaser), and (ii) comply with all Laws in furtherance of this Agreement and the transactions contemplated thereby.
- (b) From time to time after the Closing Date, Seller will promptly upon request of Purchaser execute, acknowledge, and deliver any other assurances or documents reasonably

requested by Purchaser and necessary for the Business Assets to be fully conveyed to Purchaser as provided in this Agreement and the Transaction Documents.

Section 6.04 Confidential Material. Purchaser will, and will instruct all of its representatives, agents, and Affiliates to treat all Confidential Material confidentially and not disclose it except in accordance herewith; provided, that (a) any disclosure of Confidential Material may be made with the prior written consent of Seller; and (b) Confidential Material may be disclosed without liability hereunder to the extent required by Law or by the order or decree of any Governmental Entity; provided, however, that Purchaser provides Seller with prompt notice of that fact so that Seller may attempt to obtain a protective order or other appropriate remedy. For purposes of this Section 6.04, the term "Confidential Material" means all Intellectual Property owned or used by Seller and all information, documents and other materials relating to the business, customers, products, services, prospects, plans or other matters of Seller; provided, however, that the term "Confidential Material" will not include information that (x) becomes generally available to the public other than as a result of a disclosure by any of Seller or any of their employees, representatives, agents or Affiliates, or (y) was made available Purchaser on a non-confidential basis from a source other than Seller or any of its agents; provided, that, such source is not bound by a confidentiality agreement with Seller or any of its agents. The obligations of Seller under this provision shall survive the Closing indefinitely.

Section 6.05 Liability for Taxes. Seller shall pay all sales taxes that may be imposed or assessed as a result of or in order to effectuate the sale, assignment, conveyance or transfer of the Business Assets that constitute personal property.

Section 6.06 Business Personnel.

(a) Unless a Receiver has been appointed and such receivership has been effectuated, no later than ten (10) days prior to the Closing Date, Seller shall deliver to Purchaser a schedule that reflects the following (the "Employee Schedule"): (i) the name of all of Seller's employees providing services to the Business as of the date of the Employee Schedule, and (ii) their positions and rates of pay (collectively, the "Business Employees"; each, a "Business Employee").

(b) Other than those Business Employees set forth on Schedule 6.06(b) (the "Seller Retained Employees"), as of the Effective Time, Seller shall terminate the employment of all of the Business Employees and Purchaser shall employ all of the Business Employees who accept employment with Purchaser, including without limitation all bargaining unit employees covered by the Collective Bargaining Agreement (all of such employees who accept employment with Purchaser being herein called the "Hired Employees"), which employment shall be effective as of the Effective Time. Purchaser shall, on the Closing Date, offer employment to all of Seller's employees as employees at-will, and Seller shall not be required to provide notice to the Business Employees pursuant to Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et. seq. ("WARN") and comparable State legislation.

(c) Upon advanced reasonable notice to Seller and at such time as mutually acceptable between the Parties, Purchaser shall have access to the Business Employees prior to the Closing Date for

the purposes of making offers and related matters; provided, that, Purchaser does not materially interfere with ongoing operations.

(d) Seller shall be responsible for compliance with all requirements under WARN, and any similar local or State plant closing laws, with respect to events that occur on or before the Closing, unless a Receiver has been appointed and such receivership has been effectuated, in which case, the Receiver shall be responsible for the foregoing. Purchaser shall be responsible for compliance with WARN, and any similar local or State plant closing laws, with respect to events that occur after the Closing. Seller or Receiver, as the case may be, shall cooperate in distributing any notices that Purchaser may desire to provide prior to the Closing in connection with actions by Purchaser after the Closing that would result in a notice requirement under such laws.

(e) The Parties acknowledge and agree that Purchaser will not assume and has no obligation to assume the Collective Bargaining Agreement, but will, solely to the extent required by applicable Law, recognize the union under such Collective Bargaining Agreement as the exclusive collective bargaining representative for such union employees, and upon request, negotiate in good faith, with such union.

Section 6.07 Public Disclosure. Except as may be required by Law, no Party shall issue or permit the issuance of any press release or similar public announcement or communication concerning the execution, performance or termination of this Agreement unless specifically approved in advance by Purchaser and Seller, which approval shall not be unreasonably withheld or delayed.

Section 6.08 Notice of Certain Matters. From the date hereof, Seller and Purchaser will give each other prompt notice of the occurrence or non-occurrence of any event that causes any condition set forth in Article III not to be satisfied; provided, however, that the delivery of any such notice will not limit or otherwise affect the remedies available hereunder to the Party receiving such notice, including any right to terminate this Agreement under Article VIII or to obtain indemnity for breach of representation, warranty or covenant. The Parties acknowledge and agree that the right of any Person to recovery pursuant to any breach of this Agreement will not be affected by any investigation conducted or knowledge acquired, or capable of being acquired, at any time whether before or after the execution and delivery of this Agreement or the Closing with respect to the accuracy of any representation or warranty, or performance of or compliance with any covenant or agreement.

Section 6.09 Exclusivity. Unless this Agreement is terminated as provided by Section 8.01, Seller covenants and agrees that neither Seller nor any Affiliate, agent, representative or other person acting directly or indirectly on the behalf of Seller will, directly or indirectly, solicit, initiate, negotiate or assist any proposal or offer from any Person involving any purchase of an equity interest in Seller or a merger, consolidation, share exchange or other business combination involving any equity interest in, or a substantial portion of the assets of, Seller (each, an "Acquisition Proposal"), other than in connection with the transactions contemplated by this Agreement. Seller shall immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person conducted heretofore with respect to any Acquisition

Proposal. Seller agrees that it will take the necessary steps to promptly inform its representatives of the obligations undertaken in this Section 6.09.

Section 6.10 Working Capital Loans.

(a) In the event that Working Capital (as defined below) is required in connection with the operation of the Business during the period from the Effective Date to the Closing Date (or earlier termination of this Agreement), Purchaser shall loan or arrange for its Affiliates to advance such funds to Seller (the "WC Loans") pursuant to and in accordance with a promissory grid note issued by Seller to Purchaser, or designee thereof (the "WC Note"), substantially in the form attached hereto as Exhibit G. The Purchaser shall make all necessary WC Loans on a consistent basis, not to exceed once per month. In the event that Purchaser fails to make a required WC Loan, such failure shall be deemed a material breach and permit Seller to terminate this Agreement pursuant to Section 8.01(e). "Working Capital" shall mean the amount of money in excess of the Seller's collections and cash on hand necessary for the efficient operation of the Business, including without limitation, monies needed to fund all due and owing obligations of Seller with respect to the Business. The intent and purpose of the WC Loans shall be that (i) Seller's liabilities on its balance sheet do not increase after deducting the WC Loans and (ii) outstanding Accounts Payable are paid in full in a timely manner.

(b) Simultaneously with the execution of this Agreement, Purchaser shall cause Real Property Purchaser and FBH Healthcare, LLC, a New York limited liability company (collectively, "Purchaser Guarantor") to provide a limited guaranty to Seller, in substantially similar form as attached hereto as Exhibit H ("Purchaser Guaranty"), to secure the obligations to advance the WC Loans and to pay or otherwise discharge the Assumed Liabilities as more specifically provided in the Purchaser Guaranty.

(c) In order to secure Seller's obligation to repay the WC Note upon termination of this Agreement in accordance with Section 8.02(b), Seller shall deliver to Purchaser on the date hereof: (i) a corporate guaranty (the "Guaranty"), dated on even date herewith, issued to Purchaser by RiseBoro Community Partnership Inc., a New York not-for-profit corporation with an address at 555 Bushwick Avenue, Brooklyn, New York 11206 ("RiseBoro"), (ii) a Confession of Judgment (the "Borrower Confession of Judgment"), that shall be executed by Seller and delivered to DLA Piper, as escrow agent (the "Collateral Escrow Agent") simultaneously herewith, to be held by the Collateral Escrow Agent pursuant to and in accordance with an escrow agreement, dated on even date herewith, by and among Seller, Purchaser and the Collateral Escrow Agent, and (iii) a Confession of Judgment (the "RiseBoro Confession of Judgment"), and together with the Borrower Confession of Judgment, the "Confession of Judgment"), that shall be executed by RiseBoro and delivered to Collateral Escrow Agent simultaneously herewith, to be held by the Escrow Agent pursuant to and in accordance with an escrow agreement, dated on even date herewith, by and among Purchaser, RiseBoro and the Collateral Escrow Agent.

(d) The Purchaser shall deliver the WC Note, Guaranty, Borrower Confession of Judgment, and RiseBoro Confession of Judgment marked "void" to Seller at the REAPA Closing.

Section 6.11 Intentionally Omitted.

Section 6.12 Provider Numbers. At the request of Purchaser, Seller shall execute such documents as may be necessary to assign its Medicaid and Medicare provider numbers and Provider Agreements and any other Healthcare Reimbursement Payor Contracts to Purchaser. During the pendency of Purchaser's application with respect to the foregoing, Purchaser may bill Medicare, as applicable, under Seller's name and Medicare provider number until the electronic funds transfer account or special payment address is changed to Purchaser. Seller shall file, on a timely basis, all Medicare and Medicaid reports as required by applicable regulations to be filed by Seller. This covenant shall survive the Closing indefinitely.

Section 6.13 Cost Reports. Unless a Receiver has been appointed and such receivership has been effectuated, Seller shall prepare or cause the preparation, at Purchaser's own cost and expense, and file with the appropriate Healthcare Reimbursement Payor its final cost reports in respect to its operation of the Business as soon as practicable after the Closing Date, but in any event prior to or on the expiration of the period of time as may be required by law for the filing of each such final cost report under the applicable Healthcare Reimbursement Payor, it being specifically understood and agreed that the intent and purpose of this provision is to ensure that the reimbursement paid to Purchaser for the period beginning on the Closing Date is not delayed, reduced or offset in any manner as a result of Seller's failure to timely file such final cost reports. In addition to and not in lieu, place, stead or substitution of any other remedy set forth herein, Purchaser shall have the right, and Seller acknowledges such right, to specific performance to remedy any delay, failure or dispute relating to the filing of the cost reports as provided herein. On the Closing Date, at Purchaser's option, Seller shall cancel or assign to Purchaser any existing direct deposit arrangement that Seller has in connection with the operation of the Business relating to such Medicare and Medicaid payments.

Section 6.14 Withdrawal Liability. Purchaser and Seller intend that the sale of the Business Assets contemplated by this Agreement shall qualify as a sale of assets under Section 4204 of ERISA and, accordingly, agree to take any actions required or desirable so that a complete withdrawal or a partial withdrawal, as those terms are defined and determined in accordance with Part 4 of Title IV of ERISA by the Seller does not occur as a result of either the consummation of the transactions contemplated by this Agreement or any subsequent action or omission of Purchaser or any Affiliate of Purchaser, and that Seller does not incur any Withdrawal Liability as a result thereof. To that end:

(a) Effective as of the Closing, Purchaser shall be obligated to contribute and shall contribute to the Multiemployer Plan with respect to the Facility, for the duration of the Multiemployer Plan's plan year (the "Plan Year"), which is the 12-month period ending each [] in which the Closing occurs and the subsequent five Plan Years, for substantially the same number of contribution base units (as defined in section 4001(a)(11) of ERISA) for which Seller had an obligation to contribute to the Multiemployer Plan in respect to the Facility.

(b) Unless an exemption or variance is timely applied for and secured, Purchaser shall (at its sole cost and expense) timely provide to the Multiemployer Plan, for the first Plan Year beginning after the Closing and for each of the four (4) Plan Years thereafter (the "Continuation Period"), a bond issued by a corporate surety company that is an acceptable surety for purposes of Section 412 of ERISA, an amount held in escrow by a bank or similar financial institution, an irrevocable

letter of credit, or any other form of security acceptable to the Multiemployer Plan, in an amount then required by Section 4204(a)(1)(B) of ERISA and acceptable to the Multiemployer Plan. The bond or escrow shall provide for payment to the Multiemployer Plan if Purchaser withdraws from the Multiemployer Plan in a complete withdrawal or partial withdrawal (as defined in Sections 4203 and 4205 of ERISA) or fails to make a contribution to the Plan, when due, at any time during the Continuation Period.

(c) If an exemption or variance is available, Purchaser and Seller shall cooperate with one another for the purpose of obtaining a variance from the bond or escrow requirements under Section 4204(a)(1)(B) of ERISA and the sale-contract requirement under Section 4204(a)(1)(C) of ERISA pursuant to Subparts A and B of Part 4204 of Title 29 of the Code of Federal Regulations. Purchaser shall provide Seller with Purchaser's proposed request for a variance from the bond/escrow requirement of Section 4204(a)(1)(B) of ERISA, for review and joinder by Seller, no later than thirty (30) days after the Closing Date. The cost of each bond or escrow (or letter of credit or other security) required under Section 4204(a)(1)(B) of ERISA and subparagraph (b) above, or the cost of obtaining an exemption therefrom, and any fees and costs associated therewith, shall be paid by Purchaser. Notwithstanding anything in this Section 6.14 to the contrary, Purchaser agrees to use best efforts to obtain an exemption or variance to the bond/escrow requirement of Section 4204(a)(1)(B) of ERISA.

(d) To the extent required under Section 4204(a)(1)(C) of ERISA, if Purchaser withdraws from the Multiemployer Plan in a complete or partial withdrawal (as defined in Sections 4203 and 4205 of ERISA) with respect to the operations of the Facility during the Continuation Period, Seller shall be secondarily liable for any Withdrawal Liability it would have had to the Multiemployer Plan with respect to the operations of the Facility (but for Section 4204 of ERISA) if and to the extent that the liability of Purchaser with respect to the Plan is not paid. Notwithstanding the foregoing, the foregoing language will be of no force and effect if the parties obtain an exemption or variance from the sale-contract requirement under Section 4204(a)(1)(C) of ERISA.

(e) Purchaser agrees to provide Seller at least sixty (60) days advance notice of any action or event known to Purchaser which could result in the imposition of Withdrawal Liability, and in any event Purchaser shall, within ten (10) days of receipt, provide Seller with a copy of any notice of or demand for withdrawal liability it may receive with respect to the Multiemployer Plan and will provide Seller with relevant details of the action or event claimed by the Multiemployer Plan to have given rise to withdrawal liability. In the event that Withdrawal Liability with respect to the Facility during or relating to the Continuation Period shall be assessed against Purchaser, Purchaser further agrees to provide Seller at least sixty (60) days advance notice of any intention on the part of Purchaser not to make full payment of any withdrawal liability when the same shall become due.

(f) On and after the Closing Date, Purchaser will indemnify defend and hold Seller and any affiliate of Seller harmless with respect to any cost, expense or Loss (including attorney's fees and costs) incurred by Seller or any such affiliate of Seller with respect to any breach of this Section 6.14 by Purchaser or any claim against Seller or any Affiliate of Seller for complete or partial Withdrawal Liability arising as a result of this transaction or any subsequent action or omission of

Purchaser or any Affiliate thereof. Such indemnification will be governed procedurally by the provisions of Section 7.04 hereof but shall not be subject to the limitations set forth in 7.03.

(g) Purchaser covenants and agrees that, if it subsequently sells the Facility during the Continuation Period, Purchaser will structure any such subsequent sale to comply with all of the requirements of Section 4204 of ERISA so as to avoid the occurrence of a complete or partial withdrawal and the imposition of withdrawal liability by the Fund as a result of any such subsequent sale.

(h) Purchaser agrees to cooperate with Seller and provide Seller with any documents needed for Seller to comply with its obligations to the Multiemployer Plan (if any) under ERISA Section 4204(a)(3) of ERISA, or for Seller to obtain a variance from or waiver of such obligations

(i) This Section 6.14 shall survive the Closing indefinitely.

Section 6.15 Federal and State Regulatory Approvals. Subject to Seller's reasonable cooperation, promptly following the appointment of the Receiver pursuant to Section 2.11, Purchaser shall file all applications with the appropriate State agency or department in order to obtain the Approval, and shall at all times use its best efforts to promptly procure the Approval from the DOH as well as approvals from any and all other Governmental Entities (including without limitation the PHHPC) necessary for Purchaser to purchase the Business Assets and operate the Facility. Purchaser shall deliver to Seller within ten (10) days of Seller's request a complete copy of the Application, and thereafter shall keep Seller advised of all material developments with respect to the Application as well as deliver to Seller copies of all submissions and communications with or from DOH regarding the Application. Purchaser shall: (x) not amend the Application after its filing requesting any reduction in the licensed bed capacity of the Facility; (y) have no communications with DOH or related agency, regardless of whether such communications are initiated by Purchaser or DOH or a related Governmental Entity, regarding any reduction in the licensed bed capacity of the Facility without first notifying Seller; and (c) provide to Seller copies of all material correspondence with DOH relating to the Application including, without limitation, all thirty (30) day letters and shall notify Seller if Purchaser requests an extension to a response to any request from DOH or related Governmental Entity. Seller shall be provided the opportunity to participate in any communications with the DOH or other State agency which Seller reasonably believes could have a material impact on Seller. Seller shall cooperate with Purchaser and shall promptly execute and deliver all forms and other documentation to be executed by it in connection with the foregoing. The Parties agree that Purchaser shall have the right, upon advance written notice to Seller, to add to, and/or substitute Persons listed in the Application to facilitate Approval from the DOH; provided, however, no such substitutions or changes to the Application shall affect Purchaser's obligation to consummate the Closing.

Section 6.16 Non-Disclosure. Each Party acknowledges that this Agreement and the terms hereof, whether set forth herein or in any other document or communication exchanged between the Parties (collectively, the "Confidential Information") are confidential and each Party agrees to keep confidential and not disclose, in whole or in part, any Confidential Information to any third party without the prior written consent of the other Party. Notwithstanding the foregoing, either

Party may disclose Confidential Information to (A) its respective principals, directors, managers, officers, employees, agents, attorneys, accountants, consultants, financial advisors and lenders (collectively, "Representatives") who need to know the Confidential Information for the purposes of evaluating the transactions contemplated hereby, who are informed by the disclosing Party of the confidential nature of the Confidential Information and who agree to keep the Confidential Information confidential in accordance with this Section and (B) to any Governmental Entity for the purposes of obtaining the approvals contemplated under Section 3.02(b). Each disclosing Party agrees to be responsible for any breach of this Section by any of its Representatives. This Section shall be inoperative to the extent that a Party or anyone to whom such Party transmitted Confidential Information in compliance with this Section becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, provided that the Party seeking to enforce this Section shall have received an opinion of counsel that such disclosure is legally required. This Section shall survive the Closing but not the termination of this Agreement or the Real Property Purchase Agreement.

Section 6.17 Prior Knowledge. To the extent that Purchaser has knowledge that any warranty or representation made by Seller in Article IV is untrue or inaccurate prior to the Closing Date and nonetheless elects to close the transactions contemplated hereby, then Seller shall not be deemed to have breached such representation or warranty and Purchaser shall be deemed to have waived any cause of action or claim for damages against Seller arising out of any alleged breach of any such representation or warranty. For purposes of this Section 6.17, "Purchaser's knowledge" or any other similar language (a) shall mean and apply to the actual knowledge of Joel Kestenbaum, Sarah Rosenfeld, Nathan Stern or David Heineman (each, a "Purchaser's Knowledge Individual") and not to any other persons, (b) shall mean the actual (and not implied or constructive) knowledge of a Purchaser's Knowledge Individual, without any duty to conduct any investigation of any kind, and (c) shall not apply to or be construed to apply to information or material which may be in the possession of Purchaser generally or incidentally, but which is not actually known to a Purchaser's Knowledge Individual.

Section 6.18 Seller Affiliate Referrals. Purchaser will use best efforts to accept not less than five (5) admissions per annum as requested by Seller and/or an Affiliate of Seller; provided, that, such request shall only include Persons who have an adequate payor source. This Section 6.18 shall survive the Closing indefinitely.

Section 6.19 Facility Commitment. Purchaser shall accept a deed restriction or enter into an agreement with the Attorney General to operate the Facility as a skilled nursing facility for a minimum period of time, not to exceed seven (7) years. In furtherance of the foregoing, Purchaser shall not file any application to close the Facility or change its use during such period. Each Party hereto agrees that if Purchaser fails to comply with the aforesaid condition, at Seller's sole discretion, Seller may pursue specific performance, injunctive relief and/or other equitable remedies available Seller. Notwithstanding the foregoing, Seller's pursuit of any of the foregoing remedies shall not foreclose its ability to pursue other remedies set forth herein.

Section 6.20 Assumed Receivables. Purchaser agrees that, upon assumption of the Seller's Accounts Receivable, that it shall first use such receivables for the payment and/or satisfaction of any outstanding Credit Assumed Liabilities.

ARTICLE VII. INDEMNIFICATION

Section 7.01 Indemnification of Purchaser.

- (a) From and after the Closing Date, Seller will indemnify, defend, and hold harmless Purchaser Indemnified Parties from, against, and in respect of all Liabilities and Losses arising out of, relating to, or resulting from: (i) a breach of Section 4.06 of this Agreement, (ii) the breach or non-fulfillment of any covenant, obligation, or agreement of Seller to be performed, fulfilled, or complied with by Seller pursuant to this Agreement or the Transaction Documents; or (iii) any Third Party Claim arising out of Seller's failure to pay, discharge or perform any Excluded Liability.
- (b) In order to secure Seller's obligations as provided in Section 7.01(a), Seller shall cause RiseBoro Community Partnership Inc. ("RiseBoro"), a New York not-for-profit corporation with an address at 555 Bushwick Avenue, Brooklyn, New York 11206, to grant a limited corporate guaranty to Purchaser in an aggregate amount of Ten Million Dollars (\$10,000,000.00), pursuant to a limited guaranty, substantially in the form attached hereto as Exhibit I (the "Seller Guaranty"), which shall be issued to Purchaser at the Closing. Following the six year anniversary of the Effective Date, the Seller Guaranty shall expire and be of no further force or effect (the "Indemnity Period").
- (c) Purchaser hereby acknowledges and agrees that, following the Closing, the Seller Guaranty and any escrow funds are deposited with the Escrow Agent pursuant to the Indemnity Escrow Agreement as described in Section 2.10(a) or (c)(iii), if any, shall be the sole liability of Seller for any Losses or any other liability incurred by Purchaser under this Agreement.

Section 7.02 Indemnification of Seller.

- (a) From and after the Effective Date, Purchaser hereby indemnifies, defends, and holds harmless Seller Indemnified Parties from, against, and in respect of all Liabilities and Losses arising out of, relating to, or resulting from: (i) any inaccuracy or breach of any of the written representations or warranties of Purchaser made in or pursuant to this Agreement or the Transaction Documents; (ii) the breach or non-fulfillment of any covenant, obligation, or agreement of Purchaser to be performed, fulfilled, or complied with pursuant to this Agreement or the Transaction Documents; or (iii) any Third Party Claim arising out of Purchaser's failure to pay, discharge or perform any Assumed Liability.
- (b) In order to secure certain of Purchaser's indemnification obligations pursuant to Section 7.02(a) from the Effective Date until the Closing Date, Purchaser shall cause Purchaser Guarantor to execute and deliver to Seller the Purchaser Guaranty. Seller hereby acknowledges and agrees that, on the Closing Date, the Purchaser Guaranty shall terminate

and Purchaser Guarantor shall have no liability thereunder following the Closing; provided, that, such Purchaser Guaranty shall continue to exist for any unsatisfied Credited Assumed Liabilities.

Section 7.03 Limitation on Indemnification.

- (a) Neither Seller nor Purchaser shall be liable for indemnification under Section 7.01(a) or Section 7.02(a) hereof, respectively, until the aggregate amount of all Losses of such Party in respect of indemnification thereunder exceeds Twenty-Five Thousand Dollars (\$25,000.00) (the "Basket"); provided, that, subject to subsection (b) and (c) below, once the amount of such Losses exceed the Basket, Seller or Purchaser, as applicable, shall be responsible for all such Losses from dollar one.
- (b) Each Party's liability hereunder shall be limited to actual damages and no Party shall be liable to the other Party hereunder for punitive or exemplary damages, or fines and penalties, except when such damages, fines and penalties are asserted against or imposed upon a Party by a government or private third party, at which time such damages, fines and penalties shall be deemed to be the actual damages of such Party.
- (c) In all cases, any amounts for which a Party shall be entitled to indemnification hereunder shall be net of any insurance proceeds received by such Party (less any deductible) for such matter; provided, however, that the Party seeking indemnification hereunder shall not be required to seek recourse against any insurance company before pursuing remedies under this Agreement or otherwise.
- (d) The remedies in this Article VII shall be the sole and exclusive remedies of the Parties with respect to the matters arising out of this Agreement; provided, however, that this Section 7.03(d) shall not limit a Party's right to seek and obtain equitable remedies, including without limitation specific performance, with respect to any covenant or agreement contained in this Agreement.
- (e) Each Indemnified Party shall use commercially reasonable efforts to mitigate the amount of any Loss for which it is entitled to indemnity hereunder to the extent any such efforts would not result in a Material Adverse Effect on the operations of the Indemnified Party.

Section 7.04 Indemnification Procedures.

- (a) Procedures for Making Claims. If and when an Indemnified Party desires to assert a claim for Indemnifiable Damages pursuant to the provisions of this Article VII, other than with respect to a Third Party Claim, the Indemnified Party shall deliver a Notice of Claim to the Indemnifying Party reasonably promptly, but not later than forty-five (45) days after the Indemnified Party's receipt of a claim or specific and affirmative awareness of a potential claim. If the Notice of Claim is timely received, the Parties shall attempt in good faith to agree on resolution of the disputed amount. Any amount mutually agreed upon or awarded to the Indemnified Party under a final and non-appealable judgment shall be paid by the Indemnifying Party within five (5) Business Days following execution of such agreement or the entering of such judgment, as applicable. The failure by any Indemnified Party to

give timely notice shall not impair such Person's rights hereunder except to the extent that an Indemnifying Party demonstrates that it has been irreparably prejudiced thereby.

- (b) Third Party Claims. If any third party asserts a claim against an Indemnified Party which, if successful, might entitle the Indemnified Party to Indemnifiable Damages (a "Third Party Claim"), the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim; provided, however, failure of the Indemnified Party to give such notice shall not excuse the Indemnifying Party's obligation to indemnify the Indemnified Party hereunder, and the Indemnifying Party, at its sole cost and expense may assume the primary defense thereof within fifteen (15) Business Days after receiving the Notice of Claim, with counsel reasonably acceptable to the Indemnified Party. The Indemnifying Party shall be entitled to direct and control such defense. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, settle, compromise or offer to settle or compromise any such claim or demand on a basis that would result in (i) the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnified Party or any subsidiary or Affiliate thereof, or (ii) any monetary liability on the part of the Indemnified Party that will not be paid or reimbursed by the Indemnifying Party. If the Indemnifying Party fails to elect to assume, or thereafter fails to diligently pursue the primary defense of any such claim, the Indemnified Party may assume the defense thereof at the expense and cost of the Indemnifying Party (subject to the limitations set forth in Section 7.03); provided that the Indemnified Party shall not settle, compromise or offer to settle or compromise or make an admission of liability with respect to such Third Party Claim without the prior written consent of the Indemnifying Party if such settlement, compromise or offer would result in (i) the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnifying Party or any subsidiary or Affiliate thereof, or (ii) monetary liability on the part of the Indemnifying Party that will not be paid by the Indemnified Party. Each Party shall give the other Party and its counsel access to, during normal business hours, the relevant Books and Records and other documents relating to any Third Party Claim and shall permit them to consult with the employees and counsel of such Party in connection with defending against such Third Party Claim. If the Indemnifying Party assumes the defense with respect to any Third Party Claim, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel reasonably acceptable to the Indemnifying Party, at the Indemnifying Party's sole expense, separate from the counsel employed by the Indemnifying Party, if such Third Party Claim involves potential conflicts of interest between or substantially different defenses for the Indemnified Party and the Indemnifying Party.

Section 7.05 Survival. The representations and warranties of Seller set forth in Section 4.06 of this Agreement will survive the Closing for a period of eighteen (18) months following the Closing Date. The representations and warranties of Purchaser set forth in this Agreement will survive the Closing for a period of eighteen (18) months following the Closing Date. Notwithstanding the foregoing, representations and warranties under which a reasonably specific good faith claim has been submitted in writing to Purchaser or Seller, as applicable, prior to the date on which such representations or warranties would otherwise expire shall survive until such claim has been resolved. Unless as otherwise provided for herein, the covenants and agreements set forth herein

(including without limitation clauses (b), and (c) of Section 7.01(a) and (ii) and (iii) of Section 7.02(a)) will survive the Closing until fully performed.

ARTICLE VIII. TERMINATION

Section 8.01 Termination. This Agreement may be terminated at any time prior to the Closing only as follows:

- (a) by mutual written agreement of each of Purchaser and Seller;
- (b) if prior to the REAPA Closing Date:
 - (i) by either Purchaser or Seller, by giving written notice of such termination to the other Party, if either Party receives a notice from a Governmental Entity, including without limitation the PHHPC or the DOH, that the transactions contemplated by this Agreement will not be approved as a result of (i) the character and competence of Purchaser and/or its principals, (ii) the financial feasibility of Purchaser's Application, or (iii) New York State Attorney General and/or New York State Supreme Court dissent to the transaction contemplated by this Agreement, and such dissent is the result of issues with the Purchaser and/or its principals or Affiliates (sub-clauses (i) to (iii) are collectively referred to herein as "Purchaser Approval Issues"), in which event, the WC Note shall be deemed satisfied in full; provided, however, if such failure to receive such approval is due to a reason other than a Purchaser Approval Issue, including, without limitation, a government moratorium on nursing home applications for change of ownership, the WC Note shall become due and payable in accordance with Section 8.02(b) below;
 - (ii) by Purchaser, if there has been any material inaccuracy in or breach of any of Seller's representations or warranties set forth in this Agreement, or Seller has breached or failed to perform any of the covenants or other agreements contained in this Agreement in any material respect; provided, however, the failure of Seller to achieve any economic thresholds or expectations resulting from operations of the Facility after the Effective Date shall not be a breach under this paragraph (c); provided, further, if such material breach by Seller relates to Seller's failure to consummate the transaction and deliver the items set forth in Section 3.03(d)(i)-(ix), in addition to the above, Seller shall reimburse Purchaser for its actual and reasonable out-of-pocket costs (including reasonable attorneys' fees) incurred by Purchaser in connection with the transactions contemplated by this Agreement as evidenced by reasonable substantiation thereof. Notwithstanding the foregoing, before Purchaser may terminate this Agreement under this Section 8.01(b)(ii), Purchaser shall deliver written notice to Seller specifying such breach in reasonable detail (to the extent known) and Purchaser shall give Seller a period of fifteen (15) days following receipt of such notice in which to cure such breach, regardless of whether such 15-day period extends beyond the proposed Closing Date;
 - (iii) By Seller, if there has been any material inaccuracy in or breach of any of Purchaser's representations or warranties set forth in this Agreement, or Purchaser

has breached or failed to perform any of its covenants or other agreements contained in this Agreement in any material respect, in which event, if the WC Note is still outstanding, the WC Note shall be deemed satisfied in full. Notwithstanding the foregoing, before Seller may terminate this Agreement under this Section 8.01(b)(iii), Seller shall deliver written notice to Purchaser specifying such breach in reasonable detail (to the extent known) and shall give Purchaser a period of fifteen (15) days following receipt of such notice in which to cure such breach, regardless of whether such 15-day period extends beyond the proposed Closing Date; or

- (iv) This Agreement shall terminate upon any termination of the Real Property Purchase Agreement. If this Agreement is terminated pursuant this paragraph (e) and Seller is entitled to the deposit under the Real Property Purchase Agreement, then the WC Note shall be deemed satisfied in full, and the foregoing shall be considered liquidated damages and Seller's sole remedy. If this Agreement is terminated pursuant to this paragraph (e) and Real Property Purchaser is entitled to the deposit thereunder, then the WC Note shall become immediately due and payable, and Seller shall reimburse Purchaser for its reasonable and actual out-of-pocket costs (including reasonable attorneys' fees) incurred by Purchaser in connection with the transactions contemplated by this Agreement; provided, that, if the Real Property Purchase Agreement is terminated pursuant to Article X of the Real Property Purchase Agreement, Purchaser shall not be entitled to reimbursement of fees.

(c) If after the REAPA Closing Date:

- (i) By either Purchaser or Seller, by giving written notice of such termination to the other Party, if either Party receives a notice from a Governmental Entity, including without limitation the PHHPC or the DOH, that the transactions contemplated by this Agreement will not be approved; or
- (ii) By Seller, by giving written notice of such termination to the other Party if the Approval is not received and the receivership is not commenced within three (3) years of the Execution Date.

Section 8.02 Effect of Termination.

- (a) In the event of the termination of this Agreement pursuant to Section 8.01, this Agreement will thereupon terminate and have no further effect, except for the provisions of Section 2.03, 8.01, this Section 8.02, Section 6.04, Section 7.02 and Article IX of this Agreement. No Party will have any liability to any other Party or their respective Affiliates, members, managers, directors, officers or employees with respect to the termination of this Agreement.
- (b) In the event of the termination of this Agreement pursuant to Section 8.01 whereby this subsection (b) is expressly referenced, Purchaser shall be entitled to repayment of all WC Loan advances under the WC Note which were made during the consecutive eighteen (18)

month period immediately following the Effective Date. The repayment of such funds shall be made in full within two (2) Business Days of the effective date of such termination.

ARTICLE IX. MISCELLANEOUS

Section 9.01 Complete Agreement; Amendments; Waivers. This Agreement and the Transaction Documents, together with the schedules and exhibits hereto and thereto, contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, with respect thereto. This Agreement may be amended only by a written instrument signed by the Parties. No provision of this Agreement may be waived without a written instrument signed by the waiving Party. The failure of any Party to insist, in any one or more instances, on performance of any of the terms or conditions of this Agreement will not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant, or condition, but the obligations of the Parties with respect thereto will continue in full force and effect.

Section 9.02 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A facsimile or electronic copy of this Agreement showing the signatures of each of the Parties, or, when taken together, multiple facsimile or electronic copies of this Agreement showing the signatures of each of the Parties, respectively, where such signatures do not appear on the same copy, will constitute an original copy of this Agreement requiring no further execution.

Section 9.03 Successors and Assigns; Assignment. This Agreement will inure to the benefit of, and be binding upon, the Parties and their respective executors, heirs, and permissible assigns. Neither this Agreement nor any of the rights or obligations hereunder (or under any document delivered pursuant hereto) may be assigned by a Party without the prior written consent of the other Parties; provided, however, that any Purchaser may assign any portion of this Agreement, or any of its rights or obligations under this Agreement, to any subsidiary or Affiliate of Purchaser upon written notice to Seller, but without any consent of Seller.

Section 9.04 Governing Law; Forum; Waiver of Jury Trial. This Agreement will be construed and enforced in accordance with the laws of the State of New York without giving effect to its conflicts of laws principles that would require the application of the laws of any other jurisdiction. Each Party hereto (i) consents to submit itself to the personal jurisdiction of any Federal court located in Kings County of the State of New York or any New York state court in Kings County in connection with any dispute that arises out of this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) agrees that it will not bring any action relating to this Agreement or any other agreement contemplated hereby or any of the transactions contemplated hereby or thereby in any court other than a Federal court or a New York state court sitting in Kings County unless venue would not be proper under rules applicable in such courts. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY PARTY OR ITS AFFILIATES MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY

TRANSACTION DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION WITH SUCH AGREEMENTS. EACH PARTY HEREBY ACKNOWLEDGES THAT THIS IS A COMMERCIAL TRANSACTION, THAT THE FOREGOING PROVISIONS HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY SUCH PARTY AND THAT BY AGREEING TO SUCH PROVISIONS SUCH PARTY IS WAIVING IMPORTANT LEGAL RIGHTS.

Section 9.05 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to be properly given (i) when delivered personally or by electronic mail to the party entitled to receive the notice, (ii) the next business day after being sent, overnight service, by nationally recognized overnight courier, (iii) upon receipt after being mailed by certified or registered mail (return receipt requested), in each case, postage prepaid, registered or certified mail, or (iv) if sent by facsimile, upon confirmation of successful transmission thereof (only if such notice is also delivered by hand, electronic mail, overnight delivery or registered or certified mail), properly addressed to the party entitled to receive such notice at the address stated below:

If to Purchaser: Buena Vida SNF LLC

Attention: Joel Kestenbaum
Email: jkestenbaum@fortispropertygroup.com

with a copy to:

DLA Piper LLP
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600
Attention: Naftali Weg
Email: Naftali.Weg@dlapiper.com

and

Nixon Peabody LLP
677 Broadway, 10th Floor
Albany, NY 12207-2996
Attention: Peter Millock
Email: PMillock@nixonpeabody.com

and

Novack Burnbaum Crystal LLP
675 Third Avenue, Flr 8
New York, NY 10017
Attention: Edward Burnbaum
Email: eburnbaum@nbclaw.com;

If to Seller: Buena Vida Corp.
48 Cedar Street
Brooklyn, New York 11221
Attention: Scott Short
Email: sshort@riseboro.org

with a copy to: Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf &
Carone, LLP
3 Dakota Drive, Suite 300
Lake Success, NY 11042
Attention: Patrick Formato, Esq.
Email: pformato@abramslaw.com

Section 9.06 Expenses. No expenses of Seller incurred in connection with the transactions contemplated by this Agreement or any Transaction Document (including, without limitation, Taxes or accounting and legal fees incurred in connection therewith) shall constitute an Assumed Liability and Seller shall bear their own expenses with respect to the foregoing and Purchaser shall bear their own expenses in connection therewith.

Section 9.07 Headings. The headings contained in this Agreement (including but not limited to the titles of the schedules hereto) have been inserted for the convenience of reference only, and neither such headings nor the placement of any term hereof under any particular heading will in any way restrict or modify any of the terms or provisions hereof.

Section 9.08 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid and unenforceable: (a) the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent and purpose of such invalid or unenforceable provision as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any jurisdiction.

Section 9.09 Remedies Cumulative. The various rights and remedies herein provided will be cumulative and not exclusive of any other rights or remedies expressly provided for in this Agreement.

Section 9.10 Inferences. Inasmuch as this Agreement is the result of negotiations between sophisticated Parties, each which is a willing participant in the transactions contemplated by this Agreement and represented by counsel, no inference in favor of or against any Party will be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such Party.

Section 9.11 Incorporation. The Recitals are incorporated herein by reference and made a part of this Agreement.

Section 9.12 Non-Business Days. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time or by a particular date that ends or occurs on a non-business day, then such period or date will be extended until the immediately following business day. Any reference to "days" shall mean calendar days unless specifically referencing business days.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

PURCHASER:

BUENA VIDA SNF LLC

By: _____
Name:
Title:

SELLER:


BUENA VIDA CORP.

By: Scott Short
Name: Scott Short
Title: Chief Executive Officer

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

PURCHASER:

BUENA VIDA SNF LLC

By:  _____

Name: Joel Kestenbaum
Title: Authorized Signatory

SELLER:

BUENA VIDA CORP.

By: _____

Name:
Title:

FIRST AMENDMENT
TO THE
ASSET PURCHASE AGREEMENT

This FIRST AMENDMENT TO THE ASSET PURCHASE AGREEMENT (this "Amendment") is made this 24th day of April, 2019 by and between BUENA VIDA SNF LLC, a Delaware limited liability company ("Purchaser") and BUENA VIDA CORP., a New York not-for-profit corporation ("Seller"). Purchaser and Seller are sometimes referred to herein as, collectively, the "Parties"; individually as a "Party."

WITNESSETH:

WHEREAS, the Parties entered into an Asset Purchase Agreement, dated May 16, 2018 (the "APA"); and

WHEREAS, the Parties originally contemplated pursuing a voluntary receivership for the operations of the Facility (as defined in the APA);

WHEREAS, the Parties believe that it is in their best interests to forego the pursuit of a voluntary receivership and instead pursue an expedited review of the Purchaser's certificate of need application;

WHEREAS, the Parties desire to amend the APA in accordance with the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the promises and the covenants and conditions hereinafter set forth, it is agreed:

1. Preambles. The preambles set forth above are incorporated herein and made a part hereof as though set forth at length.

2. Defined Terms. Capitalized terms used in this Amendment and not expressly defined herein, shall have the meaning ascribed to such terms in the APA.

3. Effective Date. This Amendment shall become effective on the date hereof.

4. Receivership Amendment to the APA. The APA is hereby amended in all circumstances to state that the Parties shall not pursue a voluntary receivership of the Facility. All references to a potential receivership shall be deemed removed and/or not applicable. To the extent that a reference to the receivership has an effect on timing or effectiveness, such reference shall be deemed to relate to the Closing Date. Without limiting the foregoing, the Parties hereby amend the APA in the following specific references:

a. Section 2.08. Section 2.08 is hereby deleted in its entirety and replaced with the following:

"On or prior to the Closing Date, Seller shall (i) provide to Purchaser a

schedule of all residents' property and funds delivered to Seller and/or the Facility by residents and held in trust for such residents by Seller for residents at the Facility ("Resident Trust Funds"), as of a date fifteen (15) days prior to the Closing Date and (ii) assign, transfer and deliver to Purchaser all such Resident Trust Funds and property, to be held by Purchaser for the benefit of the designated residents, regardless of whether such Resident Trust Funds or property appear on the schedule delivered by Seller to Purchaser pursuant to this Section 2.08. As of the Closing, Purchaser shall assume all Liability with respect to such Resident Trust Funds.

- b. Sections 2.11 and 2.12. Sections 2.11 and 2.12 of the APA are hereby deleted in their entirety.
- c. Section 4.01. The following phrase is hereby removed from the second sentence of Section 4.01:

"Subject to the Receivership Agreement,"
- d. Section 6.02. Section 6.02 of the APA is hereby deleted in its entirety and replaced with the following:

"Conduct of Business. During the period from the date hereof until the Closing Date, Seller shall conduct the Business only in the Ordinary Course of Business, and use its commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships, to retain the services of its employees, and to maintain existing relationships with licensors, licensees, suppliers, subcontractors, distributors, customers, and others having business relationships with Seller.
- e. Section 6.06(a). Section 6.06(a) of the APA is hereby deleted in its entirety and replaced with the following:

"Prior to the Closing Date, Seller shall deliver to Purchaser a schedule that reflects the following (the "Employee Schedule"): (i) the name of all of Seller's employees providing services to the Business as of the date of the Employee Schedule, and (ii) their positions and rates of pay (collectively, the "Business Employees"; each, a "Business Employee")."
- f. Section 6.06(d). Section 6.06(d) is hereby deleted in its entirety and replaced with the following:

"Seller shall be responsible for compliance with all requirements under WARN, and any similar local or State plant closing laws, with respect to events that occur on or before the Closing. Purchaser shall be responsible for compliance with WARN, and any similar local or State plant closing laws, with respect to events that occur after the Closing. Seller shall cooperate in distributing any notices that Purchaser may desire to provide

prior to the Closing in connection with actions by Purchaser after the Closing that would result in a notice requirement under such laws.”

- g. Section 6.13. Section 6.13 is hereby deleted in its entirety and replaced with the following:

“Seller shall prepare or cause the preparation, at Purchaser’s own cost and expense, and file with the appropriate Healthcare Reimbursement Payor its final cost reports in respect to its operation of the Business as soon as practicable after the Closing Date, but in any event prior to or on the expiration of the period of time as may be required by law for the filing of each such final cost report under the applicable Healthcare Reimbursement Payor, it being specifically understood and agreed that the intent and purpose of this provision is to ensure that the reimbursement paid to Purchaser for the period beginning on the Closing Date is not delayed, reduced or offset in any manner as a result of Seller’s failure to timely file such final cost reports. In addition to and not in lieu of, place, stead or substitution of any other remedy set forth herein, Purchaser shall have the right, and Seller acknowledges such right, to specific performance to remedy any delay, failure or dispute relating to the filing of the cost reports as provided herein. On the Closing Date, at Purchaser’s option, Seller shall cancel or assign to Purchaser any existing direct deposit arrangement that Seller has in connection with the operation of the Business relating to such Medicare and Medicaid payments.”

- h. Section 6.15. The first sentence of Section 6.15 of the APA is hereby deleted in its entirety and replaced with the following:

“Subject to Seller’s reasonable cooperation, Purchaser shall file all applications with the appropriate State agency or department in order to obtain the Approval, and shall at all times use its best efforts to promptly procure the Approval from the DOH as well as approvals from any and all other Governmental Entities (including without limitation the PHHPC) necessary for Purchaser to purchase the Business Assets and operate the Facility.”

- i. Section 8.01(c). Section 8.01(c) of the APA is hereby deleted in its entirety.

5. Facility Commitment. Section 6.19 of the APA is hereby deleted in its entirety and replaced with the following:

Facility Commitment. Purchaser hereby agrees to operate the Facility as a skilled nursing facility for a minimum period of time of seven (7) years. If requested, Purchaser shall enter into an agreement with the Attorney General stating such. In furtherance of the foregoing, Purchaser shall not file any application to close the Facility or change its use during such period. Each Party hereto agrees that if Purchaser fails to comply

with the aforesaid condition, at Seller's sole discretion, Seller may pursue specific performance, injunctive relief and/or other equitable remedies available Seller. Notwithstanding the foregoing, Seller's pursuit of any of the foregoing remedies shall not foreclose its ability to pursue other remedies set forth herein."

6. Miscellaneous.

(a) All other provisions of the APA are hereby confirmed as if fully set forth herein, and, except as specifically modified herein, all provisions of the APA shall remain in full force and effect.

(b) This Amendment shall not be binding upon the parties unless and until it is signed and delivered by the parties.

(c) The APA and this Amendment constitute the entire agreement between the parties hereto with respect to the matters stated herein and may not be amended or modified unless such amendment or modification shall be in writing and signed by all of the parties.

(d) This Amendment shall be governed and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such State, without regard to the conflict of laws rules thereof.

(e) For the convenience of the parties hereto, this Amendment may be executed in counterparts and all such counterparts shall together constitute the same agreement. Any executed signature page delivered by facsimile, PDF or electronic transmission shall be binding to the same extent as an original executed signature page. At the request of any party, the parties hereto agree to execute an original of this Amendment as well as any facsimile, telecopy, email or other reproduction.

(Signature Page Follows)

IN WITNESS WHEREOF, this Amendment has been executed as of the date first written above.

SELLER:

BUENA VIDA CORP.

By: Scott Hunt
Name:
Title:

PURCHASER:

BUENA VIDA SNF LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, this Amendment has been executed as of the date first
written above.

SELLER:

BUENA VIDA CORP.

By: _____
Name:
Title:

PURCHASER:

BUENA VIDA SNF LLC

By: *Sarah Resciff*
Name:
Title:

SECOND AMENDMENT

TO

ASSET PURCHASE AGREEMENT

This SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT (this "Amendment") is made this 16th day of January 2020 by and between BUENA VIDA SNF LLC ("Purchaser"), and BUENA VIDA CORP., a New York not-for-profit corporation ("Seller"). Purchaser and Seller are sometimes referred to herein as, collectively, the "Parties"; individually as a "Party."

WITNESSETH:

WHEREAS, the Purchaser and Seller entered into an Asset Purchase Agreement, dated May 16, 2018, as amended by that certain First Amendment to the Asset Purchase Agreement, dated April 24, 2019 (as amended, the "APA");

WHEREAS, simultaneously with entering in the APA, Seller and an affiliate of Purchaser, Real Property Purchaser (as defined in the APA), entered into a Purchase and Sale Agreement for the sale of the Real Property (as defined in the APA); and

WHEREAS, Purchaser identified and made indemnification claims to Seller related to certain allegedly known and undisclosed liabilities which existed prior to the Effective Date (as defined in the APA);

WHEREAS, the parties have reached an agreement resolving all such indemnification claims and such agreement requires an amendment to Section 9.04 of the Real Property Purchase Agreement (as defined in the APA);

WHEREAS, the amendments the Real Property Purchase Agreement requires amendments to the terms of the APA to eliminate those indemnification claims and any other claims which Purchaser is aware of as of the date of this Amendment.

NOW, THEREFORE, in consideration of the promises and the covenants and conditions hereinafter set forth, it is agreed:

1. Preambles. The preambles set forth above are incorporated herein and made a part hereof as though set forth at length.
2. Defined Terms. Capitalized terms used in this Amendment and not expressly defined herein, shall have the meaning ascribed to such terms in the APA.
3. Effective Date. This Amendment shall become effective on the date hereof.
4. Purchaser Representations.
 - a. Attached hereto as Exhibit A are additional Assumed Liabilities and which for all aspects of the APA shall be deemed to have been disclosed to Purchaser

prior to the Effective Date. As of the date hereof, Purchaser its agents, employees and/or affiliates have no knowledge of any Excluded Known and Undisclosed Liabilities.

- b. As of the date hereof, Purchaser, its agents, employees and/or affiliates have no knowledge of any potential indemnification claims against Seller or breaches of the APA or Real Property Purchase Agreement by Seller, including without limitation, (i) breaches of Sections 4.05 and 4.06 of the APA or (ii) indemnification obligations of Seller set forth in Section 7.01 of the APA. Those items set forth on Exhibit A shall be deemed to have been set forth on Schedule 4.06 to the APA as of the Effective Date.
- c. As of the date hereof, Purchaser, its agents, employees and/or affiliates have no knowledge of any items which would cause the need for a deposit or adjustment in accordance with Section 2.10 of the APA.

5. Miscellaneous.

(a) All other provisions of the APA are hereby confirmed as if fully set forth herein, and, except as specifically modified herein, all provisions of the APA shall remain in full force and effect.

(b) This Amendment shall not be binding upon the parties unless and until it is signed and delivered by the parties.

(c) The APA and this Amendment constitute the entire agreement between the parties hereto with respect to the matters stated herein and may not be amended or modified unless such amendment or modification shall be in writing and signed by all of the parties.

(d) This Amendment shall be governed and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such State, without regard to the conflict of laws rules thereof.

(e) For the convenience of the parties hereto, this Amendment may be executed in counterparts and all such counterparts shall together constitute the same agreement. Any executed signature page delivered by facsimile, PDF or electronic transmission shall be binding to the same extent as an original executed signature page. At the request of any party, the parties hereto agree to execute an original of this Amendment as well as any facsimile, telecopy, email or other reproduction.

(Signature Page Follows)

IN WITNESS WHEREOF, this Amendment has been executed as of the date first
written above.

SELLER:

BUENA VIDA CORP.

By: Scott Short
Name: Scott Short
Title: Chief Executive Officer

PURCHASER:

BUENA VIDA SNF LLC

By: _____
Name: Sarah Rosenfeld
Title: Manager

IN WITNESS WHEREOF, this Amendment has been executed as of the date first written above.

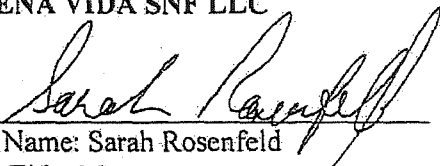
SELLER:

BUENA VIDA CORP.

By: _____
Name: Scott Short
Title: Chief Executive Officer

PURCHASER:

BUENA VIDA SNF LLC

By: 
Name: Sarah Rosenfeld
Title: Manager