

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

December 9, 2021

*Immediately following the Committee on Codes, Regulations and Legislation Meeting
(Codes scheduled to begin at 10:15 a.m.)*

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

October 7, 2021 Meeting Minutes

October 26, 2021 Special Meeting Minutes

November 18, 2021 Special Meeting Minutes

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Mary T. Bassett, M.D., M.P.H., Commissioner of Health

B. Report of the Office of Public Health

Ursula Bauer, Ph.D., MPH, Deputy Commissioner for Public Health

IV. REGULATION

Report of the Committee on Codes, Regulations, and Legislation

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

For Adoption

21-08 Amendment of Section 756.3 and Repeal of Section 756.4 of Title 10 NYCRR (Abortion Services)

20-25 Amendment of Section 405.34(g) of Title 10 NYCRR (Stroke Services)

19-33 Amendment of Subpart 5-1 of Title 10 NYCRR (Public Water Systems)

V. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

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

Certificates

Certificate of Amendment of the Certificate of Incorporation

Applicant

Hudson River Healthcare, Inc.

E.P.R.C. Recommendation

Approval

Certificate of Dissolution

Applicant

Buena Vida Corporation

E.P.R.C. Recommendation

Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212009 E	Long Island Community Hospital and Hospice (Suffolk County) Dr. Kalkut – Recusal	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	211262 E	Montefiore Westchester Community Corp. t/b/k/a Montefiore Einstein Advanced Care (Westchester County) Ms. Soto – Recusal	Contingent Approval

Certified Home Health Agency – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	211107 E	Northern Lights Home Health Care (St. Lawrence County) Mr. Thomas – Recusal	Approval
2.	211169 E	OGL Holdings, LLC d/b/a Mount Sinai at Home (Nassau County) Dr. Lim - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

VI. NEXT MEETING

January 27, 2022
February 10, 2022

VII. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
October 7, 2021

The meeting of the Public Health and Health Planning Council was held on Thursday, October 7, 2021 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner – Zoom	Dr. Sabina Lim – Zoom
Dr. Jo Boufford - Zoom	Ms. Ann Monroe – Zoom
Ms. Carver-Cheney – Zoom	Dr. Mario Ortiz – Zoom
Dr. Angel Gutiérrez – Zoom	Mr. Peter Robinson – Albany
Mr. Thomas Holt – Albany	Dr. John Ruge - Albany
Dr. Gary Kalkut – Zoom	Ms. Nilda Soto – Zoom
Mr. Jeffrey Kraut – Zoom	Dr. Theodore Strange – Zoom
Mr. Scott LaRue – Zoom	Dr. Anderson Torres - Zoom
Mr. Harvey Lawrence - Zoom	Dr. Kevin Watkins – Zoom
Dr. Roxanne Lewin - Zoom	Dr. Patsy Yang – Zoom
	Commissioner Zucker – Zoom

DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|------------------------------|-------------------------------|
| Mr. Paul Francis - Zoom | |
| Mr. Mark Furnish – Albany | Ms. Karen Madden - Zoom |
| Ms. Shelly Glock – Albany | Ms. Kathy Marks – Albany |
| Mr. Brian Gallagher - Zoom | Mr. Nicholas Mestoik - Albany |
| Mr. Michael Heeran – Albany | Ms. Marthe Ngwashi - Albany |
| Mr. Adam Herbst - Zoom | Ms. Lisa Thomson - Albany |
| Dr Eugene Heslin – Albany | Ms. Jennifer Treacy - Albany |
| Mr. Jonathan Karmel - Albany | Ms. Kerri Tily - Albany |
| Ms. Colleen Leonard- Albany | |

INTRODUCTION

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

APPROVAL OF THE MEETING MINUTES OF JULY 29, 2021, AUGUST 26, 2021 AND SEPTEMBER 2, 2021

Mr. Kraut asked for a motion to approve the July 29, 2021, August 26, 2021 and September 2, 2021 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutiérrez motioned for approval. Dr. Ortiz seconded the motion. The minutes were unanimously adopted. Please refer to pages 1 and 2 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Department of Health Activities

Mr. Kraut introduced Dr. Zucker to give his farewell remarks.

Dr. Zucker began by stating: Thank you very much and good morning, everyone, and it's a pleasure to be here at the meeting. I wanted to start by thanking you all for your continued service for the Department of Health. This has been a long journey. This is my last full council meeting for the council as the Commissioner, and I just first want to start by saying that I appreciate all your time and all your effort. This is one of the most important committees that we have in the department because it really is part of the governance of what Department of Health does. After 7 and a half years of serving, I've had the good fortune to work with everyone on the committee, and I've realized. We've all had conversations and I've realized the expertise and the knowledge that you all have. I was reflecting a little bit about what the committee did. I remember the first time I heard about it, which was actually before I was Commissioner. I started to learn more and more about what you did. Our journey in my 7 and half years as the Commissioner has been filled with a lot of challenges and opportunities, and there's much we've done. I'm not going to go through all of it, but I do want to say that we tackled some of the really tough issues. The Certificate of Need applications clearly is something that we've always, always done with the health care facilities over the years, and we've recommended many things, particularly the issues of prevention and our prevention agenda, the goals that we put forth for the community on this area. We also requested in the course of the time that that I've been in this role, we tackled some really tough ones. We forget about all the stuff prior to COVID. Legionella was a big issue. We established the regulations to protect against the spread of Legionella and then we dealt with all those issues of the public water systems and particularly the Drinking Water Council meetings that we had that really were part of the regulations that we put forth as part with PFOA, PFOS, 1,4-dioxane and many other areas that took over a period of years. It was 2015, 2016, 2017. I think 2018 we weren't working on that. Well, we were working on it, but the committee wasn't addressing it. But then again, in 2019, we addressed it. We've made it really easier for many people within New York State to get services, whether it's in birth centers, whether it's the amalgam of these services that we put forth, HIV prevention and treatment services, lab services. We've worked with ensuring that residents in nursing homes that were living with neurodegenerative diseases would have access to the specialized care that they needed. We worked on all payer database and that was something which we worked a lot with. We established a framework for trauma care, trauma centers and the operation of trauma centers, and we also worked a lot on the issues of substance abuse and substance use disorders and behavioral health issues as well and set forth policies. Way back when we were working on some issues of sepsis and septic shock and move forward on that. And then there was the whole issue with e-cigarettes. If we remember the whole issue of flavored products. I know we called many emergency meetings on that issue, but other issues as well to discuss the dangers of e-cigarettes. We looked at the issues of human trafficking and so many other areas and the list goes on and on. We focus on Ebola and Measles and we remember all the issues with Measles as well and many of the health disparities as well. That was all prior to the issues with COVID. In the last 20 months, we obviously have worked extraordinarily hard on the issues of COVID, and we've

adopted the regulations for investigating, isolating quarantine and reporting test results. We worked on the issues of PPE and the requirements for that. We looked at visitation policies in long term care facilities. We addressed the surge and flex regulations. I remember putting that issue to the committee as well. And obviously, we've most recently looked at the vaccination requirements for health care workers. That's just a few. I know if I sat here for another hour, I would talk about so many other issues that we did. But we really have, and I really thank all of you because we really made an impact in protecting the public health. I've always looked at the council as responsible for serving as that in checks and balances, but also in many ways, the voice of the community. Because all of you come from different areas of the state and also from you have many, many people who come to you with their recommendations and their advice and ask you to bring it to us. I think that that's one of the most valuable aspects of what we have is the importance of what you contribute is to provide the voice of New Yorkers on some of these issues. The contributions that you have provided to us as a department to me personally is enormous. I think that when you have spoken about an issue, we take it to heart. I've taken it to heart. There many different issues that have come forth, whether it's the issue of balancing primary care with acute care, whether it's balancing hospital care versus outpatient care, urban versus rural care. There are some things. I sort of just want to say that I really thank all of you. It's been a privilege to work with all of you. It's been a privilege to hear your feedback and to understand the perspectives that you have and to basically hear the voice of New Yorkers through your voice as we sat down and met on these issues. I also just want to thank you because I know we've asked many times for you to meet urgently, and I know all of you have very busy schedules and then to sort of say, okay, well, we need you to meet tomorrow. And then all of a sudden everyone thinks that the entire committee is just sitting there waiting for the phone call from the department to say, okay, we've got to meet. I want to thank you, because you have practices. You have business. You have jobs. You have so many obligations and then all of a sudden, the department has asked you to sit down and discuss something urgently, so I thank you for that, and it did not go unnoticed by me or anyone in the department of the asks that we put upon you. So with that, I'm happy to answer questions. I will miss all of you. I'll be around. I may be calling just for your perspectives and advice. As I said, once I added this up a long time ago, the amount of years of experience of the entire committee was enormous. I don't remember. This was about 3, 4 years ago. Just looking at it. He's been in practice. She's been around 25, 30 years. It's enormous how much knowledge and how many years of experience there is. I thank everyone and I'm happy to admit mentioned last time. I'd be happy to answer some questions and I gladly will do so, and I appreciate Jeff and the entire committee for what you've done for the Department.

Dr. Zucker concluded his remarks. To read the complete remarks and comments from the Members, please see pages 2 through 6 of the attached transcript.

Report on the Activities of the Office of Health Insurance Programs

Mr. Kraut thanked Dr. Zucker and next introduced Mr. Friedman to give the Report on the Activities of the Office of Health Insurance Programs.

Mr. Friedman presented a power point presentation on the topic of Discussion of Concept Paper for NYS's Next 1115 Waiver. To see the complete report and Members comments and questions, please see pages 6 through 18 of the transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Discussion

21-19 Amendment of Sections 600.1 and 600.2 of Title 10 NYCRR (Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements)

Dr. Gutiérrez began his report by introducing Amendment of Sections 600.1 and 600.2 of Title 10 NYCRR (Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements. Please see page 19 of the transcript.

For Information

20-25 Amendment of Section 405.34(g) of Title 10 NYCRR (Stroke Services)

Dr. Gutiérrez began his report by introducing Amendment of Section 405.34(g) of Title 10 NYCRR (Stroke Services). Please see page 19 of the transcript.

Dr. Gutiérrez concluded his report

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Mr. Kraut introduced Mr. Robinson to give the Report of the Committee on Establishment and Project Review.

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Cardiac Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211079 C	Garnet Health Medical Center (Orange County)	Contingent Approval

Mr. Robinson introduced application 211079 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 20 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Cardiac Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211180 C	New York Community Hospital of Brooklyn, Inc. (Kings County) Mr. Kraut – Interest Mr. Lawrence – Interest/Abstaining Dr. Lim – Interest/Abstaining Dr. Strange – Interest	Contingent Approval

Mr. Robinson introduced application 211180 and noted for the record that Mr. Kraut, Mr. Lawrence, Dr. Lim and Strange have declared an interest. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with the noted interests and abstentions from Mr. Lawrence and Dr. Lim. Please see pages 20 and 21 of the transcript.

211213 C	Mount Sinai Hospital – Mount Sinai Hospital of Queens (Queens County) Dr. Lim - Recusal	Contingent Approval
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Mr. Robinson introduced application 211213 and noted for the record that Dr. Lim has declared a conflict and has exited the meeting. Mr. Robison motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Dr. Lim’s recusal. Dr. Lim returned to the meeting. Please see page 21 of the transcript.

Acute Care Services – Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
202263 C	Staten Island University Hosp- North (Richmond County) Mr. Kraut – Recusal Dr. Strange - Recusal	Contingent Approval

Mr. Robinson introduced application 202263 and noted for the record that Mr. Kraut and Dr. Strange have declared a conflict and has exited the meeting. Mr. Robison motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Mr. Kraut’s and Dr. Strange’s recusal and both returned to the meeting. Please see page 22 of the transcript.

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211176 C	Strong Memorial Hospital (Monroe County) Mr. Thomas – Interest/Abstaining Mr. Robinson - Recusal	Contingent Approval

Dr. Kalkut introduced application 211176 and noted for the record that Mr. Robinson has declared a conflict and has exited the meeting. Dr. Kalkut also noted that Mr. Thomas has an interest and abstaining. Dr. Kalkut motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Mr. Robinson’s recusal and Mr. Thomas’ abstention. Mr. Robinson returned to the meeting. Please see pages 22 and 23 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211219 B	Alpha Ambulatory Project, LLC t/b/k/a Alpha Ambulatory Surgery Center, LLC (New York County)	Contingent Approval

Diagnostic and Treatment Centers Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211042 B	Rockwell Health, LLC (Kings County)	Contingent Approval
211251 B	Allhealth D&T Center – Brooklyn2 (Kings County)	Contingent Approval

Diagnostic and Treatment Centers Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
201230 E	VNA Home Health (Albany County)	Contingent Approval

Mr. Robinson introduced applications 211219, 211042, and 211251. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 23 and 24 of the transcript.

Certificates

Certificate of Dissolution

Applicant

The C.M.H. Group, Inc.

Council Action

Approval

Certificate of Amendment of the Certificate of Incorporation

Applicant

Wheel Chair Home, Inc.

Council Action

Approval

Mr. Robinson called C.M.H. Group, Inc. and Wheel Chair Home, Inc. and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 24 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers -Establish/Construct

Number

Applicant/Facility

Council Action

212013 E

Long Island Center for Digestive Health, LLC
(Nassau County)
Mr. Kraut – Recusal
Dr. Strange – Recusal

Contingent Approval

Mr. Robinson called application 212013 and noted for the record that Mr. Kraut and Dr. Strange have declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with the noted recusals. Mr. Kraut and Dr. Strange returned to the meeting room. Please see pages 24 and 25 of the transcript.

Certificates

Certificate of Dissolution

Applicant

Massena Memorial Hospital Auxiliary, Inc.
Mr. Thomas – Abstaining/Interest

Council Action

Approval

Mr. Robinson called Massena Memorial Hospital Auxiliary, Inc. and noted for the record that Mr. Thomas has declared an interest and will abstain. Dr. Gutiérrez seconded the motion. The motion to approve carried with Mr. Thomas' abstention. Please see pages 25 and 26 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the following:

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

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

Mr. Robinson concluded his report.

ADJOURNMENT:

Mr. Kraut announced the upcoming PHHPC meetings and adjourned the public portion of the meeting and was calling into order Executive Session to consider a Health Personnel and Interprofessional Relations matter.

NEW YORK STATE DEPARTMENT
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
OCTOBER 7, 2021

Jeff Kraut I'm Jeff Kraut, and I have the privilege to call to order the meeting of the Public Health and Health Planning Council. I'd like to welcome members, Commissioner Zucker, members of DOH, participants and observers. I want to remind you for our audience viewing the public via this webcast, there's a form that needs to be filled out required by the Joint Commission on Public Ethics in accordance with Executive Law 166. We post the form on the Department of Health's website at www.NYHealth.Gov under Certificate of Need, and you can email those completed forms to the Secretary to the Council, Colleen.Leonard@Health.NY.Gov, and we appreciate your cooperation. We are reminding council members, staff that this meeting is subject to the Open Meeting Law and we're now broadcasting that over the internet. We need to be on mute when you're not speaking. Please don't rustle papers or make extraneous noise. Obviously, all of that is picked up and magnified through Zoom. We're doing synchronized captioning and it's important we don't speak over each other and we obviously can't do that when two people speak at the same time. And the first time you speak, I'd appreciate if you'd identify yourself as a council member or the DOH staff. That'll be helpful. We want to make sure that everybody understands the members, the staff, the public to be aware of our agenda items and the matters that are coming before the council. We recommend that you join the Department Certificate of Need listserv. We regularly send out important information notices, dates through there. There's printed instructions on the reference table, how to join that listserv or you can contact Colleen Leonard as well, who will assist you. Today, I'm going to ask Dr. Zucker to make some opening comments. We will then go to Dr. Gutierrez, who will manage and operate the Codes Committee. We'll then at the conclusion of the Codes Committee, return back to the council meeting. I want to remind everybody that when we do project review, that Mr. Robinson's agenda items that you had the ability to look at it and review it. We've organized the agenda by topics of categories that captures our roles and responsibilities, and we will be battling the approval of these applications at that point in the meeting. I'd ask all the members to look at those batched applications before we call them and that you just let us know if you want to change or remove any application out of a batch.

Jeff Kraut Before we introduce Dr. Zucker, I would ask for a motion to adopt the July 29th, the August 26th.

Unknown (Someone speaking)

Jeff Kraut I'm sorry. If somebody is talking if you can mute yourself.

Jeff Kraut The July 29th, the August 26th and the September 2nd meeting minutes.

Jeff Kraut May I have a motion to do so?

Unknown So moved.

Jeff Kraut I have a second by Dr. Ortiz.

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut Opposed?

Jeff Kraut The motion carries.

Jeff Kraut It's now my pleasure and honor to turn the meeting over to Dr. Zucker.

Dr. Zucker Thank you very much and good morning, everyone, and it's a pleasure to be here at the meeting. I wanted to start by thanking you all for your continued service for the Department of Health. This has been a long journey. This is my last full council meeting for the council as the Commissioner, and I just first want to start by saying that I appreciate all your time and all your effort. This is one of the most important committees that we have in the department because it really is part of the governance of what Department of Health does. After 7 and a half years of serving, I've had the good fortune to work with everyone on the committee, and I've realized. We've all had conversations and I've realized the expertise and the knowledge that you all have. I was reflecting a little bit about what the committee did. I remember the first time I heard about it, which was actually before I was Commissioner. I started to learn more and more about what you did. Our journey in my 7 and half years as the Commissioner has been filled with a lot of challenges and opportunities, and there's much we've done. I'm not going to go through all of it, but I do want to say that we tackled some of the really tough issues. The Certificate of Need applications clearly is something that we've always, always done with the health care facilities over the years, and we've recommended many things, particularly the issues of prevention and our prevention agenda, the goals that we put forth for the community on this area. We also requested in the course of the time that that I've been in this role, we tackled some really tough ones. We forget about all the stuff prior to COVID. Legionella was a big issue. We established the regulations to protect against the spread of Legionella and then we dealt with all those issues of the public water systems and particularly the Drinking Water Council meetings that we had that really were part of the regulations that we put forth as part with PFOA, PFOS, 1,4-dioxane and many other areas that took over a period of years. It was 2015, 2016, 2017. I think 2018 we weren't working on that. Well, we were working on it, but the committee wasn't addressing it. But then again, in 2019, we addressed it. We've made it really easier for many people within New York State to get services, whether it's in birth centers, whether it's the amalgam of these services that we put forth, HIV prevention and treatment services, lab services. We've worked with ensuring that residents in nursing homes that were living with neurodegenerative diseases would have access to the specialized care that they needed. We worked on all payer database and that was something which we worked a lot with. We established a framework for trauma care, trauma centers and the operation of trauma centers, and we also worked a lot on the issues of substance abuse and substance use disorders and behavioral health issues as well, and set forth policies. Way back when we were working on some issues of sepsis and septic shock and move forward on that. And then there was the whole issue with e-cigarettes. If we remember the whole issue of flavored products. I know we called many emergency meetings on that issue, but other issues as well to discuss the dangers of e-cigarettes. We looked at the issues of human trafficking and so many other areas and the list goes on and on. We focus on Ebola and Measles and we remember all the issues with Measles as well and many of the health disparities as well. That was all prior to the issues with COVID. In the last 20 months, we obviously have worked extraordinarily hard on the issues of COVID, and we've adopted the regulations for investigating, isolating quarantine and reporting test results. We worked on the issues of PPE and the requirements for that. We looked at visitation policies in long term care facilities. We

addressed the surge and flex regulations. I remember putting that issue to the committee as well. And obviously, we've most recently looked at the vaccination requirements for health care workers. That's just a few. I know if I sat here for another hour, I would talk about so many other issues that we did. But we really have, and I really thank all of you because we really made an impact in protecting the public health. I've always looked at the council as responsible for serving as that in checks and balances, but also in many ways, the voice of the community. Because all of you come from different areas of the state and also from you have many, many people who come to you with their recommendations and their advice and ask you to bring it to us. I think that that's one of the most valuable aspects of what we have is the importance of what you contribute is to provide the voice of New Yorkers on some of these issues. The contributions that you have provided to us as a department to me personally is enormous. I think that when you have spoken about an issue, we take it to heart. I've taken it to heart. There many different issues that have come forth, whether it's the issue of balancing primary care with acute care, whether it's balancing hospital care versus outpatient care, urban versus rural care. There are some things. I sort of just want to say that I really thank all of you. It's been a privilege to work with all of you. It's been a privilege to hear your feedback and to understand the perspectives that you have and to basically hear the voice of New Yorkers through your voice as we sat down and met on these issues. I also just want to thank you because I know we've asked many times for you to meet urgently, and I know all of you have very busy schedules and then to sort of say, okay, well, we need you to meet tomorrow. And then all of a sudden everyone thinks that the entire committee is just sitting there waiting for the phone call from the department to say, okay, we've got to meet. I want to thank you, because you have practices. You have business. You have jobs. You have so many obligations and then all of a sudden, the department has asked you to sit down and discuss something urgently, so I thank you for that, and it did not go unnoticed by me or anyone in the department of the asks that we put upon you. So with that, I'm happy to answer questions. I will miss all of you. I'll be around. I may be calling just for your perspectives and advice. As I said, once I added this up a long time ago, the amount of years of experience of the entire committee was enormous. I don't remember. This was about 3, 4 years ago. Just looking at it. He's been in practice. She's been around 25, 30 years. It's enormous how much knowledge and how many years of experience there is. I thank everyone and I'm happy to admit mentioned last time. I'd be happy to answer some questions and I gladly will do so, and I appreciate Jeff and the entire committee for what you've done for the department.

Jeff Kraut Commissioner, thank you so much, and I am certainly going to invite anybody to speak or make any statements following my thoughts. You just went through an amazing litany of activities that we partnered with you and the department with. I think we need to thank you for your support, for your willingness to listen and really what under your leadership, I feel we've gotten closer to putting the public health back into the activities of the Public Health and Health Planning Committee. Clearly under your tenure, you look at what we've been able to accomplish together. You've had to confront challenges that no other Commissioner has had to confront in 113 years of the existence of the department and the council. You've made investments and we realize the value not of of the professionals that you brought to the department to partner with us, but the investments we made and the refocus and the important saw on public health and and how you've always been a leader in those fields. I have to tell you it's been a privilege for me personally to work with you. I can only hope our paths will definitely cross in the years ahead. I know that and with other members. We are just grateful for all the support you have given us and in permitting us to share in that mission to serve and improve the health of all of New Yorkers. We can't say enough thanks for you.

Jeff Kraut I'll just leave it up to other members if they want to make any statements or you can grill him and ask questions. I would prefer the former right now.

Jeff Kraut Dr. Boufford.

Dr. Boufford Howard, thanks very much. I think your statement thanking us is a great demonstration of your graciousness. True, as Jeff said, some of the most challenging times I think any public health leader has had to go through. You've always been incredibly gracious, incredibly patient and incredibly respectful, really of in really tough times, in high conflict times. I just want to thank you. I think also just to indicate as well your very strong support and often behind the scenes, because these are, the CON's are very visible, but the prevention agenda has been a little bit more challenging. The work across agencies that you co-chaired with Paul Francis whose name I saw on the call really implementing the Governor's Executive Order on health across all policies and age friendly New York State have been not as visible to this council, but very, very important and would not have moved ahead in the way that it did without your support. I just want to thank you personally for that. Now that I'm teaching in a school of public health and teaching Master's degree students and Doctoral students in public health, you have literally been through and I think, been a role model for, in many, many instances, the incredible challenges of being a public health professional in times of enormous political upheaval. This is a reality that a lot of public health professionals don't think about and don't see as they think about this career path. I know Patsy Yang is on this call and she is living through a version of that in New York City. But I mean, it takes a lot of courage. I just want to commend you on your courage and your professionalism, and I look forward to working with you going forward.

Dr. Boufford Thanks so much, Howard.

Dr. Zucker Thank you so much.

Dr. Zucker And thank you for all your service and all of our conversations about many issues. I think when you mentioned prevention, it's really important, because this whole issue about the pandemic is that when you were talking about the vaccines it's prevention. I mean, you can't crystallize this more than the fact that we're sitting here with a pandemic on the way out of this is about prevention. It's right there in front of all of us.

Jeff Kraut Any other members?

Jeff Kraut Dr Kalkut and then Mr. La Rue.

Dr. Kalkut Howard, it's been a pleasure working with you. Before you became the Commissioner and as in your tenure as Commissioner from the Public Health Council standpoint, I think your smarts and professionalism really shined through as the Health Commissioner and as Jeff laid out, you've been tremendous challenges from a public health standpoint, from an individual health standpoint, and your leadership has been a beacon for a lot of people in public health.

Dr. Zucker Thank you.

Dr. Kalkut Thanks to you.

Jeff Kraut Mr. La Rue.

Mr. La Rue Good morning. Dr. Zucker, I just wanted to take this opportunity to also thank you and how appreciative I've always been of the recognition of the importance of mission driven organizations and faith based organizations in delivering health care in the State of New York. You've always given us an equal playing field and included us, and I'm very grateful for that. I'm also grateful for your leadership and the departments under extraordinary circumstances during the pandemic. I've mentioned this before. We were on the phone with staff members all hours of the night and weekends, and you supported us greatly and I'm grateful and thank you and I wish you the best in your next role.

Dr. Zucker Thank you, Scott. Thank you for your service and I really appreciate and all of our conversations.

Dr. Zucker Thank you.

Jeff Kraut Let me maybe close. There's one more things that are due and that's to your family, because we know that when you go into public service, it's not an individual. It is a family commitment. As Scott just said, the nights and the weekends, particularly in the last two years, I suspect all of us worked late into the night and we certainly know what that required of you and the toll it had on your family. We have to thank your family as well for their service that permitted you to serve.

Dr. Zucker My wife know and my little kids and they are happy to see me now.

Jeff Kraut When you walk through the house, they say, Who's that, Mommy? You have an issue.

Dr. Zucker When my older one said to me one day, you know, when I was down in the city, which is where they are and said to me, Why do you have to leave and go home, Daddy? That really just hit me. Like he didn't believe I lived there. That really, really hit me. He realized when I have a tie on, it means work. One day the younger one literally hid all my ties from the closet just assuming that if I don't put a tie on, I'm not going to work. Means I'm staying home.

Jeff Kraut Those of all of us, particularly in state service, because the demands that are 24-7, we don't recognize our families and the support that we get the permits us to do the work we do. I want to thank yours as well, Dr. Zucker, and thank you very much. And as we said, we'll be seeing a lot of you.

Dr. Zucker Thank you all.

Jeff Kraut Thanks very much.

Jeff Kraut What I'm going to do now is I'll suspend the full council meeting and I will now turn it over to Dr. Gutierrez, who will proceed with the Committee on Codes, Regulation and Legislative Committee Meeting.

Jeff Kraut Dr. Gutierrez.

Jeff Kraut Now going to call back into order, the October 7th meeting of the Public Health and Health Planning Council would continue with our agenda. Before I do so, I just want to acknowledge that two of our members had appeared on some health care lists. Patsy

Yang was one of the New York State Health Power 100 list by City and State Magazine, and Dr. Anderson Torres appeared in the Latino Top 100 in the state, so I want to acknowledge them. I also want to point out to the publishers they did not reflect their membership on the Public Health and Health Planning Council an oversight, which we hope will be corrected next year when that list is republished. It is now my pleasure for something that you have requested that we spend time on. We've invited Brett Friedman to come and talk to us about New York's planned and anticipated waiver. The next waiver ,1115 waiver.

Jeff Kraut I just want to introduce Mr. Friedman. He in November of 2019, right at the cusp of before the COVID epidemic, he made the decision to join the Office of Health Insurance Programs at the State Department of Health, and he initially served as Director of Strategic Initiatives in the special counsel and supported the then Medicaid Director on initiatives that involve that complex intersection of legal, regulatory and policy issues that have profound impact on the State of New York and, frankly, the work of the council. And then this past June in 2021, Brett assumed day to day responsibility for the Medicaid programming following the announced retirement of Donna, and he was named the Medicaid Director in 2021. Brett, those of us who have worked with Brett in the field. He was a partner in the health care group of Ropes and Gray and co-head of the firm's digital health practice. Any one of you who have worked with him at Ropes and Gray know how bright, innovative and creative he is and how enthusiastic and how passionate he is as an advocate for the health care industry and kind of very forward looking. So, Brett, it is my absolute pleasure and thank you so much for joining us today.

Jeff Kraut I'll hand it over to you.

Brett Friedman Great, thank you, Jeff, and thank you, Dr. Boufford for inviting me to the council meeting. I'm very excited to share where we are in our thinking around the next version of the 1115 waiver. And for those of you not steeped in Medicaid parlance, but many of you are seeing the names on the Zoom call. The 1115 waiver is the legal vehicle or the legal authority that we work with CMS to do innovative things in the Medicaid program. For example, was done through the 1115 waiver. When we discuss the concept paper, it's appropriate to think of it as the next phase even though we're looking to learn from the experience and improve upon it through this next version. It's going to require a tremendous amount of partnership with CMS and those of you who know the history, the former federal administration wasn't keen to using the Medicaid program to further innovation the same way that the prior administration was. We confronted a series of challenges as expired in 2019, just as I was coming to the department through 2020, trying to think through how to position our 1115 waiver for the future. And now that we have a new federal administration, a CMS that has further themes that align with our own, we've over the past 7,8 months have been working to think through where we take this and where we take the 1115 waiver from here to really advance the Medicaid agenda in a meaningful way. I believe there are slides if Total Webcasting can project them and I can advance some. If not, I can try and share my screen.

Unknown You're going to share your screen, Brett.

Brett Friedman Okay, let me do that then.

Brett Friedman Can everyone see the slides?

Unknown Please just click on the presenter mode button.

Jeff Kraut Yes, we can see your slides and now we can see your email.

Jeff Kraut Go back to your slides.

Brett Friedman Is it all right?

Brett Friedman Perfect.

Jeff Kraut There you go.

Brett Friedman Excellent.

Brett Friedman I'll just share a few short slides to walk through what we're thinking on the concept paper in hopes it gives you a flavor of what we're thinking. Many of you were involved in some of the earlier stage thinking here, and I thank you for that. We've been having discussions with Ann and others as part of the learning process as we're set to release the summative evaluation. Hopefully we'll be able to tie a lot of that together. But just to give you a sense, and here's the agenda. Well, we'll discuss where we are with the status in the process. And that's critical because I want to make sure you understand where we are because it's a long road ahead. We'll walk through very quickly what the concept paper contains thematically, and we'll go through the four major goals and objectives that we seek to advance as part of the next waiver. We'll walk through how we would finance it and ensure budget neutrality, which is a key federal requirement. We'll talk about some of the stakeholder feedback that we've engaged in so far, which has been, by nature, informal because we haven't formally submitted the application yet. And then we'll discuss where we go from here. Where we are in the process. I was touching on this a little bit at the intro 1115 waivers generally and I would say the New York State Medicaid program was in a very difficult spot in the federal administration. Where the Obama administration used 1115 waivers as a means of really furthering public health and Medicaid agenda. The previous administration's position was 1115 should be a waiver of last resort and that really hurt us as we were looking to extend to do bigger and better things. When it expired in March of 2020 and the larger 1115 waiver document of which was part was set to expire in 2021, we moved into crisis mode. And crisis mode was to say, let's make sure we just get the waiver extended right? Extend the base agreement, if you will. And then once the waiver is extended, we can then work to design a new programmatic initiative that is the real successor program. And so in March of 2021, we submitted our formal waiver extension application, which went through a whole public transparency process. And all that did was took our waiver that was set to expire in March of 2021 and extended the term by 3 years. And that extension again was critical to keep the waiver alive so that we could do something bigger and more programmatic on top of that. In the cover letter that we submitted to CMS, we gave CMS a placeholder that we were intending to submit a concept paper that was designed to address the inextricably linked health disparities and systemic health care delivery system issues that were highlighted and intensified by the COVID-19 pandemic. We put our place holder in with CMS. And then really, since March and today we've been working to refine and develop what that concept paper is. We're pleased to say in the third week of August, we were able to send that paper over the transom to CMS. And to give you a sense of what's in there. We are asking for \$17 billion over 5 years to do a big new delivery system push. Thematically again, as indicated in that March letter CMS, the goals and objectives the waiver top level are designed to address the health disparities that were exacerbated by the COVID-19 pandemic. It reflects the fact that New York was one of the first and hardest

hit by the pandemic, and then it also revealed health disparities and systemic health care issues that was working to address but more time and effort and a different direction is needed to really fulfill that promise. The overarching theme is really around health equity, our efforts to promote health equity by fully integrating health care, behavioral health and social care interventions together in a cohesive Medicaid offering. Doing that we think we can build on the long term momentum and the long term movement towards value based payments as being the primary vehicle and relevant to the role of the council. We think that using global and fully prepaid arrangements around geographies as one means of effective payment can help provide stability to large health systems and insulate against unexpected fluctuations in utilization that are accompanied by a pandemic. We want to reflect or we thought to have the concept of reflect New York's experience as the early epicenter of the pandemic and allow us to build back better. FEMA is being thrown around a lot in Washington these days and then we want to importantly learn from the experience. The planning process has aligned nicely with the summit evaluations and some of the challenges and successes that caused that we can learn from, including the importance of regional alignment on public health objectives providing and the need for direct investment in CDO's and social terms of help, which was limited by virtue of the structure. Importantly, avoiding the creation of new intermediary funding entities. One of the challenges, PPS's were important at receiving the funding and pushing it to different network partners in furtherance of the clinical projects. The sustainability plan, as we've moved out of for PPS as not a managed care organization, not necessarily a risk provider network. What was their real role in the delivery system? How can we avoid creating entities that don't have a long term function and purpose? And then also to really build on that work in creating deeper alignment and funding incentives. How do we use most effectively given that movement to ensure that we're aligning incentives to the extent possible. All of that thinking culminated in the attached document, which is on the DOH 1115 waiver website. It's a very extensive and detailed concept paper. I think the first concept paper we did was 2 pages. This one is 34. The goal of doing a long and detailed concept paper is 1, to tell we really care about this, right? We're not looking for agreement on principle. We're looking for agreement on action. 2, this is a concept paper, which means that we're looking for CMS's input on what we're thinking before we go ahead and submit the formal waiver application. We're hopeful that this is exactly what CMS wants so that we can go and take this concept paper and literally change the title. We hope. Convert it into an application, which will save us further time and effort. We really put the effort in on the front end. And 3, it's important to show the detail, right? This is a long and complex flavor which reflects the size and complexity of the New York State Medicaid program and everything it does, and there's just a lot we want to do. This is essentially now the cliff notes version of that 34 page document. Hopefully I save you a little bit of reading time. But really, what we're looking to do is advance four goals. The first and the biggest goal is to build a more resilient, flexible and integrated delivery system that's capable of promoting health equity. There's five components of this goal, and I'll walk through them very quickly, but they all linked together. The first is the development of what we're calling Health Equity Regional Organizations or HERO. I joke that with the retirement of Greg Allen, I needed to be the Chief acronym developer. We like HERO as an acronym. HERO are not PPS's. I hate to define something as to what they aren't, and they're not the extension of PPS. HERO, there will be one for region, and we can use the traditional 9 or so regional divisions of New York for HERO or we can stop stratify within those regions. It reflects that the health equity priorities are inherently regional and geographically driven. What's going to be important in the North country is going to be different than what is going to work in the Bronx. The goal of the HERO are to really create collaborative vehicles for discussion. We would have all the critical stakeholders in a region MCO's, providers, the qualified entities through the shiny social service and health networks, which are organizations of CBO's,

which are found on the right half of the slides and other stakeholders, members, Medicaid members, members of the workforce, local health departments that can do two critical things. One is inventory, the existing activities and initiatives going on in the region that are designed to really care for at-risk and vulnerable populations. What is around and what is working or what is around that we can improve upon? The second means of collaboration is to design new linkages and partnerships. We view a very significant data analytics function occurring within a HERO to assist in the regional planning effort and that the data linkages coming together are not just those within the health care or even the social care system, but we can look at data linkages that go across into criminal justice into the foster care system so that when we're designing new interventions, which we'll find on the next slide, it's appropriately informed in a collaborative way. It was that collaborative aspect of the PPS's in the governance structure that we thought could be scaled here with a more inclusive participation, especially by the MCO's who are largely left out of PPS governance. The second entity we would create is social in terms of health networks, and these are while we view them as new entities, we view them being essentially independent practice associations or IPA's composed of community based organizations with the idea that we could use these to provide infrastructure funding to CBO's to participate more effectively in value based payment arrangement. One critical aspect while a significant portion is not nearly enough funding went to CBO's. Create a vehicle to provide more direct funding for CBO's to do the things like become HIPA compliant, creating data linkages so that when we integrate the social care interventions into the value based payment arrangements, you have a contracting vehicle, a closed loop referral network and bi directional social care data exchange to make CBO's in a woven part of that enterprise. Are the recognition of the fact that we need to provide that upfront funding to CBO's and that creating essentially a one stop shop would be effective at ensuring that the appropriate linkages between services within the region. We've seen them already start to form from the experience. The Alliance for Better Health in Albany created one. IPA is a good example Downstate. We want to scale those because we think that that CBO collaboration and development that network is an essential aspect in moving and integrating social care services into the Medicaid landscape. Then we get to the really major element of the waiver and how we would expect funding to work, which is really to advance model. Roadmap were very effective at moving a managed care organizations and provider networks into largely total cost of care, primary care driven arrangements. And that was effective at changing the payment paradigm in the Medicaid space so that people were comfortable getting paid based on cost and quality. What's happened and this is really where I think a lot of the experience in the behavioral health space has shaken out is that special populations with high MLR populations, those with really specialized needs didn't have a role in this total cost of care arrangement. It's those very populations that we think would benefit from a health equity driven social care integrated model. We would tape waiver funding and release it in connection with population specific arrangements. Here where we view the HERO as sort of collaborative planning entities. Once that collaboration plan takes place, there becomes a level of competition where IPA's or ACO's composed of the CBO's, the hospital and community based providers, long term care providers and others, depending on the population being targeted, will come together. And if they can reach an arrangement with a target budget that aligns with the HERO priorities in the region, we will release waiver funding above and beyond with built into the existing plan of premium. What that does is it provides waiver funding to test and do the interventions that really work to promote better care for populations with historical health disparities. It's impossible to list of all of the iterations of how we use these different arrangements, but there are some good examples coming up of criminal justice involved populations, people even incarcerated environment, whether we can spend more in connection with care management, direct provider reimbursement and CBO integration to

care for this population as they're transitioning from incarceration and being reintegrated into the community; SUD and that bundle, maternity health bundle, children in foster care and to with the role of the HERO building those connections and connectivity or inventory existing programs that we benefit from more Medicaid funding to be able to use those in connection with MCO's who are already responsible for the health care of these members to really create that network offering fully integrated with social care, health care and other support systems from the geography to make that population effectively serve using waiver dollars. We would update the roadmap to create a menu of options for these enhanced services, and the funding would only be released by the department upon the presentment and approval of a qualifying arrangement that aligns with HERO objectives and contains an appropriately proposed network of providers and CBO's. It's not like we're giving the money to MCO's, which was part of the feedback we've gotten on this. We would make it available for MCO use support and integrate with their existing premium dollars to ensure that we are building targeted and effective options for populations who have been most at risk and vulnerable in the Medicaid ecosystem. One point to raise, and this is, I think, building on the long term vision and the practicality of this waiver option is part of the role and it can be done through health homes or existing vehicles. One requirement we would like to impose as part of the waiver is a concept of a social care assessment or a uniform social care assessment so that every Medicaid member would through a community health workforce, would be assessed based on their social care needs. Think of like the Community Health Assessment tool or the UASNY that we have a space where everyone gets assessed for their long term care needs. Here we would assess individuals based on their social care needs and that social care needs assessment would go into the person's time and service planning process that's already required of MCO's with support of health. And that way we can ensure that every MCO in the state is able to collect adequate data on race ethnicity, which is more incomplete than we'd all like. And then we can integrate that sort of social care need process into the larger health care needs assessment process. Then, as we move to the end of the waiver, the fact that we have a uniform social care needs assessment using a validated tool and those tools already exist, we can risk adjust claim premium based on the social care acuity of the Medicaid members and drive differential premiums long term to the MCO's that have the most vulnerable populations. And that's really with the testing of the interventions and the social care assessment that builds upon data collection so we can stratify quality measures, but also really integrate social care needs into the care planning process. That's how we really work to integrate health care and social care together into the ecosystem in a way that really hasn't been done in New York or anywhere else in the country. Things have been moving in this direction, whether through initiatives or through interventions that we've been supporting or otherwise. This is really the culmination of the planning that we've been engaging in for the 5 years and we think ties it all together in a really wonderful way. The other subcomponents is to build capacity, and we heard about workforce issues in connection with the discussion. We need to build a community of community health workers, care navigators, peer support that are going to perform one social care risk assessment we just discussed, but also provide those traditionally not enrolled provider categories that are going to be critical to the intervention of the sub population. And so to create expanded career pathways, and to really utilize the Medicaid space as a means of itself of addressing economic or job security for the vulnerable population. We'll talk more about it, because there is a separate workforce investment building on a lot of the things we've just been discussing through the entire council meeting. And then the last and this is a sort of a relatively discreet component is to do an eligibility expansion for criminal justice of all populations to provide certain Medicaid eligibility 30 days prior to discharge. It's an example of how we want to involve the sub population into these arrangements and where we are willing to make targeted Medicaid

eligibility expansions in order to bring those people effectively into these arrangements. That was goal one. That's by far the biggest. I'm almost done. Gal 2 is a large direct investment in supportive housing. Housing insecurity was a tremendous factor through the pandemic, and New York has a long and successful history, dating back to the first Medicaid redesign team and state only supportive housing investments that really work to create an array of supportive housing programs that resulted in deinstitutionalization, but also a reduction in homeless population, especially for the medically vulnerable. We want to do two things with waiver dollars here. One is inventory and expand the existing supportive housing programs, essentially to help supplement some of that state only spending on supportive housing investment. But then we also want to expand our supportive housing offering and home based services initiative to do more. Here's where we really want to push the envelope and see what CMS is willing to do. Historically, room and board, as they call it, has been a sort of a line you shall not cross in the Medicaid space. You can't pay for physical capital. You can't pay for rent. Here, we think that there is room given some relaxations in federal policy where we can start paying for things like first and last month's rent, security deposit, the application fees and other rental assistance support that would help get people into transitional supportive housing more effectively and to utilize Medicaid dollars in that respect. This would buttress and support those programs from the first to have a supportive housing element to it. Third goal, and this is really the goal that's focused on the facilities and the recognition that facilities need to be redesigned and strengthened post-pandemic. That we would look to create a pool of funding to help with facilities, hospitals and other health care facilities to develop a ready to execute strategy to respond to whether it's the tale of the COVID-19 pandemic or the recognition that this is unlikely to be the last mass event or some disruption of utilization that we'll encounter in the New York health care delivery system. Waivers in the past have used to support facilities stabilization. We do want a component of the waiver to support facility stabilization, but around the COVID-19 experience. Here we would look to fund physical infrastructure preparation and planning, inventory planning around critical supplies necessary for pandemic response, but critical workforce training to ensure that workforce can be redeployed or cross-trained effectively as their utilization needs change from outpatient to inpatient or for the patient community based so that a hospital facility or another type of health facility in a region can effectively redeploy themselves during the pandemic and be ready for that. A separate component here, and this is, you know, even as we've developed design the concept paper over the last 6 or 7 months, this is, you know, we are planning on a substantial workforce reinvestment. And frankly, the need here relative is becoming more substantial. We do have our community based services spending plan, which is authorized by Section 17 of the American Rescue Plan Act. That's providing New York over \$5 billion of incremental federal funding to help address the home and community based services space. The non facility staff and we're advancing a cohesive workforce development proposals that look at recruitment, retention, education, cross practice expansion. We would want to utilize the waiver funding to supplement that those tools for workforce across the Medicaid delivery system. Because the funding is limited, so we're limited to be able to apply that funding into facilities. We could utilize this workforce to help with facility based growth and training, especially given some of the nursing homes and hospital staffing shortages that were highlighted earlier on during this council meeting. As well as really further training and career pathways for health care staff, as well as create a concept of ethnic concordance within a region with the understanding that populations and we've seen the level of distrust in the health care space. But to ensure that the providers are not just culturally competent, but can reflect the demographic makeup of communities to help promote care. We do view I don't want to call it a supplemental investment spending plan, but really a transformational training investment that will be the biggest that we saw from the federal government through an 1115 waiver.

And then finally, and Jeff mentioned my background in digital health, but we would have the small waiver and I'll show you how our 17 billion would break down. We would want to provide a funding pool to allow providers and community based organizations to invest in innovative health care technology. While CMS has been the path to allow for investments in capital infrastructure, we think we can use this funds for human capital investment, model of care development, wraparound resource development to support and promote the integration of virtual technologies into the Medicaid delivery landscape. Whether that forms of remote patient monitoring and the long term care space creating necessary data platform interoperability. How is your social care assessment? How is your social care data system that's provided by Unite Us lock into a system within a hospital or health system to create more patient facing tool tablets and remote monitoring devices and then expansion of specialty virtual care models. How do we use a virtual care assessment process to really support what we're doing in the social care intervention space? We view. This is really a digital health technology investment that we think would go a long way to building on the positive momentum that we saw with telehealth writ large during the pandemic. If there wasn't telehealth or digital component of this concept paper, we would be missing an opportunity to really create long term and meaningful change. This is our early preliminary breakdown of how we would expect this 17 billion to spread across the different categories of funding. You'll see HERO, because they're not a funding intermediary, we would expect a relatively small investment to build out that collaboration data linkage work. They're not distributing and funding to the partners, right? The real funding is going to as part of the network development that we talked about, as well as through these advanced models that really provide the funding for specific opportunities, address the populations that are vulnerable and at risk, and that have historical health disparities and need real health equity promotion. Three billion for supportive housing, which is that we think a real transformational investment in developing those programmatic offerings in the housing space and that's additive to whatever housing fund could be included. We're building both components together. We have 3 and a half billion in total for the preparation for future pandemic response in this, including the workforce training and the pandemic response redesign. These may grow relative to other buckets as we think through the spending priorities, especially as our branch has changed in the last couple of months. And then it's not the biggest investment, but we think a half a billion dollars would really be helpful in doing that type of digital health and telehealth, incubation and innovation that would help in future in ensuring future medical access through digital technology. Sources of financing. We would rely, and this is one of the benefits of the waiver to rely on on designated health programs as a form of funding. Are really important. Intergovernmental transfers, which are contributions from local government because some of the early data that we've seen around the health equity driven interventions, the entities that tend to benefit the most aren't the traditional health care systems. It's actually the municipal services, whether it's EMT, ambulance, whether the Fire Department, whether it's prison that really benefit from these types of investments instead of provide those municipal funding as a source of investment really reflects the fact that this is a local state partnership in addition to being a federal state partnership. In consistent with federal requirements, we need to ensure that we have adequate room in our budget neutrality calculations to support the 17 billion. We think we do, even though we're going to continue quote budget neutrality. If the federal government allows us to some necessary adjustments around things like minimum wage. That's part of the negotiation that we have to work through with CMS in terms of ensuring that we have the adequate room in our budget calculations to fund this major investment. The concept paper was developed, this was a I'll call it, an informal public feedback process because once the waiver application submitted, it's going through formal transparency. We'll have at least two public hearings. It will be published in the state register. We'll invite written comments. We've received

written comments and we're appreciative as we've considered all of them in the constant paper design. We have consulted with a lot of people, both renowned national labor experts, but also our mental hygiene agency partners our other state partners, managed care organizations, providers of all types. We have had calls with advocates around us to present our vision and their feedback was incorporated into the process as well. Really making sure that we were assessing the labor landscape to make sure we were proposing was reasonable given what CMS is doing elsewhere. In terms of next steps. We've submitted the concept paper and we're validating the direction and approach for CMS. We've had two calls with them. They've been warmly receptive of our concept paper, but there's a lot to work through. \$17 billion, admittedly, is a scary number to them on top of all of the other spending going on and all the other federal opportunities. Making sure that we're not overstepping and having that collaborative discussion. Otherwise we'd just be submitting an application that would fall flat like our extension did. We would eliminate or modify anything that the federal government uses untenable, whether due to federal policy priorities, whether due to inconsistency with other objectives they issue for different funding sources. We would import additional opportunities, being considered in other markets. If something cool comes out of North Carolina or Massachusetts or Ohio that we're building on things that are readily approvable. Was not a new concept in New York. It was something that was approved in other states like California that we brought into New York. We may have to if the feds require it consider some of these things through a different lens because approval is key. We want to consider non-medical sources of achieving similar objectives. This is critical for CMS, right? Something is being provided through providing relief funding or investment. They're not going to double fund it as part of the waiver. We want to make sure all of our requests are unique and discreet in terms of how it aligns and achieve synergy with other federal funding priorities that we're receiving as the state. We are we are getting a lot of federal money through other sources, both Medicaid and non Medicaid related. We want to make sure the 5 years and the amount are consistent and we'll establish a timeline for submission. It's a 6 month transparency process once we start it. Given that in 6 months, I would love to start it soon so we can go to the transparency, incorporate comprehensive public feedback and make the application better. This is really trying to make sure when that happens, people are aware of what we're doing, how it's evolved, and they'll be ready to provide targeted and constructive feedback. If we can make something better, let's make it better. We're really trying to be transparent and collaborative through this process because we do think we have a unique opportunity to really improve the medical delivery system at this point in time.

Brett Friedman So with that, I will stop.

Brett Friedman I'm going to end my screen share, hopefully not show you my e-mail again.

Jeff Kraut Thank you.

Brett Friedman I'm happy to take questions.

Jeff Kraut Look, look, everybody. There's a lot to unpack here, and we're not going to try to unpack it in a few Q&A's. I'm assuming we'll get a copy of the slides and remember, you asked for the concepts of the waiver to come in and then hopefully through planning public health, the full council meetings, we'll have some additional discussion as Brett said, this is being developed and revised, but I'll leave it open for comment now or anything you want to say. Let's just be realistic at the level of detail we can get into it at this meeting.

Jeff Kraut That's all.

Jeff Kraut Is there are any questions, comments?

Jeff Kraut I don't mean to stop comments, I just need to clarify them.

Jeff Kraut Dr. Kalkut.

Dr. Kalkut Appreciate the clarification, Jeff.

Dr. Kalkut I'll just say it's an ambitious plan, Brett, and I think you're taking on just the right stuff and look forward to work with it. There's plenty here to do.

Brett Friedman I mean, we want to make it better, right? Some of the commenters on the regs that we discussed that there isn't a clear spend outside support of housing on long term care, right? We know that the gap in the concept paper and one where we would work with CMS to help address. We've really tried to bring behavioral health and whole person integration into the forefront here, which is something that we haven't seen actually brought. We're really, you know, this is the fun planning part and we really want to make sure we get it right.

Jeff Kraut I'm going to go to Mr. Lawrence, then Dr. Boufford and Dr. Lynn.

Mr. Lawrence Yeah, I'd like to thank you because I think it is taking on all of the right issues. Having lived through 1, I think it's a great approach to bring all of those CDO's in to look at supportive housing. I'll just take a second. I met recently with a private group that's got, I think, about \$400 million of investment to care for the same patients that I'm caring for here in Brownsville. I invited them in because I said, Well, if they could get private sector money into care from Medicaid and low income Medicare patients, then they're doing something really smart that I need to learn from. And the first thing they said to me was, Hey, you can't do this. The way you're reimbursed is ridiculous and your rates are ridiculous. There's no way you're going to be able to do any of this. Their approach is pretty much, I think in the spirit and the concept which you're outlining is that they get paid based on value based arrangements. What they have is that they have the latitude of making the investment in all of those things that we sort of struggled to make investments in. They follow up with their patients. They make sure that there's navigation, that their home care visits and that their actual an opportunity for people to go into their homes if someone can't get to their health care provider. I guess my point here is that at some level, oftentimes when we are attempting to redesign our system, we add complexity. In their world, I think it's pretty simple. We keep a patient out of the ER. We minimize avoidable hospitalization. We get a bottom line. With all of the connective tissues that I hear here it seems like we're adding an additional layer, especially from a primary care perspective. We sort of view ourselves at the center of all of this, because we get the first touch with the patients and all of those things. I would just ask that you look at how you redesign not the entire process, the payment process, so that at some point that we have the value of that equity, that this 400 million dollars brought to this private provider so that they can do some of the soft touch and not have to worry about the generating volume to pay the bills. That's something that I would ask if you take a really close look at in how that happens, how do we get information from the managed care companies that allow us to understand, well, what is this patient costing? That's not always available to primary care providers. We're sort of operating in the dark and in many instances. I think there are a number of really great things and this is a great opportunity, but I would like to see much more of the

flesh around the redesign from the primary care perspective and how that's going to be supported so that in fact, we can do the work that's necessary. My last comment is that, you know, typically, I guess from where I sit, when I hear health equity, I think of racial disparity and I think of systemic racism. I just did note and maybe I missed it that that was highlighted in any of the comments or presentations that you made, because at some level, we're changing the system again. But at the core, there are some fundamental issues where a person of color can go through one the same door, but come out with two different sets, a different set of outcomes with the same provider, same institution. Those are some challenges that I think if we're going to frame this through a health equity set of lens that we need to make front and center in the process.

Jeff Kraut Thanks, Mr. Lawrence.

Brett Friedman Excellent comments.

Brett Friedman If I could just respond quickly to a few of those, because I think they're incredibly relevant. The idea of the value based payment spending pool in my view is that venture capital funding, right? Where you have providers are able to access this waiver money above what exists currently the Medicaid system to build and not worry so much about what your baseline reimbursement is. You can really do those wrap around whether it's enhanced care management on the front end, whether it's additional direct provider reimbursement to ensure that you're not worried if I'm only spending 15 minutes with this patient or what APG or what Medicare fee schedule am I my generating where if there's additional time and attention needed, there is waiver funding to supplement that. 3, that you can invest in some of those historically unreimbursed social care interventions that are necessary to care for the high population, whether it's wraparound transportation, whether it is housing, navigation, things that put the provider and who's driving the attribution, that arrangement at the center. I think some of those concerns and we'll look deeper into those are 100 percent relevant to where our thinking is and where there are gaps in the current Medicare funding system that relies on historically depressed fee schedule that doesn't work to really make those investments into the Medicaid population. The last point you made about differential outcomes for the patients is something that we're focusing on currently in the Medicaid program, including through the reconstitution of the clinical advisory groups that help inform the measure set development within the arrangements. One issue that we keep hearing that we're looking to solve for as part of this waiver is the incomplete or inaccurate data on race and ethnicity within the Medicaid program. It's only about 68 to 70 percent complete. And then about 68 to 70 percent, the largest self-reported, so degree of accuracy is also challenging. Consistent with requirements and best practices, we're starting to think about how to stratify measure sets around race and ethnicity so we can look at those differential outcomes and pinpoint them more effectively. And that work is going to continue across the department. It's not just Medicaid. It's our Office of Patient Safety, our Office of Public Health, our Office of Minority Health. But we also want to ensure through the waiver upfront investment that we have a workforce that can appropriately engage historically populations with historical health disparities to do a better job on that upfront assessment and data collection, because then we can really build it into measurements that stratification and drive those clinical improvements in a way that we haven't been able to do historically. Your point resonates, too. My response to that, which is not a good response, is we have to do a better job being able to measure and track it because that, I think, was a major gap in that the measure sets were imprecisely selected and they weren't stratified based on historical health disparities.

Jeff Kraut So Brett, I have two or three other council members who want to make comments. What I'm going to ask is I'm going to ask all the council members to get their comments out. Keep your pen by you and you can kind of make a closing comment, because I have to get back to our agenda before we lose our quorum.

Jeff Kraut Dr. Boufford, Dr. Lim.

Jeff Kraut And then if nobody else is going to speak, Dr. Kalkut wanted to make one other comment.

Dr. Boufford Thanks, Brett, very much. Really appreciate your being here and especially being here at this stage of the development of the waiver. I'm going to defer what could be extensive discussion as the Chair has suggested that we really try with the committees, the Planning Committee and the Public Health Committee of the Council to take a more in-depth look at some of these elements and give you a feedback. I think that's a really important distinction. I just wanted to highlight a couple of things that have been a series of major concern to the council that you have mentioned in passing, but I haven't seen as explicitly called out. I sort of believe that the Power Point that gets presented is the way the audience is left with what's important, what's going to happen. I wanted to raise two things. I mean, three sort of major things. One is that you allude to the issue of the value based payment moving towards more of a managed care global budgeting. I think that is the drop dead issue, the financial incentives to really have a primary care driven waiver. I do not think I would respectfully disagree that the last waiver was primary care driven. I think that we're trying to be a primary care driven, but it can't be until that financial incentives issue is addressed. The other piece is that the linkage many of what you want to do in social determinants is terrific. I think we have an opportunity with the work that this group that the council has done in bringing together primary care providers and local health departments, both in COVID response and preparation, as well as in looking at building back fairer and better to look perhaps beyond social services wraparound, which is really important and building that in to look at conditions in these communities, especially when you're looking at geographic areas that could be affected and the prevention agenda is not mentioned at all in your presentation. It already for the last decade has been trying to convene providers and local health departments and community based organizations around shared goals across the state at the county level. I think looking at that and how that might be reinforced to sort of at least provide a connection with your HERO, your regional sections and to know what the issues are in a geographic area is really important. Just the last thing I wanted and you mentioned the intergovernmental. I think we've also had county executives involved in our conversations around the work of local health departments. So again, this council has been in touch and that interest is aligned very much with where you want to go with this. And then finally, maybe on behalf of my colleague, Dr. Gutierrez, who's been raising this for 3 years, congratulations on addressing the workforce issue. I think it cannot be underestimated how important it is and the issues I think are going to be huge. There are many, many innovations in health care, workforce development, all of which are generally stymied by departments of education, traditional scopes of practice and traditional ways of reimbursing workforce issues and without that being connected in a really big issue addressed in line with this issue of innovating workforce, especially around community health workers, navigators. We have all those things. The issue is they either aren't paid for or they're basically, I would say, too professionalized. There is really good data available for a lot of peer work, especially in behavioral mental health, et cetera. The last thing I'd say is also sorry, Jeff. There is also a group that's been Co-Chaired by the Commissioner of Health and the Secretary for Health, bringing in other agencies across

government aligned with Governor Cuomo's Executive Order beyond mental health and behavioral health, which have been involved in the prevention agenda from the beginning. There are funding streams in housing, there are funding streams in transportation, there are funding streams and criminal justice in all these areas. That structure does exist for engaging with them with you and in this thinking going forward. I just wanted to flag those and happy to explore them in more depth using our committee structure or off the line. It's very exciting and the opportunities are there and we have some time to really connect the dots. I think it will strengthen that proposal.

Jeff Kraut Thank you.

Jeff Kraut Dr. Lim and then, Mr. La Rue.

Dr. Lim Thank you.

Dr. Lim Sabina Lim, council member.

Dr. Lim Thank you again for the great presentation. I think it's really as a psychiatrist, I was heavily involved in 1.0 and really glad to see the sort of specific investments that are going to be go into the behavioral health, hopefully CBO's as well as supportive housing. Just really one comment and one sort of question, which is really for I think the more detailed paper is, I think it's really important to recognize that behavioral health providers and services, there are some very unique care delivery models and care delivery structure, resources or lack of resources and a lot of different regulations that shape how we can work together. For example, according to CFR, right? And all those kinds of things I think should be sort of considered and the fact that like other services too, health providers are often drastically under reimbursed by Medicaid. At the same time, I think I'm really glad to see that there's this again, this push towards integration. I think one of the things that I think was something that we struggled with was the attribution model. I am curious to know sort of their different thoughts on how the attribution would go and just to suggest that I think, particularly for behavioral health providers, I think people who come to see us at least a certain segment of the behavioral health patients is that they come to see us more than any other provider. We see them once a week, sometimes almost every day. I think it would be helpful to maybe broaden out the definition of what a primary care provider might be. That's another way of sort of integrating behavioral health with the rest of the health care system. I have tons more questions, but I know we have limited time, so I'll reserve them for the next meetings.

Jeff Kraut Thanks so much.

Jeff Kraut Mr. La Rue.

Mr. La Rue Yeah, just quickly.

Mr. La Rue Good afternoon, Mr. Friedman. Unlike my comments earlier about the nursing homes as I'm very enthusiastic about the waiver proposal and the goals of the waiver. I'm listening to Mr. Lawrence. It just makes me reflect on the program in the State of New York, which actually achieves what it seems like the majority of the goals are of the waiver for the population that's 55 and older and duly eligible. I'm just wonder how it will fit into this as we move forward because I think at the state.

Brett Friedman Oh, I got I have separate plans, Scott. Don't worry. We don't need to use the waiver. Thanks to the federal authorization, the stuff I want to do there, which I've worked with the alliance on including yourself, I think will be very helpful to promoting it as an alternative. My first thing there is going to fix it. We can caucus on it.

Jeff Kraut Thank you.

Jeff Kraut And I'll give Dr. Kalkut the closing comment.

Jeff Kraut Thanks.

Dr. Kalkut Thanks, Jeff.

Dr. Kalkut Mr. Friedman, just a couple of other things I'd want to mention to consider in the model. They come really from the first iteration. Mr. Lawrence and Dr. Lim mentioned a couple of them. Particularly if we're going to get a global risk further on down the value based roadmap. The attribution model, particularly a simplification of the attribution model, would be a big advance. Timely availability of data so that one can manage the population. And then finally, transparency in the risk scores. What are you actually aiming at in global risk? It's too much detail for today, for sure, but those are intrinsic to Medicaid, and I think the success and value based payment hinges on them. You've obviously have a passionate audience who are willing to put in time, energy and share their experiences. You described it as what it's not by saying it's not PBS. And I think the biggest lesson of PPS. These type of waiver programs have to be designed in partnership with the people who are actually going to implement them. This is not a health policy, academic activity. I think the flexibility, the lack of micromanagement, the tailoring to unique needs of regions, all things that you've obviously thought about are going to be helpful. We look forward for your return to engage with us to the degree it's practical and to the degree it's productive. We think our venues do have merit and we really look forward to partnering with you in supporting your success and that of the state. I would just say that

Brett Friedman I really appreciate the form and the opportunity to solicit the feedback that this group has. I've known many of you from for a long time.

Jeff Kraut It's a real, diverse group of perspectives that really have interesting, you know, as you just heard from Mr. Lawrence, Dr. Boufford, Dr. Lim and Mr. La Rue, not to mention Dr. Kalkut.

Jeff Kraut Thank you so much, Brad.

Jeff Kraut We really appreciate it.

Jeff Kraut Thank you.

Jeff Kraut I'm going to now turn back to the committee meetings. We're going to have three committee meetings. Two is Dr. Gutierrez and then Mr. Robinson. Then we are going to join the public portion and go into Executive Session. I also want to announce that due to the expiration of Dr. Martin's term, we have appointed Mr. Hugh Thomas as Chair of the Health Personnel and Professional Relations committee, and he will be chairing his first committee meeting with the council when we do go into Executive Session to take up on a 2801B manner.

Jeff Kraut So with that, I will now turn to Dr. Gutierrez to give a report on the Code, Regulations and Legislation Committee.

Dr. Gutierrez Thank you very much, Mr. Kraut.

Dr. Gutierrez Good afternoon again to the entire council. At today's meeting of the Committee on Codes, Regulation and Legislation, the committee reviewed the following three regulations as a proposal for council. Number 1, for information only, and these are all for information and discussion. Minimum direct care resident spending. The second one was clinical staffing of general hospitals and number 3, was minimum and staffing requirements for nursing homes. Then, on September 23rd of this year, the committee on Codes and met and reviewed the two following regulations, Article 28 General Hospital designated a stroke centers and Article 28 Nursing Homes, Establishment Notice and character and competence requirements.

Dr. Gutierrez I make a motion to offer this report to the Codes, Regulation and Legislation Committee. This will, after you take over, this will complete my report.

Jeff Kraut I have a motion from Dr. Gutierrez.

Jeff Kraut May I have a second?

Jeff Kraut I have a second from Dr. Kalkut.

Jeff Kraut Is there any discussion?

Jeff Kraut Any questions?

Jeff Kraut Hearing none, I'll call the motion.

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut Any opposed?

Jeff Kraut Abstaining?

Jeff Kraut Seeing none, hearing none, the motion passed.

Dr. Gutierrez This concludes the report.

Jeff Kraut Thank you very much, Dr. Gutierrez. Thank you. You have carried a lot of water these past couple of months, and I will just warn the council quite likely we'll be meeting in between the other meetings if needed. A lot of codes and activities coming down. I can't begin to thank you enough and those members of the Council of the Committee and all the members of the council who have been so flexible and supportive of carrying out our work. Thank you, Dr. Gutierrez, for your leadership.

Dr. Gutierrez We are looking forward to it.

Jeff Kraut There you go.

Jeff Kraut Let me now turn to Mr. Robinson, who will give the report on the Establishment of Project Review.

Mr. Robinson Thank you, Mr. Kraut.

Mr. Robinson And the following is the report of the Establishment and Project Review Committee. I will batch applications, as you mentioned in your introductory remarks to open the council meeting where possible.

Mr. Robinson The first application for approval is 2 1 1 0 7 9 C, Garnett Health Medical Center in Orange County. This is to certify an adult cardiac surgery program and perform requisite renovations. Both the department and the committee recommend approval with conditions, and I so move.

Jeff Kraut I have a motion.

Jeff Kraut I have a second by Dr. Gutierrez.

Jeff Kraut Is there any questions?

Jeff Kraut Any comments?

Jeff Kraut Nothing from the department.

Jeff Kraut Hearing none, I'll call for a vote.

Jeff Kraut Did anybody in Albany raise their hand?

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstention?

Jeff Kraut Motion carries.

Mr. Robinson The next few applications do have some abstentions and therefore recusals. For those of you on Zoom, would you please leave the place where you're zooming, step out of the room and then Colleen will text you when you can come back into the room so that you can kind of smoothly re-enter.

Mr. Robinson For this first application, I'm going to note an abstention by Dr Lim and Mr Lawrence, also an interest by Mr Kraut.

Mr. Lawrence Application 2 1 1 8 0 C, New York Community Hospital of Brooklyn Kings County. This is to certify a cardiac catheterization and percutaneous coronary intervention, or PCI and cardiac catheterization with electrophysiology services with requisite construction. The department recommends approval with conditions, as did the committee, and I so move.

Jeff Kraut I have a motion.

Jeff Kraut May I have a second?

Jeff Kraut Dr. Gutierrez.

Jeff Kraut Are there any questions?

Jeff Kraut Any comments?

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut Seeing or hearing none, application is approved.

Jeff Kraut Thank you.

Mr. Robinson Dr. Lim, excuse me, remains recused for this application.

Mr. Robinson Mr. Lawrence can return.

Mr. Robinson Application 2 1 1 2 1 3 C, Mt. Sinai Hospital of Queens in Queens County. This is to certify a cardiac catheterization and PCI and electrophysiology services there with no construction needed. Here the department and the committee recommend approval with conditions and contingencies, and I so move.

Jeff Kraut I have a motion.

Jeff Kraut I have a second by Dr. Gutierrez.

Jeff Kraut Any questions for the department?

Jeff Kraut Hearing none, I'll call a vote.

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut All those opposed?

Jeff Kraut Abstentions?

Jeff Kraut Hearing or seeing no abstentions or opposition, the motion carries.

Mr. Robinson Thank you.

Mr. Robinson This application has a conflict in recusal by both Mr. Kraut and Dr. Strange. Dr. Boufford, I'm going to be making the motion to you.

Jeff Kraut I'm walking out.

Mr. Robinson Got it.

Mr. Robinson Application 2 0 2 2 6 3 C, Staten Island University Hospital North in Richmond County to construct a new women and newborn center in shell space in the new Central Utility Plan Building and decertify for maternity beds. The department is recommending approval with conditions and contingencies, as did the committee, and I so move.

Dr. Boufford I have a motion and a second from Dr. Gutierrez.

Dr. Boufford Are there any comments from staff from the state?

Dr. Boufford Any comments or questions from the council?

Dr. Boufford All in favor?

All Aye.

Dr. Boufford Opposed?

Mr. Robinson Could you take this next application? I'm recusing myself.

Dr. Boufford Is Mr Thomas available or not?

Dr. Boufford Peter.

Mr. Robinson Dr. Kalkut, are you going to do this?

Mr. Robinson You're on mute.

Mr. Robinson I'll turn it to Mr Thomas.

Dr. Kalkut This is application 2 1 1 7 6 C, Strong Memorial Hospital, Monroe County.

Dr. Kalkut Mr Robinson has left the room with a conflict. Mr Thomas is abstaining.

Dr. Kalkut This is to certify 11 physical medicine rehabilitation beds and perform construction to accommodate the new beds The department recommends approval with conditions and contingencies, as does the Establishment Committee.

Dr. Kalkut I have a motion. I have a motion from Dr. Kalkut.

Dr. Kalkut May I have a second?

Dr. Kalkut Dr. Gutierrez.

Dr. Kalkut Thank you.

Dr. Kalkut Any questions?

Dr. Kalkut Ms. Soto, do you have a question? Did I see your hand up or I misunderstood that?

Ms. Soto No.

Dr. Kalkut Okay.

Dr. Kalkut Any questions?

Dr. Kalkut All those in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstentions?

Dr. Kalkut Hearing or seeing none, the motion carries.

Dr. Kalkut We're going to ask Mr. Robinson to return to the room.

Mr. Robinson I am going to batch the next four applications. The first is 2 1 1 2 9 B, Alpha Ambulatory Project LLC, DPKA Alpha Ambulatory Surgery Center LLC in New York County. This is to establish and construct a freestanding, multi-specialty ambulatory surgery center initially specializing in vascular surgery and interventional radiology to be located at 110 East 60th Street. I will note here that the department inadvertently left off the standard 5 year limited life language, and I'm making the following amendment to the motion that was passed by the department and the committee earlier, which is approval with conditions and contingencies with with an expiration of the operating certificate 5 years from the date of issuance. On this application, the department and the committee both recommend approval with the condition and contingencies, as added to by my comment.

Mr. Robinson Application 2 1 1 0 4 2 B, Rockwell Health LLC in Kings County to establish and construct a diagnostic and treatment center to be located at 17 West 9th Street, Brooklyn, for primary care and other medical specialties, including radiology, cardiology, pulmonology and endocrinology. Here, the department recommended approval with conditions and contingencies, as did the committee.

Mr. Robinson Application 2 1 1 2 5 1 B, All Health DNT Center Brooklyn. This is to transfer 100 percent ownership interest from to withdrawing members and two new members and certified medical services, which include other medical specialties at the main site and at an existing extension clinic located at 1100 Coney Island Avenue in Brooklyn. The department recommends approval with the condition and contingencies, as did the committee.

Mr. Robinson Finally application 2 0 1 2 3 0 E, VNA Home Care in Albany County. This is to establish Albany Visiting Nurse Home Care Services Group, VNA group as the parent and Albany Medical Center as the grandparent of Visiting Nurse Association of Albany. I

will note on this application. I don't believe he's here, but Dr. Bennett did express an interest. The department recommends approval with a condition and contingencies, as did the committee. I make the motion on those four applications.

Jeff Kraut I have the motion.

Jeff Kraut I have a second by Dr. Gutierrez.

Jeff Kraut Does anybody have any questions on any of the applications hearing?

Jeff Kraut Hearing none, I'll call for a vote.

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut Seeing or hearing none, the motion carries.

Mr. Robinson Thank you.

Mr. Robinson Two certificates for action by the council, a certificate of dissolution for CMH Group Inc and a Certificate of Amendment to the Certificate of Incorporation to Wheelchair Home Inc, which is a name change. Both the department and the committee recommended approval, and I so move.

Jeff Kraut I have a motion.

Jeff Kraut I have a second again by Dr. Gutierrez.

Jeff Kraut Are there any questions on these two matters hearing?

Jeff Kraut Hearing none, I'll call for a vote.

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut Abstentions?

Jeff Kraut Opposition?

Jeff Kraut The motion carries.

Mr. Robinson Thank you.

Mr. Robinson I think this next item involves a recusal by Mr. Kraut and Dr. Strange.

Mr. Robinson This is application 2 1 2 0 1 3 E, Long Island Center for Digestive Health LLC in Nassau County. This is to transfer 51 percent membership interest to the Long Island Center for Digestive Health LLC, from existing members to Northwell LICDH Ventures LLC. The department is recommending approval with conditions and contingencies with an operating with an expiration of the operating certificate three years from the date of issuance. The committee made a similar recommendation, and I so move.

Dr. Boufford Second from Dr. Gutierrez.

Dr. Boufford I just want to double check. Dr. Strange's picture isn't up in his box was going off and on. Just for the record, he's recused and presumably not present. I want to validate that.

Mr. Robinson Thank you.

Dr. Boufford Any comments or questions from the counsel?

Dr. Boufford Seeing none, all in favor?

All Aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Seeing none, the motion is approved.

Dr. Boufford Dr. Strange and Mr. Kraut can return.

Mr. Robinson Thank you very much.

Mr. Robinson The last item is a certificate of amendment to the Certificate of Incorporation. This for Memorial Hospital Auxiliary Inc. It's a name change. I want to note the abstention by Mr. Thomas. The department and the committee recommended approval, and I so move.

Jeff Kraut I have a motion.

Jeff Kraut I have a second by Dr. Gutierrez.

Jeff Kraut Any comments?

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut Abstention?

Jeff Kraut The motion carries.

Mr. Robinson Thank you.

Mr. Robinson That concludes the report of the Establishment of Project Review Committee.

Mr. Robinson Thank you.

Jeff Kraut Thank you very much, Mr. Robinson.

Jeff Kraut Now, the public portion of the Public Health and Health Planning Council meeting is now going to be adjourned. The next committee day is on November 18th and the full council will convene on December 9th. I will ask all the members of the council to remain on the Zoom. We are now going to go into Executive Session for the report on the Committee of Health Personnel and inter professional relationships, get a briefing on other matters that may be coming before the council.

Jeff Kraut Could you please tell me when the public portion has stopped?

State of New York
Special Public Health and Health Planning Council

Minutes
October 26, 2021

The meeting of the Public Health and Health Planning Council was held on Thursday, October 26, 2021 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany and via Zoom. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. John Bennett - Zoom	Dr. Sabina Lim – Zoom
Dr. Howard Berliner – Zoom	Ms. Ann Monroe – Zoom
Dr. Jo Boufford - Zoom	Dr. Mario Ortiz – Zoom
Ms. Carver-Cheney – Albany	Mr. Peter Robinson – Albany
Dr. Angel Gutiérrez – Zoom	Dr. John Rugge - Albany
Mr. Thomas Holt – Albany	Ms. Nilda Soto – Zoom
Dr. Gary Kalkut – Zoom	Dr. Theodore Strange – Zoom
Mr. Jeffrey Kraut – Zoom	Dr. Anderson Torres - Zoom
Mr. Scott LaRue – Zoom	Dr. Kevin Watkins – Zoom
Mr. Harvey Lawrence - Zoom	Dr. Patsy Yang – Zoom
Dr. Roxanne Lewin - Zoom	Commissioner Zucker – Zoom

DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|------------------------------|-------------------------------|
| Mr. Mark Furnish – Albany | Ms. Karen Madden - Zoom |
| Ms. Shelly Glock – Albany | Ms. Kathy Marks – Albany |
| Mr. Brian Gallagher - Zoom | Mr. Nicholas Mestoik - Albany |
| Mr. Michael Heeran – Albany | Ms. Marthe Ngwashi - Albany |
| Mr. Adam Herbst - Zoom | Ms. Lisa Thomson - Albany |
| Dr Eugene Heslin – Albany | Ms. Jennifer Treacy - Albany |
| Mr. Jonathan Karmel - Albany | |
| Ms. Colleen Leonard- Albany | |

INTRODUCTION

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

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements)

Dr. Gutiérrez introduced for emergency adoption the proposed Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements). Dr. Gutiérrez motioned for approval. Dr. Torres seconded the motion. The motion for emergency adoption carried. Please see pages 1 and 2 of the attached transcript to view the members questions and comments.

21-06 Addition of Subpart 66-4 to Title 10 NYCRR (COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel)

Dr. Gutiérrez introduced for emergency adoption the proposed Addition of Subpart 66-4 to Title 10 NYCRR (COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel). Dr. Gutiérrez motioned for approval. Dr. Bennett seconded the motion. Dr. Watkins abstained. The motion for emergency adoption carried. Please see page 2 of the attached transcript to view the members questions and comments.

20-24 Addition of Sections 1.2, 700.5 and Part 360 to Title 10 NYCRR; Amendment of Sections 400.1, 405.24 & 1001.6 of Title 10 NYCRR and Sections 487.3, 488.3 and 490.3 of Title 18 NYCRR (Surge and Flex Health Coordination System)

Dr. Gutiérrez introduced for emergency adoption the proposed 24 Addition of Sections 1.2, 700.5 and Part 360 to Title 10 NYCRR, Amendment of Sections 400.1, 405.24 & 1001.6 of Title 10 NYCRR and Sections 487.3, 488.3 and 490.3 of Title 18 NYCRR (Surge and Flex Health Coordination System). Dr. Gutiérrez motioned for approval. Dr. Torres seconded the motion. Dr. Boufford stated for the record and the counsel that we hope to have explicit information about how a process for engaging primary care providers and local health departments either in the Surge and Flex regulation, final preparation or in some parallel Code application. The motion for emergency adoption carried. Please see pages 2 and 3 of the attached transcript to view the members questions and comments.

20-27 Amendment of Section 405.11 and Addition of New Sections 77.13, 77.14 and 415.33 to Title 10 NYCRR (COVID-19 Confirmatory Testing)

Dr. Gutiérrez introduced for emergency adoption the proposed 20-27 Amendment of Section 405.11 and Addition of New Sections 77.13, 77.14 and 415.33 to Title 10 NYCRR (COVID-19 Confirmatory Testing). Dr. Gutiérrez motioned for approval. Dr. Berliner seconded the motion. The motion for emergency adoption carried. Please see page 3 of the attached transcript to view the members questions and comments.

ADJOURNMENT:

Mr. Kraut announced the upcoming PHHPC meetings and adjourned the meeting.

NEW YORK STATE DEPARTMENT OF HEALTH
SPECIAL PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
OCTOBER 26, 2021
MEETING TRANSCRIPT

Jeff Kraut I now call to order the October 26th, 2021, special meeting of the Public Health and Health Planning Council. This meeting is being held in Albany, where I see Mr. Robinson in attendance. We have a quorum and able to conduct the business of the council.

Jeff Kraut We have one item on the agenda today, and that is to receive the report of the Codes and Regulations Committee.

Jeff Kraut I will now ask Dr. Gutierrez to give that report.

Jeff Kraut Dr. Gutierrez.

Dr. Gutierrez Good morning, again.

Dr. Gutierrez I'm Dr. Gutierrez, Chair of the Codes, Regulation and Legislation Committee meeting. At today's meeting of the Committee on Codes, Regulation and Legislation, the committee reviewed the following for emergency regulation proposals for adoption to the council. The first one is hospital and nursing home personal protective equipment, or PPE requirements. Mr. Furnish and Jonathan from the department are available will provide us with information, if any, is necessary at this point.

Jeff Kraut So, I have that motion.

Jeff Kraut Does anybody need any clarification?

Dr. Gutierrez I made the motion.

Jeff Kraut Oh, I'm sorry.

Dr. Gutierrez I'm just giving an opportunity for people that want to ask further questions.

Jeff Kraut Are we going to do all four or are we going to do one at a time?

Dr. Gutierrez I can do whatever.

Mark Furnish One at a time, please.

Dr. Gutierrez I move for hospital and nursing home personal protective equipment, PPE requirements at this point.

Jeff Kraut I have a motion.

Jeff Kraut May I have a second?

Jeff Kraut I have a second Dr. Anderson.

Jeff Kraut Dr. Torres.

Jeff Kraut Any other questions?

Jeff Kraut Hearing none, all those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Any abstentions?

Jeff Kraut Hearing none or seeing none, the motion carries.

Dr. Gutierrez Second, for emergency adoption, presented and passed by the Codes, Regulation and Legislation Committee was COVID-19 vaccination of nursing home and adult care facility residents and personnel.

Dr. Gutierrez I so move.

Jeff Kraut I have a motion.

Jeff Kraut I have a second, Dr. Bennett.

Jeff Kraut Is there any questions?

Jeff Kraut Hearing none, all those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut Abstention by Dr. Watkins.

Jeff Kraut The motion carries.

Dr. Gutierrez For emergency adoption also, Surge and Flex Health Coordination System. That motion was passed at the committee.

Dr. Gutierrez I so move.

Jeff Kraut I have a motion.

Jeff Kraut May I have a second?

Jeff Kraut Dr. Torres.

Jeff Kraut Any questions?

Jeff Kraut Dr. Boufford.

Jo Boufford Yes, just because there are no minutes taken in the Code committee session, I just wanted to again make my comment for the record and the counsel that we hope to have explicit information about how a process for engaging primary care providers and local health departments either in the Surge and Flex regulation, final preparation or in some parallel Code application.

Jo Boufford Thank you.

Jeff Kraut I was going to wait to the end, but I'll do it now. You've now heard from Ms. Monroe, Dr. Boufford, Mr. Lawrence and others about this. This has to be one of the things when these regs, when we get to the next level here, that to include the primary care, the FQHC's, the network of providers outside of the focus of these regs, which is hospitals and nursing homes.

Jeff Kraut Any other comments?

Jeff Kraut Hearing none, I'll call for a vote.

Jeff Kraut All those in favor, aye?

All Aye.

Jeff Kraut Anybody opposed?

Jeff Kraut Any abstentions?

Jeff Kraut Motion carries.

Dr. Gutierrez The last one approved this morning was COVID-19 confirmatory testing.

Dr. Gutierrez I so move.

Jeff Kraut I have a motion.

Jeff Kraut May have a second?

Jeff Kraut Dr. Torres.

Jeff Kraut Are there any questions?

Jeff Kraut Seeing none, I'll call for a vote.

Jeff Kraut All those in favor, aye?

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut The motion carries.

Jeff Kraut Okay, I believe, Dr. Gutierrez, that concludes.

Dr. Gutierrez That concludes my report.

Jeff Kraut Okay.

Jeff Kraut Now, the full meeting of the Public Health and Health Planning Council is now adjourned.

Jeff Kraut The next committee day was going to be held on November 18th, and the full council meeting will convene on December 9th. Colleen, I believe those meetings will be held in Albany.

Jeff Kraut Is that correct?

Colleen That is correct.

Jeff Kraut They'll be held in Albany, and we'll still be able to participate using Zoom.

Jeff Kraut Any other matter?

Jeff Kraut Hearing none, we are adjourned.

Jeff Kraut Thank you again so much for being flexible and accommodating this important work.

Jeff Kraut Thank you.

Jeff Kraut Take care.

State of New York
Special Public Health and Health Planning Council

Minutes
November 18, 2021

The meeting of the Public Health and Health Planning Council was held on Thursday, November 18, 2021 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany and via Zoom. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. John Bennett - Zoom	Dr. Sabina Lim – Zoom
Dr. Howard Berliner – Zoom	Ms. Ann Monroe – Albany
Dr. Jo Boufford - Zoom	Dr. Mario Ortiz – Zoom
Ms. Carver-Cheney – Zoom	Ms. Rautenberg - Zoom
Dr. Angel Gutiérrez – Zoom	Mr. Peter Robinson – Albany
Mr. Thomas Holt – Albany	Dr. John Ruge - Albany
Dr. Gary Kalkut – Zoom	Ms. Nilda Soto – Zoom
Mr. Jeffrey Kraut – Zoom	Mr. Hugh Thomas - Zoom
Mr. Scott LaRue – Zoom	Dr. Kevin Watkins – Zoom
Mr. Harvey Lawrence - Zoom	Dr. Patsy Yang – Zoom
Dr. Roxanne Lewin - Zoom	

DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Lynn Baniak	Mr. George Macko - Albany
Ms. Meaghan Carroll - Zoom	Ms. Karen Madden - Zoom
Ms. Barbara DelCogliano - Zoom	Ms. Kathy Marks – Zoom
Mr. Ken Evans - Albany	Mr. Vanessa Murphy - Albany
Mr. Mark Furnish – Albany	Mr. Nicholas Mestoik - Albany
Mr. Brian Gallagher - Zoom	Ms. Marthe Ngwashi - Albany
Ms. Shelly Glock – Albany	Mr. Matthew Potter - Zoom
Mr. Michael Heeran – Albany	Ms. Carol Rodat
Mr. Adam Herbst - Zoom	Ms. Lisa Thomson - Albany
Dr Eugene Heslin – Albany	Ms. Jennifer Treacy - Albany
Mr. Jonathan Karmel - Albany	
Ms. Colleen Leonard- Albany	

INTRODUCTION

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

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption/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)

Dr. Gutiérrez introduced for emergency adoption and for information the proposed 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). Dr. Gutiérrez motioned for approval. Dr. Berliner seconded the motion. The motion for emergency adoption carried. Please see pages 1 and 2 of the attached transcript to view the members questions and comments.

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)

Dr. Gutiérrez introduced for emergency adoption and for information the proposed Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention). Dr. Gutiérrez motioned for approval. Dr. Yang seconded the motion. The motion for emergency adoption carried. Please see page 2 of the attached transcript to view the members questions and comments.

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)

Dr. Gutiérrez introduced for emergency adoption and for information the proposed 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). Dr. Gutiérrez motioned for approval. Dr. Berliner seconded the motion. The motion for emergency adoption carried. Please see pages 2 and 3 of the attached transcript to view the members questions and comments.

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)

Dr. Gutiérrez introduced for emergency adoption and for information the proposed 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). Dr. Gutiérrez motioned for approval. Dr. Berliner seconded the motion. The motion for emergency adoption carried. Please see pages 3 and 4 of the attached transcript to view the members questions and comments.

21-15 Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing)

Dr. Gutiérrez introduced for emergency adoption the proposed Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing). Dr. Gutiérrez motioned for approval. Mr. Thomas seconded the motion. The motion for emergency adoption carried. Please see page 4 of the attached transcript to view the members questions and comments.

For Information

21-08 Amendment of Section 756.3 and Repeal of Section 756.4 of Title 10 NYCRR (Abortion Services)

Dr. Gutiérrez introduced Amendment of Section 756.3 and Repeal of Section 756.4 of Title 10 NYCRR (Abortion Services). Please see page 4 of the attached transcript to view the members questions and comments.

Dr. Gutiérrez concluded his report

ADJOURNMENT:

Mr. Kraut announced the upcoming PHHPC meetings and adjourned the meeting.

NEW YORK STATE DEPARTMENT OF HEALTH
SPECIAL PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
NOVEMBER 18, 2021
MEETING TRANSCRIPT

Jeffrey Kraut If there's no other questions, I'm going to call to order the meeting of a special meeting of the Public Health and Health Planning Council for November 18th, 2021. I want to welcome members, participants and observers. In the previous meeting, Dr. Gutierrez laid out some of the requirements of the public meeting law, which this meeting is bound by. We are webcasting it. Anybody who's appeared that should record their record of appearance. And as being webcasted, we want to make sure that everybody has the ability to speak and recognize that the microphones are hot. With those of you participating via Zoom, we ask you to mute your line until such time as you want to make a comment and or are going to vote on a matter.

Jeffrey Kraut Today's special meeting has one agenda item. It's going to be a presentation by Dr. Gutierrez and the Codes Committee and Regulations Committee. And then following that meeting, I'll adjourn it and we will now return to the committee day activities of Mr. Robinson and the project review.

Jeffrey Kraut I'll ask Dr. Gutierrez to please present regulations for emergency adoption.

Dr. Gutierrez Thank you very much, Mr. Kraut.

Dr. Gutierrez Good morning. At today's meeting of the Committee on Codes, Regulation and Legislation, the committee review and voted to recommend the adoption of the following five emergency regulation proposals for approval before the full council. The first one was for emergency adoption in the investigation of communicable diseases, isolation and quarantine. Ms. Murphy from the department is presence, should there be any questions for the members. At this moment, I move to accept this emergency regulation.

Jeffrey Kraut I have a motion from Dr. Gutierrez.

Jeffrey Kraut May I have a second?

Jeffrey Kraut I have a second by a Dr. Berliner.

Jeffrey Kraut I think you've heard the presentation made by the department on these emergency regulations. Are there any questions from any member of the council who either on the Codes committee or not? Any member about any one of the regulations we're being asked to adopt?

Jeffrey Kraut Hearing and seeing none, I am going to call a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut All those opposed?

Jeffrey Kraut You can say opposed or raise your hand.

Jeffrey Kraut I do not see any.

Jeffrey Kraut Any abstentions?

Jeffrey Kraut I see none.

Jeffrey Kraut The motion carries and is approved.

Jeffrey Kraut Thank you very much.

Jeffrey Kraut I'm now going to adjourn the special meeting of the Public Health and Health Planning Council.

Jeffrey Kraut Go ahead.

Colleen Jeff, this is Colleen.

Colleen We have other regulations to adopt.

Jeffrey Kraut Go ahead, Dr. Gutierrez.

Dr. Gutierrez Thank you.

Dr. Gutierrez For emergency adoption also, we have face coverings for COVID-19 prevention. And again, Ms. Murphy from the department is present should there be any questions of the members. I move to accept this emergency regulation.

Jeffrey Kraut I have a motion. I have a second by Dr. Yang.

Jeffrey Kraut Are any questions from any members?

Jeffrey Kraut Hearing none, seeing none, I call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Anyone opposed?

Jeffrey Kraut Any abstention?

Jeffrey Kraut The motion carries.

Dr. Gutierrez Number three for an emergency adoption, personal care giving and compassionate care giving visitors and nursing homes and adult care facilities. Mark Furnish and Jonathan Gomel from the department are present should there be any questions of the members. I move to accept this emergency regulation.

Jeffrey Kraut I have a motion from Dr. Gutierrez. I have a second from Dr. Berliner.

Jeffrey Kraut Are there any questions from the council?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Jeffrey Kraut Number four for emergency adoption prevention of COVID-19 transmission by covered entities. Jonathan Karmel from the department is pressing should there be any further questions from members of the council. I move to accept this emergency regulation.

Jeffrey Kraut I have a motion.

Jeffrey Kraut May I have a second?

Jeffrey Kraut Dr. Berliner, thank you.

Jeffrey Kraut Any questions from the council?

Jeffrey Kraut Dr. Lim.

Dr. Lim I just would like to reiterate again for the council record that if there's any flexibility that the DOH can provide, it would be very appreciated.

Dr. Lim Thank you.

Jeffrey Kraut And I think in the response to the question, the DOH acknowledged that there would be.

Jeffrey Kraut Mr. Thomas.

Mr. Thomas Thomas, a member of the council. And I, we probably covered it earlier, but just for clarification, this is an emergency adoption and will ultimately be subject to a public comment period.

Mark Furnish That's correct.

Mark Furnish Thank you, Mark.

Jeffrey Kraut Any other questions on this?

Jeffrey Kraut I think I also pointed out this was the reg where we're now acknowledging the statutory role of physicians assistants wherever it basically says physicians, and that has been an issue. I know that that's not fixed in this as well.

Jeffrey Kraut Any others?

Jeffrey Kraut Okay.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Dr. Gutierrez Number five and last for emergency adoption, COVID-19 reporting and testing. Vanessa Murphy from the department is present should there be any further questions for the members. I move to accept this emergency regulation.

Jeffrey Kraut I have a motion. I have a second by Mr. Thomas.

Jeffrey Kraut Any questions or comments?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Dr. Gutierrez The following regulations were also discussed for information purpose. There will be no voting on this. And it will be repetitive. Remember you mentioned that before. For information, the investigation of communicable diseases, isolation and quarantine. For information, face covering of COVID-19 prevention. For information, personal care giving and compassionate care giving visitors in nursing homes and adult care facilities. For information, prevention of COVID-19 transmission by covered entities. And last for information, abortion services.

Dr. Gutierrez This completes the report of the Special Committee on Codes, Regulation and Legislation.

Dr. Gutierrez Thank you very much.

Jeffrey Kraut Thank you very much, Dr. Gutierrez.

Jeffrey Kraut I am now going to adjourn the Public Health and Health Planning Council.

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] abortion service, 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] a 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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**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.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by Section 2803 of the Public Health Law, Section 405.34 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (g) of section 405.34 is amended to read as follows:

(g) Transition Period.

- (1) Hospitals designated as stroke centers by the Department prior to the effective date of this section shall have two years from the effective date of this section to initiate the stroke center certification process with a certifying organization approved by the Department. The process is initiated when a hospital enters into a contractual agreement with a certifying organization. Once the hospital has entered into a contractual agreement with a certifying organization, the hospital shall have one year to complete the certification process.
- (2) Any hospital that does not initiate the stroke center certification process with a certifying organization within two years of the effective date of this section shall no longer maintain a stroke center designation and may no longer hold themselves out as a designated stroke center.
- (3) The Department may extend the transition period specified in paragraphs (1) and (2) of this subdivision as deemed necessary. The Department will notify all impacted hospitals of any decision to extend the transition period.

REGULATORY IMPACT STATEMENT

Statutory Authority:

PHL Section 2803 authorizes the Public Health and Health Planning Council (“PHHPC”) to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high-quality health services at a reasonable cost.

Needs and Benefits:

Stroke, also known as brain attack, is a medical emergency. It occurs when a vessel in the brain is either ruptured (hemorrhagic stroke) or blocked by a clot (ischemic stroke), arresting the blood supply to the brain. Stroke is a deadly condition, and it is the fifth leading cause of death and a major cause of disability in the United States. Each year, about 795,000 people in the United States develop a stroke, producing an enormous economic and healthcare burden. It is estimated that there are almost three million survivors of stroke living with a long-term disability in the United States, with a societal cost of approximately \$34 billion.

Since stroke treatment is complex and time sensitive, advanced, expedited hospital care is critical. Evidence has shown that a standardized approach to hospital care for patients with acute stroke improves outcomes by increasing survival and decreasing disability.

The stroke regulation in 10 NYCRR section 405.34 requires hospitals that received designation as a stroke center prior to the enactment of the regulation to enter into a contractual

agreement with a certifying organization recognized by the Commissioner of Health within two years of the effective date of the regulation. Within a year after the hospital enters into a contractual agreement with the certifying organization, they must complete their certification as a stroke center and request designation as a stroke center from the Department. Thus, any hospital that does not complete the certification and designation process by March 19, 2022 would relinquish their designation as a stroke center.

Due to the COVID-19 pandemic all regular surveys and reviews scheduled by certifying organizations were temporarily suspended. Approximately 100 hospitals still need to comply with the regulation. It has become clear that the length of time the certification process can take from the time a contract between a certifying organization and a hospital is initiated to the time a hospital is surveyed and designated could force many hospitals to relinquish their stroke designations as a result of backlogs caused by the COVID-19 pandemic. This amendment will give the Department the ability to extend the transition timeline to allow hospitals to complete the stroke designation process outlined by this regulation while they maintain their stroke designation status and continue to be a destination for patients in their communities that need access to stroke services.

COSTS:

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

Costs to the regulated entities related to this amendment are none. There is no impact on consumers or providers.

Costs to Local and State Government:

There is no anticipated fiscal impact to State or local government as a result of this amendment.

Costs to the Department of Health:

There will be no additional costs to the Department of Health associated with this amendment.

Local Government Mandates:

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork:

There is no additional paperwork associated with this change in wording.

Duplication:

These regulations do not duplicate any State or Federal rules.

Alternative Approaches:

There are no viable alternatives. Stakeholders requested that this change be made to assure adequate time for hospitals to comply with the regulation timeline.

Federal Requirements:

Currently there are no federal requirements.

Compliance Schedule:

These regulations will take effect upon publication of a Notice of Adoption in the New York *State Register*.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

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**

No rural area flexibility analysis is required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

JOB IMPACT STATEMENT

Pursuant to the State Administrative Procedure Act (SAPA) section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

SUMMARY OF EXPRESS TERMS

These amendments are necessary for the Department to maintain full primacy for delivery, oversight and management of New York's public drinking water supply supervision program and to ensure consistency with federally enacted drinking water regulations promulgated by the United States Environmental Protection Agency (EPA). The amendments update tables for consistency with federal and State requirements, update outdated references, and correct typographical errors.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225 of the Public Health Law, Subpart 5-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision 5-1.1(bc) is amended to read as follows:

(bc) *Level 1 assessment* [means] is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and[,] (when possible[,]) the likely reason that the system triggered the assessment. It is conducted by the system operator or owner. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

Subdivision 5-1.1(bd) is amended to read as follows:

(bd) *Level 2 assessment* [means] is an evaluation [conducted by an individual approved by the State,] to identify the possible presence of sanitary defects, defects in distribution system

coliform monitoring practices, and[,] (when possible[,]) the likely reason that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than does a Level 1 assessment[,] through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the State, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The system must comply with any expedited actions or additional actions required by the State in the case of an E. coli MCL violation.

Paragraph 5-1.1(bz)(4) is amended to read as follows:

(4) turbidity violations or exceedances specified in paragraph 5-1.78(d)[(3)][(4)] of this Subpart and determined by the State to present an existing or imminent condition which can be responsible for or cause illness, injury or death and for which immediate corrective or remedial action is required;

Paragraph 5-1.30(c)(3) is amended to read as follows:

(3) Disinfection must be sufficient to ensure at least 99.9 percent inactivation of Giardia lamblia cysts, 99.99 percent inactivation of viruses, and 99 or 99.9 percent inactivation of Cryptosporidium (per section 5-1.83(c)(2) of this Subpart), between a point where the raw water is no longer subject to recontamination by surface water runoff and a point downstream before or at the first consumer. Actual CT values must be equal to or greater than the required values found in section 5-1.52 Tables 14A through 14[I]K of this Subpart,

* * *

Section 5-1.32 is amended to read as follows:

No later than April 1, 2009, [Finished] finished water storage facilities which deliver water to the user without later treatment shall be covered, or the water from an uncovered finished water storage facility shall be continuously treated to achieve inactivation or removal of at least 99.99 percent virus, 99.9 percent Giardia lamblia, and 99 percent Cryptosporidium in a manner approved by the State, in accordance with section 5-1.22(b) of this Subpart, before being discharged to the distribution system or be in compliance with a State approved schedule to meet these requirements.

Footnote 1 of Paragraph 5-1.40(b)(1) is amended to read as follows:

¹ Analysis of lead and copper samples must be done by an approved laboratory as prescribed in section 5-1.74(a), that demonstrates the ability to achieve a Practical Quantitation Level (PQL) for lead equal to [0.0005]0.005 milligrams/Liter (mg/L) and a PQL for copper equal to 0.050 mg/L.

Paragraph 5-1.41(b)(6) is amended to read as follows:

(6) Any water system deemed to have optimized corrosion control shall notify the State in writing, pursuant of section 5-1.48(i)[,] of this Subpart of any [upcoming long-term] change in treatment or addition of a new source. The water system shall obtain approval from the State before implementing the addition of a new source or [long-term] change in water treatment. The State may require any such system to conduct additional monitoring or to take other action the State deems appropriate to ensure that such systems maintain minimal levels of corrosion in the distribution system.

Subdivision 5-1.41(g) is amended to read as follows:

(g) Continued operation and [maintenance]monitoring.

Clause 5-1.42(a)(1)(iii)(d) is repealed.

Clause 5-1.42(a)(1)(iv)(a) is amended to read as follows:

(a) contain copper pipes [and]with leaded solder joints installed after 1982 or contain lead pipes;
and/or

New subparagraph 5-1.42(a)(1)(vi) is added to read as follows:

(vi) Any water system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of the samples from sites served by a

lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall collect first-draw samples from all of the sites identified as being served by such lines.

Subparagraph 5-1.42(a)(2)(i) is amended to read as follows:

(i) All samples for lead and copper shall be collected from user taps and shall be first draw samples with the following exceptions: lead service line samples collected under section [5-1.45(b)(2)] 5-1.42(a)(2)(iii); or, if a system meets the criteria in section [5-1.47(g)]5-1.42(a)(2)(v) (e.g., prisons and hospitals).

Subparagraph 5-1.42(b)(1)(i) is amended to read as follows:

(i) the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under section 5-1.41, of this subpart in which case the system shall continue standard monitoring in accordance with paragraph (b)(2) of this section; or

* * *

Paragraph 5-1.42(c)(4) is amended to read as follows:

(4) Any water system that demonstrates for two consecutive 6-month monitoring periods that the tap water lead level is less than or equal to 0.005 mg/L and the tap water copper level is less than or equal to 0.65 mg/L, at the 90th percentile calculated in accordance with section [5-1.41(c)] 5-1.40(b)(4) of this Subpart may reduce the number of samples in accordance with subdivision (a)(3) of this section and reduce the frequency of sampling to once every three calendar years.

Subparagraph 5-1.42(c)(5)(ii) is amended to read as follows:

(ii) Any water system that has optimal corrosion control treatment installed that fails to meet the lead action level during any four-month monitoring period, or that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the State under section 5-1.41(f) of this Subpart for more than nine days in any six-month monitoring period specified in section 5-1.43(b)(3) of this Subpart shall resume standard monitoring at the standard number of sampling sites every six months in accordance with subdivision (b) of this section, and resume standard monitoring for water quality parameters in accordance with section 5-1.43(b) of this Subpart. This standard monitoring shall begin during the six-month monitoring period immediately following the water quality parameter excursion or lead action level exceedance with the first monitoring period to begin either January 1st or July 1st, whichever comes first. Any such system may resume reduced monitoring [if it meets the reduced monitoring criteria as specified in subdivision (c)(1) of this section] for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

(a) The system may resume reduced monitoring for lead and copper at the tap if it meets the reduced monitoring criteria as specified in subdivision (c)(2) of this section and it has received written approval from the State. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

(b) The system may reduce the number of water quality parameter tap water samples required and the frequency with which it collects such samples in accordance with section 5-1.43(c)(2) of this Subpart. Such a system may not resume triennial monitoring for water quality parameters at

the tap until it demonstrates, in accordance with the requirements of section 5-1.43(c)(2)(ii) of this Subpart, that it has re-qualified for triennial monitoring.

Subdivision 5-1.42(f) is amended to read as follows:

(f) Monitoring waivers for systems serving 3,300 or fewer persons. Any water system that serves 3,300 or fewer persons and meets the criteria in this subdivision may be eligible for a waiver to reduce monitoring of lead and copper to once every nine years ([“]full waiver[“]), or only for lead, or only for copper ([“]partial waiver[“]). The system must demonstrate that its distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and/or copper-containing materials as those terms are defined [as follows:] in subparagraphs (f)(1)(i) and (ii) and/or (f)(2)(i) of this section. In addition, the system must meet the monitoring criteria in subparagraphs (f)(1)(iii) and/or (f)(2)(ii).

(1) Lead. To qualify for a full waiver or a waiver of the tap water monitoring requirements of lead (i.e. a [“]lead waiver[“]), the water system must provide certification and supporting documentation to the State that the system is free of all lead-containing materials, as follows:

(i) It contains no plastic pipes which contain lead plasticizers, or plastic service lines which contain lead plasticizers; and

(ii) It is free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to section 5-1.22(a) (Approval of [P]plans and [C]completed [W]works).

(iii) After completing at least one 6-month round of standard tap water monitoring for lead and copper at sites approved by the State as described in subdivisions 5-1.42(a) and (b) of this Subpart, the system must demonstrate that the 90th percentile lead level does not exceed 0.005 mg/l.

(2) Copper.

(i) To qualify for a full waiver or a waiver of the tap water monitoring requirements of copper (i.e. a [“]copper waiver[“]), the water system must provide certification and supporting documentation to the State that the system contains no copper pipes or copper service lines.

(ii) After completing at least one 6-month round of standard tap water monitoring for lead and copper at sites approved by the State as described in subdivisions 5-1.42(a) and (b) of this Subpart, the system must demonstrate that the 90th percentile copper level does not exceed 0.65 mg/l.

(3) Approval of waiver application. The system will be notified of the State’s determination in writing, setting forth the basis for its decision and any condition of the waiver. The system may be required to perform specific activities (e.g., limited monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void reduced monitoring) to avoid the risk of lead or copper concentration of concern in tap water. A system serving fewer than 3,300 persons must continue monitoring for lead and copper at the tap as required in [subdivision (f)(1)-(4) of this section] subdivisions (b) and (c) of this section, as appropriate, until it receives written notification that the reduced monitoring has been approved.

Subparagraph 5-1.43(b)(2)(ii) is amended to read as follows:

(ii) one sample shall be collected at each entry point: Except as provided in [subdivision] subparagraph [(b)(2)](iii) of this [section] paragraph, at least one sample no less frequently than every two weeks (biweekly) for pH; alkalinity (and a reading of the dosage rate of the chemical used to adjust alkalinity, [when] and the alkalinity concentration is adjusted); calcium; orthophosphate or silica, as appropriate to the corrosion control treatment used; and a reading of the dosage rate of the corrosion control treatment chemical used.

Paragraph 5-1.45(a)(3) is amended to read as follows:

(3) The water system shall complete standard monitoring for tap water in accordance with section 5-1.42(b) of this Subpart and source water in accordance with [subdivision (b)(2) of this section] section 5-1.44(b)(2) of this Subpart following installation of source water treatment.

Subdivision 5-1.46(a) is amended to read as follows:

(a) Water systems that fail to meet the lead action level in tap samples collected after installing corrosion control treatment and/or source water treatment (whichever sampling occurs later) shall replace lead service lines in accordance with the requirements of this section. Water systems that fail to install optimal corrosion control treatment in accordance with section 5-1.41(c) of this Subpart or source water treatment in accordance with section 5-1.45(a)(2) of this Subpart by the date(s) specified by the State may be required to begin replacement of lead service lines.

Paragraph 5-1.46(b)(4) is amended to read as follows:

(4) Any water system resuming a lead service line replacement program after the cessation of its lead service line replacement program as allowed by subdivision [(f)](e) of this section shall update its inventory of lead service lines to include those sites that were previously determined not to require replacement through the sampling provision under subdivision [(c)](b)(2) of this section. The system will then divide the updated number of remaining lead service lines by the number of remaining years in the program to determine the number of lines that shall be replaced per year (7-percent lead service line replacement is based on a 15-year replacement program). For those systems that have completed a 15-year lead service line replacement program, the State will determine a schedule for replacing or re-testing lines that were previously tested under the replacement program if the system re-exceeds the action level.

Paragraph 5-1.46(c)(1) is amended to read as follows:

(1) At least 45 days prior to commencing with partial replacement of a lead service line, the water system shall provide notice to the resident(s) of all buildings served by the line explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers can take to minimize their exposure to lead. The State may allow the water system to provide notice of less than 45 days prior to commencing partial lead service line replacement, if such replacement is done in conjunction with emergency repairs. In addition, the water system shall inform the resident(s) served by the line that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed in section 5-1.42(a)(2)(iii) of this Subpart, within 72 hours after the completion of the partial replacement

of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three business days of receiving the results. [Mailed notices post-marked within three business days of receiving the results shall be considered “on time.”]

Clause 5-1.47(b)(2)(ii)(a) and (b) are amended to read as follows:

(a) Deliver printed materials meeting the content requirements of [subdivision (a)] paragraph (b)(1) of this section to all bill paying customers.

(b) Contact consumers who are most at risk by delivering education materials that meet the content requirements of [subdivision (a)] paragraph (b)(1) of this section as follows:

Item 5-1.47(b)(2)(ii)(b)(2)(vi) is amended to read as follows:

(vi) [Local]Social welfare agencies.

Clause 5-1.47(b)(2)(ii)(d) is amended to read as follows:

(d) Post material meeting the content requirements of [subdivision (a)] paragraph (b)(1) of this section on the water system’s website if the system serves a population greater than 100,000 or if the water system maintains a publicly accessible website;

Subdivision 5-1.47(c) is amended to read as follows:

(c) As long as a community water system exceeds the action level, it shall repeat the activities pursuant to [subdivision] subparagraph 5-1.47(b)(2)(ii) of this Subpart as described in paragraphs (c)(1) through (4) of this section.

(1) A community water system shall repeat the tasks contained in [subdivisions (a), (b) and (f)] clauses 5-1.47(b)(2)(ii)(a), (b), and (f) of this section every 12 months.

(2) A community water system shall repeat tasks contained in [subdivision (c) of this] clause 5-1.47(b)(2)(ii)(c) of this section with each billing cycle.

(3) A community water system serving a population greater than 100,000 shall post and retain material on a publicly accessible website pursuant to [subdivision (d)] clause 5-1.47(b)(2)(ii)(d) of this section.

(4) The community water system shall repeat the task[s] in [subdivision (b)(2)(ii)(a), (b) and (d)] clause 5-1.47(b)(2)(ii)(e) of this section twice every 12 months on a schedule agreed upon with the State. The State may allow activities in [subdivision] subparagraph 5-1.47 (b)(2)(ii)[(b)] of this section to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis; however, this extension must be approved in writing by the State in advance of the 60-day deadline.

Subdivision 5-1.47(g) is amended to read as follows:

(g) A community water system may use only the text specified in [subdivisions (b)(1)(i) and (b)(1)(ii)]section 5-1.47(b)(1)(i) of this [section] Subpart in lieu of the text in [subdivisions(b)(1)(i) through (b)(1)(iii)] section 5-1.47(b)(1)(i) and 5-1.47(b)(1)(ii) of this [section] Subpart, and to perform the tasks listed in subdivisions (d) and (e) of this section in lieu of the tasks in [subdivisions] subparagraph (b)(2)(ii) and [(b)(3)]subdivision (c) of this section if:

* * *

Subparagraph 5-1.48(a)(1)(iii) is amended to read as follows:

(iii) the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period and calculated in accordance with [section 5-1.41(c)] paragraph 5-1.40(b)(4) of this Subpart, unless the State calculates the system's 90th percentile under subdivision (h) of this section;

Paragraph 5-1.48(a)(2) is amended to read as follows:

For a nontransient noncommunity water system, or a community water system meeting the criteria of section 5-1.47[(b)(2)](g) of this Subpart that does not have enough taps that can provide first-draw samples,

* * *

New paragraph 5-1.51(c)(6) is added to read as follows:

(6) Copies of monitoring plans developed pursuant to this subdivision shall be kept for the same period of time as the records of analyses of samples collected under the plan are required to be kept under this subpart.

Repeal Table 1 of section 5-1.52 and replace with new Table 1 to read as follows:

Table 1. Inorganic Chemicals and Physical Characteristics Maximum Contaminant Level Determination

Contaminants ^{1,2}	MCL (mg/L) ³	Determination of MCL violations
Asbestos	7.0 million fibers/liter (MFL) (longer than 10 microns)	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one more sample from the same sampling point within 2 weeks or as soon as practical.
Antimony	0.006	
Arsenic	0.010	
Barium	2.00	An MCL violation for all contaminants listed in this table, except for Arsenic, occurs when the average ⁴ of the initial sample and any confirmation sample exceeds the MCL.
Beryllium	0.004	
Cadmium	0.005	
Chromium	0.10	
Cyanide (as free cyanide)	0.2 ^{5,6}	MCL violations for Arsenic will be determined as follows:
Mercury	0.002	Compliance with the Arsenic MCL shall be determined based on the analytical result(s) obtained at each sampling point.
Selenium	0.05	
Silver	0.1	For systems which are conducting monitoring at a frequency greater than annual, an Arsenic MCL violation occurs when the running annual average ^{11,12,13} at any sampling point is greater than the MCL. If any one sample would cause the annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.
Thallium	0.002	
Fluoride	2.2	
Chloride	250.0	
Iron	0.3 ⁷	
Manganese	0.3 ⁷	
Sodium	No designated limits ⁸	
Sulfate	250.0	Systems monitoring annually or less frequently whose sample result exceeds the Arsenic MCL ¹¹ must begin quarterly sampling ¹⁴ . The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling and the running annual average ^{11,12,13} at that sampling point is greater than the Arsenic MCL. If any one sample would cause the annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.
Zinc	5.0	
Color	15 Units	
Odor	3 Units	Compliance is based on a running annual average of monthly samples, computed quarterly. If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public.
Bromate ⁹	0.010	
Chlorite ¹⁰	1.0	Compliance is based on an average of each three-sample set taken in the distribution system in accordance with Table 8B. If the average exceeds the MCL, the system is in violation of the MCL and must notify the public.

Table 1 (cont.)

¹ If EPA Methods 200.7 or 200.9 are used, the MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher, because they were determined using a 2x preconcentration step during sample digestion. Consider the need to preconcentrate, or the use of multiple in-furnace depositions to achieve required MDLs. For direct analysis of cadmium by Method 200.7, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Standard Methods 3113 B; and lead by ASTM Method D3559–90D, unless multiple in-furnace depositions are made.

²When metals or nitrate samples are collected, they may be acidified with a concentrated acid or a dilute (50% by volume) solution of the applicable concentrated acid. This acidification may be done at the laboratory rather than at the time of sampling, provided the shipping time and other instructions in Section 8.3 of EPA Methods 200.7, 200.8, or 200.9 are followed.

³mg/L = milligrams per liter

⁴Rounded to the same number of significant figures as the MCL for the contaminant in question.

⁵If Ligand Exchange and Amperometry is used for cyanide analysis; either ASTM Method D6888-04 or Method OIA-1677, DW, “Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry,” January 2004 are approved. EPA-821-R-04-001, is available from ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842-9010; sulfide levels below those detected using lead acetate paper may produce positive method interferences. Samples should be tested using a more sensitive sulfide method to determine if a sulfide interference is present, and samples shall be treated accordingly.

⁶Cyanide samples must be adjusted with sodium hydroxide to pH 12 at the time of collection. The sample must be shipped and stored at 4°C or less.

⁷If iron and manganese are present, the total concentration of both should not exceed 0.5 mg/L. Higher levels may be allowed by the State when justified by the supplier of water.

⁸Water containing more than 20 mg/L of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 mg/L of sodium should not be used for drinking by people on moderately restricted sodium diets.

⁹Community and nontransient noncommunity water systems using ozone for disinfection or oxidation must comply with the bromate standard.

¹⁰Community and nontransient noncommunity water systems using chlorine dioxide as a disinfectant or oxidant must comply with the chlorite standard.

¹¹Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

¹²Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

¹³If confirmation samples are collected, the average of the initial sample and any confirmation samples will be used for the determination of compliance and future monitoring requirements.

¹⁴Systems are only required to conduct the increased monitoring frequency at the sampling point where the MCL was exceeded and for only the specific contaminant(s) that triggered the system into the increased monitoring frequency.

Footnote 5 of section 5-1.52 Table 4A is amended to read as follows:

⁵ If the combined filter effluent turbidity exceeds 1 NTU, the system must consult with the State in accordance with section 5-1.78(d)[(3)](4) of this Subpart.

Footnote 1 of section 5-1.52 Table 6 is amended to read as follows:

¹All samples collected in accordance with Table 11 footnotes 1 and 2 and Table 11B of this section and samples collected in accordance with subdivision 5-1.51(g) of this Subpart shall be included in determining compliance with the MCL, TTT, and/or TTV unless any of the samples have been invalidated by the State. In accordance with 40 CFR 141.852(a)(2) systems need only determine the presence or absence of total coliforms and *E. coli*; a determination of density is not required.

Footnote 10 of section 5-1.52 Table 8B is amended to read as follows:

¹⁰Systems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system's running annual average bromate concentration is ≤ 0.0025 mg/l based on monthly bromate measurements for the most recent four quarters. A system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is [equal to or greater than 0.025 mg/L]greater than 0.0025 mg/L. If the average bromide concentration is [equal to or greater than 0.025 mg/L]greater than 0.0025 mg/L, the system must resume routine monthly bromate monitoring.

Footnote 6 of section 5-1.52 Table 8C is amended to read as follows:

⁶For both types of water sources the system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. If a system draws water from more than one source and the sources are combined before distribution the system must sample at an entry point to

the distribution systems during periods of normal operating conditions when water is representative of all sources. [The average of the initial and confirmation sample contaminant concentration at each sampling point shall be used to determine compliance with the MCL.]

New Footnote 7 of section 5-1.52 Table 8C is added to read as follows:

⁷ The average of the initial and confirmation sample contaminant concentration at each sampling point shall be used to determine compliance with the MCL.

Footnote 1 of section 5-1.52 Table 9A is amended to read as follows:

¹To comply with monitoring requirements, certain conditions must be applied to test methods. The following apply to any samples collected for compliance with section [5-1.50(o)]5-1.51(o) of this Subpart:

* * *

Footnote 1 of Section 5-1.52 Table 11B is amended to read as follows:

¹After any total coliform positive sample from the distribution system, the system must collect repeat samples on the same day and within 24 hours of being notified of the positive result. If *E. coli* are present, the system must notify the State by the end of the day when the system is notified of the test result.

Footnote 10 of section 5-1.52 Table 11B is amended to read as follows:

¹⁰In the event of a fecal indicator positive sample from the raw source water, the state must be notified immediately and may require immediate corrective action. In no case will notification be later than 24 hours as described in section 5-1.78(d[(4)])(5) of this Subpart.

The Lead and Copper entry of Table 13 of section 5-1.52 is amended to read as follows:

Lead and Copper (Sections 5-1.40 to 1.48)	Not applicable	State Tier 2	State Tier <u>3</u>
----------------------------------------------	----------------	-----------------	------------------------

Footnote 3 of section 5-1.52 Table 13 is amended to read as follows:

³State notification must be made by the supplier of water [within 24 hours of] by the end of the day when the system is notified of an E. coli positive [sample] test result in the distribution system. State notification must be made by the supplier of water within 24 hours when the system is notified of an E. coli positive test result in the ground water source.

Footnote 1 of Section 5-1.61 is amended to read as follows:

¹Routine monitoring shall begin in the month following the quarter when the running annual average TOC in treated water is ≥ 2.0 mg/L for systems using conventional filtration and/or >4.0 mg/L [for systems using all other types of filtration] in source water.

Paragraph 5-1.72(c)(5) is amended to read as follows:

(5) Surface water systems and ground water systems under the direct influence of surface water that are required to provide enhanced filtration and disinfection for *Cryptosporidium*, shall report to the State in accordance with the treatment and/or management options used to comply with the treatment requirements under section 5-1.83(b) or (c) of this Subpart, as applicable.

Alternatively, the State may approve a system to certify operation within required parameters for treatment credit, rather than reporting monthly operational data for Microbial Toolbox Component options in accordance with section 5-1.80(a) of this Subpart. The applicable treatment compliance dates are found in section 5-1.83(d) of this Subpart.

Subparagraph 5-1.72(c)(5)(vii) is amended to read as follows:

(vii) For systems using the individual filter performance option, monthly verification of the following shall be submitted within 10 days following the month in which the monitoring was

conducted: individual filter effluent (IFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of [sample] samples each month [in]for each filter; and no individual filter greater than 0.3 NTU in two consecutive readings 15 minutes apart.

Paragraph 5-1.72(f)(5) is amended to read as follows:

Information on detected contaminants from sampling used to determine compliance. For the purpose of this subdivision (*except Cryptosporidium, Giardia, and radon monitoring*), *detected* means: at or above the contaminant's method detection limit (MDL), as defined in section 5-1.1(b), or as prescribed by the State. Any contaminants specified in sections [5-1.41]5-1.40 (lead and copper) and 5-1.51 of this Subpart and section 5-1.52 Tables 8A, 8B, 8C, 8D, 9A, 9B, 9C, 9D, 10, 10A, 11, 11A, 11B, 12, 16 and 17 of this Subpart that are detected during compliance monitoring shall be displayed in one table or in several adjacent tables.

* * *

Subparagraph 5-1.72(f)(9)(iii) is amended to read as follows:

(iii) lead and copper control requirements. The report shall include health effects language [specified in 40 CFR 141.54(d)] prescribed by the state for lead, copper, or both, for systems which fail to take one or more actions prescribed by sections 5-1.40 through 5-1.48 of this Subpart;

Paragraph 5-1.72(f)(11) is amended to read as follows:

(11) Education information. The report must contain the language of subparagraph (i) of this paragraph or alternative language approved by the State. The report also must include the language of subparagraphs (ii) through [(iv)] (v) of this paragraph.

(i) the sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and can pick up substances resulting from the presence of animals or from human activities. Contaminants that may be present in source water include: microbial contaminants; inorganic contaminants; pesticides and herbicides; organic chemical contaminants; and radioactive contaminants.

(ii) in order to ensure that tap water is safe to drink, the State and the EPA prescribe regulations which limit the amount of certain contaminants in water provided by public water systems. The State Health Department's and the FDA's regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

(iii) drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

(iv) some people may be more vulnerable to disease causing microorganisms or pathogens in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice from their health care provider about their drinking water. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium, Giardia and other microbial pathogens are available from the Safe Drinking Water Hotline (800-426-4791).

New subparagraph (v) is added to section 5-1.72(f)(11) to read as follows:

(v) if present, elevated levels of lead can cause serious health problems, especially for pregnant women, infants, and young children. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. [Water Supply Name] is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (1-800-426-4791) or at <http://www.epa.gov/safewater/lead>.

Paragraph 5-1.77(a) is amended to read as follows:

(a) The supplier of water shall make State notification within 24 hours [of], or as specified in section 5-1.52 table 13 of this subpart, when [learning of] the existence or potential existence of a public health hazard is discovered. The supplier of water shall make State notification [or] within 48 hours for any other violation or situation that may pose a risk to public health. Section 5-1.52 table 13 of this Subpart lists violations and situations that require State notification.

Section 5-1.80 is amended to read as follows:

5-1.80 Applicability.

[(a)]The provisions of this section, and sections 5-1.81 through 5-1.83 apply to all public water systems supplied by a surface water source(s) or ground water source(s) directly influenced by surface water, provided the system serves 15 or more service connections or serves 25 or more

persons. The requirements in this section for filtered systems apply to any system with a surface water or GWUDI source that is required to provide filtration, regardless of whether the system is currently operating a filtration system. All treatment must comply with the requirements of the Microbial Toolbox Components (MTC) as described in 40 CFR 141.715 through 40 CFR 141.720. Any systems utilizing any of the MTC must retain records and report to the State as described in 40 CFR 141.721 and 141.722. Any unfiltered systems that are in compliance with the filtration avoidance criteria in section 5-1.30(c) of this Subpart, are subject to the requirements in sections 5-1.80 through 5-1.83 pertaining to unfiltered systems. Wholesale system compliance with sections 5-1.81 through 5-1.83 is based on the population of the largest system in the combined distribution system. The above systems shall comply with the following requirements:

Subparagraph (a) is moved from the body of the above paragraph to stand separate as follows:

- (a) Systems shall conduct an initial and a second round of source water monitoring for each plant that treats water from a surface water source or ground water source directly influenced by surface water. This monitoring may include Cryptosporidium, E. coli, and turbidity, as described in section 5-1.81(a) through (d) of this Subpart, to determine what level, if any, of additional Cryptosporidium treatment shall be provided. Cryptosporidium monitoring shall be done using an approved method. The following method modifications must also be followed:

* * *

Footnote 1 to paragraph 5-1.83(a)(2) is amended to read as follows:

¹ Based on calculations in paragraph (1) or [(4)](3) of this subdivision, as applicable.

New subparagraphs (i) and (ii) are added to section 5-1.83(c)(3) to read as follows:

(i) Systems that use chlorine dioxide or ozone and fail to achieve the *Cryptosporidium* inactivation required in paragraph (2) of this subdivision on more than one day in the calendar month are in violation of the treatment technique requirement.

(ii) Systems that use UV light and fail to achieve the *Cryptosporidium* inactivation required in paragraph (2) of this subdivision by meeting the criteria in footnote 4 of section 5-1.52 Table 14K are in violation of the treatment technique requirement.

Paragraph 5-1.83(d)(1) is amended to read as follows:

(1) Following initial bin classification under subdivision (a) of this section, filtered systems shall provide the level of treatment for *Cryptosporidium* required under subdivision (b) of this section, [on a schedule approved by the State] in accordance with the schedule in 40 CFR 141.713(c).

Paragraph 5-1.83(d)(2) is amended to read as follows:

(2) Following initial determination of the mean *Cryptosporidium* level under [subdivision] subparagraph (c)(1)(i) of this section, unfiltered systems shall provide the level of treatment for *Cryptosporidium* required under subdivision (c) of this section, in accordance with the schedule in 40 CFR 141.713(c).

Appendix 5-A of Subpart 5-1 is repealed and replaced with the new Appendix 5-A to read as follows:

APPENDIX 5-A

RECOMMENDED STANDARDS FOR WATER WORKS, 2018 EDITION

“Recommended Standards for Water Works, 2018 edition” reported by the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. Available for viewing at the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 and the Bureau of Water Supply Protection, Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237

NOTICE OF CONSENSUS RULEMAKING

Statutory Authority:

The Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, is authorized by section 225 of the Public Health Law to establish, and from time to time, amend and repeal sanitary regulations, known as the sanitary code of the State of New York.

Basis:

The proposed regulatory change is non-substantive and non-controversial. The proposed amendment of 10 NYCRR Subpart 5-1 "Public Water Systems" of the State Sanitary code will correct typographic errors, update references and make minor technical revisions to conform the regulation with federal requirements to obtain primacy for the implementation and enforcement of federal drinking water regulations from U.S. Environmental Protection Agency.

JOB IMPACT STATEMENT

The Department of Health has determined that the proposed revisions will not have substantial adverse impact on jobs or employment opportunities. These correct mainly typographic errors and do not change the requirements water systems need to follow to implement the regulation.



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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new diagnostic and treatment center to be located at 61-33 Woodhaven Boulevard, Rego Park and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

201273 B

FACILITY/APPLICANT:

CFR Advance Services, LLC d/b/a Village
Med & Rehabilitation

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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:

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:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,661,497	\$5,593,966
Expenses	<u>4,489,721</u>	<u>5,406,889</u>
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 8 Maple Avenue, Bay Shore, to provide primary and specialty medical care, behavioral health, occupational therapy, physical therapy, and speech-language pathology services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

211132 B

Arena Care LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 362 East 148th Street, Bronx and certify medical services-primary care , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

211270 B

Samaritan Daytop Health, Inc.

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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 |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 673 Livonia Avenue, Brooklyn, and an extension clinic to be located at 63 Marcus Garvey Boulevard, Brooklyn, to serve the PACE Program of ElderServe Health, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

212015 B

RiverSpring Project Corp. t/b/k/a RiverSpring
DTC Corp.

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 5202-5204 16th Avenue, Brooklyn to provide ophthalmology and optometry services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

212032 B

Emes Vision Center LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



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

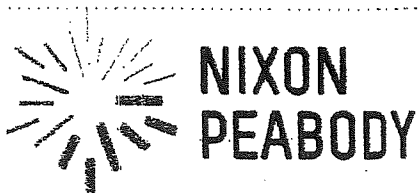
DATE: November 2, 2021

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

NIXONPEABODY.COM
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Jena M. Grady |
Associate |
T 212-940-3114 |
jgrady@nixonpeabody.com |

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:

Jena Grady
FFBF73315A0A4E0

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:

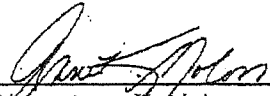
Paragraph 1 of the Corporation's Certificate of Incorporation relating to the name of the Corporation is hereby amended to read in its entirety as follows:

"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:

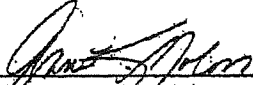
Paragraph 1 of the Corporation's Certificate of Incorporation relating to the name of the Corporation is hereby amended to read in its entirety as follows:

"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

Cust REPA SWNR130116

FILED

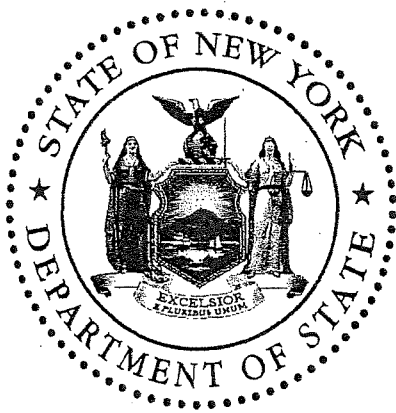
2021 MAY 12 PM 1:01

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.

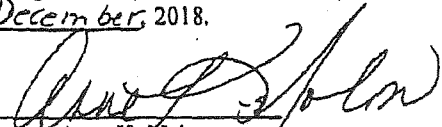
TENTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her is:

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]
[Signature]

DRAWDOWN

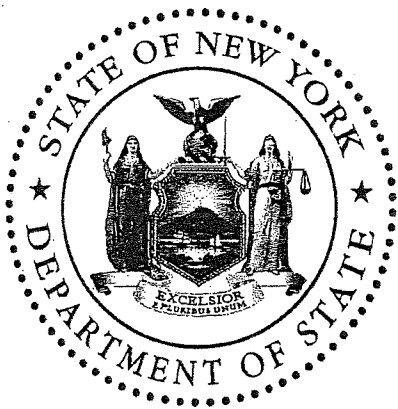
107

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.

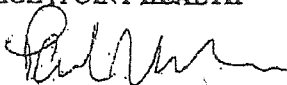
7. BPH's Board of Directors approved the Agreement and Plan of Merger, and authorized filing of a Certificate of Merger by majority vote of the Board in accordance with Section 903 of the N-PCL at a meeting duly noticed and held on September 6, 2018.

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

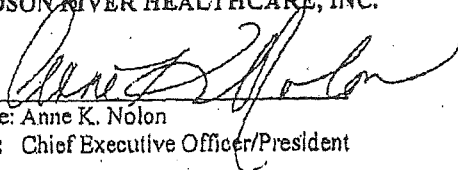
Dated: _____

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

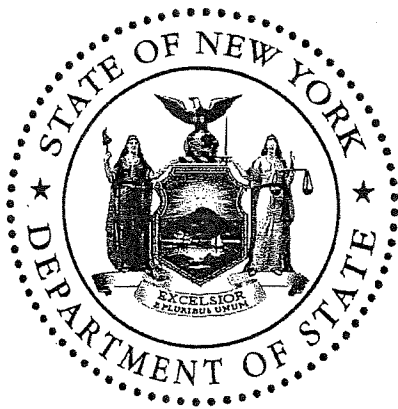
593

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.

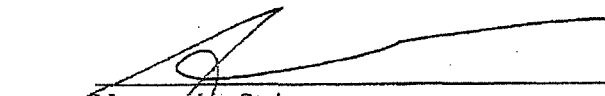
FOURTH: The amendments effected by this Certificate of Amendment are as follows. Article SIXTH of the Certificate of Incorporation of the Corporation, relating to the service area of the Corporation, is hereby deleted, and Articles SEVENTH through FOURTEENTH are renumbered accordingly.

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.

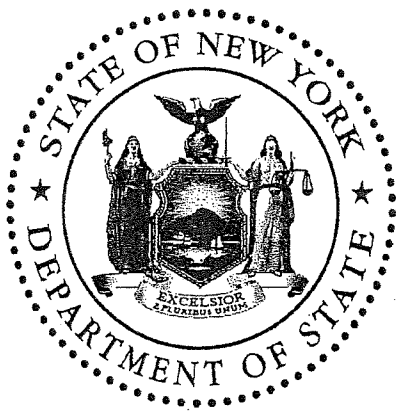

Name: Alan Steiner
Title: Chairman

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

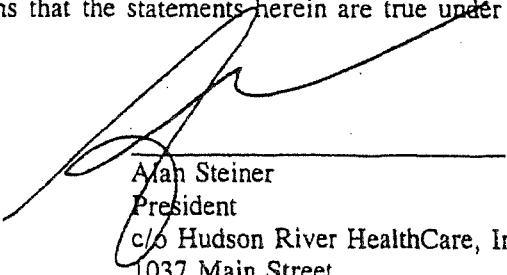
TWELFTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

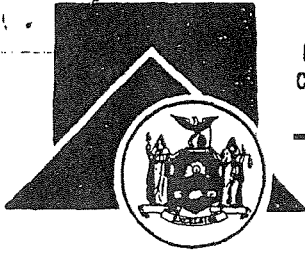
Hudson River HealthCare, Inc.
1037 Main Street
Peekskill, New York 10566

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.

BILLED
DELANEY - 30

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JAN 08 1999
TAX \$
BY: PSZ

west

RECEIVED
Jan 7 12 55 PM '99

FILED BY:
KALKINES, ARKY, ZALL & BERNSTEIN LLP
1675 BROADWAY
NEW YORK, NY 10019

REF
DEL01/07/99

8

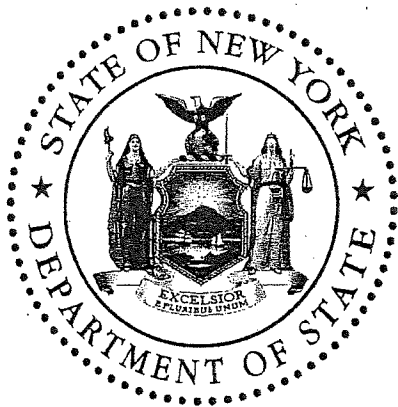
990108000 345

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:

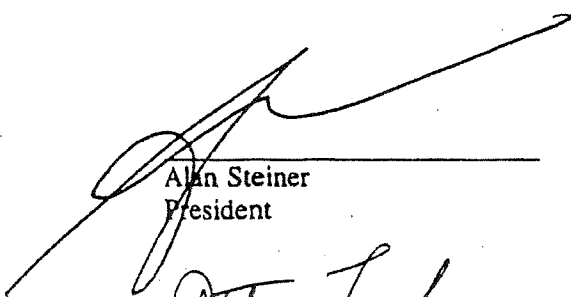
FIRST: The name of the corporation is Hudson River HealthCare, Inc. (hereinafter referred to as the "Corporation").

(6) This amendment to the Certificate of Incorporation was authorized by the Board of Directors of the Corporation.

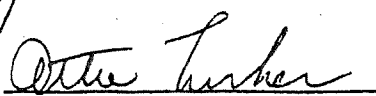
(7) The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation 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.)

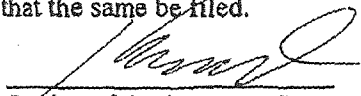
On this 25 day of August, 1998, before me personally came Alan Steier to me known and known to me to be the persons described in and who executed the foregoing Certificate of Amendment of Certificate of Incorporation and they duly acknowledged to me that they severally and independently executed the same.

Marie D. Forsyth
Notary Public

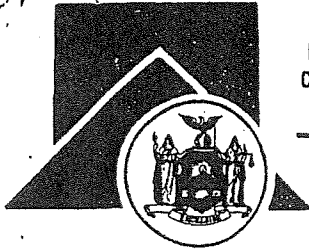
MARIE D. FORSYTH
Notary Public, State of New York
No. 4970345
Qualified in Westchester County
Commission Expires August 13, 1999

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.

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.

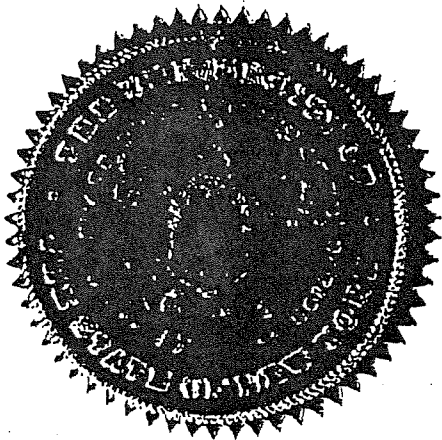
This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use 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.

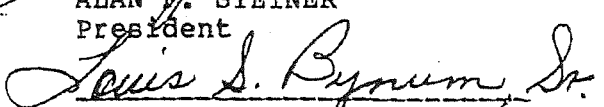
(5) The amendment to the certificate of incorporation of the Peekskill Area Health Center, Inc., was authorized by an affirmative vote of a quorum of the members of the Board of Directors on the 14th day of January, 1986. The corporation is not a membership corporation.

(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.

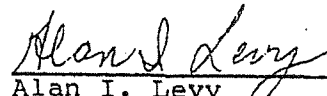

ALAN F. STEINER
President


LOUIS S. BYNUM, SR.
Secretary

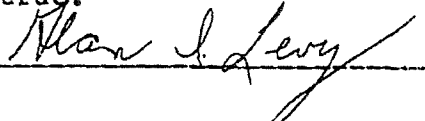
STATE OF NEW YORK)

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,

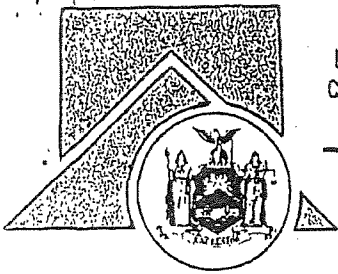
, a Justice

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 \$ _____
COPY \$ _____
CERT \$ _____
REFUND \$ 20
SPEC HANDLES \$ 10

BY: [Signature]
- West
Type B

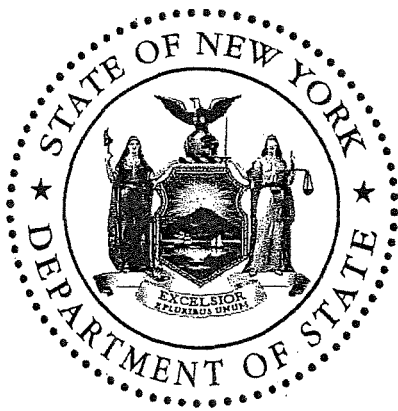
JUN 13 10 01 AM '87

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

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, 1980

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

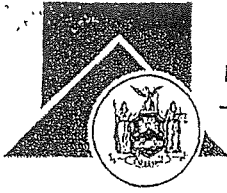
HON. William A. Walsh
Justice of the Supreme Court
of the 9th ~~10th~~ Judicial
District of the State of New
York.

New York, New York
September 5, 1978

THE UNDER SIGNED
OFFICER OF THE
OF JUSTICE AND
HONORARY AND
STATUTORY NOTICE
SOUTHERN DISTRICT
Attorney General
State of New York

Bernard Bowen

5-A



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

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 [unclear] ENTERED IN THE OFFICE OF THE CLERK OF THE WITHIN COURT ON [unclear] 19 [unclear]

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 NEXT TO THE HON.

TO JUDGES OF THE WITHIN NAMED COURT, AT

day of [unclear] 19 [unclear] 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

FILED NOV 22 1978

Handwritten: *Handwritten*

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*, *11-5-49*, *Typ B*, *noted in book*, *125 King St*, *Peekskill*, *10860*, *11/22/78*, *Donoff*

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, 11/20/78

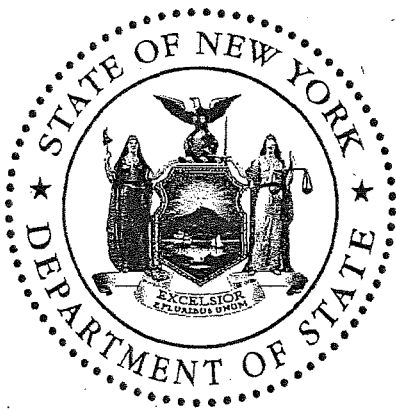
307629

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

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

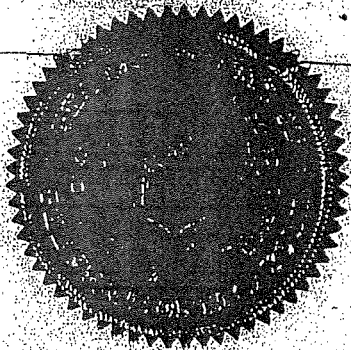
PEEKSKILL AMBULATORY HEALTH CARE CENTER, INC.

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

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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

Jeannette J. Phillips
Jeannette 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, 1975

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, 1975

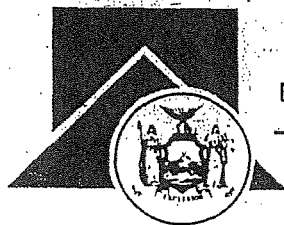
Dorothy Louise Ryder
Notary Public

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, 1975

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Dorothy Louise Ryder
Notary Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

May 5, 1975



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.D.C.

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.

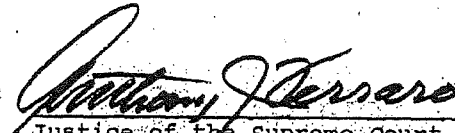
Louis J. Lefkowitz
Attorney General
State of New York

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



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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

PLOWEST
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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**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.

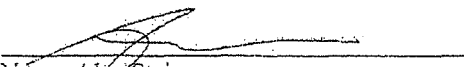
NOW, THEREFORE, it is

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of December 2021 approves the filing of the Certificate of Amendment of Certificate of Incorporation of Hudson River Healthcare, Inc., dated March 9, 2021.



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

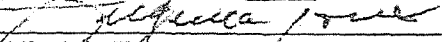
RESOLVED, that any acts of the officer and Directors of the Corporation, which acts would have been authorized by any of the foregoing resolutions except that such acts were taken prior to the adoption of the foregoing resolutions, shall be, and hereby are, severally ratified, confirmed, approved and 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. Gellman
Hon. Dawn J. Gellman - Justice
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.

Pamela Gellman 2-6-20
ASSISTANT ATTORNEY GENERAL DATE

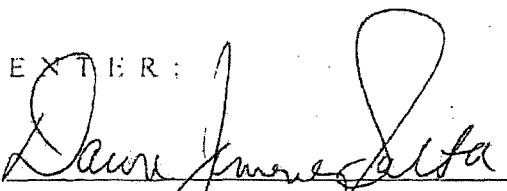
Pamela Gellman

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

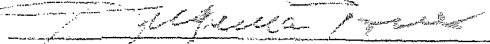
BY SIGNING THIS ORDER, I HEREBY AFFIRM HEREIN
AND I HEREBY AFFIRM TO THE GRANTING OF
JUDICIAL AUTHORITY, I PERSONALLY ACKNOWLEDGE
HEREBY TO STATUTORIAL NOTICE AND DEMANDS
SERVED ON ALL PARTIES SUBMITTED HEREIN
BY FILING ALL ORDERS, AGREEMENTS AND
ENDORSEMENTS OF THE COURT, AND NO OBJECTION
IS COMPLETED BY 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

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Facility Id. 6248
Certificate No. 7001035N

Certified Beds - Total 240
RHCF 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.

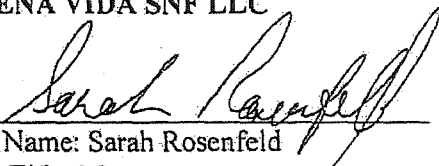
SELLER:

BUENA VIDA CORP.

By: _____
Name: Scott Short
Title: Chief Executive Officer

PURCHASER:

BUENA VIDA SNF LLC

By: 
Name: Sarah Rosenfeld
Title: Manager

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of December 2021, approves the filing of the Certificate of Dissolution of Buena Vida Corporation, dated as attached.



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	<u>\$961</u>	<u>\$8,061,606</u>	<u>\$883</u>	<u>\$8,521,500</u>	<u>\$894</u>	<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>	<u>\$56</u>	<u>\$8,978,500</u>	<u>\$58</u>	<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 |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish NYU Langone Health System as the active parent and co-operator of Long Island Community Hospital and Long Island Community Hospital Hospice and change the corporate name of the operator, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

212009 E

Long Island Community Hospital and Hospice

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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 PHHC 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Montefiore Westchester Community Corp. as the operator of the facility located at 555 Taxter Road, Elmsford that is currently operating as an extension clinic of Burke Rehabilitation Hospital and certify other medical specialties, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

211262 E

Montefiore Westchester Community Corp.
t/b/k/a Montefiore Einstein Advanced Care

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 25 percent interest from one withdrawing member to the remaining members evenly, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

211107 E

Northern Lights Home Health Care

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONED 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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:

<u>OGL Holdings, LLC – Operator</u>	
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	345,660	315,414	372,452
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	0	482,642	514,079
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9th day of December 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish OGL Holdings, LLC as the new operator of an existing certified home health agency (CHHA) located at 1000 South Oyster Bay Road, Hicksville, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

211169 E

OGL Holdings, LLC d/b/a Mount Sinai
at Home

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 CONDITIONED 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.