

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

July 28, 2022

*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

Jo Ivey Boufford, M.D., Vice Chair

II. 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, PhD, MPH, Deputy Commissioner, Office of Public Health

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

John Morley, M.D., Deputy Commissioner, Office of Primary Care and Health Systems Management

III. *REGULATION

Report of the Committee on Codes, Regulations and Legislation

Thomas Holt, Chair of the Committee on Codes, Regulations and Legislation

For Emergency Adoption

20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease)

20-07 Addition of Section 2.60 to Title 10 NYCRR (Face Coverings for COVID-19 Prevention)

IV. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212271 C	Ambulatory Surgery Center of Niagara (Niagara County)	Contingent Approval

Residential Health Care Facilities - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212105 C	Rutland Nursing Home, Inc. (Kings County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212282 C	Auburn Community Hospital (Cayuga County) Mr. Robinson – Interest	Contingent Approval
2.	221105 C	Strong Memorial Hospital (Monroe County) Mr. Robinson – Recusal Mr. Thomas - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

**B. APPLICATIONS FOR ESTABLISHMENT AND
CONSTRUCTION OF HEALTH CARE FACILITIES**

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221115 E	Apex Surgical Center (Oneida County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221070 B	Pinpoint Medical LLC (Kings County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	192027 E	Crest Opco LLC d/b/a Crest Manor Living and Rehabilitation Center (Monroe County)	Contingent Approval
2.	221084 E	Hilaire Farm Skilled Living & Rehabilitation Center, LLC d/b/a Hilaire Rehab & Nursing (Suffolk County)	Approval
3.	192332 E	EDRNC Operating, LLC d/b/a Eden Rehabilitation & Nursing Center (Erie County)	Contingent Approval
4.	192333 E	HORNC Operating, LLC d/b/a Houghton Rehabilitation & Nursing Center (Allegany County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities - Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	192335 E	SARNC Operating, LLC d/b/a Salamanca Rehabilitation & Nursing Center (Cattaraugus County) Mr. Holt - Interest	Contingent Approval
2.	192336 E	DURNC Operating, LLC d/b/a Dunkirk Rehabilitation & Nursing Center (Chautauqua County) Mr. Holt – Interest	Contingent Approval
3.	202122 E	Providence Rest, Inc. (Bronx County) Mr. LaRue- 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 HAS

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

V. NEXT MEETINGS

September 15, 2022
October 6, 2022

VI. PROFESSIONAL

Executive Session – Report of the Committee on Health Personnel and Interprofessional Relations

VII. ADJOURNMENT

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

Section 2.6 is repealed and replaced as follows:

2.6 Investigations and Response Activities.

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

- (1) Verify the existence of a disease or condition;
- (2) Ascertain the source of the disease-causing agent or condition;
- (3) Identify unreported cases;
- (4) Locate and evaluate contacts of cases and suspected cases, as well as those reasonably expected to have been exposed to the disease;
- (5) Collect and submit, or cause to be collected or submitted, for laboratory examination such specimens as may furnish necessary or appropriate information for determining the source of disease, or to assist with diagnosis; and furnish or cause to be furnished with

such specimens pertinent data on forms prescribed by the State Commissioner of Health, including but not limited to the history of cases, physical findings and details of the epidemiological investigation;

(6) Examine the processes, structures, conditions, machines, apparatus, devices, equipment, records, and material within such places that may be relevant to the investigation of disease or condition;

(7) Instruct a responsible member of a household or entity, as applicable, to implement appropriate actions to prevent further spread of a disease; and

(8) Take any other steps to reduce morbidity and mortality that the local health authority determines to be appropriate.

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

(c) Investigation Updates and Reports.

(1) Upon request of the State Department of Health, the local health authority shall submit updates and reports on outbreak investigations to the State Department of Health. The content, timeframe, and manner of submission of such updates shall be determined by the State Department of Health.

(2) The local health authority shall complete investigation reports of outbreaks within 30 days of the conclusion of the investigation in a manner prescribed by the State Commissioner of Health, unless the State Commissioner of Health prescribes a different time period.

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

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

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

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

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

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

investigative materials which were heretofore created by the local health authority.

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

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

* * *

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

(i) attendance;

(ii) date and duration of the meeting;

(iii) synopsis of issues discussed and actions or recommendations made; [and]

(12) whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, such syndromic and disease surveillance data as the commissioner deems appropriate, which the hospital shall submit in the manner and form determined by the commissioner; and

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

* * *

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

(g) Whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, the commissioner may direct general hospitals, as defined in Article 28 of the public health law, and consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA), to accept patients pursuant to such procedures and conditions as the commissioner may determine appropriate.

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

Section 58-1.14 Reporting of certain communicable diseases.

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

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

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

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

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

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

Legislative Objectives:

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

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

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

Needs and Benefits:

These regulations update, clarify and strengthen the Department's authority as well as that of local health departments to take specific actions to monitor the spread of disease, including actions related to investigation and response to a disease outbreak.

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

Part 2 Amendments:

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

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

Part 405 Amendments

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

Part 58 Amendments

- New section 58-1.14 added clarifying reporting requirements for certain communicable diseases

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

COSTS:

Costs to Regulated Parties:

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

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

Accordingly, both of these proposed amendments will not impose any substantial additional cost to hospitals.

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

Costs to Local and State Governments:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations. Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

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

Paperwork:

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

Local Government Mandates:

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

Duplication:

There is no duplication in existing State or federal law.

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

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

United States Census data:

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

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

Albany County
Dutchess County
Erie County

Monroe County
Niagara County
Oneida County
Onondaga County

Orange County
Saratoga County
Suffolk County

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

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

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

As stated in the declaration of the State disaster emergency in Executive Orders No. 11 through 11.8 (November 26, 2021, through August 13, 2022; see 9 NYCRR §§ 9.11 through 9.11.8), New York continues to experience high rates of COVID-19 transmission. The constant threat of a possible resurgence of COVID-19 or another communicable disease outbreak necessitates that the adoption of these regulatory amendments on an emergency basis. In addition, the emergency regulations also require clinical laboratories to report all test results, including negative and indeterminate results, for communicable diseases such as COVID-19; mandate hospitals to report syndromic surveillance data; and permit the Commissioner to direct hospitals to take patients during a disease outbreak such as COVID-19.

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

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

Section 2.60 is added to read as follows:

2.60. Face Coverings for COVID-19 Prevention.

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

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

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

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

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

(f) Penalties and enforcement.

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

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

Now, more than two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. Beyond the ongoing COVID-19 burden in communities, certain settings such as crowded indoor spaces, public transit, nursing homes, and health care settings, have been at increased risk for transmission. These regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. The regulations are necessary to permit flexibility to allow the Department to quickly adapt to changing circumstances related to the spread of COVID-19 and increasing transmission rates.

COSTS:

Costs to Regulated Parties:

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

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

Costs to Local and State Governments:

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

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

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

Duplication:

There is no duplication of federal law.

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

The regulations will become effective upon filing with the Department of State and will expire, unless renewed, 60 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 60-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed ruling-making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

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

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

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

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

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

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

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

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

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

Now, more than two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. Beyond the ongoing COVID-19 burden in communities, certain settings such as crowded indoor spaces, public transit, nursing homes, and health care settings, have been at increased risk for transmission.

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

regulations are necessary to permit flexibility to quickly adapt to changing circumstances and increasing transmission rates and control the spread of COVID-19, necessitating immediate action. Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.



Project # 212271-C
Ambulatory Surgery Center of Niagara

Program: Diagnostic and Treatment Center
Purpose: Construction
County: Niagara
Acknowledged: February 1, 2022

Executive Summary

Description

Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara LLC (The Center), an existing Article 28 Ambulatory Surgery Center (ASC) located at 6500 Porter Road, Suite 2030, Niagara Falls, seeks approval to convert from a single-specialty ambulatory surgery center to a multi-specialty ambulatory surgery center and perform requisite renovations. The Center is currently certified for ophthalmology. Approval of this application will initially add orthopedic and pain management to become a multi-specialty ASC.

The Center was granted permanent life under CON 211011. Approval of this application will not result in any change to the leased space, membership structure, or the executed transfer agreement with Mount St. Mary's Hospital of Niagara Falls.

OPCHSM Recommendation
Contingent Approval

Need Summary

Approval of this project will increase access to multi-specialty surgery services for the residents of Niagara County.

Program Summary

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

Financial Summary

The project costs of \$158,468 will be met with equity from the existing operations. The budget projects a net income of \$341,625 in year one and \$1,400,842 by year three. The proposed budget is as follows:

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues (\$2,874,680 vs \$3,975,193), Expenses (2,533,055 vs 2,574,351), Net Income (\$341,625 vs \$1,400,842).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed commitment and a plan by the applicant to increase the utilization of their services by those who are Medicaid and Medicare/Medicaid eligible. The plan should include, but not necessarily be limited to, ways in which the facility will identify and reach out to community resources that serve medically underserved populations. [HSP]

Approval conditional upon:

1. This project must be completed by **August 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 **February 1, 2023**, and construction must be completed by
3. **May 1, 2023**, 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]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

July 28, 2022

Need and Program Analysis

Program Description

Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara, an ambulatory surgery center that currently operates a single-specialty ophthalmology ambulatory surgery center, seeks approval to convert to a multi-specialty ambulatory surgery center and perform the requisite renovations. Two physicians, John P. Swinarski, D.O. and Franco E. Vigna, M.D., submitted letters of interest stating their intent to perform surgical procedures and pain injections at the ASC. Once the ASC has been certified as a multi-specialty surgery center, the two physicians estimate they will perform 566 surgical procedures/pain injections at the Center: Dr. Vigna plans to perform at least 86 surgeries and Dr. Swinarski plans to perform 480 epidural and facet pain injections.

As a result of this project, staffing is expected to increase to a total of 10.5 FTEs and remain at 10.5 FTEs in Year Three of the completed project.

Analysis

The Center began operations in March 2016 providing ophthalmology surgery services. Currently, two ASCs are operating in Niagara Falls (Niagara County): Endoscopy Center of Niagara, which provides gastroenterology surgery, and the applicant, Ambulatory Surgery Center of Niagara, which is seeking to convert into a multi-specialty surgery center.

The service area consists of Niagara County. According to Data USA, 96.7% of the population of Niagara County has health coverage as follows:

Employer Plans	50%
Medicaid	19.8%
Medicare	13.1%
Non-Group Plans	12.5%
Military or VA	1.28%

The center is current with its SPARCS reporting. The following table shows the center's utilization of Medicaid and total visits for the last three years:

	2018	2019	2020
Visits	2,162	2,211	1,868
Medicaid	4.4%	3.7%	4.3%

The Center has Medicaid managed care contracts with the following: Amerigroup, Fidelis, Independent Health Medisource, Molina Health Plan, Univera MyHealth, United Healthcare Community Plan, American Indian Health.

The applicant projects 2,433 procedures in Year One and 3,222 in Year Three, based on the current practices of participating surgeons. The applicant is committed to serving all persons in need without regard to the ability to pay or a source of payment.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. Approval of this project will enhance access to multi-specialty surgery services for the residents of Niagara County.

Financial Analysis

Total Project Costs and Financing

Total project costs for the renovations and acquisition of moveable equipment are \$158,468, presented in 2022 dollars and distributed as follows:

Renovation & Demolition	\$20,000
Construction Contingency	2,000
Architect/Engineering Fees	7,500
Moveable Equipment	126,500
Application Fee	2,000
Processing Fee	<u>468</u>
Total Project Costs	\$158,468

Operating Budget

The applicant has submitted the 2020 current year budget and first and third years' operating projected budget, in 2022 dollars, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2020</u>		<u>2023</u>		<u>2025</u>	
<u>Revenues</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$1,349	\$1,638,474	\$1,241	\$1,867,778	\$1,241	\$1,883,272
Medicare FFS	\$1,233	437,804	\$1,233	437,804	\$1,231	530,408
Medicare MC	\$1,287	279,185	\$1,139	345,246	\$1,331	1,317,952
Medicaid MC	\$1,011	80,856	\$956	91,730	\$1,084	91,028
Private	N/A	0	N/A	0	\$1,286	11,576
Other*	<u>N/A</u>	<u>0</u>	<u>\$768</u>	<u>132,122</u>	<u>\$787</u>	<u>140,957</u>
Total Revenues		\$2,436,319		\$2,874,680		\$3,975,193
<u>Expense</u>						
Operating	\$1,244.32	\$1,974,235	\$885.34	\$2,162,897	\$684.10	\$2,204,193
Capital	<u>187.45</u>	<u>350,158</u>	<u>151.51</u>	<u>370,158</u>	<u>114.88</u>	<u>370,158</u>
Total Expenses	\$1,431.77	\$2,324,393	\$1036.85	\$2,533,055	\$798.98	\$2,574,351
Net Income		<u>\$111,926</u>		<u>\$341,625</u>		<u>\$1,400,842</u>
Procedures		1,868		2,443		3,222
Cost Per Procedure		\$1,244.32		\$1,036.86		\$798.99

*Other includes Workers' Compensation, Disability, and No-Fault among others.

The following is noted for the submitted budget:

- Revenue, expense, and utilization assumptions are based on the combined historical experience from member physicians' private practice and proposed physicians' experience.
- Revenues for the three specialties (orthopedic, ophthalmology, and pain management) were based on the 2022 Medicare Rates, Commercial rates were based on 110% of Medicare rates and Medicaid rates are based on 90% of the Medicare rate.
- Utilization and associated revenues are projected to increase because of new physicians performing procedures at the Center.

- The ASC covers areas with aging populations and with increased Medicare managed care penetration. The applicant expects that a large share of new orthopedics and pain management cases and ophthalmology cases will be performed on patients enrolled in Medicare-managed care plans.

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

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	65.04%	61.60%	47.08%
Medicare FFS	19.00%	14.53%	13.38%
Medicare MC	11.62%	12.40%	30.73%
Medicaid MC	4.28%	3.93%	2.61%
Other	0.00%	7.04%	5.83%
Charity	<u>0.05%</u>	<u>0.49%</u>	<u>0.37%</u>
Total	100%	100%	100%

Capability and Feasibility

Project costs of \$158,468 will be met with cash. The 2020 certified financial statements and the facility's latest internal financial statements dated October 31, 2021, show the facility has sufficient equity to fund this project (BFA Attachment A). The working capital requirements for this project are estimated at \$422,176, representing two months of the first year's expenses to be covered through operations. The Center's 2020 certified financial statement and year-end 2021 internal financial statement show a positive working capital position and a negative members' deficit position of \$522,122 and \$199,517 respectively. The facility achieved a net income of \$254,977 and \$330,605 in 2020 and 2021 respectively. The latest internal financial statement from January 1, 2022, thru April 30, 2022, shows a positive working capital position and negative net asset position and achieved a net income of \$30,392 year to date. It should be noted that due to the negative effects of COVID-19 the facility was closed for four months in 2020. The budget indicates a net income of \$341,625 and 1,400,842 for the first and third years, which appears reasonable.

Conclusion

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

Attachments

BFA Attachment A Certified Financials 2020 & Internal (January 1, 2021 - October 31, 2021)



Project # 212105-C
Rutland Nursing Home, Inc.

Program: Residential Health Care Facility
Purpose: Construction

County: Kings
Acknowledged: November 9, 2021

Executive Summary

Description

Rutland Nursing Home, Inc. (Rutland), a 466-bed, voluntary not-for-profit Article 28 Residential Health Care Facility (RHCF) at 585 Schenectady Avenue, Brooklyn (Kings County) requests approval to renovate part of the facility to initiate an 80-bed Young Adult RHCF program.

The applicant is one of two providers in New York State awarded the opportunity to operate a Young Adult Demonstration Program for medically fragile children in transition to young adults and young adults with complex medical conditions, as provided for by Public Health Law § 2808-e.

Rutland currently has 404 RHCF beds, 30 ventilator-dependent beds, and 32 pediatric beds. The proposed Young Adult unit will be on the ninth and tenth floors of the 11-story building Rutland Nursing Home occupies. The proposed space currently has 146 general RHCF beds. The 66 nursing home beds displaced from the ninth and tenth floors will be relocated to the fourth floor. There will be no change in the total number of licensed beds as a result of this application.

One Brooklyn Health System, Inc. (OBHS) is the active parent/co-operator of Rutland Nursing Home.

OPCHSM Recommendation

Contingent Approval

Need Summary

The new Young Adult program beds will create a continuity of care and programming for residents ages 18 and older who are aging out of existing pediatric nursing home beds.

Program Summary

The Young Adult Demonstration Program is designed for medically fragile children in transition to young adults and young adults with complex medical conditions, as provided for by Public Health Law § 2808-e.

Financial Summary

The total project cost of \$43,039,119 will be met from the Kings County Health Care Facility Transformation Program (KCHCFTP) grant. The KCHCFTP is a \$664M grant that provides capital funding to address the health care needs in Kings County served by the three hospitals and other OBHS facilities.

The submitted budget projects a Year One net loss of \$2,024,740 and a Year Three net income of \$374,193. The loss in Year One includes \$2,516,371 in depreciation expense, without which the operations would generate \$491,631 in net income.

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues, Expenses, Net Income/(Loss).

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 documentation confirming final approval of the Kings County Health Care Facility Transformation Program executed grant contract for period four, acceptable to the Department of Health. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG 1.0. [AER]

Approval conditional upon:

1. This project must be completed by **October 1, 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 **February 1, 2023**, and construction must be completed by **July 1, 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. Approval for use of the fourth-floor Briger building as temporary space is time-limited for a period to expire upon completion of this project and not later than February 1, 2024. [LTC]
5. Acknowledgment of exception to 2018 FG1 3.1-2.2.2.2 is being provided under this demonstration project authorized by PHL §2808-e as a rigid application to the current space on the fourth floor of the DMRI building and fourth-floor Briger building would result in unreasonable hardship to the facility, any required structural changes are not feasible, and waiver of this provision will not impact resident health and safety. This determination is conditional upon the facility's immediate and ongoing implementation of policies and procedures and the provision of equipment and personnel as necessary to ensure a level of resident and staff safety and dignity of resident care services and care as required by regulation, the above-noted deficiency, and this determination notwithstanding. All policies and procedures must be acceptable to the Regional Office. [LTC]

Council Action Date

July 28, 2022

Need Analysis

Analysis

There will be no change in the total number of licensed beds in this facility as a result of this application. Rutland Nursing Home currently has 404 non-specialty RHCf beds, 30 beds certified and dedicated to serving ventilator-dependent residents, and 32 pediatric program beds. The historical reported Year-End occupancy for this facility, by bed type, has been:

Bed Type	Rutland Occupancy				
	2018	2019	2020	2021	Current*
RHCf	94.8%	97.8%	79.5%	80.4%	89.6%
Ventilator Dependent	86.7%	96.7%	93.3%	86.7%	93.3%
Pediatric	78.1%	87.5%	84.4%	78.1%	81.3%
Total	93.1%	97.0%	80.7%	80.7%	89.3%

Source: Nursing Home Weekly Bed Census Survey.

*Current is reported as of April 6, 2022.

While the facility's occupancy rate in non-pediatric beds has declined during the pandemic, occupancy in their pediatric program has remained consistent. There have also been consistently high occupancy rates for pediatric skilled nursing beds in the NYC/Westchester County area, with most facilities operating near or at capacity:

NYC/Westchester Pediatric Occupancy				
2018	2019	2020	2021	Current*
97.7%	98.5%	97.8%	96.8%	95.7%

Source: Nursing Home Weekly Bed Census Survey.

*Current is reported as of April 6, 2022.

Excludes pediatric beds that opened or closed during the reporting period shown.

The historically high occupancy rates in pediatric skilled nursing beds demonstrate a consistent demand for specialized skilled nursing services and programs for those with medically complex conditions. The Young Adult Demonstration Program established in Public Health Law is an effort to address the aging of the medically fragile population residing in pediatric skilled nursing beds. While the preference is to have children transitioned to home or community placement when clinically appropriate, the level of care required by existing residents in pediatric skilled nursing beds sometimes makes a transition outside of a skilled nursing environment challenging. In such cases, pediatric skilled nursing providers have encountered difficulty finding programs in traditional skilled nursing beds that meet the complex medical and social needs of the young adults aging out of pediatric skilled nursing programs. Specialized young adult programs create an opportunity to transition existing young adults from pediatric skilled nursing beds into programs that offer continuing long-term residential care specific to the unique needs of this population.

Public Health §2808-E allows current pediatric nursing home residents age 18 and above, or residents recently aging out of pediatric nursing home beds, transitional opportunities to two newly created Young Adult Demonstration Programs. The chart below shows the trend for the aging of residents in pediatric nursing home beds in the NYC/Westchester County region, with over 100 residents age 16 and older close to aging out of pediatric nursing home beds.

	2016	2017	2018	2019	2020
Number age 16+	51	52	64	105	101
Percentage of total pediatric residents	16.7%	14.8%	18.1%	26.9%	25.4%

Source: RHCf Cost Report for NYC/Westchester County pediatric programs, including Rutland Nursing Home.

Rutland Nursing Home’s own experience has demonstrated the need to establish Young Adult programs for pediatric nursing home bed eligible residents past the age of 18. In total, the facility has 44 residents who would be or would soon be eligible for such a program:

- 12 residents between the age of 16 and 21 who are expected to age out of the pediatric program beds,
- 12 young adult residents over 21 years of age in a geriatric unit because they have aged out of Rutland’s pediatric program beds and appropriate alternative placement could not be found elsewhere, and
- 20 young adult residents over 21 years of age with medical fragility referred from acute care facilities in New York City.

The demand for the young adult services within the facility alone would result in significant initial occupancy of the Young Adult Demonstration Program proposed. To further support the immediate need for the proposed program, the applicant reported receiving over 1,000 referrals between January 2019 and June 2021 for eligibility into a skilled nursing program for young adults with medical fragility. The applicant claims that of the referrals received, 16% were determined to meet the criteria for admission into the proposed Young Adult Demonstration Program.

Access

The proposed population to be served by the new Young Adult Demonstration Program beds will predominantly have a Medicaid payor source, and therefore increase the Medicaid access to services at the facility. Based on the facility’s existing pediatric population and potential referrals reviewed, 60% of the population to be served by the new program will be from Brooklyn with the other 40% distributed throughout the greater NYC and outlying areas.

The proposed Young Adult Demonstration Program will also provide opportunities for residents currently receiving care in other states. New York State Medicaid claims data from August 2017 to August 2018 for nursing home residents aged 18-35 detailed 20 unique nursing home residents in Massachusetts and 16 in New Jersey. New York State Medicaid claims data from the same period also showed 22 teens between the ages of 13 and 16 in New Jersey nursing homes.

Conclusion

The new Young Adult Demonstration Program beds will create a continuity of care and programming for residents ages 18 and older who are aging out of existing pediatric nursing home beds. The proposed Young Adult Demonstration Program beds will also increase the capacity for admission of medically fragile young adults from acute care settings into a residential long-term care environment. Approval of this application will result in providing access to necessary services for a population that has a predominantly Medicaid payor source and possibly prevent New York State residents from having to go out of state for care.

Program Analysis

Facility Information

Facility Name	Rutland Nursing Home, Inc
Address	585 Schenectady Avenue Brooklyn, New York 11203 (Kings County)
RHCF Capacity	466-beds
ADHCP Capacity	NA
Type of Operator	Voluntary
Class of Operator	Not for Profit Corporation
Operator	Rutland Nursing Home, Inc.

Rutland Nursing Home is one of two providers in New York State awarded the opportunity to operate a Young Adult Demonstration Program. The program was created for medically fragile children in transition to young adults and young adults with complex medical conditions, as provided for by Public Health Law § 2808-e.

Project Overview

Rutland will renovate the ninth and tenth floors of the David Minkin Rehabilitation Institute (DMRI) building to accommodate 40 beds on each floor as part of the project. The Young Adult Demonstration Project will have its own program space separate from the rest of the facility. At present, the ninth and tenth floors of the DMRI building consist of 146 beds.

The project proposes to permanently move 66 beds to the fourth floor of the DMRI building, temporarily use 40 beds in the adjacent Briger building to house residents, and voluntarily transfer 40 residents to the Schulman & Schachne Institute, a sister nursing home facility 1.4 miles away from Rutland Nursing Home. Residents who voluntarily transfer to Schulman & Schachne Institute will be given priority readmission rights to Rutland should they desire to return. The applicant states that they will work with the New York State Department of Health Division of Nursing Homes and ICF/IID Surveillance and the Metropolitan Area Regional Office to identify 40 residents willing to transfer to Schulman & Schachne Institute.

The certified 66 nursing home beds on the fourth floor of the DMRI building will be in space originally constructed as a nursing home floor with resident rooms, a dining room, and physical therapy spaces. As per Certificate of Need application (CON) 121205-L, 38 resident rooms were decertified on this floor, including rooms 1400 – 1418. The rooms were to be vacated and converted into administrative space. Construction notice 547 implemented the renovation of the decertified patient rooms into administrative offices. The fourth floor of the DMRI building is currently not occupied by any nursing home residents and has no certified nursing home rooms on the floor.

The fourth floor of the Briger building contains former medical-surgical inpatient beds which are not currently in use and the floor is unoccupied. These rooms are being proposed as a temporary location for nursing home residents for approximately one year while construction takes place on the fourth floor of the DMRI building.

Physical Environment

The layout of the DMRI building is a symmetrical rectangular tower, with resident rooms and communal space lining the exterior walls and staff and support space centrally located in the interior on each floor. The fourth, ninth, and tenth floors of the facility will be renovated as part of this project. The number of beds on the ninth and tenth floors will be reduced from 146 total beds to 80 total beds, this will create larger resident rooms with increased accessibility on the ninth and tenth floors. The remaining 66 beds removed from the ninth and tenth floors will be relocated to the fourth floor of the DMRI building.

The ninth and tenth floors of the Young Adult program space will have a similar floorplan, with resident rooms lining the east and west exterior walls of the floors. Each floor will have 40 total beds, composed of 17 double-bedded rooms and six private rooms. One double-bedded room on the ninth and tenth floors will feature additional space and enhanced clearances to accommodate people of size. Resident dining/multipurpose rooms for the Young Adult Program will be able to seat 40 residents at a time on the floor, with the main dining room able to accommodate 36 residents and an adjacent dining space able to accommodate four residents. Additional resident amenities on each floor include a mediation room, technology lounge, and a family lounge for overnight family visits. Therapy spaces will be provided on both floors allowing for direct resident access. The therapy space on each floor consists of a large gym with six private individual treatment areas. Adjacent to the therapy gym is the speech therapy room. Resident and staff support spaces will be centrally located in the interior of each floor. The resident support space features a central shower room with one standard shower and two showers able to accommodate a stretcher, two resident nourishment rooms, equipment alcoves, a social worker's office, and resident clean and soiled utility rooms. Staff support service space will be provided on each floor and include a staff lounge, conference room, nurse manager's office, and both central and decentralized nursing stations.

The 66 beds that will be relocated to the fourth floor will be composed of 29 double-bedded resident rooms and eight private rooms. In 27 double-bedded resident rooms and one private resident room, the placement of a residential chair in those rooms would block access to the resident wardrobe requiring staff to assist residents in accessing clothing and belongings for residents on the unit regardless of the resident level of function and independence with dressing.

In five private resident rooms and two double-bedded resident rooms, the resident chair blocks access to the resident bathroom, requiring staff to assist residents in moving the chair and accessing the bathroom for residents on the unit regardless of the resident's level of function and independence with toileting.

These resident room space constraints currently exist throughout the entire building. Rooms on the ninth and tenth floors of the DMRI building are increasing in size by 50% as part of the renovation to construct the 80-bed Young Adult Unit. However, renovations to the fourth floor where 66 current residents will be relocated will not include structural changes, as those would not be feasible.

The fourth floor of the Briger building currently has 18 double-bedded rooms and five private resident rooms. The fourth floor of the Briger building contains former medical-surgical inpatient rooms, which are not currently in use, and the floor is currently unoccupied. In every resident room, the resident chair blocks access to the resident wardrobes, and the chair would be required to be moved every time a resident needed access to their belongings. In resident room 432, the resident bathroom door cannot be fully opened due to a bedside table being located behind it.

Acknowledgment of Exception to 2018 FGI 3.1-2.2.2.2.

42CFR 483.90 (e) 2 (iv) requires the facility to provide each resident with functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

The proposed resident room clearances on the fourth floor are not compliant with 2018 FGI 3.1-2.2.2.2, which states that resident rooms should be sized, arranged, and furnished to maximize safe resident mobility, mobilization, and ambulation potential while minimizing risk to caregivers.

To address the issue of promoting residents' highest practical well-being, while providing functional furniture appropriate to residents' needs, including providing a comfortable alternative to bed-stay, Rutland has policies and procedures in place to assess a resident's needs and preferences and create a customized interdisciplinary care plan to meet their individualized alternate seating needs, while maintaining a safe environment.

Acknowledgment of exception to 2018 FG1 3.1-2.2.2.2 is being provided under this demonstration project authorized by PHL §2808-e as a rigid application to the current space on the fourth floor of the DMRI building and fourth-floor Briger building would result in unreasonable hardship to the facility, any required structural changes are not feasible, and waiver of this provision will not impact resident health and safety. This determination is conditional upon the facility's immediate and ongoing implementation of policies and procedures and the provision of equipment and personnel as necessary to ensure a level of resident and staff safety and dignity of resident care services and care as required by regulation, the above-noted deficiency, and this determination notwithstanding. All policies and procedures must be acceptable to the Regional Office.

Approval for use of the fourth-floor Briger building as temporary space is time-limited for a period to expire upon completion of this project and not later than February 1, 2024.

Rutland Nursing Home, Inc. currently has no outstanding civil monetary penalties or pending enforcement.

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Rutland Nursing Home, Inc.	Current	***	**	*****	***
	07/1974 Data 01/2009	****	***	***	****

Data date: 03/2022

Conclusion

Rutland Nursing Home, Inc. is one of two providers in New York State awarded the opportunity to operate a Young Adult Demonstration Program. The program was created for medically fragile children in transition to young adults and young adults with complex medical conditions, as provided for by Public Health Law § 2808-e. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

The total cost to renovate and add moveable equipment is projected to be \$43,039,119, which is distributed as follows:

Renovation and Demolition	\$29,669,400
Asbestos Abatement/Removal	540,600
Design Contingency	1,186,776
Construction Contingency	2,966,940
Planning Consultant Fees	367,820
Architect / Engineer Fees	2,830,200
Other Fees (Consultant)	302,100
Movable Equipment	3,379,674
Telecommunications	1,558,200
CON Application Fee	2,000
CON Processing Fee	<u>235,409</u>
Total Project Cost	\$43,039,119

The total project cost of \$43,039,119 will be met from the Kings County Health Care Facility Transformation Program (KCHCFTP) grant. The KCHCFTP is a \$664M grant that provides capital funding to address the health care needs in Kings County served by the three hospitals and other OBHS facilities.

Enterprise Operating Budget

The applicant has submitted their current year (2020) enterprise operating budget in 2022 dollars consisting of all services provided by Rutland Nursing Home, for the first and third years after completion of this project. The budget projects a Year One net loss of \$2,024,740 and a Year Three net income of \$374,193. The loss in Year One includes \$2,516,371 in depreciation expense, without which the operations would generate \$491,631 in net income. Between the Current Year and Year One, Rutland anticipates a post-COVID-19 recovery in volume and revenue across its current service lines amounting to \$4,898,499. In the Current Year, Rutland Nursing Home operated as a hospital-based facility, with Kingsbrook Jewish Medical Center (KJMC) allocating shared services to the nursing home as indicated in the Institutional Cost Report. Due to downsizing at KJMC, Rutland now operates as a freestanding facility and provides certain administrative, fiscal, housekeeping, plant operation, and maintenance services on a direct basis resulting in projected savings for the nursing home between the Current and First Year.

The budget is summarized as follows:

	<u>Current Year (2020)</u>		<u>First Year (2025)</u>		<u>Third Year (2027)</u>	
	<u>PD</u>	<u>Total</u>	<u>PD</u>	<u>Total</u>	<u>PD</u>	<u>Total</u>
Revenue						
Medicare FFS	\$555.76	\$2,604,858	\$690.49	\$6,331,750	\$690.49	\$6,331,750
Medicare MC	\$554.76	2,619,585	\$504.91	2,673,000	\$504.91	2,673,000
Medicaid FFS	\$409.39	38,828,187	\$704.16	82,850,235	\$716.75	85,777,309
Medicaid MC	\$321.11	12,540,101	\$336.41	10,752,365	\$336.41	10,752,365
Private Pay	\$547.35	2,939,269	\$0	0	\$0	0
All Other*		<u>7,921,000</u>	<u>\$0</u>	<u>0</u>	<u>\$0</u>	<u>0</u>
Total		\$67,453,000		\$102,607,350		\$105,534,424
Expenses						
Operating	\$642.76	\$95,561,738	\$621.41	\$101,963,998	\$617.05	\$102,492,139
Capital	<u>6.96</u>	<u>1,034,262</u>	<u>16.26</u>	<u>2,668,092</u>	<u>16.06</u>	<u>2,668,092</u>
Total	\$649.72	\$96,596,000	\$637.67	\$104,632,090	\$633.11	\$105,160,231
Operating Gain/(Loss)		<u>\$(29,143,000)</u>		<u>\$(2,024,740)</u>		<u>\$374,193</u>
Transfer from Related Party		\$30,791,000				
Net Income / (Loss)		\$1,649,000				
Patient days		148,674		164,084		166,101
Occupancy		87.41%		97.40%		97.65%

* All Other revenue includes grant income and other income generated through operations.

The following is noted for the Rutland Nursing Home operating budget:

- The Current Year reflects the facility's 2020 payor mix and 2020 audited financial statements. The historical occupancy rate for the base year 2020 was 87.41% for all service lines.
- The Medicaid Fee for Service (FFS) revenue increase between Current Year and Year One includes the addition of the Young Adult Program.
- The Medicare FFS revenue increase in Years One and Three is a combination of geriatric and ventilator-dependent rates based on Medicare FFS collections between October 2020 and September 2021, which averaged \$630.00 per day inclusive of Medicare Parts A and B revenues and a market basket adjustment of 3.50%.
- Medicare Managed Care utilization in Years One and Three reflects an increase in the overall census at Rutland, which experienced reductions in census during 2020 as a result of the COVID-19 pandemic.
- Additional revenues include Medicaid reimbursement add-ons including supplemental payments, NHQI contributions, 1.5% ATB reduction, and historical cash receipt assessment data. The net impact of Medicaid reimbursement add-ons in Years One and Three amounts to \$4,353,524, and \$4,477,149, respectively.
- The applicant estimates approximately 16,425 patient days will be transitioned from Rutland's existing service lines to the Young Adult Program between the Current Year and Year One.
- Rutland's Skilled Nursing Facility (SNF) revenue, as shown in BFA Attachment F, is projected to decline in Years One and Three. The revenue decline is attributable to the conversion of 80 general RHCf beds to young adult beds.
- Census in the ventilator-dependent and pediatric service lines is expected to recover from pandemic-driven declines. Revenue increases, between Current Year and Year One, in BFA Attachment F, are based on the recovery of the census and an increase in average per diem rates.
- Expenses in the Current Year are based on actual stepdown/tracebacks from the 2020 RHCf-4 Cost Report. Expenses by service line are shown in BFA Attachment G.

- The applicant projects that during the First and Third years of the new bed complement the occupancy will be restored to reflect Rutland's overall historical levels of 93.48% and 96.24% in 2018 and 2019, respectively.

Utilization by payor source is projected as follows:

<u>Payor</u>	<u>Current Year</u>	<u>First Year</u>	<u>Third Year</u>
Medicare FFS	3.15%	5.59%	5.52%
Medicare MC	3.18%	3.22%	3.19%
Medicaid FFS	63.79%	71.71%	72.05%
Medicaid MC	26.27%	19.48%	19.24%
Private Pay	3.61%	0.00%	0.00%
Total	100.00%	100.00%	100.00%

Rutland's breakeven occupancy for the First- and Third-years beds is projected at 98.37% and 97.31%, respectively.

Incremental Young Adult Program Operating Budget:

The applicant has provided an incremental operating budget for the Young Adult Program at Rutland in 2022 dollars for Years One and Three, the incremental budget is summarized as follows:

	<u>Year One (2025)</u>		<u>Year Three (2027)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid	\$1,451.20	\$38,176,851	\$1,451.20	\$41,103,925
Total Revenue		\$38,176,851		\$41,103,925
<u>Expenses</u>				
Operating	\$1,432.37	\$37,681,367	\$1,349.01	\$38,209,508
Capital	<u>\$68.10</u>	<u>1,791,559</u>	<u>\$63.25</u>	<u>1,791,559</u>
Total Expense	\$1,500.47	\$39,472,926	\$1,412.26	\$40,001,067
Net Income/(Loss)		<u>(\$1,296,075)</u>		<u>\$1,102,858</u>
Patient Days		26,307		28,324
Occupancy		90.09%		97.00%

- For budget years One and Three, Medicaid revenues will be based on the operating component of pediatric residential health care facilities with an increase or decrease adjustment to account for any discrete expenses associated with caring for this population.
- Incremental young adult revenues include Medicaid reimbursement add-ons, including supplemental payments, NHQI contributions, 1.5% ATB reduction, and cash receipt assessments. The net impact of Medicaid reimbursement add-ons in Years One and Three amounts to \$1,612,489, and \$1,736,114, respectively. Based on the FY 2023 enacted budget, the applicant estimates Medicaid revenue projections to increase by approximately \$2,214,000 and \$2,284,000 in Years One and Three, respectively. Cash receipt assessment revenue is based on historical data and is based on revenues subject to the assessment.
- Year One and Three utilization is based on the applicant's current census and an assessment of 1,038 referrals for eligibility, of which the applicant identified 166 as eligible for potential admission to the Young Adult Program.
- Years One and Three reflect a reimbursement increase of \$1,072 per day for patients eligible for young adult services that are currently in the geriatric population. The \$1,072 per day is the difference between the estimated young adult rate and the current geriatric rate (\$1,377 - \$305 = \$1,072). This equates to \$28,201,104 more revenue for the young adult population as compared to the same utilization for geriatric patients.
- The young adult utilization in Year One is projected to be 26,307 days and will replace the baseline geriatric utilization at a higher reimbursement rate, with some reduced utilization in other areas.

- The staffing mix is based on standards of practice and experience with medically complex pediatric and young adult populations.
- Depreciation expense related to the Young Adult Unit construction is charged directly.

Capability and Feasibility

Between 2019 and 2021, Rutland reported average negative working capital, net asset position, and net income of \$9,930,333, \$24,011,000, and \$32,296,000, respectively, as shown in BFA Attachment B. In 2019 and 2020 Rutland reported an operating loss of \$32,179,000 and \$29,143,000, which was offset by \$26,580,000 and 30,791,000 in transfer from related parties, respectively. In 2020, Rutland experienced negative impacts from the COVID-19 pandemic which continued into 2021. This is evident by the decline in occupancy during the 2020 and 2021 periods to 87.4% and 80.3% respectively as compared to the 2019 occupancy rate of 96.2%. Rutland's March 2022 internal financial statements indicate the facility maintained positive working capital, and negative net assets and reported an operating loss of \$8,540,000 as shown in BFA Attachment C.

The total project cost of \$43,039,119 will be met in full from the Kings County Health Care Facility Transformation Program grant. The working capital requirement for the Young Adult Program is \$6,666,844 based on two months of the third-year expenses and will be satisfied from existing equity from the ongoing operations of OBHS. A review of financial statements for OBHS in BFA Attachments D and E indicates the entity has sufficient equity for the working capital requirements for this project. The submitted enterprise budget indicates a net loss of \$2,024,740 and a net income of \$374,193 will be generated for the first and third years, respectively. The loss in year one includes \$2,516,371 in depreciation expense, without which the operations would generate \$491,631 in net income. The budget appears reasonable.

As shown on BFA Attachment D, as of December 31, 2020, OBHS reported \$13,791,000 in negative working capital, a \$419,731,000 total net deficit, and an operating loss of \$11,927,000 which was increased by \$712,000 in non-operating losses and \$11,049,000 in unfavorable impacts from pension-related changes resulting in a \$23,670,000 net deficit. As shown in BFA Attachment E, for the period ending December 31, 2021, OBHS reported \$46,849,000 in negative working capital, \$386,509,000 total net asset deficit, and an operating loss of \$351,136,000. The operating loss was reduced by \$338,437,000 in non-operating revenues including VBP-QIP receipts of \$221,779,000 and VAPAP receipts amounting to \$114,878,000 resulting in a net deficit of \$12,698,000. BFA Attachment F is OBHS's financial summary for period ending March 31, 2022, during which OBHS reported \$86,027,000 in negative working capital, \$383,525,000 total net asset deficit, and an operating loss of \$116,137,000. The operating loss was offset by \$139,994,000 in non-operating revenues, consisting of \$55,445,000 in VBP-QIP and \$84,105,000 in VAPAP receipts, resulting in excess of revenues over expenses of \$23,857,000.

The projected system losses are expected to be offset through future system-wide transformation plan projects, including improvements to the post-acute care services, back-office and clinical service integration, proactive operating cash management strategies, or other corporate and clinical service line performance improvement initiatives planned but not yet implemented or quantified in the projection. The system's deficits are reflective of the challenges of financially distressed hospitals that serve communities with a high concentration of uninsured, under-insured, Medicaid, and Medicare enrollees, with complex medical and social, and economic needs, where the rate of growth of revenues does not keep pace with the rate of growth of expenses. The proposed Young Adult Program at Rutland is one of the post-acute care service initiatives and the capital component of the initiative is fully funded through the KCHCFTP grant.

Conclusion

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

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Rutland Nursing Home, Inc. Financial Summary 2018-2021
BFA Attachment C	Rutland Nursing Home, Inc. March 2022 Internal Financial Statements
BFA Attachment D	One Brooklyn Health System, Inc. 2020 Audited Financial Statements
BFA Attachment E	One Brooklyn Health System, Inc. December 2021 Internal Financial Statements
BFA Attachment F	One Brooklyn Health System, Inc. March 2022 Internal Financial Statements
BFA Attachment G	Rutland projected revenues by service line for Years 1 and 3
BFA Attachment H	Rutland projected expenses by service line for Years 1 and 3



Project # 212282-C
Auburn Community Hospital

Program: Hospital
Purpose: Construction

County: Cayuga
Acknowledged: April 7, 2022

Executive Summary

Description

Auburn Community Hospital (ACH), a 99-bed, voluntary not-for-profit, Article 28 acute care hospital located at 17 Lansing St., Auburn (Cayuga County), requests approval to construct a Radiation Oncology center and certify Radiology-Therapeutic O/P, Linear Accelerator (LINAC), and Medical Services – Other Medical Specialty services. ACH will contract with Upstate University Radiation Oncology, Inc. (UURO), a New York State not-for-profit University Faculty Practice Corporation of SUNY Upstate Medical University, to provide clinical physicians, technologists, and medical directors services for the center. The new building located on the ACH campus will include exam rooms, infusion rooms, a PET/CT scanner, a LINAC, and all appropriate support spaces.

OPCHSM Recommendation

Contingent Approval

Need Summary

Currently, there are no Article 28 LINACs in Cayuga county. The project will allow patients to receive radiation oncology services in Cayuga county instead of traveling to other counties to receive treatment.

Program Summary

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

Financial Summary

Total project costs of \$14,127,057 will be funded via \$329,263 in applicant’s equity, \$4,247,509 in seven-year equipment leases at 4.99%, and a landlord (Park Grove Acquisitions, LLC) financed loan of \$9,550,285 for 10 years at 5.75% for the new building. ACH will have the option to purchase the building after five years. The budget projects a net income of \$1,151,089 in the first year and \$1,537,291 by the third year.

Table with 3 columns: Budget, Year One 2024, Year Three 2026. Rows: Revenues (\$7,778,899 vs \$8,823,909), Expenses (6,627,810 vs 7,286,618), Net Income (\$1,151,089 vs \$1,537,291).

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 equipment lease for Varian Mobius 3D with FX, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment lease for Varian TrueBeam Linac, acceptable to the Department of Health. [BFA]
4. Submission of an executed equipment lease for Siemens Somatom go. sim, acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment for the real property development, acceptable to the Department of Health. [BFA]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]

Approval conditional upon:

1. This project must be completed by **April 1, 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 **January 1, 2023**, and construction must be completed by **January 1, 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]

Council Action Date

July 28, 2022

Need and Program Analysis

Project Proposal

There are currently no linear accelerators in Article 28 facilities in Cayuga County and patients travel outside of the county to receive radiation oncology services. This is generally a two-hour round trip from Auburn creating a hardship for many patients and families. Radiation therapy is a series of treatments that can typically entail 12-18 visits per round of treatments.

ACH will contract with Upstate University Radiation Oncology, Inc. (UURO), a New York State not-for-profit University Faculty Practice Corporation of SUNY Upstate Medical University, to provide clinical physicians, technologists, and medical directors services for the center.

The applicant reports that adding the service will improve patient outcomes through a comprehensive approach to care delivery at all levels of the healthcare system. Providing this service will lower the cost of healthcare by coordinating healthcare services between providers to deliver the highest quality of patient care. ACH will collaborate on patient care to improve patient outcomes and the overall health of the communities they serve, and they will improve healthcare quality by reducing dependency on hospitalization, emergency care, and avoidable utilization of services through improved care coordination.

Staffing is expected to increase as a result of this construction/expansion project by 20.0.0 FTEs at Year One of the completed project with no additional increase at Year Three.

Regulation

10 NYCRR §709.16 (excerpted) Oct. 5, 2005

The factors for determining the public need for megavoltage (MEV) devices used in therapeutic radiology shall include, but not be limited to, the following:

- (1) No equipment other than four or more MEV or cobalt teletherapy units with a source axis distance of 80 or more centimeters and rotational capabilities will be considered appropriate as the primary unit in a multi-unit radiotherapy service or as the sole unit in a smaller radiotherapeutic unit.
- (2) Ninety-five percent of the total population of each health region is within a one-hour mean travel time, adjusted for weather conditions, of a facility providing therapeutic radiology services.
- (3) The expected volume of utilization sufficient to support the need for an MEV machine shall be calculated as follows:
 - (i) Each applicant and MEV machine shall provide a minimum of 5,000 treatments per year and have the capacity to provide 6,500 treatments per year. These volumes may be adjusted for the expected case mix of a specific facility.
 - (ii) Sixty percent of the annual incidence of cancer cases in a service area will be candidates for radiation therapy.
 - (iii) Fifty percent of radiation therapy patients will be treated for cure with an average course of treatment of 35 treatments and fifty percent of patients will be treated for palliation with an average course of treatment of 15 treatments. These estimates may be adjusted based on the case-mix of a specific facility.

Based on 10 NYCRR §709.16, the public need for linear accelerators in Cayuga County is:

1	Number of Cancer Cases per Year	526.4
2	60% will be Candidates for Radiation Therapy	330.96
3	50% of (2) will be Curative Patients	165.48
4	50% of (2) will be Palliative Patients	165.48
5	Course of Treatment for Curative Patients is 35 Treatments	5,791.80
6	Course of Treatment for Palliative patients is 15 Treatments	2,482.20
7	The Total Number of Treatments [(5) + (6)]	8,274.00
8	Need for MEV Machines in Nassau (Each MEV Machine has Capacity for 6,500 Treatments)	1.27
9	Existing/Approved Resources	0
10	Remaining Need for MEV Machines	1.27

Analysis

The applicant projects 170 radiation patients in the first year, and 190, and 210 patients in Years Two and Three. Each patient is expected to average 24 treatments. Per the need methodology set forth in 10 NYCRR §709.16, it is expected that each linear accelerator can accommodate between 5,000 and 6,500 treatments per year.

Linear Accelerator	Year 1	Year 3
Treatments	4,080	5,040

According to Data USA, in 2019 94.9% of the population in Cayuga County has health coverage as follows:

Employer Plans	48.6%
Medicaid	18.4%
Medicare	13.7%
Non-Group Plans	12.6%
Military or VA	1.57%

Prevention Agenda

The Prevention Agenda priorities selected for action in Cayuga County's most recent Community Health Improvement Plan include:

- Prevent Chronic Diseases
- Promote Healthy Women, Infants, and Children

The proposed project does not directly address these Prevention Agenda priorities; however, the project will improve access to important cancer treatment services for affected individuals within Cayuga county. Additionally, the project will serve to eliminate/attenuate transportation as a barrier for radiation oncology services and provide state-of-the-art cancer care services through collaboration with SUNY Upstate.

Auburn Community Hospital did not report spending in Community Health Improvement Services and Community Benefit Operations in their 2018 Form 990 Schedule H; however, they did report \$282,883 in Financial Assistance at Cost, and \$6.5 million in Medicaid.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Conclusion

The project will allow patients to receive radiation oncology services in Cayuga county instead of traveling to other counties to receive treatment. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost

The total project cost for construction and equipment related to Article 28 is estimated at \$14,127,057, broken down as follows:

New Construction	\$6,588,000
Site Development	250,000
Design Contingency	659,000
Construction Contingency	363,000
Architect/Engineering Fees	653,000
Other Fees	895,285
Movable Equipment	4,497,509
Telecommunications	142,000
Application Fee	2,000
Processing Fee	<u>77,263</u>
Total Project Cost	<u>\$14,127,057</u>

The applicant's financing plan is as follows:

Applicant - Cash Equity	\$329,263
Applicant – Equipment Leases - Siemens Financial Services, Inc. (7 years at 4.99%)	4,247,509
Landlord – 10-year loan at 5.75%	<u>9,550,285</u>
Total	\$14,127,057

ACH will fund the total project costs of \$14,127,057 through \$329,263 in equity (\$250,000 used for moveable equipment and \$79,263 in fees), \$4,247,509 equipment lease and \$9,550,285 building lease. Five Star Bank submitted a letter of interest to finance the construction of the building.

ACH can purchase the Cancer Center after the fifth (5th) year and has created a fundraising plan. Its goal is to raise \$5 million by 2024. Senator Schumer and Representative Katko are sponsors of a \$2 million FY 2023 Federal Budget appropriation, which will be used to purchase a PET-CT scanner. They have a history of raising funds through yearly events, capital campaign appeals, and grants.

Operating Budget

The current year's financial performance is for oncology only. Their first-year and third-year operating budgets include both (oncology & radiation) in 2023 dollars, as shown below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>						
Commercial FFS	\$2,708	\$2,158,596	\$2,048	\$4,838,923	\$2,039	\$5,492,373
Commercial MC	\$212	5,713	\$292	23,353	\$311	28,345
Medicare FFS	\$1,206	651,025	\$875	1,401,384	\$866	1,580,510
Medicare MC	\$1,115	571,818	\$833	1,267,962	\$828	1,436,768
Medicaid FFS	\$46	2,493	\$86	13,733	\$93	17,008
Medicaid MC	\$166	71,812	\$141	180,292	\$142	208,006
All Other	\$238	<u>22,589</u>	\$190	<u>53,252</u>	<u>\$192</u>	<u>60,899</u>
Total Revenue		\$3,484,046		\$7,778,899		\$8,823,909

	<u>Current Year</u> <u>2021</u>		<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Expenses</u>						
Operating	\$1,047	\$2,600,662	\$706	\$5,202,301	\$701	\$5,883,518
Capital	<u>0</u>	<u>\$0</u>	<u>\$193</u>	<u>1,425,509</u>	<u>\$167</u>	<u>1,403,100</u>
Total	\$1,047	\$2,600,662	\$899	\$6,627,810	\$868	\$7,286,618
Net Income		<u>\$883,384</u>		<u>\$1,151,089</u>		<u>\$1,537,291</u>
Patient Visits		2,485		7,369		8,399

The patient visits stated above include radiation visits of 0 in the current year, 4,080 by Year 1, and 5,040 by Year Three. The remainder of the visits are for Oncology.

Utilization by payor source for the current year and years one and three are summarized below:

<u>Payor</u>	<u>Current Year</u> <u>2021</u>		<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	797	32.07%	2,363	32.07%	2,694	32.08%
Commercial MC	27	1.09%	80	1.09%	91	1.08%
Medicare FFS	540	21.74%	1,602	21.74%	1,826	21.74%
Medicare MC	513	20.64%	1,522	20.64%	1,735	20.66%
Medicaid FFS	54	2.17%	160	2.17%	183	2.18%
Medicaid MC	432	17.38%	1,282	17.40%	1,461	17.39%
Charity	27	1.09%	80	1.09%	91	1.08%
Other	<u>95</u>	<u>3.82%</u>	<u>280</u>	<u>3.80%</u>	<u>318</u>	<u>3.79%</u>
Total	2,485	100%	7,369	100%	8,399	100%

The following is noted concerning the submitted operating budget:

- The primary service area (PSA) includes the towns of Auburn, Moravia, Skaneateles, Weedsport, Port Byron, and Union Springs.
- Utilization and revenue projections by payor were based on the ACH's experience servicing its existing oncology patients, market study, and input from SUNY Upstate Medical University (SUNY Upstate).
- Payment rates for radiation therapy services were based on SUNY Upstate's experience. The averages by payor were based upon ACH's current payor mix for its existing oncology-hematology service.
- Payment rates for oncology were based on ACH's internal data.
- Staffing was developed in consultation with SUNY Upstate based on actual expenses for Oncology Services plus changes in volume and the addition of the Radiation Service Line.
- Expenses were developed in consultation with SUNY Upstate. The new building lease cost was calculated based on the construction costs multiplied by a lease factor plus estimated triple net costs.

Radiation Oncologist Services Agreement

The applicant has submitted a draft Radiation Oncologist Services Agreement, as summarized below:

Client:	Auburn Community Hospital (ACH)
Provider:	Upstate University Radiation Oncology, Inc. (UURO)
Billing Fees:	ACH shall have exclusive authority to determine the fees, and bill and receive payment.
Services:	<u>Service Location and Time:</u> UURO shall provide usual and customary full-time operation Monday through Friday. <u>Physician Services:</u> UURO will be responsible for providing clinical professional services for radiation oncology and participating in clinical supervision. Services to be provided by currently approved methods and standards.

	<p><u>Physician Management:</u> In collaboration with ACH, UURO will help manage all aspects of the physicians assigned for coverage at the Cancer Center.</p> <p><u>Administrative Services:</u> Physician(s) shall also perform such other administrative duties as the Parties may be mutually agreed to from time to time. Administrative shall include, as required, participation in the credentialing, quality assurance, and utilization review activities as related to Cancer Center.</p> <p><u>Medical Director Services:</u> A UURO physician shall serve as the Medical Director for the Cancer Center.</p>
Term:	Eight (8) years. Automatically renew for successive terms of five (5) years.
Fee:	\$750,000 in year (3% annual increase)

Purchase and Sale Agreement

The applicant has submitted an executed Purchase and Sale Agreement to sell for \$100,000 a portion of the applicant's parking lot to the builder (landlord) of the new Cancer Center, as summarized below:

Date:	November 4, 2021
Seller:	Auburn Community Hospital a/k/a Auburn Memorial Hospital
Buyer:	Park Grove Acquisitions, LLC.
Premises Real Property:	Approximately 1.5 acres of land (part of tax map 16.21-1-35.13)
Payments by Buyer:	\$100,000 less \$5,000 previously deposited

Equipment Lease Agreement

The applicant has submitted a draft equipment lease for Varian Truebeam Linac, Varian Mobius 3D with FX, and Service Package, as summarized below:

Equipment:	Varian TrueBeam Linac and Varian Mobius 3D with FX
Lessor:	Siemens Financial Services, Inc.
Lessee:	Auburn Community Hospital
Price:	\$3,570,934 (Purchase of equipment at the end of the lease is \$1 each)
Term:	Seven years
Rent:	\$602,946 annually or \$50,245.52 monthly, including interest at 4.99% (There is a proposal with the enclosed terms)

The applicant has submitted a draft equipment lease for Somatom Go. Sim, as summarized below:

Equipment:	Siemens Somatom Go. Sim
Lessor:	Siemens Financial Services, Inc.
Lessee:	Auburn Community Hospital
Price:	\$676,575 (The purchase of equipment at the end of the lease is \$1)
Term:	Seven years
Rent:	\$114,238 annually or \$9,519.87 monthly interest, including interest at 4.99% (There is a proposal with the enclosed terms)

Lease Agreement

The applicant submitted a letter of terms which is summarized below:

Premises:	11,471 square feet at 17 Lansing Street, Auburn, New York.
Landlord/Lessor:	Park Grove Acquisitions, LLC
Lessee:	Auburn Community Hospital
Term:	Twenty years with Two (2) five (5) renewal options
Rent:	\$764,023 with 2% per year annual increase
Provisions:	Triple Net
Other:	Lessee has the right of the first offer to purchase the Premises after the fifth (5 th) year)

The applicant attested that the lease arrangement is an arm's length agreement. The applicant has provided two letters from NYS licensed realtors attesting to the reasonableness of lease terms.

Capability and Feasibility

The total project costs for this application are \$14,127,057, funded through \$329,263 in applicant's equity, \$4,247,509 in equipment leases, and \$9,550,285 for the new building constructed by the landlord (Park Grove Acquisitions, LLC). The equipment leases will be for seven years at 4.99%. Park Grove Acquisitions, LLC expects to finance the \$9,550,285 with a 10-year loan at the stated terms above. Siemens Financial Services, Inc submitted a preliminary financing proposal for equipment leases. In addition, Five Star Bank submitted a letter of interest to finance the building's construction.

Working capital requirements are \$1,214,436 based on two months of third-year expenses, including the existing oncology of \$666,484 and the new radiation program of \$547,952. BFA Attachment A shows the operations' first-year cash flow of \$464,379. The applicant indicated they would utilize existing cash and ongoing operations to fund any additional working needs. In addition, the applicant stated there is \$816,895 of restricted assets in Auburn Community Hospital Foundation, Inc. that could be released upon approval from the New York Attorney General. The submitted budget shows a first-year profit of \$1,151,089 and a \$1,537,291 profit in the third year. The budget appears reasonable.

BFA Attachment B is Auburn Community Hospital and Affiliate's 2020 - 2021 draft Certified Financial Statements and their March 31, 2022, Internals, which show negative working capital, positive assets, and loss from operations. BFA Attachment C is the September 2021 Board Financials with a year-to-date (YTD) loss of \$5,424,750 and a September 2021 normalized income statement; without COVID-19 and labor shortages the loss would be \$1,457,049. The applicant indicated the following steps are being implemented to improve operations, mitigate losses, and improve resources:

- Submitting FEMA reimbursement requests for COVID Costs. Applications for COVID relief for \$2.2 and \$9.2 million have already been submitted and are awaiting payments through 12/31/2021. The applicant intends to submit an application for COVID relief for the capital cost (computers/ air cleaners/ etc.) and any personal protective equipment along with continued expenses for the first two applications already submitted until the end of the federal emergency;
- The applicant has submitted a Transformation Capital Grant Requests for Cardiology Practice Acquisition and Provider-Based Physician Renovations within the hospital and the expansion of Operating Rooms for Interventional Radiology/Cath Procedures/Orthopedic Surgery to expand these services in conjunction with Upstate Physician support;
- Submitting a VAP application for \$4.8 million to support cardiology and oncology services. \$1.6 million per year for three years;
- This CON (a new service line of Radiation Services) is expected to provide a positive contribution margin of over \$1 million per year;
- Senator Schumer has submitted a budget request for \$2.365 million for Auburn to install a positron emission tomography (PET) scan and parking improvements to build upon the Cancer Center Plan. PET is a new modality that we do not currently offer. The nearest PET is in Syracuse;
- Continue to pursue grant opportunities such as the \$396,501 grant application to Mother Cabrini Health Foundation;
- Working with SUNY Upstate on a rural resident training track in partnership with their Family Residency Program to continue the affiliation work. Resident applicants will be reviewed in October. The First year at SUNY Upstate/VA, Second and third years at Auburn;
- Mercer review of the human resources department, nurse retention, recruitment, and providing a road map;
- Working with Healthlinx on nurse leadership and manager retention and training;
- Through an NYS Transformation Grant, renovating existing hospital space including physician office space, and enhancing the 340B program;
- GPO Premier is providing purchasing leadership and identifying additional cost savings;
- Filling existing capacity with revenue opportunities (outpatient surgery, radiology, with continue grow in the physician practice);
- Improvements to the revenue cycle, verify billing is complete, payments are correct, outsource insurance follow-up after 90 days, enhance the systems to make them more patient-friendly, and renegotiate existing payor contracts where there is an opportunity;

- Expand the partnership with SUNY Upstate; and,
- Expand services such as cardiology.

Conclusion

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

Attachments

- BFA Attachment A Auburn Community Hospital projected cash flow in the first year
- BFA Attachment B Auburn Community Hospital 2020 – 2021 Draft Audited Financial Statements and March 31, 2022, Internal Financial Statement
- BFA Attachment C Auburn Community Hospital September 30, 2021, Board Financial Statement and September 30, 2021, Normalized Financial Statement



Project # 221105-C Strong Memorial Hospital

Program: Hospital Purpose: Construction

County: Monroe Acknowledged: April 5, 2022

Executive Summary

Description

Strong Memorial Hospital (SMH), an 886-bed, voluntary not-for-profit, Article 28 hospital at 601 Elmwood Avenue in Rochester (Monroe County), requests approval to construct a five-story inpatient bed tower, certify nine additional Intensive Care beds and 35 additional Medical/Surgical beds (44 net new, in total), and perform renovations to expand and modernize the Emergency Department (ED) and Comprehensive Psychiatric Emergency Program (CPEP).

Currently, the hospital operates over 100% of its licensed bed capacity with up to sixty patients boarding in the ED on any given day. The addition of the 44 beds will allow the census to be closer to an average of 95% occupancy rate and reduce boarding in the ED. The project will also increase SMH's complement of private beds from 75% to 95%, meeting community health care needs and expectations for patient and family privacy, improved infection control, and a more therapeutic and restful environment.

The existing ground and 1st floors of SMH will be renovated to expand and modernize the ED and CPEP. The new construction includes a southwest tower, which will house the westward expansion of the ED on the ground level, nearly tripling its footprint, and a new ED Observation Unit on the 3rd floor. The new tower will include shell space for future expansions.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant expects the addition of 44 beds to reduce their utilization to 95% and reduce ED boarding. This expansion will also create 114 private treatment spaces and 112 private inpatient rooms, increasing the ability to isolate children and critical cases. In addition, the expansion of the ED will support SMH's state designations as a level 1 Adult and Pediatric Trauma Center through the addition of 3 bays for adult acute, 7 for critical care, 4 for trauma, and 20 for pediatric care.

Program Summary

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

Financial Summary

Total project costs of \$557,250,894 will be met via \$257,250,894 of accumulated funds from SMH's operations and \$300,000,000 of tax-exempt bond proceeds. The bond issuance will be underwritten by BarClays at an interest rate of 3.25% for a 30-year term. In the event SMH is unable to obtain financing, the project will be funded by equity. The proposed budget, in thousands, is as follows:

Table with 4 columns: Budget (000's), Current, Year One, Year Three. Rows: Revenues, Expenses, Gain.

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Approval.

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 State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of the County Bond and Note Resolution acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12 [SEQ]

Approval conditional upon:

1. This project must be completed by **November 1, 2027**, 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 **April 1, 2023**, and construction must be completed by **August 1, 2027**, 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]

Council Action Date

July 28, 2022

Need and Program Analysis

Analysis

Bed Category	Current	Change	Proposed
Burns Care	7		7
Coronary Care	8		8
Intensive Care	98	9	107
Maternity	45		45
Med/Surg	467	35	502
Neonatal Continuing Care	14		14
Neonatal Intensive Care	34		34
Neonatal Intermediate Care	20		20
Pediatric	56		56
Pediatric ICU	24		24
Physical Medicine	20		20
Psychiatric	93		93
Total	886	44	930

Through this project, Strong Memorial Hospital (SMH) hopes to address the following issues:

- Current census in medical-surgical beds of over 100% results in the inability to accept and place all patients referred to SMH from the surrounding region.
- The lack of inpatient beds has caused as many as 80 patients boarding in the ED until an inpatient bed becomes available.
- Lack of space in the current ED requires patients to be doubled in single rooms, cared for in hallways, or in waiting rooms.
- Current inability to place patients in private rooms as needed to accommodate privacy, optimal infection control, and a therapeutic and restful environment for patients and their families.
- Inability to meet the national standard for private beds for the majority of patients.

SMH is the largest employer and the largest, most specialized academic health care hospital in Upstate New York providing care to a population of over 2.6 million. SMH serves as the safety-net hospital for the most vulnerable citizens in both urban and rural communities and provides approximately \$70 million annually in uncompensated and charity care to the most in-need community members. A table detailing SMH's hospital discharge service area can be found in BPNR Attachment A.

Staffing is expected to increase as a result of this construction/expansion project by 166.6 FTEs to a total of 2,965.6 FTEs in the first year of the completed project and increase by 124.6 FTEs for a total of 3,089.9 FTEs by the third.

Expected benefits of the new bed tower include:

- Providing fully code-compliant ICU-capable rooms.
- Reducing infection control risks due to the creation of private rooms.
- Enhancing patient privacy and experience through modern renovations.
- Pandemic and disaster readiness capable flex beds.
- Facilitating patient placement through the use of private rooms, improving throughput.

The bed tower layout will be as follows:

- 1st Floor: CPEP, Psych ED, shell space for ORs and special procedure rooms, and connection to existing Strong Memorial Hospital
- 2nd Floor: there is no 2nd floor in order to align with the existing hospital building
- 3rd Floor: 48-bed ED Observation Unit, Census Management offices, URM Emergency Command Center, ED administrative offices, shell space for a future 30-bed unit, and connection to existing Strong Memorial Hospital

- 4th Floor: Mechanical infrastructure, building support services, and connection to existing Strong Memorial Hospital
- 5th Floor: shell space for future 28-bed unit
- 6th Floor: 28-bed medical/surgical unit
- 7th Floor: 28-bed cardiac ICU unit
- 8th Floor: 28-bed medical/surgical unit
- 9th Floor: 28-bed medical/surgical unit

Average Daily Census (ADC), Average Length of Stay (ALOS), and Occupancy by Service								
Bed Category	Certified Beds	Measure	2019 Total	2020 Total	2021 1st Q	2021 2nd Q	2021 3rd Q	2021 Total
Medical/Surgical	600	ADC	553.2	550.0	609.9	606.0	563.6	595.2
		ALOS	6.9	7.1	7.6	7.0	7.0	7.2
		Occupancy	92.2	91.7	100.0	100.0	93.9	99.2
Pediatric	80	ADC	40.7	38.7	41.9	42.9	46.0	43.8
		ALOS	4.1	4.5	4.6	4.1	3.8	4.1
		Occupancy	50.9	48.4	52.3	53.6	57.5	54.7
Obstetric	45	ADC	31.3	24.1	22.5	26.9	27.1	25.6
		ALOS	3.2	2.9	2.7	2.8	2.8	2.8
		Occupancy	69.5	53.6	50.0	59.8	60.2	56.9
Psychiatric	93	ADC	76.5	74.6	75.2	85.2	56.1	72.4
		ALOS	14.7	13.9	13.8	13.1	13.8	13.5
		Occupancy	82.3	80.3	80.9	91.7	60.4	77.8
High-Risk Neonates	68	ADC	46.8	62.3	57.0	69.2	68.0	65.0
		ALOS	24.7	28.5	28.0	26.3	22.3	25.2
		Occupancy	68.9	91.6	83.8	100.0	100.0	95.6
Total	886	ADC	748.5	749.8	806.5	830.2	760.8	801.9
		ALOS	7.0	7.4	7.7	7.2	6.9	7.3
		Occupancy	84.5	84.6	91.0	93.7	85.9	90.5

Data source: SPARCS inpatient data (1/1/2019-9/30/2021)

Date of last update: 02/17/2022; 4th Quarter of 2021 is not available for this facility

As seen in the table above, over the last two years SMH has seen extremely high Medical-Surgical numbers averaging 99-100%.

Emergency Department and Ambulatory Surgery Data				
Period	Total Visits per Study		Visits per Treatment Bay / OR	
	SMH ED	Amb/Surg	SMH ED	Amb/Surg
FY 2022 (7/1/21 - 5/31/22)	101,493	25,067	814	516
FY 2021	104,027	26,252	765	495
FY 2020	106,862	24,324	786	459
FY 2019	117,507	28,648	864	541
FY 2018	116,976	26,567	860	501
FY 2017	116,006	25,512	853	481
FY 2016	113,536	24,780	835	468
Current ED Treatment Spaces			136	
Proposed ED Treatment Spaces			157	
Current ORs				53

Source: Applicant

Note: FY runs July 1 through June 30

Emergency Department Treatment Spaces		
Treatment Area	Existing ED	Upon Completion
Adult Acute	60	63
Bio/Decon.	0	1
Behavioral Health/Safe Sobering	12	12
Verticare	25	17
Fast Lane	6	0
Critical Care	11	18
Specialty Procedure	1	1
Trauma	2	6
Pediatric	19	39
Total Main ED	136	157

Source: Applicant

Strong Memorial Hospital has the following designations:

- AIDS Center.
- Burn Center.
- Comprehensive Stroke Center.
- Level 1 Adult Trauma Center.
- Level 1 Pediatric Trauma Center.
- Regional Perinatal Center.
- SAFE Designated Hospital.

According to Data USA, in 2019 95.5% of the population in Monroe County has health coverage as follows.

Employer Plans	50.3%
Medicaid	19.8%
Medicare	13.4%
Non-Group Plans	13.4%
Military or VA	0.47%

Prevention Agenda

The Prevention Agenda priorities selected for action in Monroe County's most recent Community Health Improvement Plan include:

- Promote Well-Being and Prevent Mental and Substance Use Disorders
- Promote Healthy Women, Infants, and Children

While the proposed project does not directly address these Prevention Agenda priorities, SMH's planned expansion of the CPEP will expand services and capacity for individuals living with mental and substance use disorders. Additionally, SMH reports the proposed addition of private beds will improve privacy, and infection control, and provide for a more therapeutic and restful environment for patients, including women, infants, and children.

Currently, SMH reports instances of up to 80 patients boarding in the emergency department while awaiting placement in an appropriate bed, this includes patients doubled in single rooms, and being treated in hallways and waiting areas.

SMH reported \$1.34 million in Community Health Improvement Services and Community Benefit Operations spending in their 2019 Form 990 Schedule H.

Compliance with Applicable Codes, Rules, and Regulations

The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of

payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Conclusion

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

Conclusion

The addition of 44 incremental beds will reduce SMH's occupancy to approximately 95% and reduce ED boarding. This expansion will also address private inpatient rooms and treatment spaces through the addition of 114 private treatment spaces and 112 private inpatient rooms, increasing the ability to isolate children and critical cases.

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and construction is estimated at \$557,225,894 and line-item detail is listed below:

	Article 28	Shell Space	Total
New Construction	\$278,325,816	\$71,172,771	\$349,498,587
Renovation & Demolition	23,635,263	-	23,635,263
Temporary Utilities	2,492,154	587,359	3,079,513
Asbestos Abatement or Removal	112,926	26,615	139,541
Design Contingency	10,615,699	1,152,483	11,768,182
Construction Contingency	16,420,272	3,589,337	20,009,609
Planning Consultant Fees	6,942,304	1,636,185	8,578,489
Architect/Engineering Fees	14,917,698	3,515,852	18,433,550
Construction Manager Fees	13,184,320	3,101,737	16,286,057
Other Fees	16,970,786	3,271,055	20,241,841
Movable Equipment	30,757,305	-	30,757,305
Telecommunications	23,384,571	-	23,384,571
Financing Costs	395,112	93,121	488,233
Interim Interest Expense	28,382,203	-	28,382,203
Application Fee	\$2,000	-	\$2,000
Processing Fee	\$2,565,950	-	\$2,565,950
Total Project Cost	\$469,104,379	\$88,146,515	\$557,250,894

The application contains \$469,104,379 of project costs that will be allowable for reimbursement purposes. The remainder of the costs are for 116,051 square feet of shell space. The applicant's financing plan appears as follows:

Equity	\$257,250,894
Tax Exempt Bond Proceeds (3.25% interest rate/ 30-year term)	\$300,000,000
Total	\$557,250,894

Operating Budget

The applicant has submitted an operating budget for SMH for the Current Year (2021), Year One (2026), and Year Three (2028). The submitted budget, in thousands, that has been adjusted to account for inflation appears reasonable.

	<u>PD/PV</u>	<u>Current Year (2021)</u>	<u>PD/PV</u>	<u>Year One (2026)</u>	<u>PD/PV</u>	<u>Year Three (2028)</u>
<u>Inpt Revenues</u>						
Commercial FFS	28,978	\$310,725,772	35,424	\$415,137,202	37,416	\$464,784,896
Commercial MC	19,343	24,255,682	23,654	32,406,182	24,987	36,281,749
Medicare FFS	25,846	188,675,122	31,592	252,074,560	33,371	282,221,029
Medicare MC	23,644	211,495,334	28,901	282,562,920	30,530	316,355,596
Medicaid FFS	21,725	31,935,798	26,551	42,667,004	28,050	47,769,699
Medicaid MC	16,886	174,198,363	20,642	232,733,258	21,803	260,566,633
Private Pay	929	192,303	1,132	256,923	1,199	287,647
All Other	23,756	<u>47,915,207</u>	29,032	<u>64,015,884</u>	30,669	<u>71,671,765</u>
Total IP Rev	23,428	\$989,393,581	28,637	\$1,321,853,933	30,250	\$1,479,939,014
<u>Outpt Revenues</u>						
Commercial FFS	474	\$572,280,504	51	\$704,491,789	533	\$755,537,688
Commercial MC	382	62,135,102	417	76,468,488	429	81,971,626
Medicare FFS	274	130,767,862	299	160,921,827	308	172,540,036
Medicare MC	298	253,219,096	326	311,560,195	335	333,890,416
Medicaid FFS	183	10,095,297	200	12,479,900	207	13,460,886
Medicaid MC	226	121,864,127	247	150,478,015	255	161,922,842
Private Pay	98	3,795,542	108	4,681,850	111	5,030,167
All Other	240	<u>22,094,601</u>	262	<u>27,225,612</u>	270	29,195,056
Total OP Rev	344	\$1,176,252,132	375	\$1,448,307,676	387	\$1,553,548,717
Total IP & OP Revenues		\$2,165,645,713		\$2,770,161,609		\$3,033,487,731
Other Oper Rev		<u>\$647,515,665</u>		<u>\$695,191,810</u>		<u>\$744,706,847</u>
Total Revenue		\$2,813,161,378		\$3,465,353,419		\$3,778,194,578
<u>Inpt Expenses</u>						
Operating	20,815	\$879,078,444	25,967	\$1,198,620,377	26,991	\$1,320,519,528
Capital		<u>0</u>	865	<u>39,917,472</u>	807	<u>39,469,841</u>
Total IP Expenses	20,815	\$879,078,444	26,832	\$1,238,537,849	27,798	\$1,359,989,369
<u>Outpt Expenses</u>						
Operating	436	\$1,491,613,121	490	\$1,890,360,066	510	\$2,046,676,230
Capital	33	111,790,611	30	114,237,192	28	114,237,192
Total OP Expense	468	<u>1,603,403,732</u>	520	<u>2,004,597,258</u>	538	<u>2,160,913,422</u>
Total Expenses		\$2,482,482,176		\$3,243,135,107		\$3,520,902,791
Net Income/(Loss)		<u>\$330,679,202</u>		<u>\$222,218,312</u>		<u>\$257,291,787</u>
Inpt Discharges		42,232		46,159		48,924
Outpt Visits		3,423,761		3,858,134		4,016,598

The following is noted for the submitted operating budget:

- Revenues are based on the facility's historical growth and the current reimbursement methodologies for inpatient and emergency department hospital utilization.
- Expense and utilization assumptions are based on the facility's historical experience in operating inpatient and emergency department services.
- The payor mix used was based on the historical volume of the payors for inpatient discharges and visits to the emergency department for outpatient services.

- The utilization reflects an increase from the ramp-up in years one and three from the addition of the 44 incremental beds and increased market availability to meet demand.
- The reduction in incremental revenue is due to the large portion of expenses related to the project's depreciation and interest expense.
- Operating expenses increase in years one and three from hiring additional staff to support operations, including the increase in utilization and larger footprint of the hospital.
- The 2021 financial results for SMH also include approximately \$167 million in CARES Act Provider Relief funding

Capability and Feasibility

Total project costs of \$557,250,894 will be met via \$257,250,893 of accumulated funds from SMH's operations and \$300,000,000 of tax-exempt bond issuance by the BarClays Corporation at a 3.25% interest rate for a 30-year term.

The June 30, 2021, Certified Financial Statements of Strong Memorial Hospital show the hospital has positive working capital, a positive net asset position, and operating excess of revenues over expenses of \$330,679,202 (BFA Attachment A) with a cash balance of \$659,080,349. The financial statement for this period indicates the availability of sufficient funds to meet the equity contribution and any working capital needs. The March 31, 2022, Internal Financial Statements of Strong Memorial Hospital (BFA Attachment B) indicate the entity had a positive working capital position, operating excess of revenues over expenses of \$77,179,426 and a cash balance of \$690,088,776. The operating results for SMH also include approximately \$167 million in CARES Act Provider Relief funding. The CARES Act funds received between April 10, 2020, and November 23, 2021, relate to the fiscal period 2020 (7/1/19-6/30/20) of \$76M, 2021 (7/1/20-6/30/21) of \$82M, and 2021 (7/1/21-6/30/22) of \$8.5M.

The submitted operating budget for the proposed project indicates a net gain of \$222,218,312 and \$257,291,787 in the first and third years, respectively. The submitted budget appears reasonable.

Conclusion

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

Attachments

HSA Attachment A	Finger Lakes Health Systems Agency Review
BPNR Attachment A	Strong Memorial Hospital Market Share
BFA Attachment A	June 30, 2021 and June 30, 2020 Certified Financial Statements of Strong Memorial Hospital.
BFA Attachment B	March 31, 2022 Internal Financial Statements of Strong Memorial Hospital.



Project # 221115-E
Apex Surgical Center

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Oneida
Acknowledged: April 15, 2022

Executive Summary

Description

Westmoreland ASC, LLC d/b/a Apex Surgical Center, an existing multi-specialty Article 28 Ambulatory Surgery Center at 5325 State Route 233, Westmoreland (Oneida County), is seeking approval to transfer 48.87% of the membership interest in the Center from three withdrawing members and four existing members to two new individual members, one new member LLC comprised of multiple individual members, and two existing members, as depicted in the Program Review. Upon approval of this application, the Center will continue to be owned and operated by Westmoreland ASC, LLC, with no changes in location or services provided.

The Center has a transfer agreement with Oneida Health Hospital approximately 14.3 miles away. Greg Steven Orlando, M.D., will continue to serve as the Medical Center Director.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change to services as a result of this application.

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 total purchase price for membership interests is \$676,183, which will be met with equity from the proposed member's cash resources. The budget projects a net income of \$200,349 in Year One and \$91,719 by Year Three.

Table with 3 columns: Category, Year One (2023), Year Three (2025). Rows: Revenues (\$9,257,076), Expenses (\$9,057,357), Net Income (\$200,349).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of a photocopy of an executed an amended and executed Certificate of Amendment of the Articles of Organization of Westmoreland ASC, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of SCD NY LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Restated Operating Agreement of Westmoreland ASC, LLC, acceptable to the Department. [CSL]
5. Submission of an executed Operating Agreement of SCD NY LLC, acceptable to the Department. [CSL]
6. Submission of an executed Lease, 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 any extensions to the project approval expiration date. [PMU]

Council Action Date

July 28, 2022

Need and Program Analysis

Background

Apex Surgical Center is located at 5325 State Route 233, Westmoreland in Oneida County. There will be no change to services as a result of this application. The Center began operations in July 2015 providing orthopedic, plastic, and pain management surgery services.

Character and Competence

The table below details the proposed change in ownership:

Member	Current	Proposed
Rudolph Buckley, MD	10.43%	6.00%
Greg Orlando, MD	10.43%	8.00%
Russell LaFrance, MD	10.43%	11.50%
David Patalino, MD	8.70%	8.00%
James Dennison, MD	8.70%	7.00%
Andrew Wickline, MD	8.70%	11.50%
Denny Battista, MD	4.35%	3.00%
Oneida Health Systems, Inc	17.40%	0.00%
Raymond Meeks, MD	10.43%	0.00%
Michael Zahn, MD	10.43%	0.00%
John Sullivan, MD***	-----	5.50%
Daniel Mendez, MD***	-----	1.50%
SCD NY, LLC***	-----	38.00%
<i>Stacy Berner, MD (15.24%)</i>		
<i>Nicole Facchina (1.32%)</i>		
<i>Kelly Fox (15.24%)</i>		
<i>Ian Friedman (2.63%)</i>		
<i>Gregory George, MD (14.14%)</i>		
<i>Emily Berend Grove (2.63%)</i>		
<i>William Gueck, MD (5.26%)</i>		
<i>Steven Hammerstrom (5.26%)</i>		
<i>Christine Merryman (1.97%)</i>		
<i>Sean O'Neal (10.53%)</i>		
<i>Vivek Sood, MD (10.53%)</i>		
<i>Ashley Urban (7.62%)</i>		
<i>William Urban, Jr (7.62%)</i>		
TOTAL	100%	100%

***Subject to Character and Competence review

John Sullivan, MD is an Orthopedic Surgeon at Slocum Dickson Medical Group, is a Chair of the Department of Orthopedics, and has been on the financial committee. He completed his medical degree at the New Jersey Medical School and his residency in Orthopedic Surgery at SUNY Downstate. He completed his Orthopedic Fellowship at Johns Hopkins University.

Daniel Mendez, MD is a Partner and Owner of CNY Spine and Pain Medicine, LLC. He was an Attending Physician at The Physical Medicine & Rehabilitation Center/Atlantic Health Care System. He was an Interventional Pain Physician at Advanced Surgery Center and at Patient Care Associates. He completed his medical degree at the Instituto Tecnológico de Santo Domingo and his residency in Internal Medicine and Physical Medicine and Rehabilitation at Nassau University Medical Center. He is board-certified in Physical Medicine and Rehabilitation.

SCD NY, LLC

SCD NY, LLC's members are principals of and children of principals of SurgCenter Development. SurgCenter Development has been involved in over 200 ASCs, including over 170 in the last ten years. It is SurgCenter Development's goal to create a generational business, whereby the children of the principals and employees of SurgCenter Development have the opportunity to learn the business and to eventually take over for their parents. As such, some of the children of principals of SurgCenter Development are being given the opportunity to participate as members of SCD NY, LLC. These lesser experienced members of SCD NY, LLC will be closely supervised by the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC, including Dr. Stacey Berner, Dr. Gregory George, Dr. Vivek Sood, and Ian Friedman. See Program Attachment A for a listing of affiliated ASCs, with ownership percentages, for the proposed members of SCD NY, LLC.

Stacey Berner, MD is CEO, President, and Managing Principal of SurgCenter Development. She is responsible for day-to-day operations. She was previously an Orthopedic Hand Surgeon at Advanced Centers for Orthopedic Surgery and Sports Medicine. She practiced as an orthopedic hand surgeon, operated, and helped run the ASC. She received her medical degree from Tufts University School of Medicine and her residency in General Surgery and Orthopedics at Medical College of Virginia. She completed a fellowship in Hand and Microsurgery at the Hospital for Special Surgery.

Nicole Facchina is a full-time student at the University of Miami. She interned at an ASC in Miami for four months where her responsibilities included supporting various aspects of the business office including Human Resources and accounting roles. Nicole Facchina is the daughter of a principal of SurgCenter Development and will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

Kelly Fox is a Business Consultant for PricewaterhouseCoopers Advisory Services. Her responsibilities are driving day-to-day across ongoing salesforce applications as well as any strategic initiatives for the company using Agile methodology. She collaborates with stakeholders to define functional requirements for known or identified opportunities for improvement, provides technical demonstrations of enhancements to stakeholders, and develops documentation of the configuration specifications of the client's Salesforce instance. Kelly Fox is the daughter of a principal of SurgCenter Development and will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

Ian Friedman is an attorney and the Vice President and Principal of SurgCenter Development. He is responsible for managing and addressing any and all legal issues the ASCs may encounter. He also has significant involvement in the day-to-day operations of the ASCs and the healthcare businesses. He was previously employed as an Associate Attorney at Ober, Kaler, Grimes & Shriver and his focus was healthcare and healthcare practice.

Gregory George, MD is a retired Ophthalmologist. He is a Founding Principal of SurgCenter Development. He is responsible for key business making decisions and voting on items delineated in the bylaws. He received his medical degree from Duke University.

Emily Ellis Berend Grove is a Ministry Director at Wheaton Young Life. She has previous volunteer experience. Her father is a surgeon and Principal of SurgCenter Development, and she will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

William Gueck, MD is a retired Emergency Room Physician. He is a Principal of SurgCenter Development, LLC. Since joining SurgCenter, Dr. Gueck has participated in and helped operate over 100 ASCs. He received his medical degree from St. Louis University School of Medicine and completed his residency in Internal Medicine at Mercy Medical Center in Missouri and his Emergency Medical residency in the Air Force.

Steven Hammerstrom, MD is a Principal at SurgCenter Development. He was previously a Founding Partner of six Comprehensive Foot Centers. He received his medical degree from the University of Osteopathic Medicine and Health Sciences and completed his residency in Podiatric Surgery at J.L. Pettis Memorial Hospital.

Christine Merryman is retired and was previously an Owner and Partner of SurgCenter Development. She played an active role in the development and day-to-day management of the team of healthcare professionals. She was directly involved in supporting over 200 physician-owned ASCs.

Sean O'Neal is the founding CEO and President of SurgCenter Development. He was previously employed as a hospital CEO for 20 years.

Vivek Sood, MD is a Managing Principal of SurgCenter Development. He is responsible for serving as one of three managers, the COO, and the Secretary of the company. He will be actively involved in the business decisions and be SCD NY, LLC's representative on the board of managers. He is also an Attending Physician and Surgeon at Bay Area Orthopedics & Sports Medicine, at Anne Arundel Medical Center, and at University of Maryland Baltimore Washington Medical Center. He received his medical degree from SUNY Health Sciences at Brooklyn and completed his residency in Orthopedic Surgery at SUNY Health Sciences at Brooklyn. He received subspecialty training in foot and ankle surgery at Mount Sinai Medical Center. He is board-certified in Orthopedic Surgery.

Ashley Urban is an undergraduate student at Syracuse University. Her father is a spinal surgeon and Principal of SurgCenter Development, and she will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

William Urban graduated in May 2022 from the University of Notre Dame with a Bachelor of Business Administration, majoring in Finance. He held several summer internships, including an Investment Banking intern at M&T Bank, a Private Wealth Management intern at Royal Bank of Canada, and a Commercial Real Estate intern at Rosso Commercial Real Estate Services. His father is a spinal surgeon and Principal of SurgCenter Development, and she will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

Legal Disclosures and Enforcements

- In November of 2019, two former Members of South Bend Specialty Surgery Center, LLC, a facility in which SurgCenter was an owner until April of 2018, filed a lawsuit against South Bend Specialty Surgery Center, SurgCenter Development, and other Members of South Bend Specialty Surgery Center alleging that their dissociation from the surgery center in early 2018 was improper. The litigation was promptly transferred to Arbitration. The arbitration is still pending, but to date, all but one of the plaintiffs' claims were dismissed via summary judgment and the remaining claim remains under consideration from the Arbitrator who will rule upon it after receiving additional briefings on that one issue.
- Advanced Surgical Care of Baton Rouge received Condition level citations from a survey ending on November 6, 2016, related to deficient practice regarding Surgical Services and Infection Control.
- Advanced Surgical Care of Bethesda received citations from a survey ending on August 30, 2018, related to deficient practices regarding Governing Body & Management and Infection Control. Specifically, the governing body failed to provide oversight of all the activities of the ASC and the administration failed to ensure that all measures to prevent infection control were practiced at the facility.
- Delaware River Surgical Suites, LLC received citations from a survey completed on August 6, 2020. Specifically, the facility failed to comply with an approved exception by not having documented post-surgery recovery plans, the facility failed to ensure patients were properly identified prior to a surgical procedure by the practitioner, and the facility failed to segregate their quality assurance and performance improvement data.
- In August 2015, SurgCenter of West Texas, LLC paid a \$4,400 fine for survey deficiencies related to required info/medical records, personnel/equipment policies and procedures, anesthesia services, and reporting incidents.

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

Program

The service area consists of Oneida County. According to Data USA, 96% of the population of Oneida County has health coverage as follows:

Employer Plans	46.0%
Medicaid	23.5%
Medicare	13.7%
Non-Group Plans	11.4%
Military or VA	1.4%

The center has Medicaid managed care contracts with the following: BCBS Excellus, CDPHP, Fidelis, MVP, and United Healthcare. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment. The following table shows the center's historical utilization and Medicaid share.

	2018	2019	2020
Visits	4,194	4,462	3,367
Medicaid	15.2%	12.5%	13.5%

The center is current with its SPARCS reporting.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted the 2020 current year budget and first and third years operating projected budget, in 2022 dollars, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2020</u>		<u>2023</u>		<u>2025</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>						
Commercial FFS	\$1,140.20	\$3,811,699	\$1,140.20	\$4,087,805	\$1,140.20	\$4,807,805
Commercial MC	\$1,271.58	490,828	\$1,271.58	526,382	\$1,271.58	526,382
Medicare FFS	\$827.87	1,106,033	\$827.87	1,186,150	\$827.87	1,186,150
Medicare MC	\$740.10	792,652	\$740.10	850,069	\$740.10	850,069
Medicaid FFS	\$705.62	825,449	\$705.62	885,242	\$705.62	885,242
Medicaid MC	\$609.03	22,035	\$609.03	23,631	\$609.03	23,631
Other Rev. Sources		<u>2,074,175</u>		<u>10,000</u>		<u>10,000</u>
Total Revenues		\$9,122,871		\$9,257,706		\$9,257,706

	<u>Current Year</u> <u>2020</u>		<u>Year One</u> <u>2023</u>		<u>Year Three</u> <u>2025</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Expenses</u>						
Operating	\$1,007.79	\$8,437,702	\$869.55	\$8,312,912	\$862.86	\$8,421,543
Capital	<u>\$61.27</u>	<u>545,118</u>	<u>\$77.87</u>	<u>744,445</u>	<u>\$76.27</u>	<u>744,445</u>
Total Expenses	\$1,069.05	\$8,982,240	\$947.42	\$9,057,357	\$939.14	\$9,165,988
Net Income		<u>\$140,451</u>		<u>\$200,349</u>		<u>\$91,718</u>
Utilization (Procedures)		8,914		9,760		9,760
Cost Per Procedure		\$1,069.05		\$947.42		\$939.14

The following is noted with respect to the submitted budget:

- Revenues, expense, and utilization are based on historical experience from procedures being performed at this practice.
- Other Rev includes no-fault, workers' compensation, Small Business Administration Paycheck Protection Program grant (\$436,836), and Provider Relief Fund grant (\$54,580) in the current year. COVID-related other revenues are not projected to reoccur in years One and Three.
- Projected payor rates are based on the current year's rates for a conservative Year One and Three projection.
- Operating expenses are based on the current year's operating expenses, increasing to account for inflation in Years One and Three.
- Current year utilization and revenues are based on the facility 2020 Certified Financial Statements.
- Year One and Three utilization is based on the facility's forecasted growth and additional procedures new member, John P. Sullivan, M.D. will be performing at the Center.
- Utilization by the payor for the current, first and third years is anticipated as follows:

<u>Payor</u>	<u>Current-2020</u>	<u>Year One-2023</u>	<u>Year Three-2025</u>
Commercial FFS	37.50%	36.73%	36.73%
Commercial MC	4.33%	4.24%	4.24%
Medicare FFS	14.99%	14.68%	14.68%
Medicare MC	12.01%	11.77%	11.77%
Medicaid FFS	13.13%	12.86%	12.86%
Medicaid MC	.40%	.40%	.40%
Other	17.64%	17.64%	17.64%
Charity	<u>0</u>	<u>2.05%</u>	<u>2.05%</u>
Total	100%	100%	100%

Membership Interest Purchase Agreement

The applicant submitted an executed membership interest purchase agreement exchanging the membership transfers which will be effectuated upon PHHPC approval as shown below.

Date:	August 3, 2021
Facility:	Westmoreland ASC, LLC d/b/a Apex Surgical Center
Sellers:	Raymond Meeks, M.D.; Michael Zahn, M.D.; Rudolph Patalino, M.D.; Greg Orlando, M.D.; Oneida Health Systems, Inc.
Buyers:	SCD NY, LLC; SDNY 38%; John Sullivan, M.D. 5.5%; Daniel Mendez, M.D. 1.5%. Current owners purchasing more membership interest; Russell Lafrance, M.D.; Andrew Wickline, M.D.
Purchase Price:	\$676,183
Payment:	At the closing, the purchase price will be paid proportionally by all members.

Lease Agreement

The applicant has submitted a draft new or amended lease agreement for the proposed site, the terms of which are summarized below:

Premises:	17,292 +/- Square Feet located at 5325 State Route 233, Westmoreland.
Landlord:	Westmoreland Development Company NY, LLC.
Lessee:	Westmoreland ASC, LLC
Term:	2 successive five-year terms after the original totaling 10 years.
Rental:	Monthly base rent is \$30,643.02 or \$367,716.24 annually.
Provisions:	The lease is Triple Net where the tenant shall be responsible for gas, utilities, losses, damages, and any unforeseen costs associated with the property.

The lease agreement is a non-arm's length agreement as Westmoreland Development Company indicated there is a relationship between the landlord and tenant as there is common ownership between the realty and operations. The applicant submitted two letters of rent reasonableness from two licensed New York Realtors.

Capability and Feasibility

There are no project costs with this application. The purchase price for the transfer in membership cost is \$676,183, to be paid at the closing proportional to each member's interest. Ian Friedman of SCD NY, LLC, submitted an executed disproportionate share affidavit stating he will contribute personal resources disproportionate to his interest to help any other member of SCD NY, LLC. The applicant has demonstrated sufficient funds to meet the equity requirements as shown in BFA Attachment A. The working capital requirement is \$1,509,560 based on two months of Year One expenses. The applicant will fund working capital from operations.

The submitted budget projects a net income of \$200,349 in Year One and \$91,718 by Year Three of project implementation. The budget appears reasonable.

A review of BFA Attachment D, 2019-2020 certified financial statements, 2021 year-end financial statement, and 2022 first quarterly internal financial statement, show the entity maintained positive working capital and net asset positions for both years. The facility achieved a net income of \$43,624 and \$140,451 during 2019 and 2020, respectively. December 31, 2021, year-end internal financial statement shows a positive working capital and equity position and achieved a positive net income of \$1,138,147. On March 31, 2022, the facility maintained a positive working capital and a positive equity position and achieved a net income of \$489,678.

Conclusion

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

Attachments

Program Attachment A	List of Affiliated ASCs and Ownership Interests
BFA Attachment A	Net Worth Statement Proposed Membership
BFA Attachment B	Current and Proposed Membership after PHHPC approval
BFA Attachment C	Pro forma Balance Sheet – Westmoreland ASC, LLC (Apex)
BFA Attachment D	Certified Financial Statement of Westmoreland ASC, LLC for 2019 and 2020 Internal year-end 2021 financial statement and 1/1/22 - 3/31/22 F/S

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 28th day of July 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer a total of 48.87% ownership interest from three withdrawing members and four existing members to two new individual members, one new member LLC comprised of multiple individual members, and two existing members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

221115 E

Apex Surgical Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of a photocopy of an executed an amended and executed Certificate of Amendment of the Articles of Organization of Westmoreland ASC, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of SCD NY LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Restated Operating Agreement of Westmoreland ASC, LLC, acceptable to the Department. [CSL]
5. Submission of an executed Operating Agreement of SCD NY LLC, acceptable to the Department. [CSL]
6. Submission of an executed Lease, 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 any extensions 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 # 221070-B Pinpoint Medical, LLC

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: March 22, 2022

Executive Summary

Description

Pinpoint Medical, LLC (Center) requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 649 39th Street, Brooklyn (Kings County). Pinpoint Medical, LLC is a newly formed entity whose sole member is Ateres Mordechai, an existing not-for-profit corporation. The board of managers of Pinpoint Medical, LLC and the board of directors of Ateres Mordechai are identical and listed below:

Table with 2 columns: Member, Interest. Row 1: Ateres Mordechai, 100%. Section: Board Members. Row 2: Benzoin Wachsmann. Row 3: Chaim Vorst. Row 4: Yoel Wizel.

Ateres Mordechai (d/b/a Challenge Early Intervention Center) is an existing early intervention program that provides services for children from birth to three for those that are either suspected or are at risk of developmental delays/disabilities.

As part of this project, necessary renovations will be made for the space to meet the regulatory standards of an Article 28 D&TC. The Center will provide primary care and other medical specialties including infectious disease, pulmonology, endocrinology, and cardiology.

Mark Sonnenschine, D.O. will serve as Medical Director of the Center. Dr. Sonnenschine is board certified in hematology and oncology.

The Center expects to enter into a Transfer and Affiliation Agreement for backup and emergency services with Maimonides Medical Center, which is located one mile and 5 minutes driving time from Pinpoint Medical.

OPCHSM Recommendation

Contingent Approval

Need Summary

The center will be located in a HRSA designated Health Professional Shortage Area for Primary Care. The applicant projects 36,751 visits in Year One and 44,100 in Year Three, with Medicaid utilization projected at 40% 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 \$2,494,577 will be met with cash from Ateres Mordechai. The budget projects a net income of \$518,152 in the first year of operations and increases to \$858,239 by the third year.

Table with 3 columns: Budget, Year One, Year Three. Row 1: Revenues (\$4,876,445, \$5,943,132). Row 2: Expenses (4,358,293, 5,084,893). Row 3: Net Income (\$518,152, \$858,239).

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 building lease acceptable to the Department of Health. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. Submission of an executed copy of the Articles of Organization that is acceptable to the Department. [CSL]
6. Submission of an executed copy of a Lease agreement that is acceptable to the Department. [CSL]
7. Submission of an executed copy of the Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. This project must be completed by **July 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 **January 1, 2023**, and construction must be completed by
3. **April 1, 2023**, 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]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/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

July 28, 2022

Need and Program Analysis

Program Description

Proposed Operator	Pinpoint Medical, LLC
To Be Known As	Pinpoint Medical
Site Address	649 39 th Street Brooklyn, New York 11232 (Kings County)
Services	Medical Services-Primary Care Medical Services-Other Medical Specialties Infectious Disease Pulmonology Endocrinology Cardiology
Hours of Operation	Monday through Friday 8:00 am to 6:00 pm As volume dictates, Saturday 8:30 am to 6:00 pm
Staffing (1st Year / 3rd Year)	23.75 FTEs / 29.25 FTEs
Medical Director(s)	Mark Sonnenschine, D.O.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 0.9 miles / 5 minutes away

Background

The primary service area is the Sunset Park neighborhood in Kings County. Sunset Park is a HRSA designated Health Professional Shortage Area for Primary Care and Kings County is a HRSA designated Medically Underserved Area/Population.

The population of Kings County was 2,736,074 in 2020 and is expected to grow to 2,810,876 by 2025. According to Data USA, in 2019 93.7% of the population in Kings County has health coverage as follows:

Employer Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-Group Plans	10.5%
Military or VA	0.222

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 Kings County is slightly lower than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs		
PQI Rates: 2017	Kings	New York State
All PQIs	1,358	1,431

The applicant projects 36,751 in Year One and 44,100 in Year Three. Medicaid utilization is projected at 40% and charity care at 2%. The applicant has committed to serving all persons in need without regard to the ability to pay or source of payment.

Character and Competence

The sole member of Pinpoint Medical LLC is Ateres Mordechai, a not-for-profit corporation. The board of managers of Pinpoint Medical, LLC and the board of directors of Ateres Mordechai are identical and listed below:

Pinpoint Medical, LLC	
<u>Member</u>	<u>Interest</u>
Ateres Mordechai	100%
<u>Board Members</u>	
<i>Benzoin Wachsman</i>	
<i>Chaim Vorst</i>	
<i>Yoel Wizel</i>	

Chaim Vorst has been the President of Card Process Corp. since January 2022. He is the Owner of Fly with Sam, LLC, a travel agency, since January 2022. He was previously employed as the CFO of Universal Merchant Inc., a credit card processing company, for 10 years. He has been a member of the Board of Directors of Ateres Mordechai for over 17 years.

Benzoin Wachsman has been the Executive Director and on the board of Ateres Mordechai d/b/a Challenge Early Intervention Center for 32 years. He is responsible for supervising and directing all aspects of the administrative and clinical functions and the overall integrity of the agency. He is also responsible for service provisions, regulatory compliance, budgeting and finance, administrative policy and procedures, staff recruiting and hiring, community outreach, facility maintenance, ongoing internal quality assurance, implementing improvements in the agency operations, new facility design, and construction contracts.

Yoel Wizel has been a Project Manager and Estimator for six years at Congregation Yetev Lev and Supreme Construction. He oversaw the construction of Congregation Yetev Lev. He was previously employed as a Commercial Insurance Broker. He has been on the Board of Directors for Ateres Mordechai since September 2021.

Mark Sonnenschine, DO is the proposed Medical Director. He is a practicing Oncologist and Hematologist. He is currently in private practice at Progressive Hematology and Oncology PLLC. He is also an Attending Oncologist and Hematologist at Coney Island Hospital. He was previously employed at Hematology and Medical Oncology, PC, and was previously the Chief of Ambulatory Hematology and Medical Oncology and the Director of Infusion Services at Lutheran Medical Center. He received his medical degree from New York College of Osteopathic Medicine. He completed his residency in Internal Medicine and fellowship in Hematology/Oncology at Maimonides Medical Center. He is board-certified in Hematology and Medical Oncology.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The center will be located in an area designated as a Health Professional Shortage Area for Primary Care. The number of projected visits is 36,751 in Year One and 44,100 in Year Three, with Medicaid utilization projected at 40% and Charity Care at 2%. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

The total project cost of \$2,494,577 are detailed as follows:

	<u>Total Project Costs</u>
Renovation & Demolition	\$1,801,752
Design Contingency	90,087
Construction Contingency	36,036
Architect/Engineering Fees	142,010
Other Fees	150,000
Movable Equipment	259,058
Application Fee	2,000
Processing Fee	<u>13,634</u>
Total Project Cost	\$2,494,577

The applicant's financing plan appears as follows:

Equity from Ateres Mordechai	<u>\$2,494,577</u>
Total	\$2,494,577

Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for the first and third years, as follows:

Revenues	<u>First Year (2023)</u>		<u>Third Year (2025)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$140	\$1,440,600	\$143	\$1,763,294
Medicare FFS	\$175	321,650	\$179	393,593
Medicare MC	\$140	1,029,000	\$143	1,259,496
Medicaid FFS	\$150	1,101,251	\$150	1,321,501
Medicaid MC	\$118	866,271	\$120	1,060,316
Private Pay	\$200	367,600	\$204	449,820
Bad Debt		<u>(249,927)</u>		<u>(304,888)</u>
Total		\$4,876,445		\$5,943,132
<u>Expenses</u>				
Operating		\$3,897,739		\$4,615,486
Capital		<u>460,554</u>		<u>469,408</u>
Total Expenses	\$119	\$4,358,293	\$115	\$5,084,894
Net Income/(Loss)		<u>\$518,152</u>		<u>\$858,238</u>
Visits	36,753		44,100	

With respect to the budget:

- The Medicaid rate and revenue projections are based on the Freestanding APG Base Rates using Full APG Investment obtained from the New York State Department of Health's website. A previously approved rate of \$169.02 was utilized in the budget projections. This rate has been

utilized conservatively by excluding the per diem that would be allowed for the capital component of the rate.

- For other payors, the applicant identified the most prevalent services for each payor class and the related reimbursement that would be used for their Medicare recipients.
- Expenses and utilization are based on a review of cost reports for other Article 28 Diagnostic & Treatment Centers in the same service area, including an evaluation of staffing ratios, staffing costs, disposable items, medical supplies, etc.
- Utilization is based upon input from the proposed medical director and conversations with various medical providers who have expressed an interest in providing services at the Article 28 D&TC. These providers believe the growth assumptions to be achieved by year three of operation are reasonable.
- Utilization by payor source for the first and third year is summarized below:

Payor	Year One		Year Three	
	2023		2025	
	Visits	%	Visits	%
Commercial FFS	10,290	28.00%	12,348	28.00%
Commercial MC	0	0.00%	0	0.00%
Medicare FFS	1,838	5.00%	2,205	5.00%
Medicare MC	7,350	20.00%	8,820	20.00%
Medicaid FFS	7,350	20.00%	8,820	20.00%
Medicaid MC	7,350	20.00%	8,820	20.00%
Private Pay	1,838	5.00%	2,205	5.00%
Charity	737	2.00%	882	2.00%
Total by Payor	36,753	100.00%	44,100	100.00%

Lease Agreements

The applicant has submitted an executed assignment and assumption of lease agreement for the existing site, as summarized below. There is common ownership between Ateres Mordechai and Pinpoint Medical, LLC.

Draft Prime Lease

Date:	November 1, 2021
Premises:	649 39 th Street, Brooklyn, New York 11232 (Approximately 35,696 square feet)
Landlord:	Torah M'Sinai Inc
Tenant:	Ateres Mordechai d/b/a Challenge Early Intervention
Term:	10 Year Term
Rent:	Fixed Annual Rent Year 1 annual rent of \$960,000.00 and increasing 3% annually afterward
Provisions:	Tenant is responsible for all utilities and furnishings. Tenant shall contract directly with the utility companies in connection with gas, electric, and communications.

The prime lease agreement is an arm's length agreement, as there is no relationship between any of the principals of the landlord and the members of the applicant.

Draft Sub-Lease

Date:	December 1, 2021
Premises:	649 39 th Street, Brooklyn, New York 11232 (Approximately 6,300 square feet)
Tenant:	Ateres Mordechai d/b/a Challenge Early Intervention
Sub-Tenant:	Pinpoint Medical LLC
Term:	5-year term shall commence upon approval and a renewal period of approximately 5 years.
Rent:	Fixed Annual Rent Year 1 rent of \$214,200.00 with annual increases of 2% afterward.
Provisions:	Subtenant is responsible for their proportionate share (30%) of the cost of all utilities and maintenance related to the leased premises.

There is a relationship between the Tenant, Ateres Mordechai d/b/a Challenge Early Intervention, and sub-tenant Pinpoint Medical, LLC a/k/a applicant. Ateres Mordechai d/b/a Challenge Early Intervention is the sole member of Pinpoint Medical LLC. The applicant has submitted two letters of rent reasonableness.

Capability and Feasibility

The total project cost of \$2,494,577 will be met with equity from Ateres Mordechai. Working capital requirements are estimated at \$847,482 based on two months of third-year expenses and will be funded from Ateres Mordechai operations. A review of BFA Attachment A, Internal Financial Statements ending June 30, 2021, for Arteres Mordechai, indicates the availability of sufficient resources to meet the equity contribution for the project cost and any working capital needs.

The submitted incremental budget indicates a net income of \$518,152 in the first year and \$858,238 in the third year. The budget is reasonable.

BFA Attachment A shows Ateres Mordechai recorded a Net Income of \$722,401.55 and maintained a positive working capital and net asset position for the period. BFA Attachment B is the Pro Forma Balance Sheet for Pinpoint Medical, LLC and shows members' equity of \$3,342,059.

Conclusion

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

Attachments

- | | |
|------------------|---|
| BHFP Attachment | Map |
| BFA Attachment A | Unaudited Financial Statements for Ateres Mordechai |
| BFA Attachment B | Pinpoint Medical, LLC 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 28th day of July 2022, 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 at 649 39th Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

221070 B

Pinpoint Medical LLC

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **July 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 **January 1, 2023**, and construction must be completed by **April 1, 2023**, 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 # 192027-E
Crest Opco LLC d/b/a
Crest Manor Living and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: August 5, 2019

Executive Summary

Description

Crest Opco LLC, d/b/a Crest Manor Living and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of Crest Manor Living and Rehabilitation Center (Crest Manor), an 80-bed, proprietary Article 28 Residential Health Care Facility (RHCF) at 6745 Pittsford-Palmyra Road, Fairport (Monroe County), currently operated by Crest Manor Living and Rehabilitation Center, Inc. The real property is owned by Crest Propco LLC., which purchased the property on December 21, 2018. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the new facility operator will be Crest Opco LLC, and the facility will be named Crest Manor Living and Rehabilitation Center.

On October 11, 2017, Crest Opco LLC entered into the Asset Purchase Agreement with Crest Manor Living and Rehabilitation Center, Inc. for the sale and acquisition of the RHCF operating interests for a purchase price of \$100,000.

The proposed operator is Crest Opco, LLC, whose members are listed below:

Table with 2 columns: Member Name and Percentage. Includes Crest Opco, LLC, CME JM OPCO Holdings, LLC (100%), Jennifer Farkas (45%), Eli Gibber (15%), Avrohom (Josh) Brown (30%), Michael Lebovics (10%), and Total (100%).

CON 192026, in which the same proposed members of this application sought approval to acquire the operating interest of East Side Nursing Home, an 80-bed RHCF located in Warsaw (Wyoming County), was contingently approved by PHHPC on June 2, 2022.

On October 10, 2017, Milrose Nation Trust LLC (Milrose) negotiated an Agreement for Transaction Document (ATD) and a Contract of Sale (COS) for the operating and realty interests in Crest Manor and East Side RHCFs. The interests in Crest Manor were subsequently transferred to Crest Opco, LLC and Crest Manor Propco LLC (operations and realty, respectively).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project.

Program Summary

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

Financial Summary

Crest Opco LLC will acquire the RHCF's operations for \$100,000 funded by members' equity. There are no project costs associated with this application. The submitted budget is as follows:

<u>Budget</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,585,364	\$8,190,800	\$8,235,900
Expenses	<u>\$8,370,391</u>	<u>\$7,763,400</u>	<u>\$7,825,800</u>
Income	\$214,973	\$427,900	\$410,100

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

The Finger Lakes HSA recommends Approval.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility and inform them about the facility's Medicaid Access policy, and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
4. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operations Transfer Agreement or Asset Purchase Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Application for Authority for CME JM Opco Holdings LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Operating Agreement for CME JM Opco Holdings LLC, 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 any extensions to the project approval expiration date. [PMU]

Council Action Date

July 28, 2022

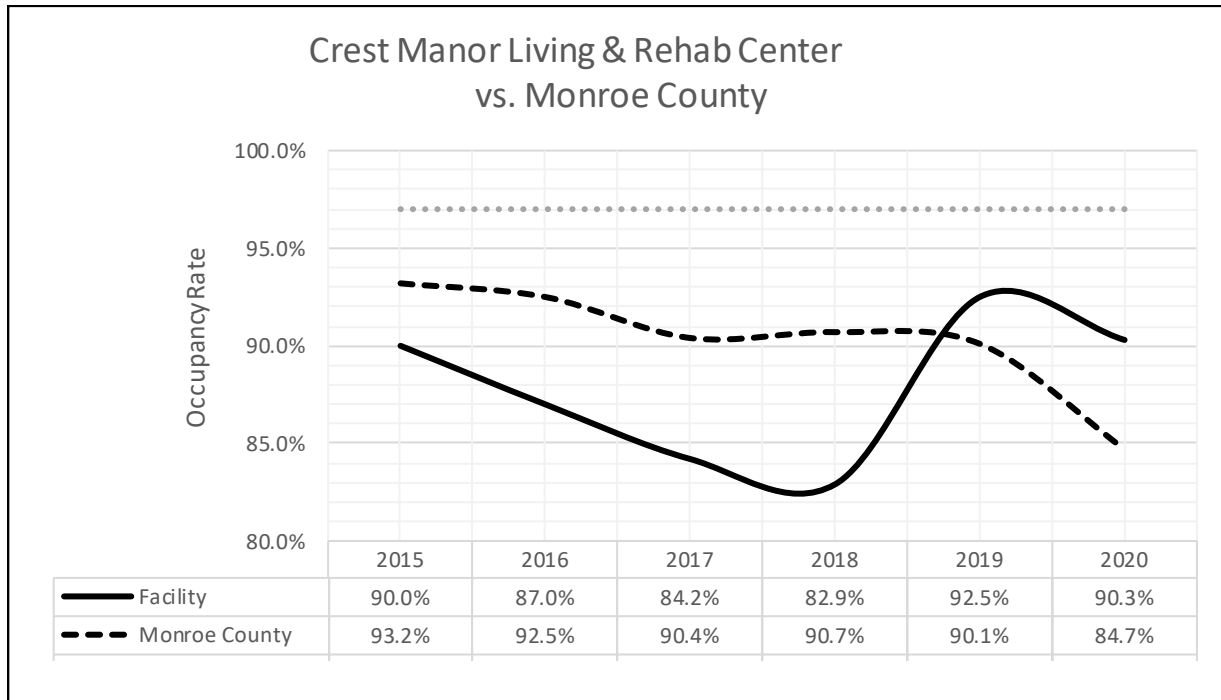
Need and Program Analysis

Program Information

	Existing	Proposed
Facility Name	Crest Manor Living and Rehabilitation Center	Crest Manor Living and Rehabilitation Center
Address	6745 Pittsford-Palmyra Road Fairport, NY 14450 (Monroe)	Same
RHCF Capacity	80 beds	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Business Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Crest Manor Living and Rehabilitation Center, Inc	Crest OPCO LLC <u>Members</u> Avrohom Josh Brown* 30% Jennifer Farkas 45% Eli Gibber 15% Michael Lebovics* 10% <i>*Managing Members</i>

Analysis

The primary service area is Monroe County



The applicant reports that there are a variety of reasons for the decline in occupancy from 2016 through 2018, including the operator's intent to sell the facility and the resulting staff turnover. Since May 2019, Avrohom Josh Brown, one of the members of the proposed operator, has been involved in the day-to-day operations as Chief Operating Officer. The facility has recently seen improvement in occupancy.

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

The 75% of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

Crest Manor Living and Rehab's Medicaid admissions rate was below the threshold of 75% of Monroe County, as demonstrated below:

Medicaid Access	2018	2019	2020
Monroe County Total	17.1%	15.0%	17.6%
Monroe Threshold Value	12.8%	11.2%	13.2%
Crest Manor Living & Rehab	14.7%	9.1%	14.7%

Character and Competence

Avrohom Josh Brown is a licensed nursing home administrator in New York. He reports concurrent employment as the Chief Operating Officer at Crest Manor Living and Rehabilitation and East Side Nursing and Rehabilitation Center. He reports prior employment as the Licensed Nursing Home Administrator at Oakland Rehabilitation and Healthcare Center in Oakland, NJ, Administrator at Brentwood Rehabilitation and Healthcare Center located in Danvers, MA, Assistant Administrator at Oakland Rehabilitation and Healthcare in Oakland, NJ, and Administrator in Training at New Eastwood Rehabilitation and healthcare in Easton, PA. Avrohom Josh Brown holds a B.A. from Fairleigh Dickinson University and discloses ownership interests in the following health care facilities:

Massachusetts Nursing Home:

Park Ave Health Center (27.5%)

09/2021-Present

Jennifer Farkas reports employment as a real estate consultant at Ocean Miracle, which is a commercial real estate firm in Lakewood, NJ, and reports previous employment as a Real Estate Investor. She indicates that she has a high school diploma. Jennifer Farkas discloses no health facility ownership. She is concurrently being reviewed for CON 192027 Crest Manor Living and Rehabilitation Center and discloses a 15% interest in the real property of the subject facility, as well as a 15% interest in Crest Manor Living and Rehabilitation Center.

Eli Gibber reports self-employment as the owner of TG Realty located in Lakewood, NJ. He reports previous employment as an Asset Manager at FBE, a real estate business located in NY, NY, and a commercial mortgage broker at Eastern Union located in Howell, NJ. Eli Gibbler indicates that before this he studied at Beth Medrash Govoha. He discloses no health facility ownership.

Michael Lebovics reports employment as President of Innovative Supply Group, LLC a supplier of medical supplies to residents in nursing homes located in Lakewood, NJ., and concurrent employment in sales at Wound Care Concepts, a company located in Bristol, PA. Michael Lebovics holds a master's

degree from Beth Medrash Govoha and has taken business enrichment courses at Professional Career Services. He discloses no health facility ownership.

Avrohom Josh Brown, Jennifer Farkas, Eli Gibber, and Michael Lebovics were also recently reviewed for CON 192026 Eastside Nursing Home.

Quality Review

Avrohom Josh Brown has an ownership interest in Park Avenue Health Center. This facility has had two harm level enforcements since he began his ownership interest. The applicant states that the steps taken to address these issues include replacing the administrator and the director of nursing, increasing staff levels and that all staff have been trained in abuse education

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Crest Manor Living and Rehabilitation Center	Subject Facility	***	***	****	**
Massachusetts					
Park Ave Health Center	Current	*	*	****	***
	09/2021	**	***	****	*

Data date: 06/2022

Enforcement History

Park Ave Health Center:

- The facility was assessed a federal CMP of \$650 on September 27, 2021, for failure to report COVID data.
- A Federal CMP of \$7,345 was assessed for September 20, 2021, survey findings relating to Freedom from Abuse, Neglect, and Exploitation Deficiencies
- A Federal CMP of \$15,000 was assessed for November 23, 2021, survey findings relating to Freedom from Abuse, Neglect, and Exploitation Deficiencies

Avrohom Josh Brown has been the Chief Operating Officer of East Side Nursing Home and Crest Manor Living and Rehabilitation since May 2019 and a review of the nursing homes since that date show:

East Side Nursing Home:

- The facility was assessed a federal CMP of \$650 on 07/05/2021 for failure to report COVID data.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-146 issued 7/7/2021 for surveillance findings on 12/31/2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) – Infection Control - Screening.

Crest Manor Living and Rehabilitation:

- The facility was assessed a federal CMP of \$655 on 07/12/2021 for failure to report COVID data.

Conclusion

There will be no changes to beds or services as a result of this project The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

Financial Analysis

Operating Budget

The applicant has provided the current year (2020) results, and the first- and third-year operating budget, in 2022 dollars, after the change in ownership. The budget is summarized below:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Commercial FFS	\$599.31	\$211,557	\$356.76	\$198,000	\$360.18	\$199,900
Medicare FFS	\$597.73	1,450,090	\$572.01	1,428,300	\$577.73	1,442,600
Medicare MC	\$512.07	1,012,873	\$500.00	668,000	\$500.00	668,000
Medicaid FFS	\$165.42	1,938,678	\$208.70	2,794,542	\$208.70	2,794,542
Medicaid MC	\$217.93	950,836	\$208.70	910,558	\$208.70	910,558
Private Pay	\$477.42	2,673,052	\$386.07	2,161,600	\$391.09	2,189,700
Other Oper Revenue*		<u>97,865</u>		<u>29,800</u>		<u>30,600</u>
Total Oper Revenue		\$8,334,951		\$8,190,800		\$8,235,900
Non-Operating Revenue		<u>250,413</u>		<u>0</u>		<u>0</u>
Total		\$8,585,364		\$8,190,800		\$8,235,900
 <u>Expenses</u>						
Operating	\$284.18	\$7,513,318	\$254.81	\$7,068,400	\$257.06	\$7,130,800
Capital	<u>32.42</u>	<u>857,073</u>	<u>25.05</u>	<u>695,000</u>	<u>25.05</u>	<u>695,000</u>
Total Expenses	\$316.59	\$8,370,391	\$279.86	\$7,763,400	\$282.11	\$7,825,800
Net Income/(Loss)		<u>\$214,973</u>		<u>\$427,400</u>		<u>\$410,100</u>
Patient Days		26,439		27,740		27,740
Utilization %		90.54%		95.00%		95.00%
Breakeven %		90.93%		90.03%		90.25%

*Other Operating Revenue includes Cafeteria, Cash Discounts & Rebates, Barber & Beauty, Contributions, Other Income, ISNP Shared Savings, Rochester RHIO Revenue, COVID I-pad Grant, and Insurance Proceeds- Elevator

The following is noted for the submitted budget:

- Private pay rates are based on the published rate of \$385 plus the approximately 6.8% cash receipts assessment.
- Commercial rates are based on contractual agreements with third-party insurance providers. The facility used conservative assumptions with these rates for Years One and Three.
- Medicaid revenue is based on the facility's current 2020 Medicaid Regional Pricing rates plus assessments.
- The \$348,278 variance between the 2020 operating revenue in the certified financial statements and the total current year revenue reported in the budget is other revenue listed above and non-operating revenue. In the financial statements, this amount is reported on a non-operating line labeled Cares Act Provider Relief funds of \$250,413 and a line marked all other for \$97,865.
- Avrohom (Josh) Brown, one of the proposed members, has been employed at Crest Manor as the Chief Operating Officer since May 1, 2019. Occupancy increased from 82.9% in 2018 to 92.5% in 2019. Occupancy remained high at 90.3% during 2020 but declined to 77.17% in 2021 due to the impact of the COVID-19 pandemic. Once Covid subsided, occupancy rose to 93.71% in December of 2021. As of June 1, 2022, the facility was at 100% occupancy while the average occupancy rate for all nursing homes in Monroe County was 77%
- Breakeven utilization is projected at approximately 90.03% for Year One and 90.25% for Year Three.

Utilization by payor source for the first and third year after the change in ownership is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Years One & Three</u>
Commercial FFS	1.34%	2.00%
Medicare FFS	9.18%	9.00%
Medicare MC	7.48%	0%
Medicaid FFS	44.33%	48.27%
Medicaid MC	16.50%	15.73%
Private Pay	<u>21.18%</u>	<u>25.00%</u>
Total	100.00%	100.00%

Agreement for Transaction Documents

The applicant submitted an executed ATD to hold all rights and obligations subject to the terms of ATD. The terms are summarized below:

Date:	October 10, 2017
Assignor (Seller):	Milrose National Trust
Assignee (Buyer):	Crest Opco LLC, Crest Propco LLC, Eastside Opco LLC and Eastside Propco LLC,
Transaction:	Milrose negotiated Asset Purchase Agreements and Contracts of Sale (collectively, the "Transaction Documents") for the sale of the operations and real property for East Side located at 62 Prospect Street, Warsaw, NY, and Crest Manor located at 6745 Pittsford Palmyra Rd, Fairport, NY. Milrose and Buyer agreed Buyer shall be entitled to enter into the Transaction Documents rather than Milrose and hold all rights and obligations subject to the terms of ATD.

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	October 11, 2017
Purchaser:	Crest Opco, LLC
Seller:	Crest Manor Living and Rehabilitation Center, Inc.
Assets Transferred:	The business and operation of the facility; leasehold improvements, furniture, fixtures, and equipment owned or leased by seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases, and undertakings; resident funds in trust, security deposits, and prepayments; manuals and computer software; resident/patient records; goodwill; all books and records relating to the facility; licenses and permits; Medicare and Medicaid provider numbers; rate increases and/or lump sum or other payments, resulting from rate appeals, audits or otherwise; patient claims, accounts receivable on and after closing date; leases and assets of seller relating to the facility.
Excluded Assets:	Amounts due from parties related to seller; seller's cash and cash equivalents; prepaid expenses; claims, causes of action, and legal rights for periods prior to the closing date; receivables from any affiliated of seller; and payments made in connections with "Universal Appeal Settlement".
Purchase Price:	\$100,000
Payment of Purchase Price:	\$100,000 due at closing

The purchase price of the operations is proposed to be satisfied with members' equity. The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 6/22/2022, the facility had no outstanding Medicaid liabilities.

Lease Agreement

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

Premises:	80-bed RHCf located at 6745 Pittsford Palmyra Rd, Fairport, NY
Landlord:	Crest Propco, LLC
Tenant:	Crest Opco, LLC
Term:	5 years with (2) extension terms of (5) years.
Rent:	\$588,000 (\$49,000 per month) for year one; With an annual increase of 5% for years two-five.
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The applicant has submitted an affidavit stating the lease between the property owner and the lessee is a non-arm's length arrangement due to common ownership. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

Capability and Feasibility

Crest Opco LLC will acquire the RHCf's operations for \$100,000 funded via members' equity. There are no project costs associated with this application. The working capital requirement is \$1,293,900 based on two months of first-year expenses. Working capital will be satisfied via equity from proposed members. The proposed members' net worth summaries show sufficient assets overall to meet the acquisition and working capital equity requirements (BFA Attachment A). Michael Lebovics has provided an affidavit confirming his willingness to contribute personal resources disproportionate to his membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,886,000. It is noted that operating assets include \$392,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of \$1,494,000

The submitted budget indicates that net income of \$427,900 and \$410,100 will be generated for Years One and Three, respectively. The budget appears reasonable.

BFA Attachment B is the Financial Summary of Crest Manor Living and Rehabilitation Center, Inc. As shown, the 2019-2020 certified financial statements indicate that the facility had an average positive net asset position of \$721,299, an average positive working capital position of \$252,079, and generated an average operating loss of \$223,868 for the period. The reported loss in 2019 (\$662,709) was attributable to low utilization at the facility. In May of 2019, Avrohom Brown became the Chief Operating Officer at the facility and utilization increased, leading to a positive net income of \$214,973. Based on Internal Financial Statements submitted for 2021 and the period 1/1/22-4/30/22, Crest Manor continues to maintain a strong financial position with a positive net asset position, positive working capital, and net income.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
HSA Attachment A	Finger Lakes Health Systems Agency Recommendation
BFA Attachment A	Net Worth and Equity Analysis of Proposed Members of Crest Opco LLC
BFA Attachment B	Financial Summary of Crest Manor Living and Rehabilitation Center, Inc.
BFA Attachment C	Transition Summary Organizational Chart of Operations and Realty
BFA Attachment D	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 28th day of July 2022, 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 Crest Opco LLC as the new operator of the 80-bed residential health care facility (RHCF), located at 6745 Pittsford-Palmyra Road, Fairport, 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:

192027 E

FACILITY/APPLICANT:

Crest Opco LLC d/b/a Crest Manor Living and Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility and inform them about the facility's Medicaid Access policy, and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
4. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operations Transfer Agreement or Asset Purchase Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Application for Authority for CME JM Opco Holdings LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Operating Agreement for CME JM Opco Holdings LLC, 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 any extensions 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 # 221084-E
Hilaire Farm Skilled Living & Rehabilitation Center, LLC
d/b/a Hilaire Rehab & Nursing

Program: Residential Health Care Facility County: Suffolk
Purpose: Establishment Acknowledged: April 28, 2022

Executive Summary

Description

Hilaire Farm Skilled Living & Rehabilitation Center, LLC, d/b/a Hilaire Rehab & Nursing, is an existing 76-bed residential health care facility (RHCF) located at 9 Hilaire Drive, Huntington (Suffolk County). This applicant is requesting approval to transfer the membership interests of a deceased member to a new member.

The current and proposed membership of Hilaire Farm Skilled Living & Rehabilitation Center, LLC are as follows:

Table with 3 columns: Members, Current, Proposed. Rows include Robert Heppenheimer, Anupadevi Lamba, Ajay Lodha, MD*, and Smita Lodha, MD. Includes a note: *deceased

There will be no change in services or beds as a result of this CON

OPCHSM Recommendation

Approval

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

The individual background review indicates the applicants 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 proposed budget is as follows:

Table with 4 columns: Budget, Current Year, Year One, Year Three. Rows include Revenues, Expenses, and Net Income.

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

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 any extensions to the project approval expiration date.
[PMU]

Council Action Date

July 28, 2022

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Hilaire Rehab & Nursing	Same
Address	9 Hilaire Drive, Huntington, NY 11743 (Suffolk County)	Same
RHCF Capacity	76-bed	Same
ADHCP Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Hilaire Farm Skilled Living & Rehabilitation Center, LLC	Hilaire Farm Skilled Living & Rehabilitation Center, LLC
	Members Robert Heppenheimer 33.3% Anupadevi Lamba 33.3% Ajay Lodha, MD 33.3%	Members Robert Heppenheimer 33.3% Anupadevi Lamba 33.3% Smita Lodha, MD 33.3%

Character and Competence

Smita Lodha, MD is a physician licensed to practice in New York State who is co-owner of Queens Medical Services PLLC. She graduated from RNT Medical College in Udaipur, India and completed a Family Practice Residency at North Shore University Hospital.

Quality Review

Dr. Smita Lodha discloses no ownership of licensed health care facilities.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Hilaire Rehab & Nursing	Subject Facility	**	*	*****	**
	03/2006 <i>Data Date: 1/2009</i>	*****	****	*****	***

Data as of: 04/2022

The facility entered into an Employment Agreement engaging Ari Silberstein as Chief Executive Officer in July 2018 to assist in the operation of the facility. With Mr. Silberstein's guidance, the facility has implemented measures to improve the overall clinical care and is working on bringing occupancy back to the historically strong pre-pandemic levels, in turn improving the facility's financial position. The agreement was entered into July 2018 and is still in place.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2020) budget and their operating budget, in 2022 dollars, for the first (2023) and third-year (2025) of operation after the change in ownership. The budget is summarized below:

<u>Revenues</u>	<u>Current Year 2020</u>		<u>Year One 2023</u>		<u>Year Three 2025</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid FFS	\$262.48	\$2,841,648	\$264.84	\$4,042,783	\$264.84	\$4,042,783
Medicaid MC	\$363.86	250,336	\$363.86	316,558	\$363.86	316,558
Medicare FFS	\$795.13	2,712,984	\$597.11	2,759,842	\$597.11	2,759,842
Medicare MC	\$379.24	166,865	\$328.95	160,857	\$328.95	160,857
Private Pay	\$300.00	675,600	\$526.00	1,243,990	\$526.00	1,243,990
All Other	\$284.36	1,958,669	\$284.36	1,016,587	\$284.36	1,016,587
Other		<u>1,065,584</u>		<u>0</u>		<u>0</u>
Total Revenue		\$9,671,686		\$9,540,617		\$9,540,617
<u>Expenses</u>						
Operating	\$372.18	\$9,120,597	\$310.07	\$8,429,597	\$308.31	\$8,381,786
Capital	<u>\$36.58</u>	<u>\$896,331</u>	<u>\$40.61</u>	<u>\$1,104,072</u>	<u>\$40.06</u>	<u>\$1,089,018</u>
Total	<u>\$408.75</u>	<u>\$10,016,928</u>	<u>\$350.68</u>	<u>\$9,533,669</u>	<u>\$348.37</u>	<u>\$9,470,804</u>
Net Income/(Loss)		<u>(\$345,242)</u>		<u>\$6,948</u>		<u>\$69,813</u>
Utilization (days)		24,506		27,186		27,186
Occupancy		88.34%		98.00%		98.00%

The following is noted for the submitted budget:

- Medicaid revenue is based on the facility's current 2022 Nursing Home Medicaid rate sheet.
- The Medicare rate is the actual average daily rate experienced by the facility during 2021. Private Pay and Other payment rates are based on the facility's actual average 2021 rates.
- Current Year Other Revenue includes \$563,142 in CARES Act Provider Relief Funds, \$501,361 in Miscellaneous Income, and \$1,081 in Interest Income.
- Expense assumptions are based on the current experience of the facility in 2020, adjusted to the projected census in the first and third years. Lease rental expense per the executed lease has been included.
- The facility had an occupancy rate of 84.7% in 2016, 87.4% in 2017, 95.3% in 2018, 93.0% in 2019 and 84.6% through May 2020. While the facility's occupancy improved and remained strong through March 2020 at 91.3% the impact of the COVID-19 pandemic curtailed the facility's occupancy in the last couple of months of 2020 and into the first quarter of 2021. Occupancy at the facility started to recover in the second quarter of 2021 and continues to improve. As of June 1, 2022, their occupancy rate is 93.4%. The applicant anticipates that the historically strong occupancy will be achieved upon full recovery from the pandemic impact. Accordingly, utilization is projected to increase to 98% in Years One and Three. In 2021, Suffolk County had an 82.9% overall occupancy rate and as of 6/1/2022, the County is at 83.8%.

Utilization by payor for the current and first year after the ownership change is summarized below:

Payor	Current Year		Years One & Three	
	Patient Days	%	Patient Days	%
Medicare FFS	3,412	13.92%	4,622	17.00%
Medicare MC	440	1.80%	489	1.80%
Medicaid FFS	10,826	44.18%	15,265	56.15%
Medicaid MC	688	2.81%	870	3.20%
Private Pay	2,252	9.19%	2,365	8.7%
All Other	<u>6,888</u>	<u>28.10%</u>	<u>3,575</u>	<u>13.15%</u>
Total	24,506	100.00%	27,186	100.00%

Breakeven utilization is projected at 97.93% or 27,166 patient days for Year One and 97.33% or 27,000 patient days for Year Three.

Membership Transfer Agreement

The applicant submitted an executed agreement from a deceased member's widow to acquire 33.33% membership interest in the RHCF's operations. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below.

Date:	May 26, 2022
Transferor:	The Estate of Dr. Ajay Lodha
Transferee:	Dr. Smita Lodha
Assets Transferred:	33.33% ownership interest in Hilaire Farm Skilled Living & Rehabilitation Center, LLC, d/b/a Hilaire Rehab & Nursing

As of June 21, /2022, the facility has an outstanding Medicaid Liability of \$31,800.11.

Capability and Feasibility

There are no project costs associated with this application. The submitted budget projects a net income of \$6,948 in Year One and \$69,813 in Year Three after the 33.33% change in ownership. The budget appears reasonable.

BFA Attachment C is the 2019 - 2020 Certified Financial Statements of Hilaire Farm Skilled Living & Rehabilitation Center, LLC, and their Internal Financial Statement for the period ending December 31, 2021. As shown, the RHCF had an average negative working capital position of \$194,096, average negative net assets of \$3,769,957, and an average net loss of \$266,575 for the period 2019-2020. For the period ending December 31, 2021, the facility had positive working capital of \$1,366,029 and a negative net asset position of \$3,743,016. They also generated a positive net income of \$718,839 for the period.

Conclusion

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

Attachments

LTCOP Attachment A	LTC Ombudsman Program Recommendation
BFA Attachment A	Net Worth of Proposed Members of Hilaire Farm Skilled Living & Rehabilitation Center, LLC
BFA Attachment B	2019-2020 Certified Financial Statements and 1/1/21-12/31/21 Internal Financial Statement of Hilaire Farm Skilled Living & Rehabilitation Center, 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 28th day of July 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 33.3% ownership interest from one deceased member to one new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

221084 E Hilaire Farm Skilled Living & Rehabilitation
Center, LLC d/b/a Hilaire Rehab & Nursing

APPROVAL CONTINGENT UPON:

N/A

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 any extensions to the project approval expiration date. [PMU]



Project # 192332-E
EDRNC Operating, LLC d/b/a
Eden Rehabilitation & Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Erie
Acknowledged: January 9, 2020

Executive Summary

Description

EDRNC Operating, LLC d/b/a Eden Rehabilitation & Nursing Center (EDRNC), a New York limited liability company, requests approval to be established as the new operator of Eden Rehabilitation & Nursing Center, a 40-bed, proprietary Article 28 residential health care facility (RHCF) located at 2806 George Street, Eden (Erie County). Absolut Center for Nursing and Rehabilitation at Eden, LLC is the current operator of the facility, and EDRNC Realty, LLC is the real property owner. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), EDRNC Realty, LLC will lease the premises to EDRNC Operating, LLC via a non-arm's length lease.

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

<u>Current Operator</u>	
Absolut Center for Nursing and Rehabilitation at Eden, LLC	
<u>Member</u>	<u>%</u>
Absolut Facilities Management, LLC <i>Israel Sherman (100%)</i>	54%
Israel Sherman	45%
Samuel Sherman	1%

<u>Proposed Operator</u>	
EDRNC Operating, LLC	
<u>Members</u>	<u>%</u>
Esther Barth	35%
Batia Zigelbaum	40%
Chaya Walden	15%
Teresa Creedon	10%

Ownership of the realty is as follows:

<u>Realty Owner</u>	
EDRNC Realty, LLC	
<u>Members</u>	<u>%</u>
Ephraim Zigelbaum	47.5%
Alexander Barth	37.5%
Yehudah Walden	15.0%

There is a familial relationship between the property owner and several of the proposed operating entity members. There will be no change in beds or services provided.

The Asset Purchase Agreement (APA) submitted for this application included the sale of the operating interests of four other Absolut RHCFs that are currently operated by the same members of Absolut Center for Nursing and Rehabilitation at Eden, LLC. Three of these facilities are being sold to the same proposed new members as identified for this application and are listed below:

- CON 192333 (Houghton Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Houghton, LLC, 100 beds, Allegany County),
- CON 192335 (Salamanca Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, 120 beds, Cattaraugus County) and
- CON 192336 (Dunkirk Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC, 40 beds, Chautauqua County).

These three applications are being reviewed concurrently with this application.

The fourth facility is being sold to different proposed new members as per an amendment to the original APA and is being reviewed under CON 192208 (Absolut Center for Nursing and Rehabilitation at Endicott, LLC, 160 beds, Broome County).

On July 6, 2017, Absolut Center for Nursing and Rehabilitation at Eden, LLC (as Seller, collectively with the operating entities of the other four RHCFS) and EDRNC Operating, LLC (Buyer, collectively with the proposed operating entities of the other four RHCFS) entered an APA for the sale and acquisition of the operating interests of the RHCFS. The total purchase price of the five RHCFS operations is \$100,000, of which \$10,000 is allocated to the Eden facility. Via an Assignment Agreement (AA) dated January 12, 2018, Ephraim Zigelbaum, Alexander Barth, and Yehudah Walden, the original proposed members of EDRNC Operating, LLC, assigned their membership interests in the operating entity to Esther Barth, Batia Zigelbaum, Chaya Walden and Teresa Creedon.

Except for Teresa Creedon, the proposed members have an ownership interest in other New York State nursing homes. BFA Attachment C presents their percentage

ownership and a financial summary of the proposed members' affiliated RHCFS.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. As of May 4, 2022, was 90.0% for the facility and 84.7% for Erie 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

EDRNC Operating, LLC will acquire the RHCFS's operations for \$10,000 funded by members' equity. There are no project costs associated with this application. The submitted budget projects a gain of \$59,768 in years One and Three.

<u>Budget</u>	<u>Current Year</u> <u>(2020)</u>	<u>Years 1&3</u> <u>(2023 & 2025)</u>
Revenues	\$2,756,717	\$3,571,892
Expensed	<u>\$3,578,808</u>	<u>\$3,512,124</u>
Gain/(Loss)	(\$822,091)	\$59,768

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
4. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amendment to the applicant's Operating Agreement, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Lease Agreement between EDRNC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Eden, LLC and the applicant, which is acceptable to the Department. [CSL]
8. Submission of an executed assignment of membership interest, acceptable to the Department. [CSL]
9. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or an Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Eden, LLC, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

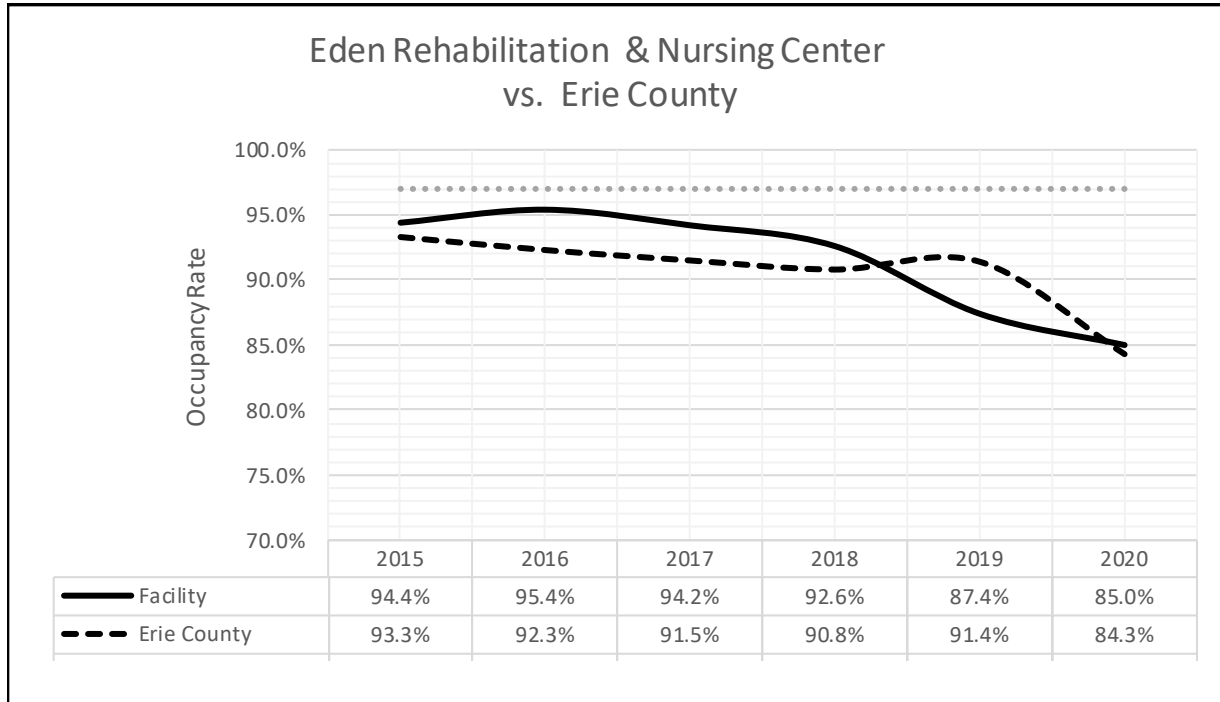
Council Action Date

July 28, 2022

Need Analysis

Analysis

The primary service area is Erie County. As of May 4, 2022, occupancy was 90.0% for the facility and 84.7% for Erie County.



Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

The 75% of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area may be increased or decreased based on specific factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

The facility's Medicaid admissions rate has been below the threshold of 75% of the Erie County rate from 2018 through 2020.

Medicaid Access	2018	2019	2020
Erie County Total	29.8%	32.0%	24.2%
Erie Threshold Value	22.3%	24.0%	18.2%
Eden Rehabilitation & Nursing Center	13.3%	19.6%	17.9%

Conclusion

There will be no changes to beds or services as a result of this project.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Eden Rehabilitation & Nursing Center	Same
Address	2806 George St Eden, NY 14057	Same
RHCF Capacity	40	Same
ADHC Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Absolut Center for Nursing and Rehabilitation at Eden, LLC	EDRNC Operating, LLC
	<u>Members</u> Israel Sherman 45% Samuel Sherman 1% Absolut Facilities Management, LLC 54% <i>Israel Sherman (100%)</i>	<u>Members</u> Esther R. Barth 35% Batia Zagelbaum 40% Chaya Walden 15% Teresa Creedon* 10% <i>*Managing Member</i>

Character and Competence – Assessment

Batia Zagelbaum discloses previous employment as a Midwife for Maternal Resources OB, PC. She holds a Master's degree in nursing from Columbia University Graduate School of Nurse-Midwifery and holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practitioner Obstetrics/Gynecology in NY, and an RN license in NY and NJ. Batia Zagelbaum discloses the following ownership interests:

Nursing Homes

Orchard Rehab & Nursing Center (17.5%)	03/2017 to present
Gowanda Rehab & Nursing Center (17.5%)	06/2018 to present
Massena Rehab & Nursing Center (37.5%)	04/2019 to present

Esther Barth has no employment history for the past 10 years, and she holds no professional licenses. She discloses a high school diploma from Bais Yaakov High School. Esther Barth discloses the following ownership interest:

Nursing Homes

Orchard Rehab & Nursing Center (37.5%)	03/2017 to present
Gowanda Rehab & Nursing Center (37.5%)	06/2018 to present
Massena Rehab & Nursing Center (37.5%)	04/2019 to present

Chaya Walden discloses previous employment in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Chaya Walden discloses the following ownership interests:

Nursing Homes

Orchard Rehab & Nursing Center (15.0%)	03/2017 to present
Gowanda Rehab & Nursing Center (15.0%)	06/2018 to present

Teresa Creedon is currently employed as the Corporate Administrator at Personal Healthcare, LLC since 2015, and she is a New York State licensed nursing home administrator in good standing. She holds a degree in Healthcare Administration from SUNY College of Technology. Teresa Creedon discloses no health care facility ownership.

Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership (as of 7/28/2022)					
Proposed Owner	Total Nursing Homes	< 48 Months		48 months or more	
		Number of Nursing Homes	Percent of Nursing Homes with a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes with a Below Average Rating
Esther R. Barth	3	1	100%	2	0%
Batia Zigelbaum	3	1	100%	2	0%
Chaya Walden	3	1	100%	2	0%
Teresa Creedon	0	n/a	n/a	n/a	n/a

Data as of: 06/2022

The proposed owner's portfolio includes ownership in three New York state facilities. Two of the New York facilities Gowanda Rehab & Nursing Center and Orchard Rehabilitation & Nursing Center have a CMS overall quality rating of average or higher. The other facility Massena Rehabilitation & Nursing Center has a CMS overall quality rating of below average. The applicant states that outside staffing agencies had to be used to supplement direct staff due to difficulty in staffing, and a regional clinical director was recently hired. Massena Rehabilitation & Nursing Center is expecting to be surveyed again soon and is optimistic that the results will also be good, but it will take some time for those results to be reflected in the star ratings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Eden Rehabilitation & Nursing Center	Subject Facility	****	****	***	***
Massena Rehabilitation & Nursing Center	Current	**	**	****	**
	04/2019	*	*	*	****
Gowanda Rehabilitation & Nursing Center	Current	***	***	****	**
	06/2018	*	**	****	*
Orchard Rehabilitation & Nursing Center	Current	***	**	*****	**
	03/2017	*	*	**	*

Data date: 06/2022

Enforcement History

Massena Rehab & Nursing Center:

- The facility was assessed federal CMPs of \$650.00 on 7/13/2020 and \$986.70 on 03/28/2022 for failure to report COVID data.

Gowanda Rehab & Nursing Center:

- The facility was assessed a federal CMP of \$7036.00 on 6/26/2020 for failure to timely report a crime against a resident and failing to ensure in response to abuse, all alleged violations were thoroughly investigated. The facility was also fined \$10,000 pursuant to Stipulation and Order NH-19-044 issued on October 15, 2019, for surveillance findings on June 26, 2019.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-152 issued on August 23, 2021, for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 400.2, Failure to obtain Covid-19 specimen results within 48 hours for three staff members; failure to document facility efforts to obtain the delayed Covid-19 specimen results.

Program

No changes in the program or physical environment are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

The applicant has provided the current year (2020) results, and the first- and third-year operating budget, in 2022 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Years One & Three</u>	
	<u>(2020)</u>		<u>(2023 & 2025)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicare FFS	\$837.88	\$156,683	\$538.87	\$195,610
Medicare MC	\$320.61	254,885	\$324.92	337,596
Medicaid FFS	\$177.03	1,314,478	\$205.60	1,181,766
Medicaid MC	\$157.17	435,689	\$238.36	1,225,868
Private Pay	\$232.16	292,054	\$291.97	435,621
Commercial FFS	\$346.54	4,505	\$291.45	25,065
Other Revenue*		<u>298,423</u>		<u>\$170,365</u>
Total		\$2,756,717		\$3,571,892
<u>Expenses</u>				
Operating	\$270.16	\$3,363,458	\$231.97	\$3,217,365
Capital	<u>\$17.30</u>	<u>\$215,350</u>	<u>\$21.25</u>	<u>\$294,759</u>
Total Expenses	\$287.46	\$3,578,808	\$253.22	\$3,512,124
Net Income (Loss)		<u>(\$822,091)</u>		<u>\$59,768</u>
Patient Days		12,450		13,870
Utilization %		85.27%		95.00%
Breakeven %		113.79%		93.34%

*Other revenue consists of Assessment revenue

The following is noted with respect to the submitted budget:

- The applicant held Year Three to Year One revenue and expense levels as a conservative measure in their projections. The facility is currently operating at over 90% occupancy and the applicant believes 95% occupancy for Years One and Three is achievable and sustainable. As of June 8, 2022, the facility was operating at 92.5% occupancy.
- Medicaid revenue is based on the facility's current July 1, 2022, Medicaid Regional Pricing rate. The Medicare, Private Pay, and Commercial rates are based on the current (August 2020) rates being received by the facility.
- The applicant indicated that the increase in projected utilization is the result of the facility hiring a person experienced in the operation of skilled nursing facilities to assist in improving performance. Upon approval of this application, the new members will build on these improvements by implementing measures to make the nursing home more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The new members plan to add clinical specialties and make physical improvements to the facility.
- Breakeven utilization is projected at 93.34% or 13,627 patient days for Years One and Three.
- Utilization by payor source before and after the change in ownership is as follows:

<u>Payor</u>	<u>Current Year Years One & Three</u>	
	<u>(2020)</u>	<u>(2023 & 2025)</u>
Medicare FFS	1.50%	2.62%
Medicare MC	6.39%	7.49%
Medicaid FFS	59.64%	41.44%
Medicaid MC	22.27%	37.08%
Private Pay	10.10%	10.76%
Commercial FFS	<u>0.10%</u>	<u>0.62%</u>
Total	100.00%	100.00%

Asset Purchase Agreement

The applicant submitted an executed APA to acquire certain assets related to the RHCF to be effectuated upon approval by the PHHPC. The terms are summarized below:

Date:	July 6, 2017
Seller:	Absolut Center for Nursing and Rehabilitation at Eden, LLC
Purchaser:	EDRNC Operating, LLC
Assets Transferred:	All furniture, fixtures, furnishings, equipment, etc.; All inventory and supplies located at the facility; All policies/procedures, manuals, intellectual property, etc.; Telephone and fax numbers; Administrative and financial books and records; Permits; Goodwill; Trust Property; Medicare/Medicaid/Third Party Payor provider numbers and provider reimbursement agreements.
Excluded Assets:	Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties; Licenses and permits not assignable or transferable; marketable securities; Any grant awarded by a Governmental Authority; All sums received from DOH related to the Universal Settlement of Medicaid rate appeals and connected lawsuits against NYS; Funds from all rate adjustments and appeals.
Purchase Price:	The total price for the five facilities included in the APA is \$100,000. \$10,000 is allocated to this application.
Payment of Purchase Price:	\$50,000 deposit paid by the original proposed members (held in escrow) toward the total purchase price, with a balance of \$50,000 due at closing. The proposed members will pay \$5,000 to the current operator of this facility at closing.

The purchase price of the operations is proposed to be satisfied with members' equity.

Assignment Agreement

The applicant submitted an executed AA to acquire the membership interests in EDRNC Operating, LLC. The terms are summarized below:

Date:	January 12, 2018
Assignors:	Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden
Assignees:	Batia Zagelbaum, Teresa Creedon, Esther Barth and Chaya Walden
Assignment:	Membership Interests in EDRNC Operating, LLC
Purchase Price:	\$5,000 was paid to the assignors upon execution of this agreement

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of June 7, 2022, the facility had no outstanding Medicaid liabilities.

Lease Agreement

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

Premises:	40-bed RHCf located at 2806 George St., Eden, NY (Erie County)
Landlord:	EDRNC Realty, LLC
Tenant:	EDRNC Operating, LLC
Term:	10 years with up to twenty (20) 1-year extension terms.
Rent:	\$161,371 Annually or \$13,455.92 Monthly
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an original affidavit attesting to the familial relationship between landlord and tenant.

Employment Agreement

Ephraim Zagelbaum was hired by the facility to provide administrative support services until CON approval of the change in ownership. The applicant has submitted the executed employment agreement, the terms of which are summarized below:

Date:	January 12, 2019
Operator:	EDRNC Operating, LLC
Employee/CEO	Ephraim Zagelbaum
Term	Until the earlier of either termination of the APA or CON approval by PHHPC.
Salary	\$50,000 annually (evenly apportioned for services provided at the four Absolut facilities being acquired by the proposed members of EDRNC Operating, LLC).
Job Duties	<ul style="list-style-type: none">• Make recommendations and proposals to the operators/administrators with respect to resident care and facility operations.• At the request of the operators/administrators, undertake projects relating to resident care or operations.• Prepare financial statements for the facilities within 120 days after fiscal year closing.• Prepare quarterly financial statements within 120 days after the quarter's closing.• Prepare internal financial statements within 120 days after monthly closing.• Maintain office records, books, and accounts in connection with management and operation of the facilities; and• Prepare all required notices/reports necessary to own and operate the facilities.

Capability and Feasibility

EDRNC Operating, LLC will acquire the RHCf's operations for \$10,000 funded via members' equity. The applicant has paid \$5,000 toward the purchase price leaving a balance due of \$5,000 at closing. There are no project costs associated with this application

The working capital requirement is \$585,354 based on two months of first-year expenses. Working capital will be satisfied via equity from the proposed members. BFA Attachment A, the proposed members' net worth summaries, shows sufficient assets overall to meet the acquisition and working capital equity requirements. Esther Barth has provided an affidavit confirming her willingness to contribute personal resources disproportionate to her membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the proforma balance sheet of EDRNC Operating, LLC as of the first day of operation, which indicates a positive members' equity of \$577,443. It is noted that operating assets include \$10,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of \$567,443.

The submitted budget indicates a net income of \$59,768 for the first and third years. BFA Attachment E shows that the proposed members of EDRNC, SARNC, HORNC, and DURNC have enough equity overall to fund all four CON applications. However, two of the members (Batia Zigelbaum and Chaya Walden) have insufficient liquid resources to cover their share. As previously noted, a disproportionate share affidavit was provided by Esther Barth to cover any member's equity shortfall. The budget appears reasonable.

BFA Attachment B is a financial summary of Eden Rehabilitation & Nursing Center for the period 2019-2020. As shown, the 2019-2020 certified financial statements indicate the facility had an average negative net asset position of \$1,006,164, an average positive working capital position of \$327,638, and generated an average operating loss of \$430,967. The applicant indicated that the reported losses for 2019 and 2020 were due to the facility being in a state of disrepair for years and the RHC's outdated bed configuration. In 2018, a person experienced in nursing home operations was hired to assist in improving facility operations. While the 2021 internal financial statements continue to show a negative net asset position of \$779,933, the facility continued to maintain positive working capital of \$270,083 and showed an overall improvement by generating a positive net income of \$198,875. For the period 1/1/22-3/31/22, the facility had a negative net asset position of \$888,868, positive working capital of \$221,711, and a small net loss of \$89,349.

BFA Attachment C is the percent ownership and financial summary of the proposed members' affiliated nursing homes. As shown, Gowanda Rehabilitation & Nursing Center, Massena Rehabilitation and Nursing Center, and Orchard Rehabilitation and Nursing Center had average positive working capital and an average positive net asset position between 2019 and 2021. All three nursing homes experienced net losses in 2020 due to the impact of COVID-19 but rebounded in 2021 with average positive net incomes of \$2,461,520.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net worth summary, members of EDRNC Operating, LLC
BFA Attachment B	Certified 2019-2020 and the 12/31/21 and the 1/1-3/31/22 Internal Financial Summary of EDRNC Operating, LLC
BFA Attachment C	Financial Summary of Proposed Member's Affiliated RHCs
BFA Attachment D	Pro Forma Balance Sheet, EDRNC Operating, LLC
BFA Attachment E	EDRNC, DURNC, HORNC, and SARNC-Equity Requirement for Operations

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 28th day of July 2022, 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 EDRNC Operating, LLC as the new operator of the 40-bed residential health care facility located at 2806 George Street, Eden currently operated by Absolut Center for Nursing and Rehabilitation at Eden, LLC, 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:

192332 E

EDRNC Operating, LLC d/b/a Eden
Rehabilitation & Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
4. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Lease Agreement between EDRNC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Eden, LLC and the applicant, which is acceptable to the Department. [CSL]
8. Submission of an executed assignment of membership interest, acceptable to the Department. [CSL]
9. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or an Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Eden, LLC, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 192333-E
HORNC Operating, LLC d/b/a
Houghton Rehabilitation & Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Allegany
Acknowledged: January 10, 2020

Executive Summary

Description

HORNC Operating, LLC d/b/a Houghton Rehabilitation & Nursing Center (HORNC), a New York limited liability company, requests approval to be established as the operator of Houghton Rehabilitation & Nursing Center, a 100-bed, proprietary Article 28 residential health care facility (RHCF) located at 9876 Luckey Drive, Houghton (Allegany County). Absolut Center for Nursing and Rehabilitation at Houghton, LLC is the current operator of the facility and HORNC Realty, LLC is the real property owner. Upon approval by the Public Health and Health Planning Council, HORNC Realty, LLC will lease the premises to HORNC Operating, LLC via a non-arm's length lease.

Ownership of the realty is as follows:

<u>Realty Owner</u>	
HHORNC Realty, LLC	
<u>Members</u>	<u>%</u>
Ephraim Zigelbaum	47.5%
Alexander Barth	37.5%
Yehudah Walden	15.0%

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

<u>Current Operator</u>	
Absolut Center for Nursing and Rehabilitation at Houghton, LLC	
<u>Member</u>	<u>%</u>
Absolut Facilities Management, LLC <i>Israel Sherman (100%)</i>	54%
Israel Sherman	45%
Samuel Sherman	1%

<u>Proposed Operator</u>	
HORNC Operating, LLC	
<u>Members</u>	<u>%</u>
Esther Barth	35%
Batia Zigelbaum	40%
Chaya Walden	15%
Teresa Creedon	10%

There is a familial relationship between the property owner and the proposed operating entity. There will be no change in beds or services provided.

The Asset Purchase Agreement (APA) for this application included the sale of the operating interests of four other Absolut RHCFs currently operated by the same members of Absolut Center for Nursing and Rehabilitation at Houghton, LLC. Three of these facilities are being sold to the same proposed new members as identified for this application and are listed here.

- CON 192332 (Eden Rehabilitation and Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Eden, LLC, 40 beds, Allegany County)
- CON 192335 (Salamanca Rehabilitation and Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, 120 beds, Cattaraugus County)
- CON 192336 (Dunkirk Rehabilitation and Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC, 40 beds, Chautauqua County)

These three applications are being reviewed concurrently with this application.

The fourth facility is being sold to different proposed new members as per an amendment to the original APA and is being reviewed under CON 192208 (Absolut Center for Nursing and Rehabilitation at Endicott, LLC, 160 beds, Broome County).

On July 6, 2017, Absolut Center for Nursing and Rehabilitation at Houghton, LLC (Seller, collectively with the operating entities of the other four RHCFS) and HORNC Operating, LLC (Buyer, collectively with the proposed operating entities of the other four RHCFS) entered an APA for the sale and acquisition of the operating interests of the RHCFS. The total purchase price of the five RHCFS operations is \$100,000, of which \$25,000 is allocated to the Houghton facility. Via an Assignment Agreement (AA) dated January 12, 2018, Ephraim Zigelbaum, Alexander Barth, and Yehudah Walden, the original proposed members of HORNC Operating, LLC, assigned their membership interests in the operating entity to Esther Barth, Batia Zigelbaum, Chaya Walden and Teresa Creedon.

Except for Ms. Creedon, the proposed members have ownership interest in other New York State nursing homes. BFA Attachment C presents their percentage ownership and a financial summary of the proposed members' affiliated RHCFS.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no As of May 18, 2022, was 95.0% for the facility and 90.9% for Allegany 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

HORNC Operating, LLC will acquire the RHCFS's operations for \$25,000 funded by members' equity. There are no project costs associated with this application. The submitted budget projects a gain of \$527,030 and \$777,512, respectively, in Year One and Year Three. The projections are based on a breakeven occupancy rate of 83.59% for Year One and 85.54% for Year Three. As of June 8, 2022, the facility was operating at 94% and it appears that HORNC's occupancy assumptions are achievable in Years One and Three.

<u>Budget</u>	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Revenues	\$7,801,974	\$8,235,418
Expensed	<u>\$7,274,944</u>	<u>\$7,457,906</u>
Gain/(Loss)	\$527,030	\$777,512

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease agreement, acceptable to the Department of Health. (BFA)
2. Submission of a photocopy of an executed Lease Agreement between HORNC Realty, LLC and the applicant, which is acceptable to the Department. (CSL)
3. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Houghton, LLC and the applicant, which is acceptable to the Department. (CSL)
4. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, which is acceptable to the Department. (CSL)
5. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. (CSL)
6. Submission of an executed Certificate of Amendment of the Articles of Organization or the Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Houghton, LLC, which is acceptable to the Department. (CSL)
7. Submission of an executed assignment of membership interest, acceptable to the Department. (CSL)
8. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
9. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)

Approval conditional upon:

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

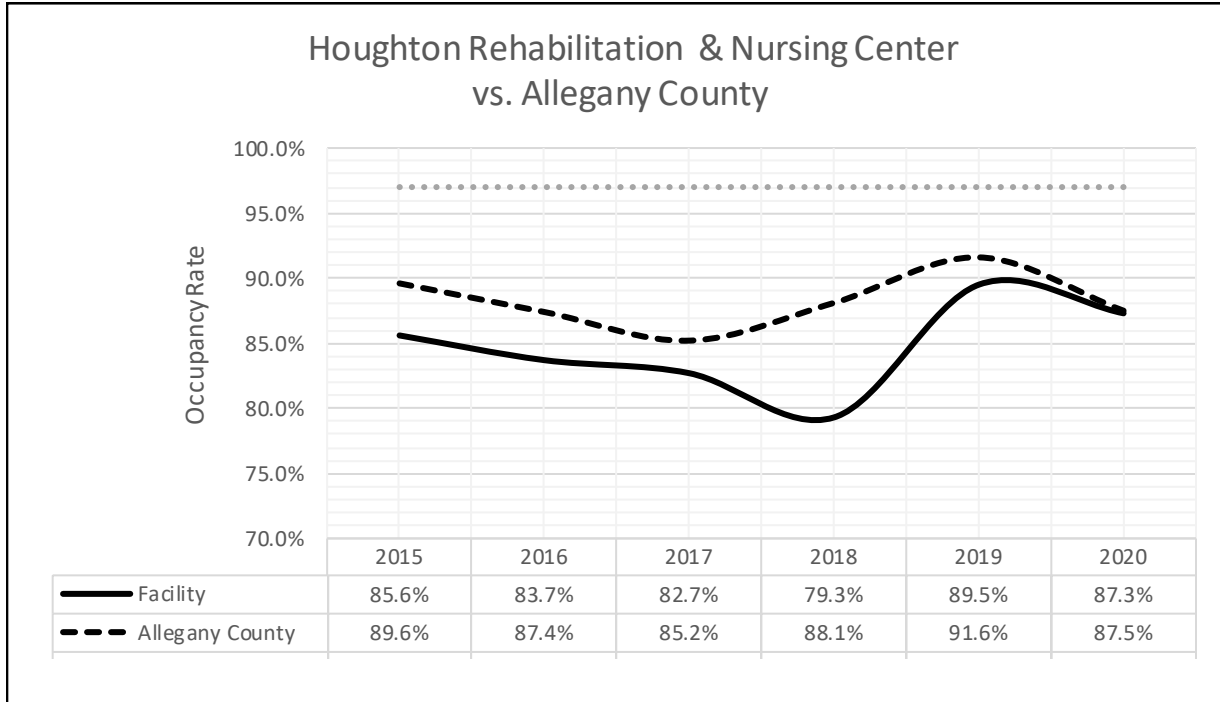
Council Action Date

July 28, 2022

Need Analysis

Analysis

The primary service area is Allegany County. As of May 18, 2022, current occupancy was 95.0% for the facility and 90.9% for Allegany County.



Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

The 75% of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

Medicaid Access	2018	2019	2020
Allegany County Total	37.7%	37.0%	41.0%
Allegany Threshold Value	28.3%	27.8%	30.7%
Houghton Rehabilitation & Nursing Center	26.0%	32.6%	43.8%

Conclusion

There will be no changes to beds or services as a result of this project.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Houghton Rehabilitation & Nursing Center	Same
Address	9876 Luckey Drive Houghton, NY 14744	Same
RHCF Capacity	100	Same
ADHC Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Absolut Center for Nursing and Rehabilitation at Houghton, LLC <u>Members</u> Israel Sherman 45% Samuel Sherman 1% Absolut Facilities Management, LLC 54% <i>Israel Sherman (100%)</i>	HORNC Operating, LLC <u>Members</u> Esther R. Barth 35% Batia Zagelbaum 40% Chaya Walden 15% Teresa Creedon* 10% <i>*Managing Member</i>

Character and Competence – Assessment

Batia Zagelbaum discloses previous employment as a Midwife for Maternal Resources OB, PC. She holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practitioner Obstetrics/Gynecology in NY, and an RN license in NY and NJ. Ms. Zagelbaum discloses the following ownership interests:

Nursing Homes

Orchard Rehab & Nursing Center (17.5%)	03/2017 to present
Gowanda Rehab & Nursing Center (17.5%)	06/2018 to present
Massena Rehab & Nursing Center (37.5%)	04/2019 to present

Esther Barth has no employment history for the past 10 years, and she holds no professional licenses. Mrs. Barth discloses a high school diploma from Bais Yaakov High School. Ms. Barth discloses the following ownership interest:

Nursing Homes

Orchard Rehab & Nursing Center (37.5%)	03/2017 to present
Gowanda Rehab & Nursing Center (37.5%)	06/2018 to present
Massena Rehab & Nursing Center (37.5%)	04/2019 to present

Chaya Walden discloses previous employment in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Ms. Walden discloses the following ownership interests:

Nursing Homes

Orchard Rehab & Nursing Center (15.0%)	03/2017 to present
Gowanda Rehab & Nursing Center (15.0%)	06/2018 to present
Massena Rehab & Nursing Center (15.0%)	04/2019 to present

Teresa Creedon discloses current employment as the Corporate Administrator at Personal Healthcare, LLC since 2015. Mrs. Creedon is a New York State licensed nursing home administrator in good standing. Mrs. Creedon holds a degree in Healthcare Administration from SUNY College of Technology. Mrs. Creedon discloses no health care facility ownership.

Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership (as of 7/28/2022)					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	< 48 Months		48 months or more	
		<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes with a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes with a Below Average Rating</u>
Esther R. Barth	3	1	100%	2	0%
Batia Zigelbaum	3	1	100%	2	0%
Chaya Walden	3	1	100%	2	0%
Teresa Creedon	0	n/a	n/a	n/a	n/a

Data as of: 06/2022

The proposed owner's portfolio includes ownership in three New York state facilities. Two of the New York facilities Gowanda Rehab & Nursing Center and Orchard Rehabilitation & Nursing Center have a CMS overall quality rating of average or higher. The other facility Massena Rehabilitation & Nursing Center has a CMS overall quality rating of below average. The applicant states that outside staffing agencies had to be used to supplement direct staff due to difficulty in staffing, and a regional clinical director was recently hired. Massena Rehabilitation & Nursing Center is expecting to be surveyed again soon and is optimistic that the results will also be good, but it will take some time for those results to be reflected in the star ratings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Houghton Rehabilitation & Nursing Center	Subject Facility	***	***	**	**
Massena Rehabilitation & Nursing Center	Current	**	**	****	**
	04/2019	*	*	*	****
Gowanda Rehabilitation & Nursing Center	Current	***	***	****	**
	06/2018	*	**	****	*
Orchard Rehabilitation & Nursing Center	Current	***	**	*****	**
	03/2017	*	*	**	*

Data date: 06/2022

Enforcement History

Massena Rehab & Nursing Center:

- The facility was assessed federal CMPs of \$650.00 on 7/13/2020 and \$986.70 on 03/28/2022 for failure to report COVID data.

Gowanda Rehab & Nursing Center:

- The facility was assessed a federal CMP of \$7036.00 on 6/26/2020 for failure to timely report a crime against a resident and failing to ensure in response to abuse, all alleged violations were thoroughly investigated. The facility was also fined \$10,000 pursuant to Stipulation and Order NH-19-044 issued on October 15, 2019, for surveillance findings on June 26, 2019.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-152 issued on August 23, 2021, for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 400.2, Failure to obtain Covid-19 specimen results within 48 hours for three staff members; failure to document facility efforts to obtain the delayed Covid 19 specimen results.

Program

No changes in the program or physical environment are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

The applicant has provided the current year (2020) results, and the first- and third-year operating budget, in 2022 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u> <u>(2020)</u>		<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2025)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues						
Commercial FFS	\$138.25	\$1,659	\$291.46	\$78,987	\$291.52	\$83,375
Medicare FFS	\$610.03	1,187,119	\$463.16	622,024	\$463.03	656,581
Medicare MC	\$329.89	317,350	\$444.96	394,235	\$445.07	416,137
Medicaid FFS	\$180.59	3,560,785	\$195.55	3,149,493	\$195.55	3,324,465
Medicaid MC	\$144.07	1,105,483	\$210.79	2,610,805	\$210.79	2,755,850
Private Pay	\$264.59	434,726	\$292.05	542,631	\$291.94	572,777
Other Revenue*		<u>\$535,868</u>		<u>\$403,800</u>		<u>\$426,233</u>
Total		\$7,142,990		\$7,801,974		\$8,235,418
Expenses						
Operating	\$195.19	\$6,236,948	\$195.26	\$6,414,493	\$190.26	\$6,597,455
Capital	<u>21.95</u>	<u>701,451</u>	<u>26.19</u>	<u>860,451</u>	<u>24.81</u>	<u>860,451</u>
Total Expenses	\$217.14	\$6,938,399	\$221.45	\$7,274,944	\$215.07	\$7,457,906
Net Income		<u>\$204,591</u>		<u>\$527,030</u>		<u>\$777,512</u>
Utilization %		87.54%		90.00%		95.00%
Breakeven %		84.83%		83.59%		85.54%

*Other revenue is comprised of Assessment revenue.

The following is noted with respect to the submitted budget:

- The facility is currently operating at over 90% occupancy and the applicant believes a 90% and a 95% occupancy for Years One and Three respectively is achievable and sustainable.

- Medicaid revenue is based on the facility's current July 1, 2022, Medicaid Regional Pricing rate. The Medicare, Private Pay, and Commercial rates are based on the current (August 2020) rates being received by the facility.
- The increase in operating costs is associated with an increase in professional fees and purchased services.
- The applicant indicated that the increase in projected utilization is the result of the facility hiring a person experienced in the operations of skilled nursing facilities to assist in improving performance. Upon approval of this application, the new members will build on these improvements by implementing measures to make the nursing home more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The new members plan to add clinical specialties and make physical improvements to the facility.
- Breakeven utilization is projected at 83.59% or 30,510 patient days for Year One and 85.54% or 31,223 patient days for Year Three.
- Utilization by payor source for the current year and the first and third year after the change in ownership is as follows:

<u>Payor</u>	<u>Current Year (2020)</u>	<u>Years One & Three (2023 and 2025)</u>
Medicare FFS	6.09%	4.09%
Medicare MC	3.01%	2.70%
Medicaid FFS	61.71%	49.03%
Medicaid MC	24.01%	37.70%
Private Pay	5.14%	5.66%
Commercial	<u>0.04%</u>	<u>0.82%</u>
Total	100%	100%

Asset Purchase Agreement

The applicant submitted an executed APA to acquire certain assets related to the RHCF to be effectuated upon approval by the PHHPC. The terms are summarized below:

Date:	July 6, 2017
Seller:	Absolut Center for Nursing and Rehabilitation at Houghton, LLC,
Purchaser:	HORNC Operating, LLC
Assets Transferred:	All furniture, fixtures, furnishings, equipment, etc.; All inventory and supplies located at the facility; All policies/procedures, manuals, intellectual property, etc.; Telephone and fax numbers; Administrative and financial books and records; Permits; Goodwill; Trust Property; Medicare/Medicaid/Third Party Payor provider numbers and provider reimbursement agreements.
Excluded Assets:	Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties; Licenses and permits not assignable or transferable; marketable securities; Any grant awarded by a Governmental Authority; All sums received from DOH related to the Universal Settlement of Medicaid rate appeals and connected lawsuits against NYS; Funds from all rate adjustments and appeals.
Purchase Price:	The total price for the five facilities included in the APA is \$100,000. \$25,000 allocated to this application.
Payment of Purchase Price:	\$50,000 deposit paid by the original proposed members (held in escrow) toward the total purchase price, with a balance of \$50,000 due at closing. The proposed members will pay \$12,500 to the current operator of this facility at closing.

The purchase price of the operations is proposed to be satisfied with members' equity.

Assignment Agreement

The applicant submitted an executed AA to acquire the membership interests in HORNC Operating, LLC. The terms are summarized below:

Date:	January 12, 2018
Assignors:	Ephraim Zigelbaum, Alexander Barth, and Yehudah Walden
Assignees:	Batia Zigelbaum, Teresa Creedon, Esther Barth and Chaya Walden
Assignment:	Membership Interests in HORNC Operating, LLC
Purchase Price:	\$12,500 was paid to the assignors upon execution of this agreement

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of June 21, 2022, the facility had no outstanding Medicaid overpayment liability.

Lease Agreement

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

Premises:	100-bed RHCf located at 9876 Luckey Drive, Houghton, NY (Allegany County)
Landlord:	HORNC Realty, LLC
Tenant:	HORNC Operating, LLC
Term:	10 years with up to (20) 1-year extension terms.
Rent:	\$672,373 annually years 1-10 (\$56,031.08 monthly)
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an original affidavit attesting to the familial relationship between landlord and tenant.

Employment Agreement

Ephraim Zigelbaum was hired by the facility to provide administrative support services until CON approval of the change in ownership. The applicant has submitted the executed employment agreement, the terms of which are summarized below:

Date:	January 12, 2019
Operator	HORNC Operating, LLC
Employee/CEO	Ephraim Zigelbaum
Term	Until the earlier of either termination of the APA or CON approval by PHHPC.
Salary	\$50,000 annually (evenly apportioned for services provided at the four Absolut facilities being acquired by the proposed members HORNC Operating, LLC).
Job Duties	<ul style="list-style-type: none">• Make recommendations and proposals to the operators/administrators with respect to resident care and facility operations.• At the request of the operators/administrators, undertake projects relating to resident care or operations.• Prepare financial statements for the facilities within 120 days after fiscal year closing.• Prepare quarterly financial statements within 120 days after the quarter's closing.• Prepare internal financial statements within 120 days after monthly closing.• Maintain office records, books, and accounts in connection with management and operation of the facilities; and• Prepare all required notices/reports necessary to own and operate the facilities.

Capability and Feasibility

HORNC Operating will acquire the RHCFC's operations for \$25,000 funded via members' equity. The applicant has paid \$12,500 toward the purchase price leaving a balance due of \$12,500 at closing. There are no project costs associated with this application. The working capital requirement is \$1,212,491 based on two months of first-year expenses. Working capital will be satisfied via equity from proposed members. BFA Attachment A, the proposed members' net worth summaries, shows sufficient assets overall to meet the acquisition and working capital equity requirements. Esther Barth has provided an affidavit confirming her willingness to contribute personal resources disproportionate to her membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,242,457. It is noted that operating assets include \$25,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of \$1,217,457.

The submitted budget indicates a net income of \$527,030 and \$777,512 for the first and third year, respectively. BFA Attachment E shows that the proposed members of HORNC, SARNC, EDRNC, and DURNC have enough equity overall to fund all four CONs. However, two of the members (Batia Zagelbaum and Chaya Walden) have insufficient liquid resources to cover their share. As previously noted, disproportionate share affidavits were provided by other proposed members to cover any member's equity shortfall. The budget appears reasonable.

BFA Attachment B is a financial summary of HORNC Operating, LLC for the period 2019-2020. As shown, the 2019-2020 certified financial statements indicate that the facility had an average negative net asset position of \$1,630,879, an average positive working capital position of \$169,941, and generated an average operating income of \$664,728. The 2021 Internal Financial Statements show that the facility has managed to achieve a positive net asset position of \$1,713,090, which is a turnaround from 2019-2020. They continued to generate positive working capital of \$3,448,445 and a net income of \$2,433,666. As of March 31, 2022, the facility had a positive net asset position of \$200,237, positive working capital of \$1,065,386, and a net loss of \$179,954.

BFA Attachment C is the percent ownership and financial summary of the proposed members' affiliated nursing homes. As shown, Gowanda Rehabilitation & Nursing Center, Massena Rehabilitation and Nursing Center, and Orchard Rehabilitation and Nursing Center had average positive working capital and an average positive net asset position between 2019 and 2021. All three nursing homes experienced net losses in 2020 due to the impact of COVID-19 but rebounded in 2021 with average positive net incomes of \$2,461,520.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Summary, Members of HORNC Operating, LLC
BFA Attachment B	Certified 2019-2020 and the 2021 and the 2022 Internal Financial Summary of HORNC Operating, LLC
BFA Attachment C	Financial Summary of Proposed Member's Affiliated RHCFCs
BFA Attachment D	Pro Forma Balance Sheet, HORNC Operating, LLC
BFA Attachment E	HORNC, DURNC, EDRNC, and SARNC-Equity Requirement for Operations

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 28th day of July 2022, 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 HORNC Operating, LLC as the new operator of the 100-bed residential health care facility located at 9876 Luckey Drive, Houghton currently operated by Absolut Center for Nursing and Rehabilitation at Houghton, LLC, 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:

192333 E

HORNC Operating, LLC d/b/a Houghton
Rehabilitation & Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease agreement, acceptable to the Department of Health. (BFA)
2. Submission of a photocopy of an executed Lease Agreement between HORNC Realty, LLC and the applicant, which is acceptable to the Department. (CSL)
3. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Houghton, LLC and the applicant, which is acceptable to the Department. (CSL)
4. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, which is acceptable to the Department. (CSL)
5. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. (CSL)
6. Submission of an executed Certificate of Amendment of the Articles of Organization or the Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Houghton, LLC, which is acceptable to the Department. (CSL)
7. Submission of an executed assignment of membership interest, acceptable to the Department. (CSL)
8. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR).
9. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)

APPROVAL CONDITIONAL UPON:

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

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



Project # 192335-E
SARNC Operating, LLC d/b/a
Salamanca Rehabilitation & Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Cattaraugus
Acknowledged: January 10, 2020

Executive Summary

Description

SARNC Operating, LLC d/b/a Salamanca Rehabilitation & Nursing Center (SARNC), a New York limited liability company, requests approval to be established as the new operator of Salamanca Rehabilitation & Nursing Center, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 451 Broad Street, Salamanca (Cattaraugus County). Absolut Center for Nursing and Rehabilitation at Salamanca, LLC is the current operator of the RHCF and SARNC Realty, LLC is the real property owner. Upon approval by the Public Health and Health Planning Council, SARNC Realty, LLC will lease the premises to SARNC Operating, LLC via a non-arm's length lease.

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

<u>Current Operator</u>	
Absolut Center for Nursing and Rehabilitation at Salamanca, LLC	
<u>Member</u>	<u>%</u>
Absolut Facilities Management, LLC <i>Israel Sherman (100%)</i>	54%
Israel Sherman	45%
Samuel Sherman	1%

<u>Proposed Operator</u>	
SARNC Operating, LLC	
<u>Members</u>	<u>%</u>
Esther Barth	35%
Batia Zigelbaum	40%
Chaya Walden	15%
Teresa Creedon	10%

Ownership of the realty is as follows:

<u>Realty Owner</u>	
SARNC Realty, LLC	
<u>Members</u>	<u>%</u>
Ephraim Zigelbaum	47.5%
Alexander Barth	37.5%
Yehudah Walden	15.0%

There is a familial relationship between the property owner and several of the proposed operating entity members. There will be no change in beds or services provided.

The Asset Purchase Agreement (APA) for this application included the sale of the operating interests of four other Absolut RHCFs currently operated by the same members of Absolut Center for Nursing and Rehabilitation at Salamanca, LLC. Three of these facilities are being sold to the same proposed new members as identified for this application and are listed here.

- CON 192332 (Eden Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Eden, LLC, 40 beds, Erie County),
- CON 192333 (Houghton Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Houghton, LLC, 100 beds, Allegany County),
- CON 192336 (Dunkirk Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Dunkirk, 40 beds, Chautauqua County).

These three applications are being reviewed concurrently with this application.

The fourth facility is being sold to different proposed new members as per an amendment to the original APA and is being reviewed under CON 192208 (Absolut Center for Nursing and Rehabilitation at Endicott, LLC, 160 beds, Broome County).

On July 6, 2017, Absolut Center for Nursing and Rehabilitation at Salamanca, LLC (as Seller, collectively with the operating entities of the other four RHCFS) and SARNC Operating, LLC (Buyer, collectively with the proposed operating entities of the other four RHCFS) entered into an APA for the sale and acquisition of the operating interests of the RHCFS. The total purchase price of the five RHCFS operations is \$100,000, of which \$30,000 is allocated to the Salamanca facility. Via an Assignment Agreement (AA) dated January 12, 2018, Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden, the original proposed members of SARNC, assigned their membership interests in the operating entity to Esther Barth, Batia Zagelbaum, Chaya Walden, and Teresa Creedon.

Except for Teresa Creedon, the proposed members have an ownership interest in other New York State nursing homes. BFA Attachment C presents their percentage ownership and a financial summary of the proposed members' affiliated RHCFS.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. As of May 11, 2022, was 88.3% for the facility and 83.9% for Cattaraugus 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

SARNC Operating, LLC will acquire the RHCFS' operations for \$30,000 funded by members' equity. There are no project costs associated with this application. The budget projects year one net income of \$1,633,575 and \$2,027,664 by year three.

<u>Budget:</u>	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Revenues	\$11,696,978	\$12,346,811
Expensed	<u>10,063,403</u>	<u>\$10,319,147</u>
Gain	\$1,633,575	\$2,027,664

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Lease Agreement between SARNC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Salamanca, LLC and the applicant, which is acceptable to the Department. [CSL]
6. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or an Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, which is acceptable to the Department. [CSL]
7. Submission of an executed assignment of membership interest, acceptable to the Department. [CSL]
8. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].

Approval conditional upon:

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

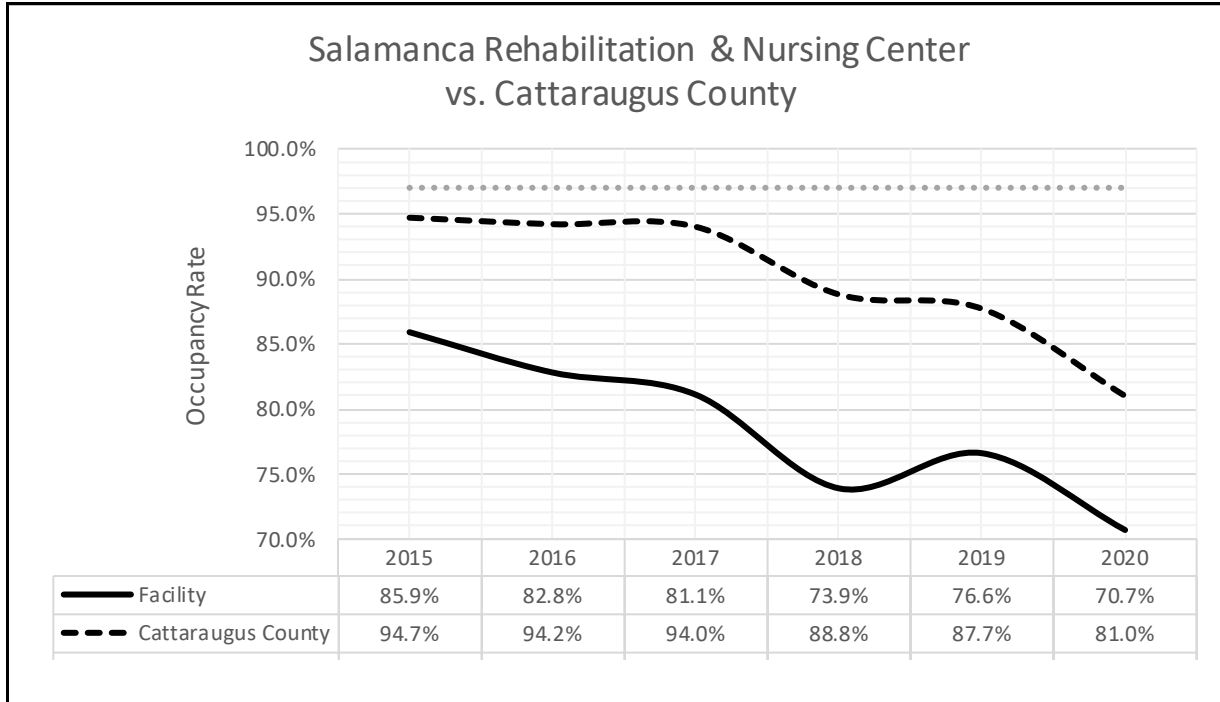
Council Action Date

July 28, 2022

Need Analysis

Analysis

The primary service area is Cattaraugus County. As of May 11, 2022, occupancy was 88.3% for the facility and 83.9% for Cattaraugus County.



Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

The 75% of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

The facility's Medicaid admissions rate has been above the threshold of 75% of the Cattaraugus County rate from 2018 through 2020.

Medicaid Access	2018	2019	2020
Cattaraugus County Total	26.9%	25.4%	30.8%
Cattaraugus Threshold Value	20.2%	19.0%	23.1%
Salamanca Rehabilitation & Nursing Center	30.6%	31.3%	42.3%

Conclusion

There will be no changes to beds or services as a result of this project.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Salamanca Rehabilitation & Nursing Center	Same
Address	451 Broad Street Salamanca, NY 14779	Same
RHCF Capacity	120	Same
ADHC Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Absolut Center for Nursing and Rehabilitation at Salamanca, LLC	SARNC Operating, LLC
	<u>Members</u> Israel Sherman 45% Samuel Sherman 1% Absolut Facilities Management, LLC 54% <i>Israel Sherman (100%)</i>	<u>Members</u> Esther R. Barth 35% Batia Zigelbaum 40% Chaya Walden 15% Teresa Creedon* 10% <i>*Managing Member</i>

Character and Competence – Assessment

Batia Zigelbaum discloses previous employment as a Midwife for Maternal Resources OB, PC. She holds a Master's degree in nursing from Columbia University Graduate School of Nurse-Midwifery and holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practitioner Obstetrics/Gynecology in NY, and an RN license in NY and NJ. Batia Zigelbaum discloses the following ownership interests:

Nursing Homes

Orchard Rehab & Nursing Center (17.5%)	03/2017 to present
Gowanda Rehab & Nursing Center (17.5%)	06/2018 to present
Massena Rehab & Nursing Center (37.5%)	04/2019 to present

Esther Barth has no employment history for the past 10 years, and she holds no professional licenses. She discloses a high school diploma from Bais Yaakov High School. Esther Barth discloses the following ownership interest:

Nursing Homes

Orchard Rehab & Nursing Center (37.5%)	03/2017 to present
Gowanda Rehab & Nursing Center (37.5%)	06/2018 to present
Massena Rehab & Nursing Center (37.5%)	04/2019 to present

Chaya Walden discloses previous employment in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Chaya Walden discloses the following ownerships:

Nursing Homes

Orchard Rehab & Nursing Center (15.0%)	03/2017 to present
Gowanda Rehab & Nursing Center (15.0%)	06/2018 to present
Massena Rehab & Nursing Center (15.0%)	04/2019 to present

Teresa Creedon is currently employed as the Corporate Administrator at Personal Healthcare, LLC since 2015, and she is a New York State licensed nursing home administrator in good standing. She holds a degree in Healthcare Administration from SUNY College of Technology. Teresa Creedon discloses no health care facility ownership.

Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meet the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership (as of 7/28/2022)					
Proposed Owner	Total Nursing Homes	< 48 Months		48 months or more	
		Number of Nursing Homes	Percent of Nursing Homes with a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes with a Below Average Rating
Esther R. Barth	3	1	100%	2	0%
Batia Zigelbaum	3	1	100%	2	0%
Chaya Walden	3	1	100%	2	0%
Teresa Creedon	0	n/a	n/a	n/a	n/a

Data as of: 06/2022

The proposed owner's portfolio includes ownership in three New York state facilities. Two of the New York facilities Gowanda Rehab & Nursing Center and Orchard Rehabilitation & Nursing Center have a CMS overall quality rating of average or higher. The other facility Massena Rehabilitation & Nursing Center has a CMS overall quality rating of below average. The applicant states that outside staffing agencies had to be used to supplement direct staff due to difficulty in staffing, and a regional clinical director was recently hired. Massena Rehabilitation & Nursing Center is expecting to be surveyed again soon and is optimistic that the results will also be good, but it will take some time for those results to be reflected in the star ratings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Salamanca Rehabilitation & Nursing Center	Subject Facility	*	*	***	*
Massena Rehabilitation & Nursing Center	Current	**	**	****	**
	04/2019	*	*	*	****
Gowanda Rehabilitation & Nursing Center	Current	***	***	****	**
	06/2018	*	**	****	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Orchard Rehabilitation & Nursing Center	Current	***	**	*****	**
	03/2017	*	*	**	*

Data date: 06/2022

Enforcement History

Massena Rehab & Nursing Center:

- The facility was assessed federal CMPs of \$650.00 on 7/13/2020 and \$986.70 on 03/28/2022 for failure to report COVID data.

Gowanda Rehab & Nursing Center:

- The facility was assessed a federal CMP of \$7036.00 on 6/26/2020 for failure to timely report a crime against a resident and failing to ensure in response to abuse, all alleged violations were thoroughly investigated. The facility was also fined \$10,000 pursuant to Stipulation and Order NH-19-044 issued on October 15, 2019, for surveillance findings on June 26, 2019.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-152 issued on August 23, 2021, for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 400.2, Failure to obtain Covid-19 specimen results within 48 hours for three staff members; failure to document facility efforts to obtain the delayed Covid 19 specimen results.

Program

No changes in the program or physical environment are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

The applicant has provided the current year (2020) results, and the first- and third-year operating budget, in 2020 dollars, subsequent to the change in ownership. The budget is summarized below:

	<u>Current Year</u> <u>(2020)</u>		<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2025)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
Commercial	\$338.28	\$430,296	\$200.02	\$406,239	\$200.00	\$428,808
Medicare FFS	\$554.25	807,544	\$519.90	1,295,079	\$519.98	\$1,367,028
Medicare MC	\$337.60	450,365	\$440.01	638,893	\$439.91	674,387
Medicaid FFS	\$195.74	3,080,376	\$274.66	3,867,433	\$274.66	4,082,290
Medicaid MC	\$189.28	1,818,774	\$260.92	4,541,539	\$260.92	4,793,847
Private Pay	\$240.98	394,485	\$199.97	392,142	\$199.97	413,928
Other Revenue*		<u>1,748,655</u>		<u>555,653</u>		<u>586,523</u>
Total Revenues		\$8,730,495		\$11,696,978		\$12,346,811

	<u>Current Year</u> <u>(2020)</u>		<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2025)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Expenses</u>						
Operating	\$239.78	\$7,444,085	\$207.35	\$8,174,182	\$202.58	\$8,429,926
Capital	<u>21.24</u>	<u>659,306</u>	<u>47.92</u>	<u>1,889,221</u>	<u>45.40</u>	<u>1,889,221</u>
Total Expenses	\$261.01	\$8,103,391	\$255.27	\$10,063,403	\$247.98	\$10,319,147
Net Income/(Loss)		<u>\$627,104</u>		<u>\$1,633,575</u>		<u>\$2,027,664</u>
Patient Days		31,046		39,422		41,612
Utilization %		70.88%		90.00%		95.00%
Breakeven %		65.79%		77.43%		79.40%

*Other Revenue consists of the Assessment revenue, prior period adjustments, H&HS Services Stimulus, cafeteria, vending machines, TV rentals, investment income, Nursing Home Quality Initiative, and barber and beauty.

The following is noted with respect to the submitted budget:

- The Medicaid reimbursement rate is projected based on the facility's current July 2022 Medicaid Regional Pricing rate and is higher than the Medicaid rates the facility received in 2020. The Medicare, Private Pay, and Commercial rates are based on the current (August 2020) rates being received by the facility.
- The Medicaid MC rates are based on the anticipated rates resulting from negotiations with the Managed Care companies.
- The operating cost per procedure is declining from the current year to year three because there is sufficient volume projected to warrant the increase in staffing whereas the capital cost per procedure is increasing from the current year to year three as a result of planned investments per the third bullet. The applicant intends to hire 29.6 incremental FTEs in the first year and an additional 9.2 FTEs by Year three.
- The applicant indicated that the increase in projected utilization is the result of census recovery after the COVID-19 pandemic and improved operations are driven by a new leader with experience in skilled nursing facility operations. Upon approval of this application, the new members will build on the improvements to date by implementing measures to make the nursing home more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The new members plan to add clinical specialties and make physical improvements to the facility to increase census.
- Breakeven utilization is projected at approximately 79.40% for the third year. The applicant indicated that occupancy in 2021 was 81.6%. Department statistics as self-reported by the facility indicate this positive trend above the projected year three breakeven utilization has continued as the occupancy rate was 88.3% as of June 6, 2022,
- Utilization by payor source for the first and third year after the change in ownership is as follows:

	<u>Current Year</u> <u>(2020)</u>	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
<u>Payor</u>			
Commercial FFS	4.10%	5.15%	5.15%
Medicare FFS	4.69%	6.32%	6.32%
Medicare MC	4.30%	3.68%	3.68%
Medicaid FFS	50.69%	35.72%	35.72%
Medicaid MC	30.95%	44.15%	44.15%
Private Pay	<u>5.27%</u>	<u>4.97%</u>	<u>4.97%</u>
Total	100.00%	100.00%	100.00%

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	July 6, 2017
Seller:	Absolut Center for Nursing and Rehabilitation at Salamanca, LLC
Purchaser:	SARNC Operating, LLC
Assets Transferred:	All furniture, fixtures, furnishings, equipment, etc.; All inventory and supplies located at the facility; All policies/procedures, manuals, intellectual property, etc.; Telephone and fax numbers; Administrative and financial books and records; Permits; Goodwill; Trust Property; Medicare/Medicaid/Third Party Payor provider numbers and provider reimbursement agreements.
Excluded Assets:	Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties; Licenses and permits not assignable or transferable; marketable securities; Any grant awarded by a Governmental Authority; All sums received from DOH related to the Universal Settlement of Medicaid rate appeals and connected lawsuits against NYS; Funds from all rate adjustments and appeals.
Purchase Price:	The total price for the five facilities included in the APA is \$100,000. \$30,000 is allocated to this application.
Payment of Purchase Price:	\$50,000 deposit paid by the original proposed members (held in escrow) toward the total purchase price, with a balance of \$50,000 due at closing. The proposed members will pay \$15,000 to the current operator of this facility at closing.

The purchase price of the operations is proposed to be satisfied with members' equity. The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 20, 2022, the facility had no outstanding Medicaid liabilities.

Assignment Agreement

The applicant submitted an executed AA to acquire the membership interests in SARNC Operating, LLC. The terms are summarized below:

Date:	January 12, 2018
Assignors:	Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden
Assignees:	Batia Zagelbaum, Teresa Creedon, Esther Barth and Chaya Walden
Assignment:	Membership Interests in SARNC Operating, LLC
Purchase Price:	\$15,000 was paid to the assignors upon execution of this agreement

Lease Agreement

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

Premises:	120-bed RHCF located at 451 Broad Street, Salamanca, NY (Cattaraugus County)
Landlord:	SARNC Realty, LLC
Tenant:	SARNC Operating, LLC
Term:	10 years with up to twenty (20) 1-year extension terms.
Rent:	\$573,813 annual rental
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an original affidavit attesting to the familial relationship between landlord and tenant.

Capability and Feasibility

SARNC Operating, LLC will acquire the RHCf's operations for \$30,000 funded via members' equity. The applicant has paid \$15,000 toward the purchase price leaving a balance due of \$15,000 at closing. There are no project costs associated with this application.

The working capital requirement is \$1,677,234 based on two months of first-year expenses. Working capital will be satisfied via equity from proposed members. The proposed members' net worth summaries show sufficient assets overall to meet the acquisition and working capital equity requirements as shown in BFA Attachment A. Esther Barth has provided an affidavit confirming her willingness to contribute personal resources disproportionate to her membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,707,234. It is noted that operating assets include \$30,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of \$1,677,234.

The submitted budget indicates that net income of \$1,633,575 and \$2,027,664 will be generated for the first and third years, respectively. BFA Attachment E shows that the proposed members of SARNC, EDRC, HORNC, and DURNC have enough equity overall to fund all four CON applications. However, two of the members (Batia Zagelbaum and Chaya Walden) have insufficient liquid resources to cover their share. As previously noted, a disproportionate share affidavit was provided by Esther Barth to cover any member's equity shortfall. The budget appears reasonable.

BFA Attachment B is the financial summary of Salamanca Rehabilitation for the period 2019 through March 31, 2022. As shown, the entity had a positive working capital position, a positive net asset position, and a net income of \$640,399 as of March 31, 2022. As of December 31, 2021, the entity had a positive working capital position, a positive net asset position, and a net income of \$3,386,462. In 2019 and 2020, the entity had an average negative net asset position of (\$2,203,409) and incurred an average loss of (\$400,417). The applicant indicated that the loss and negative net asset positions were due to difficulty in securing admissions, which impacted the facility's overall financial position. In 2018, the facility brought a person experienced in the operations of skilled nursing facilities to assist in improving facility operations. While measures being taken to improve finances were impacted by the effects of the pandemic in 2020, the facility was back on track in 2021 and experienced positive working capital, net assets, and operations.

BFA Attachment C is the percent ownership and financial summary of the proposed members' affiliated nursing homes. As shown, Gowanda, Massena, and Orchard had average positive working capital, an average positive net asset position, and an average net income of \$2,461,520 in 2021. The losses in 2020 for the three facilities are due to the impact of COVID.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net worth summary, members of SARNC Operating, LLC
BFA Attachment B	Certified 2019-2020 and the 2021-2022 Internal Financial Summary of Salamanca Rehabilitation
BFA Attachment C	Percentage Ownership and Financial Summary of Proposed Member's Affiliated RHCfs
BFA Attachment D	Pro Forma Balance Sheet, SARNC Operating, LLC
BFA Attachment E	SARNC, DURNC, HORNC, and EDRC-Equity Requirement for Operations

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 28th day of July 2022, 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 SARNC Operating, LLC as the new operator of the 120-bed residential health care facility located at 451 Broad Street, Salamanca currently operated by Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, 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:

192335 E

SARNC Operating, LLC d/b/a Salamanca
Rehabilitation & Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Lease Agreement between SARNC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Salamanca, LLC and the applicant, which is acceptable to the Department. [CSL]
6. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or an Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, which is acceptable to the Department. [CSL]
7. Submission of an executed assignment of membership interest, acceptable to the Department. [CSL]
8. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].

APPROVAL CONDITIONAL UPON:

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

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



Project # 192336-E
DURNC Operating, LLC d/b/a
Dunkirk Rehabilitation & Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Chautauqua
Acknowledged: January 8, 2020

Executive Summary

Description

DURNC Operating, LLC d/b/a Dunkirk Rehabilitation & Nursing Center (DURNC), a New York limited liability company, requests approval to be established as the new operator of Dunkirk Rehabilitation & Nursing Center, a 40-bed, proprietary Article 28 residential health care facility (RHCF) at 447 Lake Shore Drive West, Dunkirk (Chautauqua County). Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC is the current operator of the facility, and DURNC Realty, LLC is the real property owner. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), DURNC Realty, LLC will lease the premises to DURNC Operating, LLC via a non-arm's length lease.

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

<u>Current Operator</u>	
Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC	
<u>Member</u>	<u>%</u>
Absolut Facilities Management, LLC	54%
<i>Israel Sherman (100%)</i>	
Israel Sherman	45%
Samuel Sherman	1%

<u>Proposed Operator</u>	
DURNC Operating, LLC	
<u>Members</u>	<u>%</u>
Esther Barth	35%
Batia Zigelbaum	40%
Chaya Walden	15%
Teresa Creedon	10%

Ownership of the realty is as follows:

<u>Realty Owner</u>	
DURNC Realty, LLC	
<u>Members</u>	<u>%</u>
Ephraim Zigelbaum	47.5%
Alexander Barth	37.5%
Yehudah Walden	15.0%

There is a familial relationship between the property owner and several of the proposed operating entity members. There will be no change in beds or services provided.

The Asset Purchase Agreement (APA) for this application included the sale of the operating interests of four other Absolut RHCFs currently operated by the same members of Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC. Three of these facilities are being sold to the same proposed new members as identified for this application and are listed here.

- CON 192332 (Eden Rehabilitation and Nursing Center (EDRNC) p/k/a Absolut Center for Nursing and Rehabilitation at Eden, LLC, 40 beds, Allegany County),
- CON 192333 (Houghton Rehabilitation and Nursing Center (HORNC) p/k/a Absolut Center for Nursing and Rehabilitation at Houghton, LLC, 100 beds, Allegany County),
- CON 192335 (Salamanca Rehabilitation and Nursing Center (SARNC) p/k/a Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, 120 beds, Cattaraugus County).

These three applications are being reviewed concurrently with this application. The fourth facility is being sold to different proposed new members as per an amendment to the original APA and is being reviewed under CON 192208 (Absolut Center for Nursing and Rehabilitation at Endicott, LLC, 160 beds, Broome County).

On July 6, 2017, Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC (Seller, collectively with the operating entities of the other four RHCFS) and DURNC Operating, LLC (Buyer, collectively with the proposed operating entities of the other four RHCFS) entered an APA for the sale and acquisition of the operating interests of the RHCF. The total purchase price of the five RHCFS operations is \$100,000, of which \$10,000 is allocated to the Dunkirk facility. Via an Assignment Agreement (AA) dated January 12, 2018, Ephraim Zigelbaum, Alexander Barth, and Yehudah Walden, the original proposed members of DURNC Operating, LLC, assigned their membership interests in the operating entity to Esther Barth, Batia Zigelbaum, Chaya Walden, and Teresa Creedon.

Except for Ms. Creedon, the proposed members have ownership interest in other New York State nursing homes. BFA Attachment C shows their shares of ownership and a financial summary of the proposed members' affiliated RHCFS.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. As of May 11, 2022, occupancy was 82.5% for the facility and 77.6% for Chautauqua 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

DURNC Operating, LLC will acquire the RHCFS operations for \$10,000 funded by members' equity. There are no project costs associated with this application. The budget projects a net income of \$35,185 in year one and \$146,417 by year three.

<u>Budget</u>	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Revenues	\$3,533,537	\$3,729,844
Expensed	<u>3,495,352</u>	<u>3,583,427</u>
Net Income	\$35,185	\$146,417

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Lease Agreement between DUNRC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC and the applicant, which is acceptable to the Department. [CSL]
7. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Assumed Name, acceptable to the Department. [CSL]
9. Submission of an executed assignment of membership interest, acceptable to the Department. [CSL]

Approval conditional upon:

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

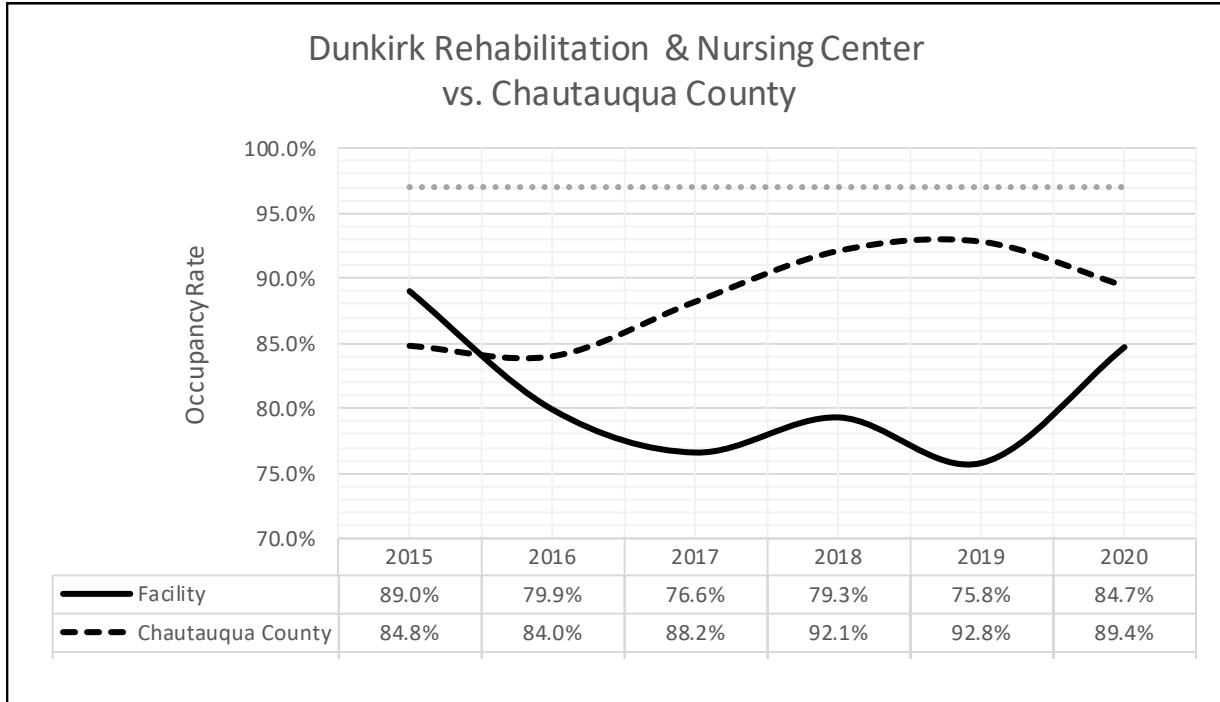
Council Action Date

July 28, 2022

Need Analysis

Analysis

The primary service area is Chautauqua County. The self-reported occupancy provided to the Department was 87.5% as of June 1, 2022.



Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

The 75% of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

The facility's Medicaid admissions rate was below the threshold of 75% of the Chautauqua County rate for 2018 but has exceeded the rate in 2019 and 2020.

Medicaid Access	2018	2019	2020
Chautauqua County Total	26.7%	19.8%	14.7%
Chautauqua Threshold Value	20.2%	14.9%	11.0%
Dunkirk Rehabilitation & Nursing Center	15.4%	23.6%	19.2%

Conclusion

There will be no changes to beds or services as a result of this project.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Dunkirk Rehabilitation & Nursing Center	Same
Address	447-449 Lake Shore Drive West Dunkirk, NY 14048	Same
RHCF Capacity	40	Same
ADHC Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC <u>Members</u> Israel Sherman 45% Samuel Sherman 1% Absolut Facilities Management, LLC 54% <i>Israel Sherman (100%)</i>	DURNC Operating, LLC <u>Members</u> Esther R. Barth 35% Batia Zagelbaum 40% Chaya Walden 15% Teresa Creedon* 10% <i>*Managing Member</i>

Character and Competence – Assessment

Batia Zagelbaum discloses previous employment as a Midwife for Maternal Resources OB, PC. She holds a Master's degree in nursing from Columbia University Graduate School of Nurse-Midwifery and holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practitioner Obstetrics/Gynecology in NY, and an RN license in NY and NJ. Batia Zagelbaum discloses the following ownership interests:

Nursing Homes

Orchard Rehab & Nursing Center (17.5%)	03/2017 to present
Gowanda Rehab & Nursing Center (17.5%)	06/2018 to present
Massena Rehab & Nursing Center (37.5%)	04/2019 to present

Esther Barth has no employment history for the past 10 years, and she holds no professional licenses. She discloses a high school diploma from Bais Yaakov High School. Esther Barth discloses the following ownership interest:

Nursing Homes

Orchard Rehab & Nursing Center (37.5%)	03/2017 to present
Gowanda Rehab & Nursing Center (37.5%)	06/2018 to present
Massena Rehab & Nursing Center (37.5%)	04/2019 to present

Chaya Walden discloses previous employment in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Chaya Walden discloses the following ownership interests:

Nursing Homes

Orchard Rehab & Nursing Center (15.0%)	03/2017 to present
Gowanda Rehab & Nursing Center (15.0%)	06/2018 to present
Massena Rehab & Nursing Center (15.0%)	04/2019 to present

Teresa Creedon is currently employed as the Corporate Administrator at Personal Healthcare, LLC since 2015, and she is a New York State licensed nursing home administrator in good standing. She holds a degree in Healthcare Administration from SUNY College of Technology. Teresa Creedon discloses no health care facility ownership.

Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership (as of 7/28/2022)					
< 48 Months					
48 months or more					
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes with a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes with a Below Average Rating
Esther R. Barth	3	1	100%	2	0%
Batia Zigelbaum	3	1	100%	2	0%
Chaya Walden	3	1	100%	2	0%
Teresa Creedon	0	n/a	n/a	n/a	n/a

Data as of: 06/2022

The proposed owner's portfolio includes ownership in three New York state facilities. Two of the New York facilities Gowanda Rehab & Nursing Center and Orchard Rehabilitation & Nursing Center have a CMS overall quality rating of average or higher. The other facility Massena Rehabilitation & Nursing Center has a CMS overall quality rating of below average. The applicant states that outside staffing agencies had to be used to supplement direct staff due to difficulty in staffing, and a regional clinical director was recently hired. Massena Rehabilitation & Nursing Center is expecting to be surveyed again soon and is optimistic that the results will also be good, but it will take some time for those results to be reflected in the star ratings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Dunkirk Rehabilitation & Nursing Center	Subject Facility	**	*	*****	*
Massena Rehabilitation & Nursing Center	Current	**	**	****	**
	04/2019	*	*	*	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Gowanda Rehabilitation & Nursing Center	Current	***	***	****	**
	06/2018	*	**	****	*
Orchard Rehabilitation & Nursing Center	Current	***	**	*****	**
	03/2017	*	*	**	*

Data date: 06/2022

Enforcement History

Massena Rehab & Nursing Center:

- The facility was assessed federal CMPs of \$650.00 on 7/13/2020 and \$986.70 on 03/28/2022 for failure to report COVID data.

Gowanda Rehab & Nursing Center:

- The facility was assessed a federal CMP of \$7036.00 on 6/26/2020 for failure to timely report a crime against a resident and failing to ensure in response to abuse, all alleged violations were thoroughly investigated. The facility was also fined \$10,000 pursuant to Stipulation and Order NH-19-044 issued on October 15, 2019, for surveillance findings on June 26, 2019.
- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-152 issued on August 23, 2021, for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 400.2, Failure to obtain Covid-19 specimen results within 48 hours for three staff members; failure to document facility efforts to obtain the delayed Covid 19 specimen results.

Project Review

No changes in the program or physical environment are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

The applicant has provided the current year (2020) results, and the first- and third-year operating budget, in 2022 dollars, subsequent to the change in ownership. The new operator anticipates a gradual increase in utilization in years one and three, thus mitigating the losses previously incurred in 2020 due to the lower occupancy rates experienced as a result of the COVID-19 pandemic. The projected positive operating margins in years one and three are a result of the combination of the increase in utilization, cost efficiencies due to such volume, and the increases in revenues that the facility is currently experiencing. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2020</u>		<u>2023</u>		<u>2025</u>	
	<u>Per PD</u>	<u>Total</u>	<u>Per PD</u>	<u>Total</u>	<u>Per PD</u>	<u>Total</u>
<u>Revenues</u>						
Commercial FFS	\$357.18	\$382,180	\$290.17	\$112,295	\$289.81	\$118,534
Medicare FFS	\$568.41	496,220	\$474.12	468,432	\$474.07	494,456
Medicare MC	\$342.41	283,855	\$279.98	302,653	\$279.99	319,467
Medicaid FFS	\$193.15	1,121,208	\$206.67	960,625	\$206.68	1,013,993
Medicaid MC	\$182.12	563,671	\$243.27	1,077,922	\$243.28	1,137,806
Private Pay	\$310.99	226,711	\$289.98	465,715	\$290.02	491,588
Other Revenue*		<u>\$288,612</u>		<u>\$145,895</u>		<u>\$154,000</u>
Total Revenues		\$3,362,457		\$3,533,537		\$3,729,844
<u>Expenses</u>						
Operating	\$248.25	\$3,078,582	\$239.87	\$3,152,072	\$233.59	\$3,240,147
Capital	<u>\$25.82</u>	<u>320,178</u>	<u>\$26.12</u>	<u>343,280</u>	<u>\$24.75</u>	<u>343,280</u>
Total Expenses	\$274.07	\$3,398,760	\$265.99	\$3,495,352	\$258.34	\$3,583,427
Net Income/Loss		<u>(\$36,303)</u>		<u>\$35,185</u>		<u>\$146,417</u>
Utilization (Days)		12,401		13,141		13,871
Occupancy		84.94%		90.00%		95.00%

*Other revenue consists of Assessment revenue, H&HS Services Stimulus, vending machine, prior period expenses, Nursing Home Quality Initiative and barber and beauty.

The following is noted with respect to the submitted budget:

- Medicaid reimbursement rate is projected based on the facility's current July 2022 Medicaid Regional Pricing rate and is higher than the Medicaid rates the facility received in 2020. The Medicare, Private Pay, and Commercial rates are based on the current (August 2020) rates of the facility.
- All payor rates but Medicaid are declining from the current year to years one and three because per the applicant, the rates are not contractually set so it is difficult to project.
- The increase in operating cost is attributable to an increase in supplies and labor costs, although the operating expense per patient day declines based on a projected increase in utilization. The applicant intends to hire an additional 1.6 FTEs and 3.8 FTEs in the first and third years, mostly related to additional LPN and Aides/Orderlies staff.
- The applicant indicated that the increase in projected utilization is the result of the following: the facility has brought in a person experienced in the operations of skilled nursing facilities to assist in improving facility operations. Upon approval of this application, the new members will build on these improvements by implementing measures to make the nursing home more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The new members plan to add clinical specialties and make physical improvements to the facility to increase census.
- Breakeven utilization is projected at approximately 91.26% for the third year. The facility occupancy based on self-reported statistics provided to the Department as of June 1, 2022, was 87.5%, which compares favorably with the Chautauqua County average for all nursing homes combined of 78.7%.

- The applicant has indicated that the facility received \$509,000 in CARES Funding.
- Utilization broken down by payor source during the current year, year one, and year three are as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Payor</u>	<u>(2020)</u>	<u>(2023)</u>	<u>(2025)</u>
Commercial FFS	8.63%	2.95%	2.95%
Medicare FFS	7.04%	7.52%	7.52%
Medicare MC	6.68%	8.23%	8.23%
Medicaid FFS	46.81%	35.37%	35.37%
Medicaid MC	24.96%	33.72%	33.72%
Private Pay	5.88%	12.21%	12.21%

Asset Purchase Agreement

The applicant submitted an executed APA to acquire certain assets related to the RHCF to be effectuated upon approval by the PHHPC. The terms are summarized below:

Date:	July 6, 2017
Seller:	Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC
Purchaser:	DURNC Operating, LLC,
Assets Transferred:	All furniture, fixtures, furnishings, equipment, etc.; All inventory and supplies located at the facility; All policies/procedures, manuals, intellectual property, etc.; Telephone and fax numbers; Administrative and financial books and records; Permits; Goodwill; Trust Property; Medicare/Medicaid/Third Party Payor provider numbers and provider reimbursement agreements.
Excluded Assets:	Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties; Licenses and permits not assignable or transferable; marketable securities; Any grant awarded by a Governmental Authority; All sums received from DOH related to the Universal Settlement of Medicaid rate appeals and connected lawsuits against NYS; Funds from all rate adjustments and appeals.
Purchase Price:	The total price for the five facilities included in the APA is \$100,000. \$10,000 is allocated to this application.
Payment of Purchase Price:	\$50,000 deposit paid by the original proposed members (held in escrow) toward the total purchase price, with a balance of \$50,000 due at closing. The proposed members will pay \$5,000 to the current operator of this facility at closing.

The purchase price of the operations is proposed to be satisfied with members' equity.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 20, 2022, the facility had no outstanding Medicaid liabilities.

Assignment Agreement

The applicant submitted an executed AA to acquire the membership interests in DURNC Operating, LLC. The terms are summarized below:

Date:	January 12, 2018
Assignors:	Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden
Assignees:	Batia Zagelbaum, Teresa Creedon, Esther Barth and Chaya Walden
Assignment:	Membership Interests in DURNC Operating, LLC
Purchase Price:	\$5,000 was paid to the assignors upon execution of this agreement

Lease Agreement

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

Premises:	40-bed RHCf located at 447 Lake Shore Drive West, Dunkirk, NY (Chautauqua County)
Landlord:	DURNC Realty, LLC
Tenant:	DURNC Operating, LLC
Term:	10 years with up to twenty (20) 1-year extension terms.
Rent:	\$218,346 annual rent
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an original affidavit attesting to the relationship between the landlord and the operating entity

Capability and Feasibility

DURNC Operating, LLC will acquire the RHCf's operations for \$10,000 funded via members' equity. The applicant has paid \$5,000 toward the purchase price leaving a balance due of \$5,000 at closing. There are no project costs associated with this application.

The working capital requirement is \$582,559 based on two months of first-year expenses. Working capital will be satisfied via equity from proposed members. BFA Attachment A, the proposed members' net worth summaries, shows sufficient assets overall to meet the acquisition and working capital equity requirements. Esther Barth has provided an affidavit confirming her willingness to contribute personal resources disproportionate to her membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$592,559. It is noted that operating assets include \$10,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of \$582,559.

The submitted budget indicates that net income of \$35,185 and \$146,417 will be generated for years one and three, respectively. BFA Attachment E shows that the proposed members of DURNC, EDRNC, HORNC, and SARNC have enough equity overall to fund all four CON applications. However, two of the members (Batia Zigelbaum and Chaya Walden) have insufficient liquid resources to cover their share. As previously noted, disproportionate share affidavits were provided by other proposed members to cover any member's equity shortfall. The budget appears reasonable.

BFA Attachment B is the financial summary of Dunkirk Rehabilitation for the period 2019 through March 31, 2022. As shown, the entity had a positive working capital position, a positive net asset position, and a net income of \$17,776 as of March 31, 2022. As of December 31, 2021, the entity had a positive working capital position, positive net asset position, and a net income of \$984,379. In 2019 and 2020, the entity had an average negative net asset position of (\$1,361,401) and incurred an average loss of (\$152,121). The applicant indicated that the loss and negative net asset positions were due to difficulty in securing admissions which impacted the facility's overall financial position. In 2018, the facility brought a person experienced in the operations of skilled nursing facilities to assist in improving facility operations. While measures being taken to improve finances were impacted by the effects of the pandemic in 2020, the facility was back on track in 2021 and experienced positive working capital, net assets, and operations.

BFA Attachment C is the percent ownership and financial summary of the proposed members' affiliated nursing homes. As shown, Gowanda, Massena, and Orchard had an average positive working capital, an average positive net asset position, and an average net income of \$2,461,520 in 2021. The losses in 2020 for the three facilities are due to the impact of COVID

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net worth summary, members of DURNC Operating, LLC
BFA Attachment B	Certified 2019-2021 and the 2022 Internal Financial Summary of Dunkirk Rehabilitation
BFA Attachment C	Percentage Ownership and Financial Summary of Proposed Member's Affiliated RHCfs
BFA Attachment D	Pro Forma Balance Sheet, DURNC Operating, LLC.
BFA Attachment E	DURNC, EDRNC, HORNC, and SARNC-Equity Requirement for Operations

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 28th day of July 2022, 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 DURNC Operating, LLC as the new operator of the 40-bed residential health care facility located at 447-449 Lake Shore Drive West, Dunkirk, currently operated by Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC, 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:

192336 E

FACILITY/APPLICANT:

DURNC Operating, LLC d/b/a Dunkirk
Rehabilitation & Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Lease Agreement between DUNRC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC and the applicant, which is acceptable to the Department. [CSL]
7. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Assumed Name, acceptable to the Department. [CSL]
9. Submission of an executed assignment of membership interest, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 202122-E Providence Rest, Inc.

Program: Residential Health Care Facility Purpose: Establishment

County: Bronx Acknowledged: October 15, 2020

Executive Summary

Description

Providence Rest, an existing voluntary, not-for-profit, Article 28 residential health care facility (RHCF) at 3304 Waterbury Avenue, Bronx (Bronx County), requests approval to establish Catholic Health Care System (CHCS) as the active parent/co-operator of the RHCF.

CHCS, a not-for-profit corporation at 205 Lexington Avenue, 3rd Floor, New York (New York County), is a health care delivery system comprised of a long-term acute care hospital, nursing homes, and community support services including supportive housing, pastoral care, and community engagement. As of December 23, 2020, CHCS d/b/a Archcare is the sole member and passive parent of Providence Rest. The sole member of CHCS is Providence Health Services (PHS), a not-for-profit corporation.

Upon approval of this application by PHHPC, Providence Rest will use the assumed name ArchCare at Providence Rest.

As an active parent and co-operator, CHCS will have the following rights, powers, and authorities for Providence Rest:

- Approval of operating and capital budgets; Appointing board members; Authority to hire and fire the administration or key management employees; Adopt and enforce policies with regard to the operation of the facility; Authority over the disposition of assets; Maintenance and control of the books and records; and

- Approval of settlements of administrative proceedings or litigations.

PHS, the sole member of CHCS, will have no operational powers over Providence Rest.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application.

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. The submitted budget projects a deficit (\$967,336) in Year One and an excess of revenue over expenses of \$91,080 in Year Three following completion of the CON, as summarized below. The applicant has provided a letter indicating that first-year net operating losses will be offset via ongoing operations of CHCS.

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenue, Expense, Gain/Loss.

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of an amended and executed Amended Certificate of Incorporation, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Amended Amendment No. 1 to the Amended and Restated Bylaws of Providence Rest, acceptable to the Department. [CSL]
3. Submission of a photocopy of a list of the Board of Directors of Providence Rest, acceptable to the Department. [CSL]
4. Submission of a photocopy of amended and executed Administrative Services Agreements, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Amended and Restated Certificate of Incorporation for Catholic Health Care System (CHCS), acceptable to the Department. [CSL]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]

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 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]

Council Action Date

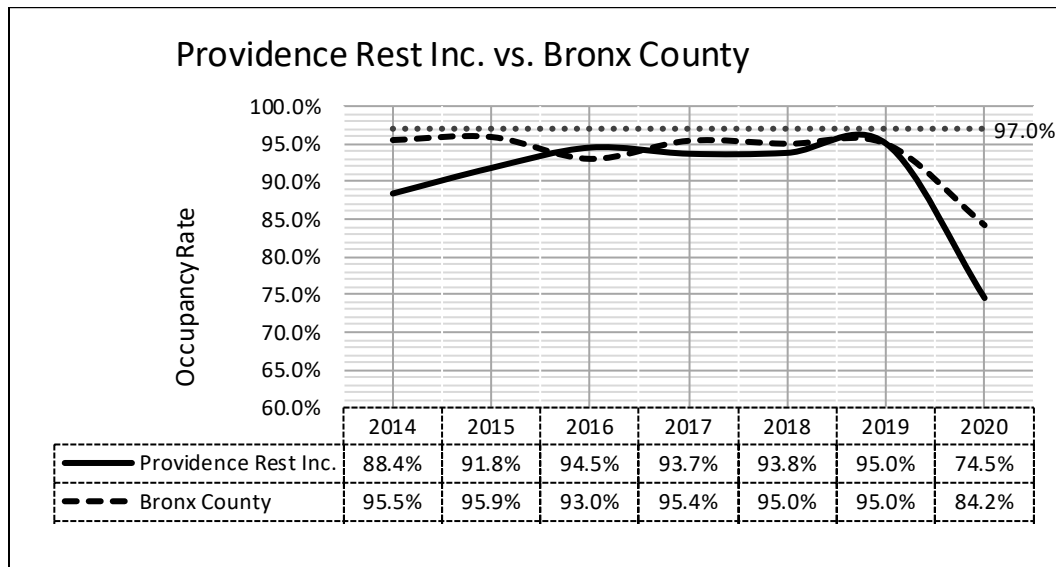
July 28, 2022

Need and Program Analysis

Program Description

	Existing	Proposed
Facility Name	Providence Rest	Archcare at Providence Rest
Address	3304 Waterbury Avenue Bronx, NY 10465 (Bronx County)	Same
RHCF Capacity	200	Same
ADHCP Capacity	N/A	Same
Type of Operator	Voluntary	Same
Class of Operator	Not-for-profit Corporation	Same
Operator	Providence Rest, Inc.	Providence Rest, Inc. Co-Operator Catholic Health System (CHCS) d/b/a Archcare

Utilization



The facility consistently had occupancy greater than 91% in the five years preceding the COVID-19 pandemic.

Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

The 75% of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area may be increased or decreased based on specific factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

The facility's Medicaid admissions rate has been below the threshold of 75% of the Bronx County rate from 2018 through 2020.

Medicaid Access	2018	2019	2020
Bronx County Total	38.50%	41.90%	41.60%
Bronx Threshold Value	28.90%	31.40%	31.20%
Provident Rest, Inc.	17.60%	15.70%	9.50%

Character and Competence

The board members of Catholic Health System were reviewed as follows:

Timothy Dolan is the Archbishop of the Archdiocese of New York and he holds a doctoral degree from Catholic University. He discloses the following board memberships: ArchCare Senior Life since 2009, ArchCare Advantage since 2009, ArchCare Community Life since 2012, ArchCare at Home from 5/1/2014 to 1/2018, Dominican Sisters Family Health Service, Inc. since 2016, Ulster Home Health Services, Inc. from 1/1/2019 to 4/7/2020, Family Home Health Services, Inc. since 2016, and ArchCare since 2009.

Whiston William is employed with the Archdiocese of New York as the CFO. He holds an MBA from New York University and discloses the following board memberships: ArchCare Senior Life since 2008, ArchCare Community Life since 2012, ArchCare at Home from 5/1/2014 to 1/2018, Dominican Sisters Family Health Service, Inc. since 8/2016, New York State Catholic Health Plan, Inc. since 8/2/2018, Ulster Home Health Services, Inc. from 1/1/2019 to 4/7/2020, Family Home Health Service, Inc. since 2016, and ArchCare since 2008.

Karen Gray is employed with A+E Networks as the EVP of Human Resources and before that at Christie's Inc. as the Human Resources Director. She received a Juris Doctorate from Harvard Law School and holds an attorney's license in New York state that is currently in good standing. Karen Gray discloses the following board memberships: ArchCare since 2017, Carmel Richmond Healthcare and Rehabilitation Center since 2017, Ferncliff Nursing Home since 2017, Mary Manning Walsh Home since 2017, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2017, Terence Cardinal Cooke Health Care Center since 2017, ArchCare at Home from 2017 to 2018, Dominican Sisters Family Health Service, Inc. since 2017, ArchCare Senior Life since 2017, ArchCare Advantage since 2017, Archcare Community Life since 2017, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 8/2016, and Calvary Hospital since 2017.

Eric Feldmann has been retired since April 2013. Before that he worked for Sisters of Charity Housing Development Corp. as the Executive Director and CEO. Eric Feldmann received a degree in administrative management from Carnegie Institute of Technology, and he holds a Real Estate Broker license in New York that is currently in good standing and a Filing Representative license in New York State that is currently expired. He discloses the following board memberships: ArchCare since 2009, Carmel Richmond Healthcare and Rehabilitation Center since 2005, Ferncliff Nursing Home since 2009, Kateri Residence from 2009 to 2013, Mary Manning Walsh Home since 2009, St. Teresa's Nursing Home from 2009 to 2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2009, Terence Cardinal Cooke Health Care Center since 2009, ArchCare at Home from 5/2014 to 1/2018, Dominican

Sisters Family Health Service, Inc. since 2016, ArchCare Senior Life since 2009, ArchCare Advantage since 2009, ArchCare Community Life since 2012, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 8/2016, and Calvary Hospital since 2009.

Gennaro Vasile has been retired since 2015, and before that, he worked concurrently for Freed-Maxick Healthcare Consulting as a Senior Advisor and at Integrated Management Solutions as an Owner and Principal. He holds a doctoral degree from the University of Iowa and discloses the following board memberships: ArchCare since 2013, Carmel Richmond Healthcare and Rehabilitation Center since 2013, Kateri Residence from 1/2013 to 8/2013, Ferncliff Nursing Home since 2013, Mary Manning Walsh Home since 2013, St. Teresa's Nursing Home from 1/2013 to 2/2013, St. Teresa's Nursing Home from 1/2013 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2013, Terence Cardinal Cooke Health Care Center since 2013, Empire State Home Care Services, Inc. from 5/1/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, ArchCare Senior Life since 2013, ArchCare Advantage since 2013, ArchCare Community Life since 2013, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 8/2016 and Calvary Hospital since 2013.

Gerald Sweeney is employed with Healthfirst a health insurance business as the CIO, and before that he worked for Cigna Health Care a health insurance company as the VP of Information Technology. He holds a bachelor's degree in computer science from SUNY Albany and discloses the following board memberships: Archcare since 2012, Carmel Richmond Healthcare and Rehabilitation Center since 2012, Ferncliff Nursing Home since 2012, Kateri Residence from 2012 to 8/2013, Mary Manning Walsh Home since 2012, St. Teresa's Nursing Home from 2012 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2012, Terence Cardinal Cooke Health Care Center since 2012, Dominican Sisters Family Health Services since 2016, ArchCare Senior Life since 2012, ArchCare Community Life since 2012, Empire State Home Care Services, Inc. from 5/2014 to 2018, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2012.

Gerald Walsh is employed with the Archdiocese of New York as the Vicar for clergy. He holds a master's degree in social work from Fordham University and discloses the following board memberships: Archcare since 2013, Carmel Richmond Healthcare and Rehabilitation Center since 2013, Ferncliff Nursing Home since 2013, Kateri Residence from 2013 to 8/2013, Mary Manning Walsh Home since 2013, St. Teresa's Nursing Home from 2013 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2013, Terence Cardinal Cooke Health Care Center since 2013, Dominican Sisters Family Health Services, Inc. since 2016, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Isabella Geriatric Center since 1999, ArchCare Senior Life since 2013, Archcare Advantage since 2013, Archcare Community Life since 2013, Ulster Home Health Service, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2013.

Telma Flores is employed with Providence Rest Nursing Home as the CEO and holds a master's degree in public administration from Hunter College of the City of New York. She is a licensed Nursing Home Administrator in the state of New York with a license currently in voluntary inactive status.

George Irish is employed with the Hearst Foundation a private charitable foundation as the Eastern Director. He holds a bachelor's degree from Millikin University and discloses the following board memberships: ArchCare since 2017, Carmel Richmond Healthcare and Rehabilitation Center since 2017, Ferncliff Nursing Home since 2017, Mary Manning Walsh Home since 2017, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2017, Terence Cardinal Cooke Health Care Center since 2017, Archcare at Home from 2017 to 2018, Dominican Sisters Family Health Service, Inc. since 2017, Archcare Senior Life since 2017, Archcare Advantage since 2017, Archcare Community Life since 2017, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2017, and Calvary Hospital since 2017.

Thomas O'Brien is employed with Sterling Bancorp, Inc. as the President and CEO, and concurrently as the Vice Chairman at Emigrant Bank. Before that he worked for Sun National Bank as the President and CEO. Thomas O'Brien holds a bachelor's degree from Niagara University and discloses the following board memberships: ArchCare since 2005, Carmel Richmond Healthcare and Rehabilitation Center since 2005, Ferncliff Nursing Home since 2005, Kateri Residence from 2005 to 8/2013, Mary Manning Walsh

Home since 2005, St. Teresa's Nursing Home from 2005 to 2/2013, San Vicente de Paul Residence since 2005, Terence Cardinal Cooke Health Care Center from 2005, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, Archcare Senior Life since 2008, Archcare Advantage since 2008, Archcare Community Life since 2012, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2005.

Francis Serbaroli is employed with Greenberg Traurig, LLP, a law firm, as a Shareholder. Francis Serbaroli received a Juris Doctorate from Fordham Law School, is a licensed attorney in New York State with a license currently in good standing, and discloses the following board memberships: ArchCare since 2001, Carmel Richmond Healthcare and Rehabilitation Center since 2008, Ferncliff Nursing Home since 2008, Kateri Residence from 2008 to 2013, Mary Manning Walsh Home since 2008, St. Teresa's Nursing Home from 2008 to 2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2008, Terence Cardinal Cooke Health Care Center since 2008, Archcare Senior Life since 2008, Archcare Advantage since 2008, ArchCare Community Life since 2012, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Service, Inc. since 2016, Ulster Home Health Service, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2005.

John Cahill is employed with the Archdiocese of New York as a Chancellor, and before that was employed at Norton Rose Fulbright LLP, a law firm. He holds a Master of Law degree from Pace University Law, is a licensed New York State attorney with a license currently in good standing, and discloses the following board memberships: Archcare since 2019, Carmel Richmond Healthcare and Rehabilitation Center since 2019, Ferncliff Nursing Home since 2019, Mary Manning Walsh since 2019, San Vicente de Paul Skilled Nursing & Recreation Center since 2019, Terence Cardinal Cooke Health Care Center since 2019, Dominican Sisters Family Health Services since 2019, ArchCare Senior Life since 2019, ArchCare Advantage since 2019, Archcare Community Life since 2019, Ulster Home Health Services, Inc. from 2019 to 4/2020, Family Home Health Services, Inc. since 2019, and Calvary Hospital since 2019.

John Dunlap is employed with Dunnington, Bartholow, & Miller, a law firm, as an Attorney. He holds a degree as a Barrister-at-Law from the Law Society of Upper Canada, a Solicitor license in Ontario Canada that is currently in good standing, and a New York State attorney's license currently in good standing. John Dunlap discloses the following board memberships: ArchCare since 2006, Carmel Richmond Nursing Home since 2006, Ferncliff Nursing Home since 2006, Kateri Residence from 2006 to 8/2013, Mary Manning Walsh Home since 2006, St. Teresa's Nursing Home from 2006 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2006, Terence Cardinal Cooke Health Care Center since 2006, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, ArchCare Senior Life since 2008, ArchCare Advantage since 2008, ArchCare Community Life since 2012, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2006.

Clarion Johnson has been retired since 2013, and before that worked for Exxon Mobil Corporation a multinational oil and gas corporation as the Medical Director, Medicine & Occupational Health. Clarion Johnson holds a Doctor of Medicine degree from Yale University School of Medicine, holds a physician and surgeon license in Maryland that is currently active, and previously held a physician and surgeon license in Virginia and Texas that are currently not active. Clarion Johnson discloses the following board memberships: ArchCare since 2016, Carmel Richmond Healthcare and Rehabilitation Center since 2016, Ferncliff Nursing Home since 2016, Mary Manning Walsh Home since 2016, St. Vincent de Paul Residence since 2016, Terence Cardinal Cooke Health Care Center since 2016, ArchCare at Home since 2016, Empire State Home Care Services, Inc. from 2016 to 1/2018, ArchCare Senior Life since 2016, ArchCare Advantage since 2016, ArchCare Community Life since 2016, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2016.

Joseph Saporito lists employment with Richmond University Medical Center as the CFO, Baruch College as an adjunct professor, and NYU Langone Medical Center as the VP of finance. He holds a bachelor's degree in accounting from Iona College, is a licensed CPA in New York with a license currently

in good standing, and discloses the following board memberships: Richmond University Medical Center since 2015, and Providence Rest Nursing Home since 2014.

Rory Kelleher is employed by Sidley Austin LLP, a law firm, as Counsel, holds a Juris Doctorate from Columbia University School of Law, and is a New York State attorney with a license currently in good standing. Rory Kelleher discloses the following board memberships: ArchCare from 2008 to 2012 and 2013 to present, Carmel Richmond Healthcare and Rehabilitation Center from 2008 to 2012 and 2013 to present, Ferncliff Nursing Home from 2008 to 2012 and 2013 to present, Kateri Residence from 2005 to 2012 and from 2013 to 8/2013, Mary Manning Walsh Home from 2008 to 2012 and 2013 to present, St. Teresa's Nursing Home from 2008 to 2012 and 2012 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center from 2008 to 2012 and 2013 to present, Terence Cardinal Cooke Health Care Center from 2008 to 2012 and 2013 to present, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Service, Inc. since 2016, ArchCare Senior Life since 2008, ArchCare Advantage since 2008, ArchCare Community Life since 2008, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2008.

Kathryn Rooney is employed with the Law Offices of Kathryn K. Rooney as an Attorney. She received a Juris Doctorate from Albany Law School, holds a New York State attorney license currently in good standing, and discloses the following board memberships: Richmond University Medical Center since 2007, ArchCare since 2009, Carmel Richmond Healthcare and Rehabilitation Center since 2001, Ferncliff Nursing Home since 2009, Kateri Residence from 2009 to 8/2013, Mary Manning Walsh Home since 2009, St. Teresa's Nursing Home from 2009 to 2/2013, St. Vincent de Paul Residence since 2009, Terence Cardinal Cooke Health Care Center since 2009, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, ArchCare Senior Life since 2009, ArchCare Advantage since 2009, ArchCare Community Life since 2012, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2009. Kathryn Rooney also discloses ownership in Homemakers of S.I., a home health agency, since 1950.

Thomas Alberto has been retired since 2013, and before that worked for Deloitte & Touche, LLP, a CPA firm, as Managing Director. He holds an MBA degree from St. John's University and has a CPA license in New York that was put on hold in 2013. Thomas Alberto discloses the following board memberships: ArchCare since 2013, Carmel Richmond Nursing Home since 2013, Ferncliff Nursing Home since 2013, Kateri Residence from 2013 to 8/2013, Mary Manning Walsh Home since 2013, St. Teresa's Nursing Home from 2013 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2013, Terence Cardinal Cooke Health Care Center since 2013, Empire State Home Care Services, Inc. since 2013, Visiting Nurse Regional Home Health System from 1990 to 5/2014, Dominican Sisters Family Health Services, Inc. since 2016, ArchCare Senior Life since 2013, ArchCare Advantage since 2013, ArchCare Community Life since 2013, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, Calvary Hospital since 2013, and Visiting Nurse Association of Brooklyn from 1990 to 5/2014.

John Gleason is employed with Epstein Becker & Green, P.C., a law firm, as a Shareholder. He holds a Juris Doctorate from St. John's University and discloses the following board memberships Providence Rest Nursing Home since 1999 and Calvary Hospital from 2000 to 2007.

Charles Fahey retired in 2001, holds a master's degree in social work from Catholic University, and discloses the following board memberships: ArchCare since 2006, Carmel Richmond Healthcare and Rehabilitation Center since 2006, Ferncliff Nursing Home since 2006, Kateri Residence from 2006 to 8/2013, Mary Manning Walsh Home since 2006, St. Teresa's Nursing Home from 2006 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2006, Terence Cardinal Cooke Health Care Center since 2006, ArchCare Senior Life since 2008, ArchCare Advantage since 2008, ArchCare Community Life since 2012, ArchCare at Home from 5/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, Isabella Geriatric Center from 1998 to 2010, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2006.

Tara Cortes is employed with the Hartford Institute for Geriatric Nursing a university as an Executive Director and Professor. She holds a doctorate degree from New York University, a Registered Nursing license in New York that is currently in good standing, and discloses the following board memberships: ArchCare since 2013, Carmel Richmond Healthcare and Rehabilitation Center since 2013, Ferncliff Nursing Home since 2013, Kateri Residence from 2013 to 8/2013, Mary Manning Walsh Home since 2013, St. Teresa’s Nursing Home from 2013 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2013, Terence Cardinal Cooke Health Care Center since 2013, Empire State Home Care Services, Inc. from 2009 to 1/2018, Visiting Nurse Regional Home Health System from 9/2009 to 5/2014, Visiting Nurse Association of Brooklyn from 9/2009 to 5/2014, ArchCare Senior Life since 2013, ArchCare Advantage since 2013, ArchCare Community Life since 2013, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, Calvary Hospital since 2013, and Dominican Sisters Family Health Service, Inc. since 2016.

Thomas Fahey has been retired since 2011, and before that worked for Memorial Sloan Kettering as a Senior Vice President. He holds a Doctor of Medicine degree from Cornell University Medical College, a New York state license in medicine that is currently in good standing, and discloses the following board memberships: ArchCare since 2009, Carmel Richmond Healthcare and Rehabilitation Center since 2009, Ferncliff Nursing Home since 2009, Kateri Residence since 2009, Mary Manning Walsh Home since 2009, St. Teresa’s Nursing Home since 2009, San Vincent de Paul Skilled Nursing & Rehabilitation Center since 2009, Terence Cardinal Cooke Health Care Center since 2009, ArchCare at Home since 5/2014, Dominican Sisters Family Health Service, Inc. since 8/2016, Memorial Sloan Kettering Cancer Center since 1996, Calvary Hospital since 2000, ArchCare Senior Life since 2009, Archcare Advantage since 2009, ArchCare Community Life since 2012, Ulster Home Health Services, Inc. since 1/2019, and Family Home Health Services, Inc. since 8/2016.

Joseph LaMorte is employed with the Archdiocese of New York, a religious organization, as Vicar and Chancellor, and before that was the Seventh Pastor of Saint Gregory Barbarigo. He holds a Master of Science degree from Iona College and discloses the following board memberships: ArchCare Senior Life since 2019, ArchCare Advantage since 2019, Archcare Community Life since 2019, Dominican Sisters Family Health Services, Inc. since 1/2019, Ulster Home Health Services, Inc. since 1/2019, Family Home Health Services, Inc. since 2019, and Archcare since 2019.

Quality Review

The board members of the proposed co-operator have been evaluated, in part, on the distribution of CMS Star ratings for their affiliated facilities. For all board members, the distribution of CMS star ratings for their affiliated facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Affiliation					
< 48 Months					
48 months or more					
Board Member	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Alberto, Thomas	5			5	0%
Cahill, John	5	5	0%		
Cortes, Tara	5			5	0%
Dunlap, John	5			5	0%
Fahey, Charles	5			5	0%
Fahey, Thomas	5			5	0%
Feldman, Eric	5			5	0%
Flores, Telma	1			1	0%
Gleason, John	1			1	0%
Gray, Karen	5			5	0%
Irish, George	5			5	0%
Johnson, Clarion	5			5	0%
Kelleher, Rory	5			5	0%

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Affiliation					
< 48 Months			48 months or more		
Board Member	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
O'Brien, Thomas	5			5	0%
Rooney, Kathryn	5			5	0%
Saporito, Joseph	1			1	0%
Serbaroli, Francis	5			5	0%
Sweeney, Gerald	5			5	0%
Vasile, Gennaro	5			5	0%
Walsh, Gerald	6			6	0%
Dolan, Timothy	0				
Whiston, William	0				
Lamorte, Joseph	0				

The portfolios include board affiliations in seven New York nursing homes. All seven of the nursing homes have a CMS overall quality rating of average or above.

CMS Nursing Home Quality Data

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Providence Rest	Subject Facility	*****	****	*****	**
	02/1967*	****	****	**	***
Carmel Richmond Healthcare and Rehabilitation Center	Current	*****	****	*****	**
	10/1973*	****	****	***	***
Ferncliff Nursing Home	Current	***	***	****	**
	03/1973*	*	*	**	**
Mary Manning Walsh Home	Current	***	**	*****	**
	02/1967*	****	****	****	***
St. Vincent de Paul Residence	Current	****	****	****	***
	09/1992*	***	***	****	***
Isabella Geriatric Center	Current	***	**	*****	**
	02/1969*	****	****	****	****
Terence Cardinal Cooke Health Care Center	Current	***	**	*****	***
	08/1983*	**	*	***	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
End Dated Nursing Home Affiliations					
Kateri Residence	08/2013	***	**	*	*
	09/1981*	**	**	****	**
St. Teresa's Nursing Home	02/2013	*	**	***	*
	02/1967*	*	**	*	*

Data as of: 06/2022

*Earliest Data Available 1/2009

Enforcement History

St. Vincent de Paul Residence:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-22-098 for surveillance findings on January 15, 2022. Deficiencies were found under 10 NYCRR 415.3(f)(1)(ii) The facility failed to ensure personnel provided basic life support, including Cardiopulmonary Resuscitation (CPR), to a resident.

Carmel Richmond Healthcare and Rehabilitation Center:

- The facility was fined \$6,000 pursuant to Stipulation and Order NH-21-049 issued on March 4, 2021, for surveillance findings on January 19, 2021. Deficiencies were found under 10 NYCRR 415.19(a)(1-2) and 400.2, infection control PPE.
- The facility was assessed a CMP of \$650 on July 5, 2021, for failure to report COVID information.

Femcliff Nursing Home Co., Inc:

- The facility was fined \$20,000 pursuant to Stipulation and Order NH-13-006 issued on February 27, 2013, for surveillance findings on April 27, 2011. Deficiencies were found under 10 NYCRR 415.11(c)(3)(i), 415.12, 415.15(b)(2)(ii), 415.18(c)(2), 415.15(a), 415.26, services meet professional standards, quality of care highest practicable potential, physician visits review notes, drug regimen review, medical director, administration.

Mary Manning Walsh Nursing Home Co Inc:

- The facility was fined \$6,000 pursuant to Stipulation and Order NH-15-012 issued on June 24, 2015, for surveillance findings on January 25, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(1), accidents, the resident environment remains as free of accident hazards as is possible.

Isabella Geriatric Center, Inc:

- The facility was fined \$24,000 pursuant to Stipulation and Order NH-20-065 issued on November 3, 2020, for surveillance findings on May 18, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1), 415.19(a)(2), 415.19(b)(1), infection control, cohorting, and PPE.
- The facility was assessed a CMP of \$15,000 based on survey findings from November 19, 2020. Deficiencies were noted relating to infection control practices.

Terence Cardinal Cooke Health Care Center:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-128 issued on June 28, 2021 for surveillance findings on March 15, 2021. Deficiencies were found under 10 NYCRR 415.19(a)(1), 415.19(a)(2), infection control, investigation of infections, isolation, and universal precautions.
- The facility was assessed a CMP of \$5,000 based on survey findings from March 15, 2021. Deficiencies were noted relating to infection control practices.

Conclusion

The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3). There will not be any changes to beds, services, or utilization in the area resulting from this change in ownership.

Financial Analysis

Operating Budget

The applicant has submitted their current year (2020) operating budget, and the first- and third-year budgets after approval of Catholic Health Care System as the active parent/co-operator of the RHCF, summarized below:

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>PD/Visit</u>	<u>Total</u>	<u>PD/Visit</u>	<u>Total</u>	<u>PD/Visit</u>	<u>Total</u>
<u>Inpt. Revenue</u>						
Comm MC	\$1,295	\$663,136	\$1,461	\$657,332	\$1,320	\$780,330
Medicare FFS	\$659	4,230,167	\$747	4,888,305	\$780	8,116,680
Medicare MC	\$536	1,586,992	\$486	1,299,580	\$608	2,316,134
Medicaid FFS	\$273	8,442,406	\$281	10,496,586	\$283	13,243,553
Medicaid MC	\$275	2,615,224	\$321	1,283,408	\$308	879,548
Private Pay	\$1,048	4,461,664	\$1,089	4,261,065	\$1,067	5,178,200
Bad Debt		<u>(287,400)</u>		<u>(1,209,629)</u>		<u>(305,100)</u>
Total Inpt. Rev.		\$21,712,189		\$21,676,647		\$30,209,345
<u>Outpt. Revenue</u>						
Comm FFS						
Comm MC						
Medicare FFS	\$97	\$26,498	\$96	\$2,991	\$0	\$0
Medicare MC	\$0	0	\$0	0	\$0	0
Medicaid FFS	\$97	581	\$0	0	\$0	0
Medicaid MC	\$0	0	\$0	0	\$0	0
Private Pay	\$100	<u>44,116</u>	\$0	<u>0</u>	\$0	<u>0</u>
Total Outpt. Rev.		\$71,195		\$2,991		\$0
Other Op Revenue		\$2,860,863		\$1,450,158		\$1,399,583
Non-Oper. Rev		<u>1,647,351</u>		<u>4,824,191</u>		<u>311,288</u>
Total Revenue		\$26,291,598		\$27,953,987		\$31,920,216
<u>Inpt. Expenses</u>						
Operating	\$493	\$26,890,685	\$459	\$25,244,226	\$415	\$28,813,363
Capital	<u>\$70</u>	<u>3,797,104</u>	<u>\$67</u>	<u>3,677,097</u>	<u>\$43</u>	<u>3,015,773</u>
Total Inpt. Expenses	\$563	\$30,687,789	\$526	\$28,921,323	\$459	\$31,829,136
<u>Outpt. Expenses</u>						
Operating	\$7	\$5,331	\$0	\$0	0	\$0
Capital	\$0	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Outpt. Expenses	\$7	\$5,331	\$0	0	\$0	0
Total Expenses		\$30,693,120		\$28,921,323		\$31,829,136
Excess Rev over Exp.		<u>(\$4,401,522)</u>		<u>(\$967,336)</u>		<u>\$91,080</u>
Patient Days		54,556		54,948		69,350
Visits		718		31		0

The following is noted concerning the submitted operating budget:

- Medicare and Medicare Managed Care are increasing due to CHCS's involvement; allowing the facility to share CHCS's resources and greater involvement directly in the hospitals, and also allowing the facility to have access to residents with higher acuities. Additionally, Managed Care contracts will be renegotiated to increase the rates while new contracts will be added with insurance companies helping both the revenues and resident days.
- Year Three uses the trajectory of how the facility will be able to swing its utilization and increase its occupancy based on its corroboration with CHCS, given CHCS's experience and outreach in the hospitals and the community.
- Expenses and utilization are based on the current data available.
- The applicant indicated that the outpatient visits and revenues for the outpatient rehabilitation program have been significantly impacted by COVID-19. Due to the uncertainty around the future of this program, the applicant has taken a conservative approach by projecting nearly zero or zero revenues and expenses going forward.

Utilization by payor source during the current year, first year, and third year are as follows:

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Patent Days</u>	<u>%</u>	<u>Patent Days</u>	<u>%</u>	<u>Patent Days</u>	<u>%</u>
<u>Inpatient</u>						
Comm MC	512	0.94%	450	0.82%	591	0.85%
Medicare FFS	6,420	11.77%	6,543	11.91%	10,406	15.01%
Medicare MC	2,960	5.43%	2,674	4.87%	3,812	5.50%
Medicaid FFS	30,898	56.64%	37,370	68.01%	46,829	67.53%
Medicaid MC	9,508	17.43%	3,998	7.28%	2,860	4.12%
Private Pay	<u>4,258</u>	<u>7.80%</u>	<u>3,913</u>	<u>7.12%</u>	<u>4,852</u>	<u>7.00%</u>
<u>Total</u>	54,556	100.00%	54,948	100.00%	69,350	100.00%

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
<u>Outpatient</u>						
Medicare FFS	272	37.88%	31	100.00%	0	N/A
Medicaid FFS	6	0.84%	0	0.00%	0	N/A
Private Pay	<u>440</u>	<u>61.28%</u>	<u>0</u>	<u>0.00%</u>	<u>0</u>	N/A
<u>Total</u>	718	100.00%	31	100.00%	0	N/A

As noted above, the applicant indicated that the outpatient visits and revenues for the outpatient rehabilitation program have been significantly impacted by COVID-19. Due to the uncertainty around the future of this program, the applicant has taken a conservative approach by projecting nearly zero or zero revenues and expenses going forward.

Capability and Feasibility

There are no project costs or budgets associated with this application. The submitted budget projects a deficiency of revenue over expenses of \$967,336 and an excess of revenue over expenses of \$91,080 will be generated for the first and third years, respectively. The applicant has submitted a letter indicating that the net operating loss in year one will be offset via ongoing operations of CHCS. Revenues are based on current reimbursement methodologies and CHCS's industry experience. The budget appears reasonable.

BFA Attachment A is the December 31, 2020 and 2021 certified financial statements for Providence Rest. During this period, the entity had an average positive working capital position and an average positive net asset position, Providence Rest had a deficiency of revenue over expenses of \$5,845,273 and \$5,999,482 in the years 2020 and 2021, respectively. The applicant has indicated that the losses in 2020 and 2021 were primarily the result of a decline in the facility's census due to the Covid-19 pandemic and the cost of Covid-19 testing. The 2020 monthly census declined from a high of 95% in February to a low of 66% in August and ended the year at 69% in December. Commensurate with the decline in the census were fewer Medicare and Private payor days and lower than anticipated revenue.

Providence Rest is working to increase the census, which has improved from 80% as of November 2021 to 89% as of May 2022. The overall county rate for Bronx County was 89.5% as of May 2022. The RHCF expects to gain efficiencies through greater engagement with CHCS to bring Providence Rest to a positive monthly cash flow position. Efficiencies and actions to improve financial performance include placing an executive director from CHCS's other facilities to help set Providence Rest on the path to greater success and providing HR, finance, legal, and purchasing efficiencies that will help reduce overhead costs. Furthermore, the organizations are obtaining grants, including, but not limited to a grant from the Mother Cabrini Foundation for \$250,000 for a hospital liaison to assist in increasing the census.

BFA Attachment B is the December 31, 2020 and 2021 certified financial statements for Catholic Health Care System. During this period, the entity had an average negative working capital position, an average positive net asset position, and an operating deficit of \$4,555,056 and \$3,572,609 in 2020 and 2021 respectively. The applicant has indicated that the financial statements of CHCS include programs provided to ArchCare Community Services given the large operating deficits for CHCS. These programs are also supported by grants and fundraising done by the Catholic Health Care Foundation of the Archdiocese of New York (CHCFA) and through grants received as part of its participation as a Workforce Improvement Organization. The non-operating revenues of CHCS were \$6.4M and \$8.8M in 2021 and 2020, respectively.

BFA Attachment C is December 31, 2020, and 2021 certified financial statements for CHCFA. The entity had an average positive working capital position and an average positive net asset position during this period. CHCFA had an operating deficit of \$746,185 in 2020 and an operating gain of \$239,105 in 2021. The applicant has indicated that grants to the various CHCS programs and other support that furthers their mission are an operating expense of CHCF and are often supported by its non-operating revenues. Non-operating revenues were \$4.4M and \$2.8M in 2021 and 2020 respectively. CHCFA also had \$33.4M in net assets without donor restrictions at year-end December 31, 2020, and had \$39M at year-end December 31, 2021. Approximately \$32.7M of this amount is made up of cash and investments, and all of the net assets are for funding health care initiatives.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendations
BFA Attachment A	Providence Rest December 31, 2020 & 2021 Certified Financial Statements
BFA Attachment B	Catholic Health Care System-December 31, 2020 & 2021 Certified Financial Statements
BFA Attachment C	Catholic Health Care Foundation of the Archdiocese New York-December 31, 2020 & 2021 Certified Financial Statements

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 28th day of July 2022, 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 Catholic Health Care System as the active parent/co-operator of Providence Rest, a 200-bed residential health care facility located at 3304 Waterbury Avenue, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

202122 E

Providence Rest, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an amended and executed Amended Certificate of Incorporation, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Amended Amendment No. 1 to the Amended and Restated Bylaws of Providence Rest, acceptable to the Department. [CSL]
3. Submission of a photocopy of a list of the Board of Directors of Providence Rest, acceptable to the Department. [CSL]
4. Submission of a photocopy of amended and executed Administrative Services Agreements, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Amended and Restated Certificate of Incorporation for Catholic Health Care System (CHCS), acceptable to the Department. [CSL]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]

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 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]

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*.