

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

March 30, 2023

Establishment and Project Review Committee – convenes at 9:30 a.m.
Committee on Codes, Regulations, and Legislation – convenes immediately following EPRC

90 Church Street, Conference Rooms 4 A/B, NYC

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services- Construction

Exhibit # 1

<u>Number</u>	<u>Applicant/Facility</u>
1. 221082 C	Jamaica Hospital Medical Center (Queens County)

Ambulatory Surgery Centers - Construction

Exhibit # 2

<u>Number</u>	<u>Applicant/Facility</u>
1. 222234 C	Atlantic Surgery Center (Suffolk County)
2. 222270 C	PrecisionCare Surgery Center (Suffolk County)

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

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 3

<u>Number</u>	<u>Applicant/Facility</u>
1. 212260 B	SurgiCore Suffolk, LLC (Suffolk County)
2. 222181 B	Bronx Vascular Surgical Center, LLC (Bronx County)

- 3. 222213 B Staten Island GSC, LLC d/b/a Ambulatory Surgery Center of Staten Island (Richmond County)
- 4. 222227 B Southern Tier Surgery Center, LLC (Broome County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 221123 E	Community Inclusion, Inc. d/b/a TRC Community Health Center of Western New York (Chautauqua County)
2. 221185 E	City Wide Health Facility Inc. (Kings County)
3. 222153 B	CareFullMD Beacon Inc. (Dutchess County)

Home Health Agency Licensures

Exhibit # 5

<u>Number</u>	<u>Applicant/Facility</u>
1. 222086 E	Aimer Home Care Corp. (Rensselaer County)
2. 222156 E	Right At Home Nassau North Shore (Nassau County)

C. Certificates

Exhibit # 6

Certificate of Amendment of the Restated Certificate of Incorporation

Applicant

Glens Falls Hospital Foundation, Inc.

Certificate of Dissolution

Applicant

St. Teresa's Nursing Home, Inc.

II. COMMITTEE ON CODES, REGULATIONS, AND LEGISLATION

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

For Emergency Adoption

- 20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR
(Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements)
- 20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR
(Investigation of Communicable Disease)

For Information

- 20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR
(Investigation of Communicable Disease)
- 23-05 Addition of Section 400.26 to Title 10 NYCRR & Amendment of Sections
600.1 & 710.2 of Title 10 NYCRR (Inclusion of a Health Equity Impact
Assessment as Part of the Certificate of Need (CON) Process)



**Project # 221082-C
Jamaica Hospital Medical Center**

Program: Hospital
Purpose: Construction

County: Queens
Acknowledged: March 22, 2022

Executive Summary

Description

Jamaica Hospital Medical Center (JHMC), a 416-bed voluntary not-for-profit Article 28 acute care hospital located at 89th Avenue & Van Wyck Expressway, Jamaica (Queens County), requests approval to expand and modernize its Emergency Department (ED) and add 22 new critical care beds and an interventional suite. Upon completion of this project, JHMC will have 48 ICU beds and 438 total beds. JHMC is the only Level 1 Trauma Center in South Queens.

The expansion and modernization of the ED will address current design and infrastructure deficiencies at JHMC, improving infection control and patient care. The new ED will be expanded into the ground floor of a new 48,534 square foot 3-story plus basement addition on adjacent available property currently utilized as a Doctor's Parking Lot. The 2nd and 3rd floors will house two new critical care units with 22 new critical care beds. In addition to the new construction, renovations will be performed to the existing ED and adjacent areas. The ED project will increase ambulance bays from four (4) to five (5), trauma bays from one (1) to four (4) major and four (4) minor trauma bays, and isolation spaces from one (1) to six (6) with four (4) additional treatment rooms available as step down units.

Medisys Health Network, Inc. (Medisys), a New York not-for-profit corporation, is JHMC's sole voting member. It is also the sole voting member of Flushing Hospital Medical Center, Jamaica Hospital Nursing Home, and other healthcare organizations. Medisys was formed to support and benefit these organizations by providing planning and consulting services and improving service coordination.

OPCHSM Recommendation

Contingent Approval is recommended.

Need Summary

The applicant projects ED visits of 99,400 in Year One and 125,000 in Year Three.

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 \$155,270,341 will be met with a Statewide Health Care Facility Transformation Program IV (SHCFTP IV) grant award of \$150,000,000 and \$5,270,341 from ongoing operations of JHMC.

<u>Incremental</u>	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>(2026)</u>	<u>(2028)</u>
Revenues	\$27,998,423	\$46,146,403
Expenses	<u>37,367,403</u>	<u>43,799,851</u>
Net Income/(Loss)	(\$9,368,981)	\$2,346,552

The Enterprise Budget (in 000's) is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
	<u>(2021)</u>	<u>(2026)</u>	<u>(2028)</u>
Revenues	\$663,882	\$691,880	\$710,028
Expenses	<u>\$662,354</u>	<u>\$699,721</u>	<u>\$706,153</u>
Net Income	\$1,528	(\$7,841)	\$3,875

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 Statewide Health Care Facility Transformation Program IV executed grant contract, 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. Submission of Mechanical, Electrical, and Plumbing (MEP) Drawings acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. This project must be completed by **April 18, 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 **September 18, 2023**, and construction must be completed by **January 18, 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

April 18, 2023

Need and Program Analysis

Background and Analysis

Jamaica Hospital Medical Center (JHMC), a 416-bed not-for-profit, tertiary care hospital located at 89th Avenue & Van Wyck Expressway in Jamaica (Queens County), seeks approval to construct an addition to expand and modernize its Emergency Department (ED), add 22 critical care beds, and add an interventional suite. The expansion and modernization of the ED will address current design and infrastructure deficiencies at JHMC, improving infection control and patient care. The new total certified bed capacity, including all bed types, will be 438 beds.

The expansion and improvements will be achieved through the construction of a new 48,534 square-foot three-story building with a basement in a parking lot adjacent to the current hospital. The 15,571 square foot ground floor will be used for the new Emergency Department. The second and third floors will provide 8,696 square feet for each of the two new critical care units consisting of 22 new critical care beds. The 15,571-square-foot basement area will provide space for hospital functions being displaced by the expanded ED. Beyond the new construction, approximately 36,265 square feet of renovations will be performed in the existing ED and adjacent areas.

The current ED was built 30 years ago and has a capacity for 60,000 visits. JHMC is the only Level 1 Trauma Center in South Queens and had 2,007 trauma activations in 2021. Occupancy of the existing 26 Intensive Care beds has consistently been in the high 90s in recent years. Direct admissions from the ED to the ICU have ranged from 1,300 to 1,600 per year.

Other improvements include adding one (1) ambulance bay, going from one (1) trauma bay to four (4) major trauma bays and four (4) minor trauma bays with four (4) additional treatment rooms, increase from one (1) to six (6) isolation rooms, and replacing curtained treatment bays with 57 enclosed treatment areas. In addition, it will address air filtration, increase air changes, increase exhaust capabilities, and negative air pressure space allocations. This project will also modernize the Pediatric ED space and seven (7) enclosed geriatric treatment rooms, as well as modernize the ICU rooms.

Staffing is expected to increase as a result of this construction/expansion project by 191.0 FTEs at Year One of the completed project, with no additional increases by Year Three.

The tables below show the current and proposed changes to treatment spaces and beds.

ED Treatment Spaces		
Treatment Spaces	Current	Proposed
Trauma Bays	1	8
Step Down Treatment	0	4
Isolation	1	6
Treatment Bays	27 curtained	57 enclosed
Total	29	75

Source: Applicant

Beds		
Bed Type	Current	Proposed
Coronary Care	4	0
Intensive Care	8	48
Maternity	40	40
Medical / Surgical	228	228
Neonatal Continuing Care	4	4
Neonatal Intensive Care	5	5
Neonatal Intermediate Care	10	10
Pediatric	24	24
Physical Medicine and Rehabilitation	16	16
Psychiatric	56	56
Transitional Care	7	7
Certified Beds Total	402	438

Source: Applicant

The hospital is in Queens County. The population of Queens County, according to 2021 US Census population estimates, was 2,331,143. The population is expected to increase to 2,544,231 by 2028, according to Cornell PAD estimates, a 9.1% increase.

According to Data USA, in 2018, 89.5% of the population in Queens County had health coverage as follows.

Employer Plans	43.2%
Medicaid	25.9%
Medicare	9.8%
Non-Group Plans	10.3%
Military or VA	0.302%

Based on the market share analysis below, the primary service area is Southwest Queens, Jamaica, and East New York neighborhoods. JHMC is the only Level I trauma center in South Queens with proximity to JFK airport.

Market Share Analysis for Jamaica Hospital Medical Center Service Area: 85% of hospital discharges based on patient Zip codes of origin, including the facility with the biggest share in each zip code						
Patient Zip Code	City	Annual average discharges	Percent of facility's total discharges	Cumulative Percent	Facility's Share of Zip Code	Facility with the biggest share of this zip code (%)
11208	Brooklyn	1,289	8.5	8.5	12.7	1629:Jamaica Hospital Medical Center (13%)
11419	Jamaica	1,143	7.5	16	23.8	1629:Jamaica Hospital Medical Center (24%)
11420	Jamaica	1,083	7.1	23.1	22.5	1629:Jamaica Hospital Medical Center (23%)
11434	Jamaica	1,047	6.9	30	13.2	1630:Long Island Jewish Medical Center (24%)
11435	Jamaica	1,022	6.7	36.7	17	1629:Jamaica Hospital Medical Center (17%)
11418	Jamaica	979	6.4	43.1	26.4	1629:Jamaica Hospital Medical Center (26%)
11421	Jamaica	736	4.8	47.9	20.5	1629:Jamaica Hospital Medical Center (21%)
11433	Jamaica	735	4.8	52.8	16.3	1630:Long Island Jewish Medical Center (20%)
11416	Jamaica	668	4.4	57.1	25.3	1629:Jamaica Hospital Medical Center (25%)
11417	Jamaica	616	4	61.2	20.4	1629:Jamaica Hospital Medical Center (20%)

Market Share Analysis for Jamaica Hospital Medical Center Service Area: 85% of hospital discharges based on patient Zip codes of origin, including the facility with the biggest share in each zip code						
Patient Zip Code	City	Annual average discharges	Percent of facility's total discharges	Cumulative Percent	Facility's Share of Zip Code	Facility with the biggest share of this zip code (%)
11432	Jamaica	500	3.3	64.5	6.8	1633:Queens Hospital Center (26%)
11436	Jamaica	486	3.2	67.7	20.8	1629:Jamaica Hospital Medical Center (21%)
11414	Jamaica	399	2.6	70.3	13.2	1630:Long Island Jewish Medical Center (22%)
11207	Brooklyn	322	2.1	72.4	3	1286:Brookdale Hospital Medical Center (14%)
11412	Jamaica	267	1.8	74.2	5.8	1630:Long Island Jewish Medical Center (33%)
11415	Jamaica	238	1.6	75.7	12.4	1630:Long Island Jewish Medical Center (18%)
11413	Jamaica	216	1.4	77.1	4.6	1630:Long Island Jewish Medical Center (27%)
11691	Far Rockaway	199	1.3	78.4	2.3	1635:St Johns Episcopal Hospital So Shore (38%)
11423	Jamaica	182	1.2	79.6	5.1	1630:Long Island Jewish Medical Center (34%)
11354	Flushing	129	0.8	80.5	2.2	1637:Newyork-Presbyterian/Queens (38%)
11422	Jamaica	119	0.8	81.3	3.4	1630:Long Island Jewish Medical Center (28%)
11355	Flushing	104	0.7	81.9	1.4	1637:Newyork-Presbyterian/Queens (47%)
11692	Far Rockaway	97	0.6	82.6	3.7	1635:St Johns Episcopal Hospital So Shore (38%)
11368	Flushing	95	0.6	83.2	0.9	1626:Elmhurst Hospital Center (25%)
11385	Flushing	95	0.6	83.8	1.1	1318:Wyckoff Heights Medical Center (27%)
11429	Jamaica	86	0.6	84.4	2.8	1630:Long Island Jewish Medical Center (39%)
11212	Brooklyn	78	0.5	84.9	0.7	1286:Brookdale Hospital Medical Center (19%)

Source: SPARCS inpatient data (April 1, 2021-March 31, 2022) Data updated 11/03/2022

The applicant states that the current ED was designed to accommodate 60,000 visits per year; however, prior to the COVID-19 pandemic, the ED volume significantly exceeded this volume, with patients facing significant wait times due to high volume and limited space.

The expected ED outcomes of the application include:

- Modernization of the ED to address design and infrastructure deficiencies to better address infection control and improve patient care by adding appropriately sized space with sufficient trauma bays, isolation rooms, and single-occupancy treatment rooms. This will streamline patient and staff flow and improve ventilation.
- Reductions in waiting time, improve staff efficiency, and patient and staff safety and comfort.

According to the applicant, the expanded ED will add to the need for additional critical care beds to accommodate direct admissions from the ED. From 2019 to 2021, there was a 21.3% decrease in ED

visits. The applicant expects ED volume to exceed pre-pandemic levels by year three, seeing 99,400 visits by Year One and 125,000 visits by Year Three.

ED Volume, Historically and Projected								
Source: Applicant								
Year	2016	2017	2018	2019	2020	2021	2022*	2025*
Total ED Visits	119,398	113,284	110,387	113,777	77,996	89,553	99,400	125,000
Volume for 29 Treatment Spaces	4,117	3,906	3,806	3,923	2,690	3,088	3,428	4,310
Volume with 75 Treatment Spaces	1,592	1,510	1,472	1,517	1,040	1,194	1,325	1,667

* Projected data

Prevention Agenda

This project will address current design and infrastructure deficiencies that will allow the ED to be better equipped to prevent the spread of infection and improve patient care.

The applicant has identified the primary and secondary service areas. A quantitative and qualitative description of the population to be served, including a sociodemographic breakdown, was provided.

The hospital's efforts will contribute to the state's goals to "reduce communicable diseases" through a modernized ED and improved ED practices. Specifically,

1. The applicant has provided information about the need for additional critical care beds to accommodate direct admissions from the ED.
2. The project will result in added ambulance bays, trauma bays, and isolation rooms and will replace current curtained treatment bays with 57 enclosed treatment areas. In addition, it will address air filtration, increased air changes, increased exhaust capabilities, and negative air pressure space allocations.
3. The hospital states it is "implementing interventions to expand cancer control services that support local public health priorities." However, the hospital did not specify how these enhancements are consistent with the facility's Community Service Implementation Plan. Specifically, However, no examples are provided, nor does the applicant describe activities that support the local Community Health Improvement Plan. Of particular interest is how the hospital has engaged partners in its efforts to address local public health priorities.
4. The application reports \$200,980,553 in community benefit spending, with \$1,827,901 in spending in the Community Health Improvement Services and Community Benefit Operations category.

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. Through this project, the applicant will expand and modernize their ED and enhance other hospital treatment areas to serve Queens and surrounding neighborhoods.

Financial Analysis

Total Project Cost and Financing

The total project cost for new construction and the acquisition of moveable equipment is estimated at \$155,270,341 and is broken down as follows:

New Construction	55,519,200
Renovation & Demolition	36,265,000
Site Development	5,337,150
Design Contingency	9,678,420
Construction Contingency	9,678,420
Architect/Engineering Fees	5,323,131
Construction Manager Fees	2,419,605
Capitalized Licensing Fees	1,162,850
Moveable Equipment	29,035,260
CON Application Fee	2,000
CON Processing Fee	849,305
Total Project Cost	155,270,341

The applicant's financing plan appears as follows:

Cash	\$5,270,341
Statewide Health Care Facility Transformation Program IV Grant	<u>\$150,000,000</u>
Total	\$155,270,341

Operating Budget

	<u>Current Year (2021)</u>		<u>Year One (2026)</u>		<u>Year Three (2028)</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Inpatient Revenues:						
Commercial MC	\$17,818.92	\$43,798,911	\$18,053.96	\$47,337,496	\$18,197.20	\$49,696,552
Medicare FFS	\$26,404.40	50,432,405	\$25,544.20	53,617,270	\$25,051.92	55,740,513
Medicare MC	\$20,420.68	66,877,729	\$19,977.81	70,961,165	\$19,717.27	73,683,456
Medicaid FFS	\$17,483.71	28,865,607	\$17,432.64	31,204,421	\$17,408.94	32,763,631
Medicaid MC	\$13,109.28	86,311,525	\$13,783.95	96,653,038	\$14,188.46	103,547,380
All Other ¹	\$29,116.19	<u>6,172,633</u>	\$28,814.35	<u>6,483,229</u>	<u>\$26,492.07</u>	<u>6,172,654</u>
Inpatient Revenues ²		\$282,458,810		\$306,256,619		\$321,604,186
Expenses: (Inpatient)						
Operating	\$21,361.80	\$347,684,626	\$20,761.71	\$364,077,420	\$19,941.66	\$366,447,900
Capital	<u>\$613.55</u>	<u>9,986,177</u>	<u>\$648.95</u>	<u>11,379,965</u>	<u>\$695.13</u>	<u>12,773,752</u>
Inpatient Expenses	\$21,975.35	\$357,670,803	\$21,410.66	\$375,457,385	\$20,636.79	\$379,221,653
Inpatient Income/(Loss)		<u>(\$75,211,993)</u>		<u>(\$69,200,766)</u>		<u>(\$57,617,467)</u>
Utilization (Discharges):		16,276		17,536		18,376

Outpatient Revenues:						
Commercial MC	\$571.05	\$37,787,869	\$583.99	\$39,322,131	\$592.37	\$40,344,972
Medicare FFS	\$461.47	\$6,774,348	\$463.61	\$6,949,272	\$464.98	\$7,065,888
Medicare MC	\$312.98	\$17,082,822	\$313.07	\$17,257,823	\$313.14	\$17,374,491
Medicaid FFS	\$391.70	\$5,978,881	\$388.63	\$6,172,691	\$386.71	\$6,301,897
Medicaid MC	\$231.63	\$54,731,229	\$236.35	\$56,689,449	\$239.43	\$57,994,929
All Other ¹	\$687.98	<u>\$3,053,269</u>	\$677.69	<u>\$3,217,667</u>	\$671.63	<u>\$3,327,265</u>
Outpatient Revenues ²		\$125,408,418		\$129,609,033		\$132,409,442
Expenses: (Outpatient)						
Operating	\$716.67	\$296,175,784	\$744.29	\$313,351,586	\$735.89	\$313,614,746
Capital	<u>20.58</u>	<u>8,506,742</u>	<u>25.92</u>	<u>\$10,911,759</u>	<u>31.25</u>	<u>13,316,779</u>
Outpatient Expenses	\$737.25	\$304,682,524	\$770.21	\$324,263,345	\$767.14	\$326,931,525
Outpatient Income/(Loss)		<u>(\$179,274,106)</u>		<u>(\$194,654,312)</u>		<u>(\$194,522,083)</u>
Utilization: (Visits)						
		413,269		421,009		426,169
Net Income Loss		<u>(\$254,486,099)</u>		<u>(\$263,855,078)</u>		<u>(\$252,139,550)</u>
Other Op. Rev.		\$222,816,686		\$222,816,686		\$222,816,686
Total Op. Loss		(31,669,413)		(41,038,392)		(29,322,864)
Non-Oper. Rev.		<u>33,198,000</u>		<u>33,198,000</u>		<u>33,198,000</u>
Total Income/(Loss) ³		<u>\$1,528,587</u>		<u>(\$7,840,392)</u>		<u>\$3,875,136</u>

¹ All Other revenue includes workers comp, no-fault Insurance, and minimal self-pay revenue.

² Other Operating Revenues include grant awards, physician billing and professional components, and other income.

³ Total revenues and expenses, as presented, exclude approximately \$265,342,000 in capitation revenues and \$218,586,000 in costs related to capitation revenue.

The following is noted with respect to the submitted budget:

- Current Year revenues and expenses are reflective of JHMC's 2021 audited financial statements.
- Projected volume is based on current community need, emergency department walkout rates attributed to wait times, current level of ambulance diversion at JHMC, as well as additional capacity created as a result of this project.
- Volume by payor is modeled based on JHMC's existing payor mix.
- Rates by payor are based on JHMC's current reimbursement levels and are projected to remain constant.
- The proposed staff mix is based on current and expected future contract staffing levels and the projected staff needed to accommodate the projected increased patient utilization based on the new capacity. Additional staff will be added as needed to ensure quality of care.

Utilization by payor source for inpatient and outpatient services is as follows:

<u>Inpatient:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	15.10%	14.95%	14.86%
Medicare FFS	11.74%	11.97%	12.11%
Medicare MC	20.12%	20.26%	20.34%
Medicaid FFS	10.15%	10.21%	10.24%
Medicaid MC	40.45%	39.98%	39.71%
Charity Care	1.14%	1.35%	1.47%
All Other	<u>1.30%</u>	<u>1.28%</u>	<u>1.27%</u>
Total	100.00%	100.00%	100.00%

<u>Outpatient:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	16.01%	16.00%	15.98%
Medicare FFS	3.55%	3.56%	3.57%
Medicare MC	13.21%	13.09%	13.02%
Medicaid FFS	3.69%	3.77%	3.82%
Medicaid MC	57.18%	56.97%	56.84%
Charity Care	5.28%	5.48%	5.61%
All Other	<u>1.08%</u>	<u>1.13%</u>	<u>1.16%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

Total project costs of \$155,270,341 will be met with a Statewide Health Care Facility Transformation Program IV (SHCFTP IV) grant award of \$150,000,000 and \$5,270,341 from ongoing operations of JHMC. Working capital needs, estimated at \$6,227,901, are based on two months of first-year incremental expenses and will be funded by JHMC's ongoing operations. The submitted budget projects an incremental net loss of \$11,510,667 and an incremental net income of \$722,501 in Years One and Three, respectively. The projected gain in Year 3 is driven by an increase in the number of Treat and Release (T&R) visits and a reduction in ED walkouts, currently estimated to be 5,500 during 2022. Moreover, an additional ambulance bay will help eliminate diversions, estimated at 500 patients per year, and allow for incremental ambulance throughput. The submitted budget appears reasonable.

As shown in BFA Attachment A, Certified Financial Statements as of December 31, 2021, JHMC reported \$30,119,000 in positive working capital, positive net assets of \$14,541,000, and a \$15,086,000 gain from operations. During the period, JHMC received approximately \$94,559,000 in Value-Based Payment Quality Improvement Program (VBPQIP) funding intended to assist facilities in severe financial distress and enable the continuation of operations while allowing the distressed facility to work on long-term sustainability. During 2021, JHMC also received \$1,745,000 in Provider Relief Funds intended to reimburse eligible healthcare providers for eligible expenditures attributable to COVID-19 and revenue loss. While Jamaica maintained a positive working capital and net asset position for the year ended December 31, 2021, these results are primarily attributable to grant funding the facility received during the year. In 2022, the VBPQIP program transitioned to the Directed Payment Template (DPT) model designed to support qualifying Safety Net hospitals through enhanced Medicaid Managed Care rates. These DPT rates are assumed to be applied to the incremental volume for this project. The revenue projections do not assume the additional impact of these rates when applied to all of JHMC's projected utilization, which will provide additional operating support across JHMC's inpatient and outpatient lines.

BFA Attachment B presents JHMC's Internal Financial Statements for the year ending December 31, 2022. During this period, JHMC reported \$8,984,043 in negative working capital, a negative net asset position of \$4,787,077, and an operating loss of \$3,648,293, which was further offset by \$17,058,143 in other non-operating expenses, and \$1,377,962 grant for capital purposes resulting in a net loss of \$19,328,475. The facility's negative financial position is attributable to challenges resulting from the high-need population served, the majority of which are governmental payors. Uncompensated care to the uninsured and patients with coverage who cannot pay their co-pays and deductibles also contribute to financial distress. The closure of six (6) hospitals in Queens within the past several years resulted in a significant strain on Jamaica Hospital, specifically the ED, which was not designed to accommodate the current demand for emergency services.

Conclusion

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

Attachments

BFA Attachment A	Jamaica Hospital Medical Center – 2021 Certified Financial Statements
BFA Attachment B	Jamaica Hospital Medical Center – December 31, 2022, Internal Financial Statements



Project # 222234-C Atlantic Surgery Center

Program: Diagnostic and Treatment Center Purpose: Construction

County: Suffolk Acknowledged: December 23, 2022

Executive Summary

Description

Atlantic SC, LLC d/b/a Atlantic Surgery Center, currently certified as a single-specialty Article 28 freestanding ambulatory surgery center (FASC) specializing in gastroenterology services, requests approval to add a second single specialty for pain management and install a C-Arm machine. The facility has been operating at 1145 Montauk Highway, West Islip (Suffolk County) since April 2022.

Dr. Nitin Mariwalla is the owner/operator of the Atlantic Surgery Center and serves as its Medical Director. Dr. Mariwalla, a neurosurgeon with a medical practice in West Islip, and Dr. Raymond Baule will perform the pain management services at the facility. Both physicians are board-certified and have admitting privileges at Good Samaritan Hospital Medical Center, where the applicant has a Transfer and Affiliation Agreement for backup and emergency services. Good Samaritan Hospital Center is located 0.4 miles from the proposed facility.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 1,098 pain management procedures in Year One and 1,331 in Year Three with 12.02% Medicaid and 1.95% Charity Care in the third year.

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 \$135,229 will be funded from equity.

Table with 3 columns: Budget, Year One (2023), Year Three (2025). Rows include Revenues, Expenses, and Net Income.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. 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 agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [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 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. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The 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

April 18, 2023

Need Analysis

Background and Analysis

The center was approved under CON 191212 and began operations in April 2022, providing gastroenterology surgery services in five procedure rooms. The primary service area is Suffolk County. The population of Suffolk County in 2021 was 1,526,344, according to the latest US Census data population estimates, and is projected to decrease to 1,492,157 by 2028. According to Data USA, in 2020, 95.8% of the population of Suffolk County had health coverage as follows:

Employer Plans	58.3%
Medicaid	11.6%
Medicare	13.0%
Non-Group Plans	12.4%
Military or VA	0.501%

The applicant projects 1,098 pain management procedures in Year One and 1,331 in Year Three. These projections are based on the current practices of participating surgeons. The applicant has also been approached by physicians currently performing pain management procedures in hospitals who would like to bring them to Atlantic Surgery Center. The table below shows the projected payor source utilization for Years One and Three for just the pain management procedures.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	330	30.05%	399	29.98%
Commercial MC	198	18.03%	240	18.03%
Medicare FFS	330	30.05%	399	29.98%
Medicare MC	55	5.01%	67	5.03%
Medicaid FFS	22	2.00%	27	2.03%
Medicaid MC	110	10.02%	133	10.00%
Private Pay	33	3.01%	40	3.00%
Charity Care	20	1.83%	26	1.95%

The applicant anticipates their projections from their original CON for gastroenterology procedures to remain (7,500 gastroenterology procedures in Year One and 10,352 in Year Three).

The center is current with its SPARCS reporting through December 2022.

PrecisionCare Surgery Center, a single-specialty ASC providing orthopedic procedures, is also requesting to add pain management at its location (222270 on this agenda). This center opened in April 2021 and is 26.2 miles and 35 minutes away from Atlantic Surgery Center.

The table below shows the number of patient visits for relevant ASCs within Suffolk County for 2019 through 2021. 2020 visits were significantly impacted by the COVID-19 pandemic.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Gastroenterology/ Pain Management	Advanced Surgery Center of Long Island	8,447	6,287	8,932
Gastroenterology	Digestive Health Center of Huntington	4,038	3,489	4,591
Gastroenterology	Great South Bay Endoscopy Center	6,720	5,305	7,056
Gastroenterology	Island Digestive Health Center	6,964	4,672	6,142
Gastroenterology	Island Endoscopy Center	11,757	7,020	8,286
Multi	Long Island Ambulatory Surgery Center	14,642	9,270	12,057
Multi	Melville Surgery Center	5,917	4,611	4,273
Gastroenterology/ Pain Management	North Fork Surgery Center (opened 2/14/20)	N/A	1,298	2,968
Multi	North Shore Surgi-Center	7,226	6,364	6,215
Gastroenterology	Northeast Endoscopy (opened 7/14/21) ¹	N/A	N/A	0
Multi	Port Jefferson ASC ¹	2,570	3,037	0
Multi	Progressive Surgery Center	2,886	1,510	2,092
Multi	South Shore Surgery Center	4,828	3,389	3,856
Multi	Suffolk Surgery Center	5,724	3,655	3,953
Multi	Center for Advanced Spine & Joint Surgery (opened 8/30/21) ¹	N/A	N/A	0
Total Visits		81,719	50,907	70,421

¹ No data located for 2021

The center has Medicaid Managed Care contracts with the following: Affinity Health, Health First PHSP, Health Insurance Plan of Greater NY, Neighborhood Health Provider, NYS Catholic Health, and United Healthcare of NY. The center will work collaboratively with local Federally Qualified Health Centers such as Hudson River Healthcare-Wyandanon, Long Island Select Healthcare, and Damian Family Health Care Centers to provide services to the under-insured in their service area.

Conclusion

Approval of this project will enhance access to pain management surgery services for the residents of Suffolk County.

Program Analysis

Project Proposal

Atlantic SC, LLC d/b/a Atlantic Surgery Center, an existing single specialty gastroenterology Ambulatory Surgery Center (ASC) located at 1145 Montauk Highway in West Islip (Suffolk County), seeks approval for the addition of a second single specialty for the provision of pain management and addition of a C-arm.

The Applicant reports that since the proposed ASC filed for initial licensure in 2019, his practice of pain medicine has increased the overall utilization and need to provide pain medicine services has increased. Also, several other physicians have approached the Applicant to provide pain management services because they feel hospitals are understaffed and patients prefer an ASC setting.

Staffing is expected to be increased by 2.00 FTEs at Year One and 2.00 FTEs at Year Three of the completed project.

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.

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.

Financial Analysis

Total Project Costs and Financing

Total project costs for construction, fit-out, and the acquisition of moveable equipment are estimated at \$135,229, distributed as follows:

Architect/Engineering Fees	\$7,500
Other Fees	\$25,000
Movable Equipment	\$100,000
CON Application Fee	\$2,000
Additional CON Processing Fee	<u>\$729</u>
Total Project Cost	\$135,229

The applicant will fund the project through equity.

BFA Attachment A presents the applicant's personal Net Worth Statement, which indicates sufficient liquid resources exist to fund the equity requirement for project costs.

Operating Budget

The applicant has submitted their first (2023) and third (2025) year operating budget for the pain management services only, in 2023 dollars, summarized below:

	<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per Visit</u>	<u>Revenues</u>	<u>Per Visit</u>	<u>Revenues</u>
Revenues:				
Commercial FFS	\$ 675.91	\$223,049	\$676.41	\$269,889
Commercial MC	644.50	116,010		\$140,372
Medicare FFS	\$482.79	\$159,321	\$483.15	\$192,778
Medicare MC	\$470.13	\$25,857	\$466.97	\$31,287
Medicaid FFS	470.14	\$10,343	\$463.52	\$12,515
Medicaid MC	\$482.79	53,107	\$483.15	\$64,259
Private Pay	\$468.73	15,468	\$467.90	\$18,716
Bad Debt		(\$12,063)		(\$14,595)
Total Revenues		\$591,092		\$715,221
Expenses:				
Operating Expense	\$457.80	\$494,420	\$408.05	\$543,117
Capital Expense	<u>\$10.89</u>	<u>\$11,761</u>	<u>\$8.84</u>	<u>\$11,761</u>
Total Expense:	\$468.69	\$506,181	\$416.89	\$554,878
Net Income:		<u>\$84,911</u>		<u>\$160,343</u>
Total Procedures		1,080		1,331

Utilization by payor sources for the pain management services only is anticipated as follows:

Payor	<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Volume</u>	<u>%</u>	<u>Volume</u>	<u>%</u>
Commercial FFS	330	30.05%	399	29.98%
Commercial MC	198	18.03%	240	18.03%
Medicare FFS	330	30.05%	399	29.98%
Medicare MC	55	5.01%	67	5.03%
Medicaid FFS	22	2.00%	27	2.03%
Medicaid MC	110	10.02%	133	10.00%
Private Pay	33	3.01%	40	3.00%
Charity Care	20	1.83%	26	1.95%

The following assumptions were considered for the operating budget:

- Volume is based on the historical experience of pain management cases of the two physicians that will be performing procedures at the FASC. These two physicians, Dr. Mariwalla and Dr. Baule, have provided a letter of intent to perform pain management services at Atlantic Surgery Center.
- Medicare and Medicaid revenues are based on the 2022 CMS fee schedule. Commercial FFS revenues are based on 140% of the 2022 CMS Fee schedule, and Commercial MC revenues are based on 125% of the CMS fee schedule.
- Expenses are based on similar ambulatory surgery centers of similar size as well as the experience to date of the existing FASC.

Capability and Feasibility

Total project costs of \$135,229 will be funded by the applicant's equity. As shown in BFA Attachment A, the applicant's personal Net Worth Statement indicates sufficient liquid resources to fund the equity requirement for project costs.

Working capital requirements are estimated at \$92,480 based on two months of third-year expenses. The applicant will fund the working capital needs from equity. The summary of the member's Net Worth Statement in BFA Attachment A indicates sufficient funds for the required working capital.

BFA Attachment B is the 4/1/2022 - 12/31/2022 internal financial statements for Atlantic SC, LLC d/b/a Atlantic Surgery Center. The facility has generated a negative working capital position of \$3,226,196 and a positive net asset position of \$235,233 and generated a net loss of \$364,840 for the period. The loss is due to the FASC receiving its operating certificate in April 2022 but not being approved for enrollment in the NYS Medicaid Program until January 23, 2023, which limited the applicant's ability to bill and collect revenue.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of the Proposed Member of Atlantic SC, LLC d/b/a Atlantic Surgery Center
BFA Attachment B	4/1/2022-12/31/2022 Internal Financial Statements for Atlantic SC, LLC d/b/a Atlantic Surgery Center



Project # 222270-C PrecisionCare Surgery Center

Program: Diagnostic and Treatment Center County: Suffolk
Purpose: Construction Acknowledged: January 13, 2023

Executive Summary

Description

Precision SC, LLC d/b/a PrecisionCare Surgery Center (the Center), a New York limited liability company, requests approval to add pain management to the Center's operating certificate. The Center is currently certified as a single specialty, Article 28 Freestanding Ambulatory Surgery Center (FASC), specializing in orthopedics, including spine procedures. The Center is located at 28 Research Way, East Setauket, New York (Suffolk County).

All projected pain management procedures will be provided in one of the existing operating rooms at the Center. Upon approval of this transaction, the Center will be certified as a dual single specialty FASC.

Timothy Groth, MD, a board-certified anesthesiologist, has submitted a letter of interest and expressed an intent to use the Center. He estimates bringing 550 cases per year to the Center in the first year of project implementation. Most of these cases (95%) are currently performed at North-Shore Surgi Center. The Center has an existing transfer and affiliation agreement with St. Charles Hospital, which is 4.3 miles or 14 minutes away.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 1,765 procedures in Year One and 1,847 in Year Three with 2.22% Medicaid and 2.01% Charity Care in the third year.

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 total project cost of \$22,110 will be met via equity from operations.

Table with 3 columns: Budget, Year One (2023), Year Three (2025). Rows: Revenues (\$7,367,071 vs \$7,705,130), Expenses (6,056,152 vs 6,203,532), Net Income (\$1,310,919 vs \$1,501,598).

Recommendations

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. 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

April 18, 2023

Need Analysis

The Center was approved under CON 182236 and began operations in April 2021, providing orthopedic surgery services in four operating rooms. The primary service area is Suffolk County. The population of Suffolk County in 2021 was 1,526,344, according to the latest US Census data population estimates, and is projected to decrease to 1,492,157 by 2028. According to Data USA, in 2020, 95.8% of the population of Suffolk County had health coverage as follows:

Employer Plans	58.3%
Medicaid	11.6%
Medicare	13%
Non-Group Plans	12.4%
Military or VA	0.501%

The applicant projects 1,765 procedures in Year One and 1,847 in Year Three. These projections are based on the current practices of participating surgeons. The applicant projects bringing 550 pain management cases to the center in Year One and 583 cases in Year Three. Currently, 95% of the pain management procedures are being performed in another ASC. In addition, the pain management cases will help the center become financially feasible and lead to long-term sustainability. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	3	0.17%	3	0.16%
Medicaid MC	36	2.04%	38	2.06%
Medicare FFS	302	17.11%	316	17.11%
Medicare MC	123	6.97%	129	6.98%
Commercial FFS	425	24.08%	444	24.04%
Commercial MC	362	20.51%	379	20.52%
Private Pay	46	2.61%	48	2.60%
Charity Care	29	1.64%	31	1.68%
Other	439	24.87%	459	24.85%

According to the applicant, the center's Medicaid utilization is low due to the time it has taken the center to get enrolled as a certified Medicaid provider. They explained challenges in projecting the incremental ramp-up for Medicaid visits, which will be based on the timing of executing contracts with various Medicaid Managed Care plans. The center plans to continue working toward contracts with additional Medicaid providers to enhance access to under-served individuals in the service area, thereby improving their Medicaid utilization. The center is showing data in SPARCS through July 2022.

Atlantic Surgery Center, a single-specialty ASC providing gastroenterology procedures, is also requesting to add pain management at its location. This center opened in April 2022 and is 26.2 miles and 35 minutes away from PrecisionCare Surgery Center.

The table below shows the number of patient visits for relevant ASCs in Suffolk County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Gastroenterology/ Pain Management	Advanced Surgery Center of Long Island	8,447	6,287	8,932
Multi	Long Island Ambulatory Surgery Center	14,642	9,270	12,057
Orthopedics	Long Island Hand & Orthopedic Surgery	666	595	659
Multi	Melville Surgery Center	5,917	4,611	4,273
Gastroenterology/ Pain Management	North Fork Surgery Center (opened 2/14/20)	N/A	1,298	2,968
Multi	North Shore Surgi-Center	7,226	6,364	6,215
Multi	Port Jefferson ASC ¹	2,570	3,037	0
Orthopedics	PrecisionCare Surgery Center (opened 4/21/2021)	N/A	N/A	628
Multi	Progressive Surgery Center	2,886	1,510	2,092
Multi	South Shore Surgery Center	4,828	3,389	3,856
Multi	Suffolk Surgery Center	5,724	3,655	3,953
Multi	Center for Advanced Spine & Joint Surgery (opened 8/30/21) ¹	N/A	N/A	0
Total Visits		52,906	40,016	45,633

¹ No data located for 2021

The center has Medicaid Managed Care contracts with the following: Affinity Health, HealthFirst, HealthPlus, United Healthcare, and Fidelis Care. The center will partner with St. Charles Hospital to implement its Charity Care plan. Also, the center will work collaboratively with local Federally Qualified Health Centers such as Sun River Healthcare, which has 11 locations in Suffolk County, and other community-based facilities to provide service to the under-insured in their service area.

Conclusion

Approval of this project will enhance access to orthopedic and pain management surgery services for the residents of Suffolk County.

Program Analysis

Program Description

The Applicant reports that they project bringing 550 pain management cases to the Center in Year One and 583 cases in Year Three. The Applicant reports that 95% of the current pain management procedures are being performed in an ASC setting at North Shore SurgiCenter. In addition, the pain management cases will help the Center become financially feasible and lead to long-term sustainability. The Center did experience some financial difficulties due to the COVID-19 pandemic. The addition of these services will bring economic stability to the Center and pain management FASC services to Suffolk.

The Applicant states they will accommodate the pain management procedures in one of the existing ORs. Therefore, there will be no construction needed to implement this project. The Center is open Monday through Friday from 8:00 am to 5:00 pm, and the hours will remain the same with the addition of the new service.

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.

Staffing is expected to increase to 22.40 FTEs at Year One and Year Three of the completed project.

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.

Financial Analysis

Total Project Costs and Financing

The total project cost is \$22,110 for the acquisition of moveable equipment and CON Fees, as noted in the following table:

Moveable Equipment	\$20,000
CON Fees	2,000
Additional Processing Fee	<u>110</u>
Total Project Cost	\$22,110

The applicant will fund the project cost through equity from operations.

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized below. The submitted budget projects a net income of \$1,310,919 and \$1,501,598 during the first and third years, respectively.

	<u>Current Year</u> <u>2021</u>		<u>Year One</u> <u>2023</u>		<u>Year Three</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>
Revenues:						
Commercial FFS	\$7,451	\$1,333,786	\$5,640	\$2,397,143	\$5,626	\$2,497,896
Commercial MC	\$7,672	\$1,212,123	\$5,915	\$2,141,070	\$5,880	\$2,228,412
Medicare FFS	\$2,384	\$309,875	\$1,905	\$575,382	\$1,910	\$603,552
Medicare MC			\$1,594	\$196,004	\$1,619	\$208,823
Medicaid FFS			\$4,755	\$14,264	\$4,755	\$14,264
Medicaid MC	\$5,632	\$123,899	\$4,185	\$150,663	\$4,157	\$157,971
Private Pay	\$8,939	\$8,939	\$5,610	\$258,050	\$5,754	\$276,172
All Other	\$4,868	\$671,715	\$3,723	\$1,634,495	\$3,743	\$1,718,040
Total Revenues		\$3,660,337		\$7,367,071		\$7,705,130
Expenses:						
Operating	\$5,647	\$3,552,143	\$2,589	\$4,569,817	\$4,723,780	\$4,725,627
Capital	<u>\$2,391</u>	<u>1,503,891</u>	<u>\$842</u>	<u>1,486,335</u>	<u>\$800.17</u>	\$1,477,905
Total Expenses	\$8,038	5,056,034	\$3,431	\$6,056,152	\$4,724,580	\$6,203,532
Net Income		(\$1,395,697)		1,310,919		1,501,598
Procedures		629		1,765		1,847

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

- Expense assumptions are based on the Center's experience in providing services and adding incremental costs for medical supplies needed for pain management cases, and adding 1.4 FTEs to the Center.
- Utilization assumptions for pain management are based on Dr. Groth's commitment to bring 550 cases to the Center. A growth factor of 3% each year was applied to pain management services.
- The Center expects the demand for ASC procedures to continue to increase in the coming years due to the projected population increase in Suffolk County, as well as the growing popularity of ambulatory surgical procedures in general.
- Reimbursement rates are based on 2022 historical experience.
- All Other payor source consists of Workers' Compensation and No-Fault.

Utilization, broken down by payor source, during the current, first, and third years, are as follows:

	<u>Current</u> <u>2021</u>	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Commercial FFS	28.46%	24.08%	24.04%
Commercial MC	25.12%	20.51%	20.52%
Medicare FFS	20.67%	17.11%	17.11%
Medicare MC	0.00%	6.97%	6.98%
Medicaid FFS	0.00%	0.17%	0.16%
Medicaid MC	3.50%	2.04%	2.06%
Private Pay	0.16%	2.61%	2.60%
Charity Care	0.16%	1.64%	1.68%
Other	<u>21.94%</u>	<u>24.87%</u>	<u>24.85%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

Total project costs of \$22,110 will be funded by equity from operations. BFA Attachment B, December 31, 2022, Internal Financial Statements of PrecisionCare Surgery Center show the facility had a positive working capital position and a positive net asset position and achieved a net income of \$6,459,675 through December 31, 2022. The facility has sufficient funds in its operations to meet the total project cost.

BFA Attachment A presents the 2021 Certified Financial Statements of PrecisionCare Surgery Center. As shown, the entity had a positive working capital position and incurred an operating loss of \$1,371,556 in 2021. The applicant has indicated that the loss was due to a slow ramp-up of utilization upon facility approval to begin services in April 2021 during the surge of the Delta variant of the COVID-19 virus. The impact of the COVID-19 pandemic on the Center's ability to build case volume had a negative impact on financial performance, in addition to the lag in having physicians become credentialed with payors for reimbursement of procedures. A review of the Center's Internal Financial Statements for 2022 indicates they have started to recover from the negative financial impact in 2021.

Conclusion

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

Attachments	
BHFP Attachment	Map
BFA Attachment A	Financial Summary- 2021 Certified Financial Statements of PrecisionCare Surgery Center.
BFA Attachment B	Internal Financial Statements of PrecisionCare Surgery Center



Department of Health **Public Health and Health Planning Council**

Project # 212260-B
SurgiCore Suffolk, LLC

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment and Construction **Acknowledged:** February 11, 2022

Executive Summary

Description

SurgiCore Suffolk, LLC (The Center), an existing Limited Liability Company, is seeking approval to establish and construct an Article 28 multi-specialty ambulatory surgery center (ACS) specializing in pain management, orthopedic, and podiatry services. The proposed Center will be in leased space owned by APR Community Realty, LLC, at 1050 Old Nichols Road, Islandia, and serve central Suffolk County.

SurgiCore Suffolk, LLC is a collaboration between SurgiCore Eastern Long Island, LLC, and Community Medical Wellness, an existing private pain management practice. Community Medical Wellness is comprised of three (3) partners who currently operate a pain management practice in Suffolk County; Aman Deep, M.D., Robert Antoniou, M.D., and Paul Cella, P.A. SurgiCore Eastern Long Island, LLC, an affiliate of SurgiCore surgical centers, comprises 11 independent ambulatory surgery centers in the Tri-State area.

Ownership of the operations after PHHPC approval is as follows:

<u>SurgiCore Suffolk, LLC</u>	
<u>Member</u>	<u>Membership % in SurgiCore Suffolk, LLC</u>
Direct Members:	49%
Paul Cella, P.A. 16.33%	
Robert Antoniou, M.D. 16.33%	
Aman Deep, M.D. 16.33%	
<u>SurgiCore Eastern Long Island, LLC</u>	<u>51%</u>
Anthony DeGradi 25%	
Wayne Hatami 25%	
Feliks Kogan 25%	
Leonid Tylman 25%	
Total SurgiCore Suffolk, LLC	100%

BFA Attachment B presents the organizational chart showing the proposed membership interest of the Center. The Medical Director of the proposed facility is Robert Antoniou, M.D. The applicant has submitted an executed transfer and affiliation agreement with St. Charles Hospital located at 200 Belle Terre Rd., Port Jefferson, NY 11777, approximately 15 miles away.

OPCHSM Recommendation

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

Need Summary

The applicant projects 3,738 procedures in Year One and 4,650 in Year Three, with Medicaid at 4% 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).

	<u>Year One</u>	<u>Year Three</u>
Budget:	<u>2024</u>	<u>2026</u>
Revenues	\$6,703,340	\$8,289,521
Expenses	<u>\$6,579,189</u>	<u>\$8,131,924</u>
Net Income	\$124,151	\$157,597

Financial Summary

Total project costs of \$6,629,110 will be met with equity from the proposed members of SurgiCore Eastern Long Island, LLC.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

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

Approval conditional upon:

1. This project must be completed by **December 18, 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 **September 18, 2023**, and construction must be completed by **September 18, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

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

April 18, 2023

Need Analysis

Background and Analysis

This project is a collaboration between Surgicore Eastern Long Island, LLC, and Community Medical Wellness, an existing pain management practice in Port Jefferson Station. According to the applicant, this long-standing practice needs an additional location to handle the volume of patients. The proposed site will allow the practice to better serve its existing patient base, as a substantial portion falls within the catchment area of the proposed ASC.

The service area consists of Suffolk County. The population of Suffolk County in 2021 was 1,526,344, according to the latest US Census data, and is projected to decline slightly to 1,492,157 by 2028. According to Data USA, in 2020, 95.8% of the population of Suffolk County had health coverage as follows:

Employer Plans	58.3%
Medicaid	11.6%
Medicare	13%
Non-Group Plans	12.4%
Military or VA	0.501%

The number of projected procedures is 3,738 in Year One and 4,650 in Year Three with Medicaid at 4.02% and Charity Care at 2.00%. These projections are based on the current practices of participating surgeons. According to the applicant, the projections are conservatively reflected due to the anticipated engagement from Managed Care Plans in both Year 1 and Year 3. The applicant states that all of the procedures moving to this center are currently being performed in other ASCs. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	1,977	52.89%	2,452	52.73%
Commercial MC	645	17.26%	821	17.66%
Medicare FFS	75	2.01%	89	1.91%
Medicare MC	151	4.04%	183	3.94%
Medicaid FFS	83	2.22%	96	2.06%
Medicaid MC	72	1.93%	91	1.96%
Private Pay/Other	660	17.66%	825	17.74%
Charity Care	75	2.01%	93	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Fidelis Care and Healthfirst. The center will work collaboratively with local Federally Qualified Health Centers such as Dolan Family Health Center, Suffolk County Health Center at Riverhead, Greenport Health Center, and others to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in Suffolk County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Gastroenterology/ Pain Management	Advanced Surgery Center of Long Island	8,447	6,287	8,932
Multi	Long Island Ambulatory Surgery Center	14,642	9,270	12,053
Orthopedics	Long Island Hand & Orthopedic Surgery Center	666	595	659
Multi	Melville Surgery Center	5,917	4,611	4,273
Gastroenterology/ Pain Management	North Fork Surgery Center (opened 2/14/20)	N/A	1,298	2,968
Multi	North Shore Surgi-Center	7,226	6,364	6,215
Multi	Port Jefferson ASC ²	2,570	3,037	0
Orthopedics	PrecisionCare Surgery Center (opened 4/21/21)	N/A	N/A	628
Multi	Progressive Surgery Center, LLC ¹	2,886	1,510	2,092
Multi	South Shore Surgery Center	4,828	3,389	3,856
Multi	Suffolk Surgery Center	5,724	3,655	3,953
Multi	The Center for Advanced Spine & Joint Surgery (opened 8/30/21) ²	N/A	N/A	0
Total Visits		52,906	40,016	45,629

¹ SPARCS 2020 & 2021 data is for a partial year.

² No SPARCS data located for 2021.

For the first six months of 2022, there have been approximately 24,900 total visits of the above ASCs, which would annualize to approximately 49,800 visits, an increase of 9% over 2021 for the relevant ASCs in Suffolk County.

Letters of opposition have been received from two ASCs that opened in 2021 in Suffolk County; The Center for Advanced Spine and Joint Surgery and PrecisionCare Surgery. Both centers expressed concerns that this proposed ASC will create an over-saturation of the market for ambulatory surgery services. Suffolk County currently has a ratio of 84,773 patients per ASC, a relatively high number that does not indicate over-saturation.

The table below shows the time and distance from the newly proposed center for the relevant ASCs in Suffolk County.

Name	Specialty Type	Time/Distance
The Center for Advanced Spine & Joint Surgery	Multi	4.6 miles / 8 minutes
Long Island Ambulatory Surgery Center	Multi	5.3 miles / 15 minutes
North Shore Surgi-Center	Multi	7.0 miles / 14 minutes
PrecisionCare Surgery Center	Orthopedics	8.8 miles / 21 minutes
South Shore Surgery Center	Multi	8.9 miles / 18 minutes
Port Jefferson ASC	Multi	14.8 miles / 24 minutes
Advanced Surgery Center of Long Island	Gastroenterology/ Pain Management	14.8 miles / 24 minutes
Melville Surgery Center	Multi	15.6 miles / 19 minutes
Suffolk Surgery Center, LLC	Multi	15.9 miles / 19 minutes
Long Island Hand and Orthopedic Surgery Center, LLC	Orthopedics	17 miles / 30 minutes
Progressive Surgery Center	Multi	18.5 miles / 25 minutes
North Fork Surgery Center	Gastroenterology/ Pain Management	46.2 miles / 52 minutes

Conclusion

Approval of this project will provide increased access to podiatry, orthopedic, and pain management surgery services in an outpatient setting for the residents of Suffolk County.

Program Analysis

Project Proposal

SurgiCore Suffolk, LLC, an existing New York State limited liability company, seeks approval to establish and construct a multi-specialty freestanding ambulatory surgery center specializing in Orthopedic Surgery, Podiatric Surgery, and Pain Management to be located at 1050 Old Nichols Road in Islandia (Suffolk County).

Proposed Operator	SurgiCore Suffolk, LLC
Doing Business As	SurgiCore Suffolk, LLC
Site Address	1050 Old Nichols Road Islandia, New York 11749 (Suffolk County)
Surgical Specialties	Multi-Specialty: Orthopedic Surgery Podiatry Pain Management
Operating Rooms	4
Procedure Rooms	3
Hours of Operation	Monday through Friday, 6:00 am to 5:00 pm Saturdays as demand warrants
Staffing (1st Year / 3rd Year)	34.79 FTEs / 42.35 FTEs
Medical Director(s)	Robert Antoniou, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by: St. Charles Hospital 15.9 Miles / 30 minutes
On-call Service	Patients who require assistance during off-hours will engage the 24-hour answering service to reach the on-call surgeon during hours when the facility is closed.

Character and Competence

The ownership of SurgiCore Suffolk, LLC is:

Member Name	Proposed Interest
Surgicore Eastern Long Island, LLC <i>Anthony DeGradi (25%)</i> <i>Wayne Hatami (25%)</i> <i>Feliks Kogan (25%)</i> <i>Leonid Tylman (25%)</i>	51.00%
Robert Anoniou, M.D.	16.33%
Paul Cella, P.A.	16.33%
Aman Deep, M.D.	16.33%
TOTAL	100%

Dr. Robert Antoniou is the proposed Medical Director. He is a Pain Management Physician and Owner of Community Medical Wellness, PC for over three (3) years. He was the former Director of Anesthesiology/Pain Management and an Interventionalist at EMU Health Surgery Center for over two (2) years. He was an Anesthesiologist/Pain Management Interventionalist at North American Partners in Anesthesia for over one (1) year. He received his medical degree from SUNY Upstate Medical University. He completed his residency in Anesthesiology and fellowship in Pain Management at Tufts University. Dr. Antoniou discloses ownership interest in the following healthcare facilities:

EMU Health

2018-present

Mr. Paul Cella, PA-C, is the CEO and Co-Founder of Community Medical Wellness, PC for over three (3) years. He administrates and manages the day-to-day operations and EMR system. He has established and set up over 20 new locations throughout Long Island. He is the owner of Long Island Physician Assistant Services PC. He is responsible for providing physician assistants on an as-needed basis to physician practices in all specialties. He is a practicing Physician Assistant at DRD Medical for over seven (7) years. He was a practicing Physician Assistant in the Critical Care program at St. Charles Hospital for five (5) years. He was a practicing Physician Assistant in the House Staff and Vascular Access/PICC Line Service at Mather Hospital for over four (4) years. He was a practicing Physician Assistant in the Neurological Department at Southside Hospital for two (2) years. He was a practicing Physician Assistant in the Neurosurgery Department at Winthrop Hospital for four (4) years. He received his Physician Assistant degree from Hofstra University.

Dr. Aman Deep is the Medical Director of Community Medical Wellness for over three (3) years. He was an Attending Physician-Hospitalist at St. Charles Hospital for over four (4) years. He received his medical degree from the American University of Antigua. He completed his residency in Internal Medicine at Flushing Hospital Medical Center and Icahn School of Medicine at Mount Sinai. He is board certified in Internal Medicine.

Mr. Anthony DeGradi is a Managing Partner and Co-Owner of New Horizon Surgical Center for over 14 years. He is responsible for management of the facility through work with the executive team, ensuring compliance with the applicable regulations, and investing in the Center. This work with the executive team allows for additional procedures and focus to constantly improve patient care and the overall patient experience. He is the Managing Partner of Surgicore Management Inc. for over three (3) years. He is responsible for management of operations and affairs. He is a Managing Partner of Surgicore Management NY LLC for over two (2) years. He is responsible for management and operations. Mr. DeGradi disclosed ownership interest in the following healthcare facilities:

<i>Fifth Avenue Surgery Center</i>	<i>12/2017-present</i>
<i>All City Family Healthcare Center</i>	<i>11/2017-present</i>
<i>Empire State ASC</i>	<i>11/2019-present</i>
<i>North Queens Surgical Center</i>	<i>11/2019-present</i>
<i>Surgicore of Jersey</i>	<i>09/2016-present</i>
<i>Surgicore Surgical Center</i>	<i>02/2016-present</i>
<i>Rockland and Bergen Surgery Center</i>	<i>03/2020-present</i>
<i>New Horizon Surgical Center</i>	<i>02/2012-present</i>

Mr. Wayne Hatami is a Managing Partner of Surgicore Management Inc. for over three (3) years. He is responsible for management and affairs. He is a Managing Partner for Surgicore Management LLC for over two (2) years. He is responsible for management and operations. He is the Owner and Physical Therapist of NY Spine Physical Therapy for 18 years. He was responsible for the day-to-day management of the office as well as teaching patients how to prevent or manage their conditions so that they achieved their long-term health benefits. This included examining each patient, developing a plan of care, using treatment techniques to promote their ability to move, reduce pain, restore function, and prevent disability. Mr. Hatami discloses ownership interest in the following healthcare facilities:

<i>Fifth Avenue Surgery Center</i>	<i>12/2017-present</i>
<i>All City Family Healthcare Center, Inc</i>	<i>11/2017-present</i>
<i>Empire State ASC</i>	<i>11/2019-present</i>
<i>North Queens Surgical Center</i>	<i>11/2019-present</i>
<i>New Horizon Surgical Center</i>	<i>02/2012-present</i>
<i>Surgicore of Jersey City</i>	<i>09/2016-present</i>
<i>Surgicore Surgical Center</i>	<i>02/2016-present</i>
<i>Rockland and Bergen Surgery Center</i>	<i>03/2020-present</i>

Mr. Feliks Kogan is the Owner and President of Aleste Corp for over eight (8) years. He is responsible for operations and affairs. He is also the Partner and Co-Owner of Manalapan Surgery Center for over nine (9) years. He is responsible for the management of the facility through work with the executive team to ensure compliance with applicable regulations. He also works with the executive team to provide investment in the center which allows for additional procedures and focus on improving patient care and the overall patient experience. He is the Managing Partner of Surgicore Management Inc. for over two (2)

years. He is responsible for operations and management. He is the Managing Partner of Surgicore Management NY LLC for over one (1) year. He is responsible for operations and management. He was the President and Owner of Syrus Corp. for five (5) years. He was responsible for medical and healthcare marketing for physicians and surgeons and patient acquisition services while providing proprietary sentiment analysis tools to physicians and healthcare providers. Mr. Kogan discloses ownership interest in the following healthcare facilities:

<i>Fifth Avenue Surgery Center</i>	<i>12/2017-present</i>
<i>All City Family Healthcare Center</i>	<i>11/2017-present</i>
<i>Empire State ASC</i>	<i>11/2019-present</i>
<i>North Queens Surgical Center</i>	<i>11/2019-present</i>
<i>Surgicore of Jersey City</i>	<i>09/2016-present</i>
<i>Surgicore Surgical Center</i>	<i>02/2016-present</i>
<i>Manalapan Surgery Center</i>	<i>02/2012-present</i>
<i>Rockland and Bergen Surgery Center</i>	<i>03/2020-present</i>

Mr. Leonid Tylman is the CEO of Lenco Diagnostics Laboratory, Inc for over 18 years. He is responsible for the management of the facility, including working with medical staff and the executive team to certify the facility complies with federal, state, and local statutes and regulations. He also works with the medical staff and executive team to invest in new equipment. The team also makes decisions on what additional testing capabilities to add to provide an additional level of care to patients. Mr. Tylman discloses ownership interest in the following healthcare facilities:

<i>Fifth Avenue Surgery Center</i>	<i>12/2017-present</i>
<i>All City Family Healthcare Center</i>	<i>11/2017-present</i>
<i>Empire State ASC</i>	<i>11/2019-present</i>
<i>North Queens Surgical Center</i>	<i>11/2019-present</i>
<i>Surgicore of Jersey City</i>	<i>09/2016-present</i>
<i>Surgicore Surgical Center</i>	<i>02/2016-present</i>
<i>Manalapan Surgery Center, Inc</i>	<i>02/2012-present</i>
<i>New Horizon Surgical Center</i>	<i>02/2012-present</i>
<i>Rockland and Bergen Surgery Center</i>	<i>03/2020-present</i>
<i>Lenco Diagnostic Laboratories, Inc</i>	<i>01/2002-present</i>

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

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant plans to refer patients to primary care providers. This can be done by any of the clinic's providers, staff, clinicians, or other persons. The Applicant is committed to serving all persons in need without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristic. The Applicant is committed to the development of a formal outreach program directed to the members of the local community. The purpose of the program will be to inform the community of the benefits derived from and the latest advances made in pain management, orthopedic surgery, and podiatry. The Applicant plans to contact FQHCs within the proposed catchment area. The Applicant will also develop customized outreach materials and resources to connect with targeted populations. The Applicant will engage experienced consultants for professional managed care contracting support. The Applicant will develop

and implement an outreach strategy to secure contracts for participation in both Medicaid and national Medicare Managed Care Organization networks and other related activities.

The Center intends on using an Electronic Medical Record (EMR) program. The EMR platform the Applicant will use does support New York's RHIO and/or Health Information Exchange, but when it becomes available in the future, the Applicant will evaluate the service.

Conclusion

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

Financial Analysis

Total Project Costs

The total project cost for the renovations and acquisition of movable equipment is \$6,629,110, presented in 2023 dollars and distributed as follows:

Renovation and Demolition	\$4,426,500
Design Contingency	442,650
Construction Contingency	442,650
Architect/Engineer Fees	300,000
Moveable Equipment	979,060
Application Fee	2,000
Processing Fee	<u>36,250</u>
Total Project Costs	\$6,629,110

Operating Budget

The applicant has submitted their first and third-year operating budgets. Summarized below:

	<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Revenues:				
Comm. FFS	\$1,871	\$3,699,552	\$1,865	\$4,571,749
Comm. MC	\$1,454	\$937,645	\$1,448	\$1,189,020
Medicare FFS	\$1,379	\$103,432	\$1,386	\$123,379
Medicare MC	\$1,723	\$260,206	\$1,738	\$318,095
Medicaid FFS	\$425	\$35,300	\$447	\$42,900
Medicaid MC	\$616	\$44,353	\$532	\$57,476
Other/Private	\$2,459	<u>\$1,622,852</u>	\$2,408	<u>\$1,986,902</u>
Total Revenues		\$6,703,340		\$8,289,521
Expenses:				
Operating	\$1,512.48	\$5,653,640	\$1,539.67	\$7,159,462
Capital	<u>\$247.61</u>	<u>\$925,549</u>	<u>\$209.13</u>	<u>\$972,462</u>
Total Expenses:	\$1,760.09	\$6,579,189	\$1,748.80	\$8,131,924
Net Income:		<u>\$124.151</u>		<u>\$157.597</u>
Utilization (Procedures)		3,738		4,650
Cost Per Procedure		\$1,760.08		\$1,748.80

The following is noted with respect to the submitted budget:

- The revenues, expense, and utilization assumptions are based on the current physician practices in the area, using 2022 Medicare rates, 90% of Medicare and Medicaid rates, and 110% for commercial rates.
- Growth projections are based on other independent entities under the SurgiCore umbrella; their labor costs, benefits, utilities, supplies, and other soft costs (marketing, computers, paper, vendors) are all projected to increase with increased utilization. According to the applicant, their labor costs are subject to substantial inflation, especially since their increased labor costs are for specialists and nurses. Likewise, medical supply costs have had significant increases. As operations ramp up and their facility becomes established, they believe the current shortage of physicians and services in the region will drive increased utilization at the ASC.

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

	Year One 2024	Year Three 2026
Commercial FFS	52.89%	52.73%
Commercial MC	17.26%	17.66%
Medicare FFS	2.01%	1.91%
Medicare MC	4.04%	3.94%
Medicaid FFS	2.22%	2.06%
Medicaid MC	1.93%	1.96%
Other/Private Pay	17.66%	17.74%
Charity Care	<u>2.01%</u>	<u>2.00%</u>
Total Procedures	100%	100%

Administrative Service Agreement:

The applicant has submitted an executed Administrative Service Agreement between SurgiCore Suffolk, LLC and Surgicore Management NY, LLC, which is summarized as follows:

Date:	Date TBA. Effective upon PHHPC approval.
Administrator:	SurgiCore Suffolk, LLC
Service Provider:	Surgicore Management NY LLC
Services:	Development of policies and procedures; computer access to new employees; assistance with workers' compensation; coordinated management, maintenance, and administration of applications related to hardware; information technology support; assistance with budget preparations and benefits.
Term:	5-year term with another additional 5-year renewal.
Fee:	\$25,000 per month prorated for any partial months.

Surgicore Management NY LLC will be performing the above services. The Licensed Operator retains ultimate authority, responsibility, and control in all the final decisions associated with the services. There is common ownership between the applicant and the administrative services agreement provider. Surgicore Management NY is made up of the same members who own SurgiCore Suffolk, LLC.

Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the proposed site, the terms of which are summarized below:

Premises:	1050 Old Nichols Road, Islandia, Suffolk County – Approximately (14,622 sq. ft.)
Landlord:	APR Community Realty, LLC
Lessee:	SurgiCore Suffolk, LLC
Term:	20 years with two (2) consecutive renewal 10-year terms.
Rental:	\$53,275.00 monthly, and in year three (3) increases to \$54,562 monthly.
Provisions:	The lessee will pay all the expenses of the property, including utilities, taxes, and maintenance, per the agreement.

The lease is a non-arm's length agreement. There is a relationship between SurgiCore Suffolk, LLC and the proposed tenant of the premises, and APR Community Realty, LLC as the owner of the premises and members of the facility. In addition, the applicant has submitted two (2) real estate letters indicating rent reasonableness from NYS Licensed realtors. The lease is a triple-net lease.

Capability and Feasibility

Project costs are \$6,629,110 and will be paid with member equity. BFA Attachment A is the net worth statement of the members who will provide equity for this facility. Members Leonid Tylman, Anthony DeGradi, and Feliks Koganeach submitted disproportionate share affidavits if other members did not have enough equity to fund project costs.

The working capital requirement is estimated at \$1,355,321, based on two (2) months of third-year expenses. SurgiCore Suffolk, LLC will fund the working capital requirement through members' equity contributions. BFA Attachment A shows that Surgicore Suffolk, LLC members have sufficient equity to cover this contribution. Additionally, members Leonid Tyman, Anthony DeGradi, and Feliks Kogan submitted disproportionate share affidavits should other members not have enough equity to fund working capital requirements.

The submitted budget indicates a net income of \$124,151 and \$157,597 during the first and third years of operation, respectively. Revenues and expenses are based on current reimbursement methodologies. BFA Attachment C presents the Pro Forma Balance Sheet SurgiCore Suffolk, LLC. The pro forma balance sheet indicates a positive members' equity position of \$7,984,431 on the first day of operations. The budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net worth Statements of all proposed members
BFA Attachment B	Organizational Chart of Surgicore Suffolk, LLC
BFA Attachment C	Pro Forma - Surgicore Suffolk, LLC



Project # 222181-B
Bronx Vascular Surgical Center, LLC

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: November 29, 2022

Executive Summary

Description

Bronx Vascular Surgical Center, LLC (to be renamed from Bronx VS, LLC) (the center), an existing limited liability company, requests approval to establish and construct a single-specialty Article 28 ambulatory surgery center (ASC) to be located at 1733 Eastchester Road, Suite 3, Bronx (Bronx County).

The ASC will have two (2) operating rooms and provide end-stage renal disease (ESRD) related vascular access services. The purpose of the ASC is to improve access to service patients with (ESRD) and peripheral vascular disease necessary to achieve maximum efficient care. The ASC will be housed in leased space.

This project is a partnership between an existing, non-article 28 physician group, Advanced Access Medical Care (AAMC), and specific individuals affiliated with RMS Lifeline Inc. d/b/a Lifeline Vascular Care, which will combine to create Bronx Vascular Surgical Center, LLC under one ASC. In addition, AAMC will dissolve, and their two (2) physicians will move their procedures to the newly established Bronx Vascular Surgical Center, LLC.

The proposed members of Bronx Vascular Surgical Center, LLC are listed below.

Table with 2 columns: Member, % Interest. Rows include Zaher Hanadeh, M.D. (50.000%), Amit Shah, M.D. (15.000%), Jeffery Peo (13.125%), Linda Raham (13.125%), Margaret Anderson (4.375%), Barry Brostoff (4.375%).

Zaher Hamedeh, M.D., will serve as Medical Director. The applicant entered into a Transfer and Affiliation Agreement with Montefiore Medical Center (Epstein Campus). The applicant also entered into an administrative services agreement with RMS Lifeline Inc. d/b/a/ Lifeline Vascular Care to provide administrative functions for the center.

OPCHSM Recommendation

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

Need Summary

The applicant projects 2,092 procedures in Year One and 2,831 in Year Three, with Medicaid at 18.58% and Charity Care at 2.30% by the third year of operations.

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 cost for this project is \$3,764,200, including \$1,750,000 for an Asset Purchase Agreement (APA). A letter of interest has been provided by Panacea Financial at an interest rate of 7.66% for a 10-year term. The cost of renovations and moveable equipment is \$2,426,989, to be funded by member equity of \$276,989 and a loan of \$2,150,000. Panacea Financial has provided a letter of interest for this loan at 7.16% interest and a 10-year term.

Budget	Year One (2023)	Year Three (2025)
Revenues	\$5,533,808	\$7,815,038
Expenses	<u>4,268,196</u>	<u>5,171,261</u>
Net Income	\$1,265,612	\$2,643,777

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

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

Approval conditional upon:

1. This project must be completed by **July 15, 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 **October 15, 2023**, and construction must be completed by **April 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
6. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

April 18, 2023

Need Analysis

Background and Analysis

The service area consists of Bronx County. The population of Bronx County in 2021 was 1,424,948, according to the latest US Census data population estimates, and is projected to increase to 1,590,942 by 2028. The percentage of residents aged 65 and over was 14.0% which is slightly lower than the New York State percentage of 17.5%. The non-white population percentage was 55.7% which is significantly higher than the New York State percentage of 30.9%. These are two population groups most in need of end-stage renal dialysis services. Based on a review of existing dialysis stations in Bronx County, there is a large presence of patients requiring dialysis services. Currently, there are 827 existing dialysis stations, with 58 stations under construction within the county, concluding that many could require vascular surgery services.

According to Data USA, in 2020, 92% of the population of Bronx County had health coverage as follows:

Employer Plans	30.8%
Medicaid	41.8%
Medicare	6.79%
Non-Group Plans	12.1%
Military or VA	0.417%

The number of projected procedures is 2,092 in Year One and 2,831 in Year Three, with Medicaid at 18.58% and Charity Care at 2.30% by the third year of operations. These projections are based on the current practices of participating surgeons. The applicant states that all the procedures moving to this center are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	673	32.17%	916	32.36%
Medicare FFS	982	46.94%	1,324	46.77%
Medicaid FFS	387	18.50%	526	18.58%
Charity Care	50	2.39%	65	2.30%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Affinity, Amida Care, Emblem Health, HIP, Empire Blue Cross, Metro Plus, MVP, United Health Care, Health First, VNS, and WellCare. The center will work collaboratively with local Federally Qualified Health Centers such as Urban Health Plan, Park Tree Community Health Center, Plaza Del Castillo Health Center, and BronxCare Dr. Martin Luther King Jr. Health Center to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in Bronx County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	Ambulatory Surgery Ctr of Greater NY	8,836	4,939	10,821
Multi	Avicenna ASC, Inc.	6,200	4,516	4,407
Multi	Crotona Parkway ASC (opened 6/10/22)	N/A	N/A	N/A
Multi	Downtown Bronx ASC	3,508	1,097	1,714
Multi	East Tremont Medical Center ¹	0	0	0
Multi	Empire State Ambulatory Surgery Center	5,633	5,062	7,868
Multi	Triborough Ambulatory Surgery Center (opened 12/24/20) ²	N/A	N/A	0
Total Visits		24,177	15,615	24,810

¹ No data located for 2019,2020, & 2021 for this facility

² No data located for 2021 for this facility

Conclusion

Approval of this project will provide increased access to vascular access surgery services in an outpatient setting for the residents of Bronx County.

Program Analysis

Program Description

Proposed Operator	Bronx Vascular Surgical Center, LLC
Doing Business As	Bronx Vascular Surgical Center, LLC
Site Address	1733 Eastchester Road, Suite 2 Bronx, New York 10461 (Bronx County)
Surgical Specialties	Single Specialty-Vascular
Operating Rooms	2
Procedure Rooms	0
Hours of Operation	Monday to Friday, 7:30 am to 3:30 pm
Staffing (1st Year / 3rd Year)	15.8 FTEs / 19.1 FTEs
Medical Director(s)	Zaher Hamedeh, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is provided by: Montefiore Medical Center 0.6 Miles / 4 minutes
On-call Service	Patients who require assistance during off-hours will be provided a phone number for a 24-hour/day, seven (7) days/week on-call service to immediately refer the patient to the Center's on-call physician.

Character and Competence

The ownership of Bronx Vascular Surgical Center, LLC is as follows:

Member Name	Proposed Interest
Zaher Hamadeh, M.D.	50.000%
Amit Shah, M.D.	15.000%
Jeffrey Peo	13.125%
Linda Rham	13.125%
Margaret Anderson	4.375%
Barry Brostoff	4.375%
TOTAL	100.00%

Bronx Vascular Surgical Center, LLC is managed by its members through a Board of Managers comprised of managers appointed by the members of Bronx Vascular. The initial managers will be the following members:

<i>Margaret Anderson</i>	<i>Manager</i>
<i>Barry Brostoff</i>	<i>Manager</i>
<i>Jeffrey Peo</i>	<i>Manager</i>
<i>Linda Rahm</i>	<i>Manager</i>

Dr. Zaher Hamadeh is a Member and the Proposed Medical Director. He is the Medical Director of Advanced Access Medical Care for over nine (9) years. He is a Diagnostic Nephrologist at Kidney Medical Associates for over six (6) years. He was an Assistant Professor of Medicine at Jacobi Medical Center for two (2) years. He was a Hospitalist at Deaconess Medical Center for three (3) years. He received his medical degree from the University of Damascus. He completed his Internal Medicine residency at the University of Texas Medical Branch. He completed his Nephrology fellowship at Albert Einstein College of Medicine Jacobi Medical Center. He is board certified in Internal Medicine with a subcertification in Nephrology.

Dr. Amit Shah is on the Medical Advisory Board of Azura Vascular Care. He is a Vascular Surgeon at American Access Care Physician, PLLC, for nine (9) years. He is the Chief of Vascular Surgery at North Bronx Health Network for 12 years. He is the Medical Director of the Vascular Laboratory at Jacobi

Medical Center for 12 years. He received his medical degree from SUNY Downstate Medical Center College of Medicine. He completed his General Surgery residency at Montefiore Medical Center and his Vascular Surgery fellowship. He is board certified in General Surgery and Vascular Surgery.

Jeffrey Peo is the Managing Partner of RMS Lifeline for two (2) years. He is responsible for the oversight of business development, Information Technology, and finance. He was the CEO of The OBL Group for two (2) years. He was responsible for optimizing patient satisfaction, reducing costs to the patient, maximizing profitability, and scheduling compression to recover lost time from less efficient venues. He was the Chief Development Officer of Ambulatory Surgical Centers of America. He was responsible for developing profitable ASCs through acquisition, de novo development, and joint ventures with hospital systems. Prior to his experience in healthcare, he worked in IT as an Executive Consultant for Xerox Connect. He partnered with Fortune 100 companies to design and implement Knowledge Management solutions. Mr. Peo discloses ownership interest in the following healthcare facilities:

<i>Select OBS</i>	<i>04/2020-present</i>
<i>Lifeline Vascular Care</i>	<i>05/2020-present</i>
<i>Vascular Health and Wellness, LLC</i>	<i>05/2020-present</i>
<i>Lifeline Vascular & Interventional Center-Niceville</i>	<i>05/2020-present</i>
<i>Coastal Vascular & Interventional Center</i>	<i>05/2020-present</i>
<i>VASCON Vascular Care Center</i>	<i>04/2020-present</i>
<i>Pittsburg North Surgical Center</i>	<i>01/2022-present</i>

Linda Rahm is an Owner, Managing Partner, and COO of Select OBS, LLC and RMS Lifeline Vascular Care, Inc. for two (2) years. She manages the daily business operations and administrations of the company, working closely with department heads and supervisor heads to support day to day activities of the company. This includes working with executives, compiling company financial reports, implementing business strategies, optimizing the company's operational capabilities, and establishing policies that promote company culture and vision. She was the Vice President of Operations for the northeast region for Ambulatory Surgery Centers of America for five (5) years. She was responsible for overseeing eight multispecialty ASCs, including growth and development, clinical operations, regulatory compliance, financial operations, and joint venture partner relations. She was the Administrator of Pioneer Valley Surgicenter for 11 years. She was responsible for the overall administration and organization of the surgery center, planning and directing all business, financial, and clinical activities. She was the Director of Operations of Connecticut Multispecialty for two (2) years. She was responsible for the general operations of the multispecialty division of Hartford Hospital, including startups, budgeting, expense control, contract development, and relations. She was the CEO of Olympus Specialty Hospital for two (2) years. She was responsible for the executive functioning of a 346-bed rehabilitative hospital and skilled nursing facility. She was the Director of Operations of the Chiron Rehabilitative Division for two (2) years. She was the Regional and Clinical Director of Operations of Sun Healthcare Group for nine (9) years. She was a Staff Therapist at New Medico Pioneer Valley TBI Center for three (3) years. Ms. Rahm discloses ownership interest in the following healthcare facilities:

<i>Select OBS</i>	<i>04/2020-present</i>
<i>Lifeline Vascular Care</i>	<i>05/2020-present</i>
<i>Vascular Health and Wellness, LLC</i>	<i>05/2020-present</i>
<i>Lifeline Vascular & Interventional Center-Niceville</i>	<i>05/2020-present</i>
<i>Coastal Vascular & Interventional Center</i>	<i>05/2020-present</i>
<i>VASCON Vascular Care Center</i>	<i>04/2020-present</i>
<i>Pittsburg North Surgical Center</i>	<i>01/2022-present</i>

Margaret Anderson is a Partner and Board Member of Lifeline Vascular Care for one (1) year. She acquired and carved out \$50M in revenue from ASC and office-based lab businesses from DaVita. She was the Senior Vice President of DaVita. She was responsible for \$1B in profits and losses, 275 dialysis centers, 140 home programs, and 115 hospitals in 13 states. She assumes additional enterprise responsibilities and expanded leadership overseeing standalone national businesses providing practice management to vascular surgeons. Under her leadership, the facilities surpassed their goals, built 67 de novo, and acquired 25 centers with improved lead times from 27 to 18 months. There was service line diversification resulting in cost-effectiveness and improved clinical results. She was the President of the 3i Dental Division of Biomet for three (3) years. She was responsible for developing and executing strategic plans to reignite growth in an underperforming \$270M global business with below-market growth. She

helped improve revenue growth from 2% below market to at market globally and 2% above market in critical North American markets. She helped increase new product revenue from 3% to 20%. She was the Director of Operations at TPG for four (4) years. She was responsible for diligence, deal negotiations, transactions, transition service, management team recruiting, and chief of staff. She improved time to market by 60% by driving implementation of disciplined portfolio management processes and leveraging differential technologies. She was the Director of Performance of Alixpartners for four (4) years. She served as the Interim Executive to perform turnaround and restructuring services for multiple companies. She was the Principal of Caledonia Group for three (3) years. She developed private equity practice, assessed potential deals for quantifiable opportunities in due diligence, validated operating plans, and capitalized on opportunities through LEAN implementation. She held multiple roles at General Motors Powertrain Division for over 10 years, including Manufacturing Superintendent, Supply Chain & Quality Superintendent, Lean Manufacturing Manager, Senior Project Manager, and Manufacturing Supervisor & Reliability Engineer. Ms. Anderson discloses ownership interest in the following healthcare facilities:

<i>Lifeline Dialysis Access Center</i>	<i>12/2005-05/2018</i>
<i>Lifeline Vascular Center Fort Lauderdale</i>	<i>06/2012-03/2018</i>
<i>Open Access Lifeline Inc.</i>	<i>05/2008-09/2018</i>
<i>Lifeline Vascular Center Altamonte Springs</i>	<i>12/2012-02/2018</i>
<i>Lifeline Vascular Center of So. Orlando</i>	<i>12/2012-02/2018</i>
<i>Lifeline Vascular Center Tampa</i>	<i>04/2012-01/2017</i>
<i>Lifeline Valley Access Center</i>	<i>03/2015-12/2021</i>
<i>Select OBS</i>	<i>04/2020-present</i>
<i>RMS Lifeline Vascular Care</i>	<i>05/2020-present</i>
<i>Vascular Health and Wellness</i>	<i>05/2020-present</i>
<i>Lifeline Vascular and Intervention Center Niceville</i>	<i>05/2020-present</i>
<i>Coastal Vascular and Intervention Center</i>	<i>05/2020-present</i>
<i>VASCON Vascular Care Center</i>	<i>04/2020-present</i>
<i>Pittsburg North Surgical Center</i>	<i>01/2022-present</i>

Barry Brostoff is the Chief of Strategy at Lifeline Vascular for one (1) year. He was the previous Vice President of Strategy and Business Development of Lifeline Vascular Care for one (1) year. He was the previous Transaction Director of DaVita for four (4) years. He developed the overall strategy for the existing portfolio post-separation from DaVita. He negotiated and closed two joint ventures in the first-year post-separation from DaVita and negotiated and executed 14 development and management service agreements. He drove the development of a database to identify potential physician partners to supplement the existing portfolio, as well as DeNovo opportunities. He held multiple roles at DCP Midstream LLC and DCP Midstream Partners LP for over eight (8) years, including Manager of Business Development for one (1) year, Manager of Corporate Development and Mergers & Acquisitions for three (3) years, Manager of Technical Accounting, and Manager of Control & Operations Accounting for one (1) year. In these roles, he was responsible for determining the strategy and drafting responses to Requests for Proposals based on the results of financial modeling and consultation with operations and engineering. He negotiated gas gathering and processing agreements that optimized and organically expanded the existing asset base. He facilitated all aspects of the due diligence process on cross-functional teams of up to 40 individuals, reporting directly to the CEO and VP of Business Development. He conducted the due diligence process, created an Excel-based financial model to evaluate numerous third-party buy side and sell side transactions, identifying critical deal issues, escalating and resolving them as appropriate. He also supervised, reviewed, and appraised a group of nine corporate associates responsible for the monthly ledger closing, annual regulatory filing process, and accounts receivable. The process included reviewing over 200 monthly account reconciliations in the area, such as stock-based compensation, purchase price allocation, payroll, legal, environmental, accounts receivable, debt, and cash. Lastly, he performed technical research in accounting pronouncements and prepared memos formally documenting the basis for conclusions on various topics, including revenue and expense recognition, derivative issues, capitalization and expense determination, and purchase and liquidation accounting. He was an Accounting Research Manager for The Coca-Cola Company for five (5) years. He supported worldwide field locations with technical accounting advice on various topics, including consolidation of variable interest entities and optimal merger and acquisition structure. He researched the impact of new accounting guidance and anchored company policies and procedures. He was the Principal/Senior Domestic Auditor at The Coca-Cola Company for two (2) years. He planned, supervised, and executed operational internal audits of various functional units to assess the adequacy of the internal

control structure in place and compliance with established company standards and US GAAP. He was a Senior and Staff Accountant at Deloitte & Touche, LLP for three (3) years. He planned, supervised, and executed quarterly and annual financial statement audits in accordance with GAAP as well as performed full and limited-scope audits of employee benefit plans. Mr. Brostoff discloses ownership interest in the following healthcare facilities:

<i>Select OBS</i>	<i>04/2020-present</i>
<i>RMS Lifeline Vascular Care</i>	<i>05/2020-present</i>
<i>Vascular Health and Wellness, LLC</i>	<i>05/2020-present</i>
<i>Lifeline Vascular & Interventional Center</i>	<i>05/2020-present</i>
<i>Coastal Vascular & Interventional Center</i>	<i>05/2020-present</i>
<i>VASCON Vascular Care Center</i>	<i>04/2020-present</i>
<i>Pittsburg North Surgical Center</i>	<i>01/2022-present</i>

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

- *Dr. Hamadeh disclosed a malpractice suit that was filed in April 2018. The plaintiff was the patient and alleged negligence. Specifically, the patient alleged negligence in an attempt to retrieve a migrated stent during the procedure to open a vein for dialysis access. The case was settled in July 2018 for \$215,000.*

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers, including a broad array of outpatient primary care services offered by Montefiore Medical Center. Prior to leaving the facility, each patient will be provided information concerning the local availability of primary care services.

The Center commits that all patients without discrimination due to personal characteristics or ability to pay. The Center commits to providing charity care for persons without the ability to pay and to utilize a sliding scale for persons who are unable to pay the full charge or are uninsured. The proposed budget projects 2% charity care, and 18% will be Medicaid recipients.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification. The Applicant will consider joining any Accountable Care Organization (ACO).

Conclusion

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

Financial Analysis

Total Project Costs

The total project cost in 2023 dollars for renovations and the acquisition of moveable equipment is estimated at \$2,426,989, further broken down as follows:

Renovation & Demolition	\$1,618,760
Design Contingency	161,876
Construction Contingency	161,876
Architect/Engineering Fees	137,595
Construction Manager Fees	40,470
Other Fees (Consultant)	24,835
Moveable Equipment	215,000
Interim Interest Costs	51,313
CON Fee	2,000
Additional Processing Fee	<u>13,264</u>
Total Project Cost	\$2,426,989

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, during the first and third years of operations, summarized as follows:

	Year One 2024		Year Three 2026	
Commercial FFS	\$2,530.60	\$1,703,092	\$2,625.73	\$2,405,166
Medicare FFS	\$3,524.47	\$3,461,031	\$3,691.68	\$4,887,790
Medicaid FFS	\$955.26	<u>\$369,685</u>	\$992.55	<u>\$522,082</u>
Total		\$5,533,808		\$7,815,038
Expenses:				
Operating	\$1,759.68	\$3,681,244	\$1,625.15	\$4,600,804
Capital	<u>\$280.57</u>	<u>\$586,952</u>	<u>\$201.50</u>	<u>\$570,457</u>
Total Expenses	\$2,040.25	\$4,268,196	\$1,826.66	\$5,171,261
Net Income		<u>\$1,265,612</u>		<u>\$2,643,777</u>
Procedures/Visits		2,092		2,831
Cost/Procedures		\$2,040.25		\$1,826.66

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

- Revenue assumptions are based upon the current cases that the M.D.s are performing at AAMC's existing private surgical practice that will be moved to the Center. Two M.D.s submitted their procedures with reimbursement CPT codes for each physician.
- Reimbursement rates reflect current and projected Federal and State Government rates with adjustments based on the region.
- Expense and utilization assumptions are based upon the current operations of AAMC office-based surgery practice.
- Charity care is estimated to be at 2.30% in the third year of operations, and Medicaid is estimated to be at 18.58%.

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

Payor Source	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	673	32.17%	916	32.36%
Medicare FFS	982	46.94%	1,324	46.77%
Medicaid FFS	387	18.50%	526	18.58%
Charity Care	50	2.39%	65	2.30%

Lease Rental Agreement

The applicant has submitted a draft lease letter of intent agreement summarized below:

Date:	3/31/2024 commencement date
Premises:	6,663 total sq. ft. (Ground Floor)
Lessor:	1733 Eastchester, LLC and Eastchester Road Realty, LLC
Lessee:	Bronx Vascular Surgical Center, LLC
Term:	10 years
Rental:	\$42.50 per square ft. totaling \$283,177.50 annually during the first year and increasing 3% the base rent by 3% every year after.
Provisions:	The lessee shall be responsible for utilities, maintenance, and real estate taxes.

The applicant has submitted an affidavit attesting that the lease will be an arm's length agreement as there is no relationship between the principals of the Landlord. The applicant has submitted two letters from two New York State real estate brokers attesting to the reasonableness. Simone Development Companies, the building owner's property management company, has submitted a letter of intent.

Asset Purchase Agreement

The applicant has submitted a draft APA summarized below:

Date:	February 21, 2023
Buyer:	RMS Lifeline, Inc.
Seller:	Advanced Access Medical Care, LLC
Term:	120 Months (10-Years)
Assets Assumed:	Goodwill from the book of business and the services of (2) doctors who will join the practice.
Fees:	\$1,750,000
Payment Terms:	\$262,500 down payment with the remaining \$1,487,500 to be paid upon receipt of the notice for NEWCO, payment through wire transfer or certified check.
Provisions:	Closing is to occur on or before December 31, 2023

The applicant has submitted an executed letter of intent as Advanced Access Medical Care is going to dissolve. Dr. Zaher Hamadeh and Dr. Amit. Shah, who owns AAMC, will transfer their book of business and practice to Bronx VSC, LLC.

Administrative Service Agreement

The applicant has submitted an executed Administrative Service Agreement, which is summarized below:

Date:	February 17, 2023
Administrator:	RMS Lifeline, Inc.
Company:	Bronx Vascular Surgical Center, LLC
Term:	(5) Five Years with a (5) Five Year renewal unless agreed otherwise.
Services Provided:	Staff Recruiting; Personnel Administration; Non-Clinical Staff Training; Clinical Staff Training approved by the governing body; Communications with Patients; Lease administration assistance; Property Administration; Contract Support Services; Purchasing and Inventory Administration; Benchmarking; Licenses; Outreach & Education; Joint Commission Accreditation; Clinical Reporting; Quality Assurance Improvement; Accounts payable; Financial Reporting and Information System Support.
Fees:	\$500,000 for the first three years and \$575,000 each year thereafter, paid monthly.
Provisions:	The company shall be responsible solely for any liabilities not stated in the agreement and expenses for operations and maintenance. Termination of this agreement will require 120 days' notice by the administrator.

Bronx Vascular Surgical Center, LLC will retain all the direct authority and decisions related to the day-to-day business and retain all authority and responsibility. The established operator retains all authority and responsibility for the obligations of the organization and governing documents.

Capability and Feasibility

The total cost for this project is \$3,764,200, including an Asset Purchase Agreement (APA) from a non-Article 28 facility. The Total Project Cost for construction is \$2,426,989. Project costs will be met by a bank loan of \$2,150,000 for ten (10) years at an estimated interest rate of 7.16%. A letter of interest from Panacea Financial was submitted. Attachment A indicates sufficient members' equity to cover the contribution of \$276,989. The asset purchase agreement to acquire the non-Article 28 private practice of AAMC is \$1,750,000. Panacea Financial has provided the letter of interest for a term of ten (10) years at an interest rate of 7.66%, which will be fully funded with a bank loan and secured by Bronx Vascular Surgical Center, LLC.

Working capital requirements are estimated at \$861,877, equivalent to two months of third-year expenses. The applicant will finance \$400,000 at a rate of 7.66% for a five-year term. A bank letter of interest has been submitted. The remaining \$465,877 will be provided by members' equity contributions. Attachment A presents the personal net worth statements of the proposed Bronx Vascular Surgical Center, LLC members, indicating sufficient funds to meet their equity contribution. BFA Attachment B is the pro forma showing equity of \$738,866 as of the first day of operation.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal net worth statements of proposed members of Renal Focus ASA, LLC
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Organizational Chart (after PHHPC approval)



Project # 222213-B
**Staten Island GSC, LLC d/b/a Ambulatory Surgery Center of
 Staten Island**

Program: Diagnostic and Treatment Center **County:** Richmond
Purpose: Establishment and Construction **Acknowledged:** December 14, 2022

Executive Summary

Description

Staten Island GSC, LLC, an existing limited liability company, requests approval to establish and construct a single specialty ambulatory surgery diagnostic and treatment center (D&TC) whose single specialty is gastroenterology services. Ambulatory Surgery Center of Staten Island will be located on the ground floor of an existing two-story office building at 2043 Richmond Avenue, Staten Island (Richmond County), New York. The primary service area is Richmond County, centered on the zip code 10314, in which the proposed Ambulatory Surgery Center (ASC) will reside.

The proposed members of Staten Island GSC, LLC are as follows:

Alexander Brun, MD.	30%
Igor Grosman, MD.	30%
Staten Island GSC MSO, LLC	40%
	100%

The members of Staten Island GSC MSO, LLC are Alexander Brun, MD. (50%) and Igor Grosman, MD. (50%).

The applicant has been in discussion with Staten Island University Hospital for referral of patients if necessary. Alexander Brun, M.D., will serve as the Medical Director of the Center.

OPCHSM Recommendation

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

Need Summary

The applicant projects 7,150 procedures in Year One and 12,711 in Year Three, with Medicaid at 24% and Charity Care at 2% each year.

Program Summary

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

Financial Summary

The total project cost of \$3,742,864 will be met as follows: Equity of \$1,042,864 and a bank loan of \$2,700,000 at an interest rate of 4.40% for a 10-year term.

	Year One (2025)	Year Three (2027)
Budget		
Revenues	\$4,305,517	\$7,657,047
Expenses	<u>3,983,370</u>	<u>5,679,378</u>
Net Income	\$322,147	\$1,977,669

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
8. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
9. Submission of a copy of a sublease that is acceptable to The Department. [CSL]
10. Submission of a copy of a Certificate of Assumed Name that is acceptable to The Department. [CSL]
11. Submission of a copy of a Delaware LLC Certificate of Formation of Staten Island GSC MSO LLC that is acceptable to The Department. [CSL]
12. Submission of a copy of an Operating Agreement of Staten Island GSC MSO LLC that is acceptable to The Department. [CSL]
13. Submission of a copy of a Delaware LLC Certificate of Formation or Application for Authority of Staten Island GSC, LLC that is acceptable to The Department. [CSL]
14. Submission of a copy of an Operating Agreement of Staten Island GSC, LLC that is acceptable to The Department. [CSL]

Approval conditional upon:

1. This project must be completed by **January 18, 2025**, 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 **October 18, 2023**, and construction must be completed by **October 18, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
6. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

April 18, 2023

Need Analysis

Background and Analysis

The service area is Richmond County. The population of Richmond County in 2021 was 493,494, according to the latest US Census population estimates data, and is estimated to decline slightly to 487,631 by 2028. According to Data USA, in 2020, 95.9% of the population of Richmond County had health coverage as follows:

Employer Plans	56.6%
Medicaid	16.7%
Medicare	12.7%
Non-Group Plans	9.53%
Military or VA	0.336%

Richmond Pain Management ASC is the only operating ASC in Richmond County. The center opened in 2016, and under CON 202093, it was granted approval to convert to a multi-specialty ASC. This center had visits of 4,370 in 2019, 2,897 in 2020, and 2,615 in 2021. Two other ASCs, Specialty Surgery Center of Staten Island (multi-specialty) and Empire Center for Special Surgery (multi-specialty), are approved but not yet operational.

The applicant projects 7,150 procedures in Year One and 12,711 in Year Three with Medicaid at 24% and Charity Care at 2% each year. These projections are based on the current practices of participating surgeons. The applicant states that the procedures moving to the proposed center are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	3,861	54.00%	6,864	54.00%
Medicare FFS	858	12.00%	1,525	12.00%
Medicare MC	572	8.00%	1,1017	8.00%
Medicaid FFS	143	2.00%	254	2.00%
Medicaid MC	1,573	22.00%	2,797	22.00%
Charity Care	143	2.00%	254	2.00%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Healthfirst PHSP, Health Plus, United Health Care of NY, NYS Catholic Health Plan, and Health Insurance Plans of Greater NY. The Center will work collaboratively with local Federally Qualified Health Centers (FQHC) such as Beacon Christian Community Health Center, Bay Street Health Center, Metro Community Health Center, and Community Health Care of Richmond to provide service to the under-insured in their service area.

Conclusion

Approval of this project will provide increased access to gastroenterology surgery services in an outpatient setting for the residents of Richmond County.

Program Analysis

Project Proposal

Staten Island GSC LLC d/b/a Ambulatory Surgery Center of Staten Island, an existing limited liability company, seeks approval to establish and construct a single specialty freestanding ambulatory surgery center specializing in Gastroenterology to be located at 2043 Richmond Avenue in Staten Island (Richmond County).

Proposed Operator	Staten Island GCS LLC
Doing Business As	Ambulatory Surgery Center of Staten Island
Site Address	2043 Richmond Avenue Staten Island, New York 10314 (Richmond County)
Surgical Specialties	Single Specialty ASC Gastroenterology
Operating Rooms	0
Procedure Rooms	4
Hours of Operation	Monday to Friday, 8:00 am to 6:00 pm The Center will modify the hours or add Saturday, 8:30 am to 6:00 pm, as volume dictates.
Staffing (1st Year / 3rd Year)	9.20 FTEs / 14.20 FTEs
Medical Director(s)	Alexander Brun, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is provided by: Staten Island University Hospital 7.5 Miles / 19 minutes
On-call Service	Patients who require assistance during off-hours will be provided an after-hours contact number so that patients and /or families can make contact with a clinical staff person of the Center.

Character and Competence

The ownership of Staten Island GCS LLC is:

Member Name	Proposed Interest
Alexander Brun, M.D.	30.00%
Igor Grosman, D.O.	30.00%
Staten Island GSC MSO LLC <i>Alexander Brun, M.D. (50.00%)</i> <i>Igor Grosman, D.O. (50.00%)</i>	40.00%
TOTAL	100%

Dr. Alexander Brun is the Director and Physician at Triborough GI, an office-based endoscopy practice, for over one (1) year. He is a Physician at Triborough GI PLLC for over five (5) years. He was a Physician at SLC Associates LLC for three (3) years. He was a Physician at Alexander Brun, P.C. for over one (1) year. He was a Physician at Be Well Primary Health Care Center for over four (4) years. He was a Physician at Century Medical and Dental for two (2) years. He received his medical degree from SUNY Downstate. He completed his Internal Medicine residency at Rutgers Robert Wood Johnson Medical School. He completed his Gastroenterology fellowship at Hofstra North Shore LIJ School of Medicine.

Dr. Igor Grosman is a Physician at Triborough GI for over 13 years. He is the Medical Director at Digestive Disease Diagnostic Treatment Center for over five (5) years. He received his medical degree from the New York College of Osteopathic Medicine. He completed his Internal Medicine residency and Gastroenterology fellowship at North Shore LIJ Hospital. He is board certified in Gastroenterology. Dr. Grosman discloses ownership interest in the following healthcare facilities:

South Brooklyn Endoscopy Center *12/2009-present*

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

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

Integration with Community Resources

The Center will provide services to all patients regardless of payor source. The Applicant plans to reach out to the following FQHCs in their catchment area in an effort to advise them of the services being offered and how those services can be a benefit to the respective FQHCs. Those FQHCs include Bay Street Health Center (part of Sun River Health, Inc.), Community Health Center of Richmond, Inc., Metro Community Health Center, Inc., and Beacon Christian Community Health Center, Inc. The Applicant plans to contract with multiple Medicaid Managed Care Plans, including Health First Health Plan/Healthfirst PHSP, Inc., United Health Care of New York, New York State Catholic Health Plan, Inc., and Health Plus, LLC, Health Insurance Plans of Greater New York.

The Applicant plans to utilize an Electronic Medical Record (EMR) system. The Applicant has not determined if they plan to integrate into a Regional Health Information Organization and/or Health Information Exchange.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$3,742,864 and is further broken down as follows:

Renovation and Demolition	\$1,847,016
Design Contingency	92,351
Construction Contingency	92,351
Architect/Engineering Fees	147,761
Other Fees (Consultant)	204,000
Moveable Equipment	1,180,125
Financing Costs	57,017
Interim Interest Expense	99,781
CON Fees	2,000
Additional Processing Fees	<u>20,462</u>
Total Project Cost	\$3,742,864

The applicant's financing plan appears as follows:

Equity	\$1,042,864
Bank Loan (4.40% interest rate for a ten-year term)	<u>\$2,700,000</u>
Total	\$3,742,864

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized below:

	<u>Year One</u> <u>2025</u>	<u>Total</u>	<u>Year Three</u> <u>2027</u>	<u>Total</u>
	<u>Per Procedure</u>		<u>Per Procedure</u>	
Revenues:				
Commercial FFS	\$737.35	\$2,846,913	\$737.44	\$5,061,812
Medicare FFS	\$491.57	421,765	\$491.74	\$749,898
Medicare MC	\$491.57	281,177	\$493.05	\$501,432
Medicaid FFS	\$491.57	70,294	\$493.54	\$125,358
Medicaid MC	\$491.57	<u>773,236</u>	\$491.53	<u>\$1,374,813</u>
Gross Revenues		\$4,393,385		\$7,813,313
Less Bad Debt		87,868		\$156,266
Net Revenues		\$4,305,517		\$7,657,047
Expenses:				
Operating	\$375.97	\$2,688,153	\$342.39	\$4,352,104
Capital	<u>\$181.15</u>	<u>\$1,295,217</u>	<u>\$104.42</u>	<u>\$1,327,274</u>
Total Expenses	\$557.11	<u>\$3,983,370</u>	\$446.81	<u>\$5,679,378</u>
Net Income		\$322,147		\$1,977,669
Utilization: (Procedures)		7,150		12,711

The following is noted with respect to the submitted budget:

- Expense assumptions are based on the historical experience of other ambulatory surgery centers in the geographical area. The doctors and referring physicians currently provide services in other areas of New York City, including Brooklyn and the Bronx, and it is factored in some patients may travel to this center for a needed procedure.

- Reimbursement is based on current reimbursement methodologies for ambulatory surgery services.
- The applicant has submitted physician referral letters in support of utilization projections.

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

	<u>Year One</u> <u>2025</u>	<u>Year Three</u> <u>2027</u>
Commercial FFS	54.00%	54.00%
Medicare FFS	12.00%	12.00%
Medicare MC	8.00%	8.00%
Medicaid FFS	2.00%	2.00%
Medicaid MC	22.00%	22.00%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Lease Rental Agreement

The applicant has submitted a draft sublease agreement for the site that they will occupy, which is summarized below:

Premises	4,024 square feet located at 2043 Richmond Avenue, Staten Island, New York.
Sublessor	Triborough GI, PLLC
Sublessee	Staten Island GSC, LLC
Term	10 years
Rental	\$600,000 annually (\$149.11 per sq.ft.)
Provisions	The sublessee shall be responsible for real estate taxes, maintenance, and utilities.

The applicant has submitted an affidavit indicating that there is no relationship between the sublessor and the sublessee. The applicant has submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

Capability and Feasibility

Total project costs of \$3,742,864 will be met with \$1,042,864 of equity through the proposed members and a bank loan of \$2,700,000 at an interest rate of 7% for a ten-year term. In addition, the applicant has submitted a bank letter of interest concerning the financing.

Working capital requirements are estimated at \$946,563, equivalent to two months of third-year expenses. The applicant will provide equity through the proposed members' resources to meet the working capital requirement. Presented as BFA Attachment A are the personal net worth statements of the proposed members of Staten Island GSC, LLC, indicating the availability of sufficient funds for their equity contribution. Presented as BFA Attachment B is the pro forma balance sheet of Staten Island GSC, LLC, which indicates a positive net asset position of \$1,989,427.

The submitted budget indicates a net income of \$322,147 and \$1,977,669 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for gastroenterology services. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement- Proposed Members
BFA Attachment B	Pro Forma Balance Sheet



**Project # 22227-B
Southern Tier Surgery Center, LLC**

Program: Diagnostic and Treatment center **County:** Broome
Purpose: Establishment and Construction **Acknowledged:** December 28, 2022

Executive Summary

Description

Southern Tier Surgery Center, LLC (to be renamed from Binghamton Project, LLC), an existing New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a dual single-specialty freestanding ambulatory surgery center (FASC) specializing in orthopedics (including spine and podiatric) and pain management procedures. The applicant will lease space in an existing one-story building located at 601 Harry L. Drive, Johnson City (Broome County), New York. The FASC will include four (4) operating rooms.

Present below and as BFA Attachment C is the organizational chart and proposed members of Southern Tier Surgery Center, LLC.

Southern Tier Surgery Center, LLC		
<u>Class A - Physician Members</u>		<u>49%</u>
Mohamed Ali Al-Saied, M.D.	2.00%	
Brandon Ewald, D.P.M.	4.00%	
Ian Hutchinson, M.D.	3.00%	
Dana Klush, D.P.M.	3.00%	
Colin McDonald, D.O.	3.00%	
Dermont Reynolds, M.D.	4.88%	
Joseph Romani, D.P.M.	4.88%	
Khalid Sethi, M.D.	4.88%	
Brian Timm, D.P.M.	3.50%	
Robert Van Gorder, M.D.	4.50%	
Thomas Van Gorder, M.D.	4.50%	
Darren J. Weinheimer, D.P.M.	2.00%	
Mark Wilson, M.D.	4.88%	

<u>Class B Members - New York Holdco, LLC</u>		<u>51%</u>
Jeffrey Andrews (35%)	17.85%	
Binghamton Health Corp. (65%)	33.15%	
Total Class A and B Ownership		100%

Dr. Mohamed Ali Al-Saied, who is currently a physician at Our Lady of Lourdes Memorial Hospital, will be a practicing physician and serve as Medical Director. There will be an additional twelve (12) practicing physicians; all are Board-Certified physicians. Our Lady of Lourdes Memorial Hospital is the sole, passive member of Binghamton Health Corporation.

Each physician member has provided a letter estimating the number of ambulatory procedures currently performed elsewhere that can be appropriately performed at a FASC. The letters attest to providing approximately 2,112 procedures in Year One and 3,717 procedures by Year Three.

The ASC will enter into a Transfer and Affiliation Agreement with Our Lady of Lourdes Memorial Hospital

OPCHSM Recommendation

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

Need Summary

The applicant projects 2,112 procedures in Year One and 3,717 in Year Three, with Medicaid at 12.89% and Charity Care at 1.99% by the third year.

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 \$13,065,769 will be met through members' equity of \$1,292,325, a lease tenant improvement allowance of \$2,792,125, and \$8,981,319 to be provided by Bank of America via a bank loan with a 7-year term and 7.13% interest rate.

Budget:	Year One <u>(2024)</u>	Year Three <u>(2026)</u>
Revenues	\$5,932,540	\$11,475,925
Expenses	<u>6,034,448</u>	<u>8,502,781</u>
Net Income	(\$101,908)	\$2,973,144

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

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

Approval conditional upon:

1. This project must be completed by **September 15, 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 **September 15, 2023**, and construction must be completed by **June 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
1. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
5. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

April 18, 2023

Need Analysis

Background and Analysis

The service area consists of Broome County. The population of Broome County in 2021 was 197,240, according to the latest US Census data, and is projected to decrease to 187,884 by 2028. According to Data USA, in 2020, 96.1% of the population of Broome County had health coverage as follows:

Total Health Care Coverage	96.1%
Employer Plans	45.3%
Medicaid	22.5%
Medicare	14.8%
Non-Group Plans	12.5%
Military or VA	1.03%

Currently, only one ASC, Greater Binghamton Eye Surgery Center, is operating in Broome County. This center provides ophthalmology services and is currently requesting approval to add otolaryngology surgical services. This center opened in May of 2021 and is located just one mile and four minutes away from the proposed new ASC. The applicant states that the volume of ambulatory surgery is expected to grow in the future, and the new center will help ensure that appropriate cases are performed in an out-of-hospital setting. The proposed center represents an attempt by Our Lady of Lourdes Memorial Hospital and local physicians to enhance access to outpatient surgical services, lessening the need for patients and physicians to travel to the hospital for ambulatory surgery services.

The table below shows the number of patient visits for area hospitals and hospital extension clinics in Broome County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	UHS-Binghamton General Hospital	9,502	8,568	7,975
Multi	Our Lady of Lourdes Hospital	17,843	16,168	17,511
Multi	UHS-Wilson Medical Center	11,085	8,322	7,636
Multi	Wilson Place ASC (extension clinic)	6,009	4,394	4,199
Total Visits		44,439	37,452	37,321

Source: SPARCS

The number of projected procedures is 2,112 in Year One and 3,717 in Year Three, with Medicaid at 12.89% and Charity Care at 1.99% by the third year. These projections are based on the current practices of participating surgeons. The applicant states that 90% of procedures moving to this center are currently being performed in a hospital setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	60	2.84%	107	2.88%
Medicaid MC	210	9.94%	372	10.01%
Medicare FFS	410	19.41%	772	19.42%
Medicare MC	378	17.90%	665	17.89%
Commercial FFS	581	27.51%	1,023	27.52%
Commercial MC	258	12.22%	453	12.19%
Other	129	6.10%	227	6.11%
Private Pay	43	2.04%	74	1.99%
Charity Care	43	2.04%	74	1.99%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans Atena Health, CDPHP, Excellus Health, MVP Health, and United Healthcare of NY. The center will work collaboratively with local Federally Qualified Health Centers to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

Conclusion

Approval of this project will provide increased access to orthopedic and pain management surgery services in an outpatient setting for the residents of Broome County.

Program Analysis

Program Description

Proposed Operator	Binghamton Project, LLC
Doing Business As	Southern Tier Surgery Center
Site Address	601 Harry L. Drive Johnson City, New York 13790 (Broome County)
Surgical Specialties	Single Specialty Orthopedics Pain Management
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday to Friday, 7:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	14.24 FTEs / 19.50 FTEs
Medical Director(s)	Mohammed Ali Al Saied, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is provided by: Our Lady of Lourdes Memorial Hospital 3.7 Miles / 10 minutes
On-call Service	Patients who require assistance during off-hours will be provided a phone number for a 24-hour/day, seven (7) days/week on-call service to immediately refer the patient to the Center's on-call physician.

Character and Competence

The ownership of Binghamton Project, LLC is:

Member Name	Proposed Interest
Class A Members	49.00%
Mohamed Ali Al-Saied, M.D. (2.000%)	
Brandon Ewald D.P.M. (4.000%)	
Ian Hutchinson, M.D. (3.000%)	
Dana Klush, D.P.M. (3.000%)	
Colin McDonald, D.O. (3.000%)	
Dermot Reynolds, M.D. (4.875%)	
Joseph Romani, D.P.M. (4.875%)	
Khalid Sethi, M.D. (4.875%)	
Brian Timm, D.P.M. (3.500%)	
Robert Van Gorder, M.D. (4.500%)	
Thomas Van Gorder, M.D. (4.500%)	
Darren Weinheimer, D.P.M. (2.000%)	
Mark Wilson, M.D. (4.875%)	
Class B Members	51.00%
Jeffrey Andrews (33.150%)	
Binghamton Health Corp. (17.850)	
TOTAL	100.00%

Dr. Mohamed Al Saied is the Proposed Medical Director and an Orthopedic Surgeon at Our Lady of Lourdes Hospital for over three (3) years. He was an Orthopedic Surgeon at St. Mary's Regional Medical Center for four (4) years. He was a Locums Orthopedic Surgeon at Humber River Regional Hospital for over four (4) years. He was a General Practitioner for one (1) month at Melville. He was a General Practitioner at Notre Dame Bay Memorial Hospital Health Center for two (2) years. He was a General practitioner at Gaser Ben Gasher Poly Clinic for over one (1) year. He was a General Practitioner at Ebn

El Nafis clinic for six (6) months. He was a General Practitioner at the Tripoli Central Hospital for over one (1) year. He was a General Practitioner in the Trauma and Emergency Department at Tripoli Central Hospital for two (2) months. He was a General Practitioner at the Alhadba Poly-Clinic for one (1) year. He received his medical degree from Al-Fatah University in Tripoli. He completed his Orthopedic Surgery residency at the University of Toronto. He completed his Foot and Ankle Surgery fellowship at Western Hospital and his Hip and Ankle Arthroplasty fellowship at McMaster University. He is board certified in Orthopedic Surgery.

Mr. Jeffery Andrews is the Chief Operating Officer and Executive Vice president of Compassus Home Health and Hospice for seven (7) months. He provided operational leadership in a multistate, privately backed organization with annual revenues of \$800M. He created organizational management systems for the consistent execution of operational metrics. He developed a plan for evolving organizational structure to ensure scalability, including the new clinical team to allow for value-based care. He directed an organic growth strategy with a focus on Ascension relationship development and improving new growth opportunities and customer relations. He designed recruitment and retention strategies specific to clinical onboarding and mentoring. He was the COO and Interim President of Sequel Youth and Family Services for nine (9) months. He was responsible for operations management for an organization with annual revenues of \$300M, developed strategic plans and an organizational road map to position the company for future industry changes, restructured the organization to leverage regional relationships and improve decision-making, including establishing operational metrics. He led and coordinated customer care development teams with a focus on lean referral management, directed growth strategy, led enterprise-wide cost savings initiatives, and led and directed a clinical philosophy redesign. He was the Market President, Regional Vice President, and CEO of United Surgical Partners International for over 10 years. He led joint venture relationships with key health system partners, actively collaborated with system executives to improve quality, performance, and outcomes, and facilitated communication of market strategy in collaboration with physician leaders. He guided financial negotiations and debt restructure, facilitated the acquisition and merger of three (3) surgery centers, and directed the implementation of hospital gainsharing programs resulting in \$4M of annual savings. He guided regional marketing and recruitment plans in collaboration with regional teams, directed regional staffing initiatives focused on reducing agency staffing, decreased turnover by 25%, designed a campus expansion, and recruited 20 physicians. He was an Administrator at Banner Thunderbird and Banner Estrella Surgery Centers for over one (1) year. He was responsible for \$3M in budget at each center. He led the financial and operational turnaround at Banner Thunderbird and increased volume by 10% in nine (9) months. He recruited four (4) new surgeons. He completed a \$6M new facility construction project. He was the Administrator at Surgis, Inc for over one (1) year. He prepared, monitored, and controlled a \$2M operating budget and provided leadership to 20 employees. He strategized and negotiated managed care contracts to bolster the bottom line resulting in improved operating margins. He was the Network Account Manager of UnitedHealthcare for over one (1) year. He was a Business Analyst at Sun Health for over one (1) year. He was a Pharmaceutical Sales Representative for one (1) year for Johnson and Johnson.

Susan Bretscher is the Chief Mission Integration Officer and Chief Operating Officer at Our Lady of Lourdes Memorial Hospital for two (2) years. She defines the strategic direction and accountabilities for infrastructures, resources, and capabilities in collaboration with the senior management team and department directors for the organization. She also participates in the development, implementation, and accountability for the organization's vision, policies, and objectives; collaborates with senior management on setting strategic initiatives, develops plans, and implements processes for Mission Integration. She was the Vice President and Chief Mission Integration Officer at Our Lady of Lourdes Memorial Hospital for four (4) years. She collaborated with senior management in setting strategic initiatives, developing plans, and implementing processes for Mission Integration and supported the ministry's ecclesiastical relationship with the local Diocesan Ordinaries and the larger Catholic communities. She also held shared strategic ownership and leadership accountability for creating a Model Community culture. She was the Director of Community Outreach and Mission Integration for one (1) year. She collaborated with senior management and department directors in the development of specific strategies, tactics, and tasks that are aligned with the mission, vision, and core values. She managed the implementation of the mission integration and strategic initiatives while also directing youth services to meet individual and program goals. She directed the Lourdes Medical Mission at Home and other institution-wide services. She was the Director of Learning Services for one (1) year. She worked in partnership with Human Resources to assess the needs and develop, recommend, and implement solutions to meet organizational

development and effectiveness needs. She worked in partnership with the Manager of Community Relations to plan, develop, implement, and evaluate community health education. She set and controlled the budget for Learning Services and the library. She oversaw the administrative management of the podiatry residency program, family medicine residency program, continuing medical education program, and the library/archives. She was a Health Sciences Information Specialist at Our Lady of Lourdes Memorial Hospital for 22 years. She managed the hospital library and archives and provided library services to hospital staff, coordinated with the continuing medical education program and maintained the program accreditation, developed and maintained a broad spectrum of library services, supervised library/archive staff and volunteers, and implemented and maintained databases for circulation and control of library materials.

Katheryn Connerton is the President and CEO of Ascension Lourdes for over eight (8) years. She has led a \$440M net revenue healthcare system with a 220-bed acute care hospital, an over 280-person physician network, and 3,400 associates. She transformed the health system to ambulatory care with 75% outpatient revenue, led value-based care redesign, initiated cohort management formalizing relationships between community-based organizations and primary care, engineered quality review infrastructure for the health system, and led entry into the largest Clinically Integrated Network in the upstate. She was the Vice President of Internal Consulting of Bon Secours Health System for over eight (8) years. She implemented all facets of EMR, achieved the system's highest revenue performance for post-install, realized \$100M in benefits, led a 300-person staff in implementing and support of EHR operations in 14 hospitals, five LTCs, and an 800-person physician network, and partnered with executive management to start A Medicare Shared Savings Program. She was the Chief Operating Officer of Bon Secours Venice Healthcare for two (2) years. She implemented operational improvements increasing EBIDTA as percent net revenue by 8.5%, obtained \$5M in grant funding for a surgical center of excellence, reduced salary and wage expense by 20% with top decile performance to benchmark metrics, increased service acuity leading to increased Medicare case mix, and doubled medical staff size. She was the Vice President of Quality and Risk at Bon Secours Venice Healthcare for four (4) years. She built a cardiovascular program including interventional cath and interventional radiology, outpaced projections for open heart surgery by 10%, doubled interventional caths, and exceeded the contribution margin by 10%. Ms. Connerton discloses membership interest in the following healthcare facilities:

Our Lady of Lourdes Memorial Hospital *12/2014-present*

Dr. Brandon Ewald is a Podiatrist at Lourdes Foot and Ankle for over four (4) years. He was a Podiatrist at Southern Tier Associates in Podiatric Medicine and Surgery for approximately one (1) year. He received his medical degree from the New York College of Podiatric Medicine. He completed his Podiatric Medicine and Surgical Residency at Our Lady of Lourdes Memorial Hospital. He completed his Podiatric Surgery Residency at the Rubin Institute for Advanced Orthopedics-International Center for Limb Lengthening at Sinai Hospital. He is board certified in Podiatric Medicine.

Dr. Ian Hutchinson is an Attending Orthopedic Surgeon at Ascension Medical Group/Our Lady of Lourdes Hospital for five (5) months. He received his medical degree from the Royal College of Surgeons in Ireland. He completed his Orthopedic Surgery residency at Albany Medical Center. He completed his Orthopedic Surgery/Sports Med at the Sports Medicine Institute at the Hospital for Special Surgery.

Dr. Dana Klush is a Podiatric Medicine and Surgery Practice Associate at LaPorta and Associates for 12 years. He received his medical degree from Temple University School of Podiatric Medicine. He completed his Podiatric Medicine and Surgery Residency at Community Medical Center. He is board certified in Podiatric Medicine.

David Mannes is the Chief Financial Officer of Ministry Markets at Ascension for over one (1) year. He leads the finance function, including financial reporting, planning, revenue cycle, capital planning, and financial integrity for Our Lady of Lourdes Memorial Hospital. He was the previous Vice President of Finance MWF at Ascension for three (3) years. He led the finance planning, forecasting, capital planning, financial integrity, and consolidation of 10 hospitals in Wisconsin. He was the Controller of Ascension for over nine (9) years. He led the financial reporting and accounting function for Ascension Wisconsin, including accounting, payroll, time and attendance, consolidation, accounts payable, cash management, and audit. Mr. Mannes discloses membership interest in the following healthcare facilities:

Horizon Homecare and Hospice *10/2009-06/2021*

Dr. Colin McDonald is an Attending Orthopedic Surgeon at Ascension Medical Group/Our Lady of Lourdes Hospital for six (6) months. He completed his Orthopedics and Sports Medicine fellowship at the University of Buffalo. He completed his Orthopedic Surgery residency at the Orthopedic Residency of York, Wellspan. He received his medical degree from Lake Erie College of Osteopathic Medicine.

Alexandra Reyes is the Vice President of Operations at Regent Surgical Health for over three (3) years. She works with the center Administrator and Operating Board and provides hands-on management and support for day-to-day center activities that promote growth and desired financial performance. The key areas of focus are strategic planning, partner relations, staff development, and accountability. She is the primary operations contact for inquiries for the Center staff and physician partners. She delegates authority and responsibility to department heads, develops and improved management techniques and practices, and provides leadership, vision, and strategic direction. She reviews and supports negotiations for quotes for equipment, supplies, and ancillary service agreements. She was the Vice president of Operations at Physician Endoscopy for over two (2) years. She functions as the primary liaison between Physician Endoscopy (PE) and multiple ASCs. She interacted and influenced cross-functionally within PE departments and also worked collaboratively with the Centers to develop initiatives that promote center growth, cost containment, and operational improvement, provided onsite support and project oversight, developed key contacts within the center community, and kept current on regional and national industry related events that may impact the Centers. She was the Senior Vice President of Operations of Frontier Healthcare for two (2) years. She provided the Centers with a recommended program for managing efficient ongoing operations. She submitted the Medical Director, Quality Assurance and Performance Improvement Committee, and Board of Manager medical staff bylaws, a quality program, and departmental policies and procedures for review and modification. She provided support to the Administrator and Medical Director, who are responsible for familiarizing the facility staff with the policies and procedures. She completes periodic audits of the Center's operations and provides feedback to the Board of Managers on the Center's adherence to programs, and contributes feedback on quality and risk programs for QAPI for the Board to consider in internal reviews. She provides operational insights on best practices and tools gained from experiences working in other ASCs. She was the ASC Regional Director of Prospira Pain Care/National Surgical Centers of America for two (2) years. She directed daily operations of the surgery center, personnel supervision, cost control, inventory management, risk management, and quality improvement. She also recruited, oriented, trained, and directed staff, conducted performance evaluations, assisted with recruiting qualified physicians, and directed the daily operations of four surgery centers. She was the Operating Room Manager of Memorial Same Day Surgery Center for 10 months. She directed the daily operations of the surgery center, personnel supervision, cost control, inventory management, risk management, and quality improvement. She prepared the facility to successfully meet The Joint Commission Inspection and monitored payroll and benefits for accuracy, timeliness, cost-effectiveness, and adherence to state and federal requirements. She was an Administrator at Weston Outpatient Surgical Center for over one (1) year. She spearheaded a full-scope facility operation inclusive of policy and procedure development and implementation, goal setting, strategy planning, budgeting, and collaboratively supporting the total perioperative process. She steered strict compliance with OSHA rules and regulations, fostered transparent communication between business offices, patient care areas, and physician practices, monitored payroll and benefits, conducted cost analysis and prepared reports, negotiated contracts and maintained cooperative relationships, and played an active role in developing and optimizing the Quality Management Program. She was an Administrator at Treasure Coast Center for Surgery for two (2) years. She was a Nurse Manager at Palms West Surgicenter for over two (2) years. She was a Staff Nurse in the Operating Room at North Shore University Hospital at Glen Cove Orthopedic and Rehab Institute for two (2) years. She was a Director of Nursing at the Rehab Institute for two (2) years.

Dr. Dermot Reynolds is an Associate in Orthopedic Surgery, Hip and Knee Reconstruction at Ascension Lourdes Hospital for seven (7) months. He was an Associate in Orthopedic Surgery Hip and Knee Reconstruction and Orthopedic Trauma at St. Joseph Health for two (2) years. He was an Associate in Orthopedic Surgery, Hip and Knee Reconstruction and Orthopedic Trauma at Robert Packer Hospital for over 16 years. He was an Assistant Professor in Orthopedics at the University of Manitoba for one (1) year. He was the Service Chief in Trauma at the University of Manitoba for one (1) year. He received his medical degree from the University of Toronto. He completed his Orthopedic Surgery residency at the Memorial University of Newfoundland. He completed his Orthopedic Adult Joint Reconstruction fellowship

at the University of Manitoba. He completed his Orthopedic Trauma fellowship at the University of Calgary. He is board certified in Orthopedic Surgery.

Dr. Joseph Romani is a Podiatric Surgeon at Ascension Lourdes for over four (4) years. He was a Podiatric Surgeon at LaPorta and Associates, PC, for two (2) years. He received his medical degree from Kent State University College of Podiatric Medicine. He completed his Podiatric and Orthopedic residency at Sinai Hospital. He completed his Podiatric Medicine and Surgery with Reconstructive Rearfoot and Ankle residency at Our Lady of Lourdes Memorial Hospital.

Dr. Khalid Sethi is the Director of Neurosurgery a UHS Medical Group for over six (6) years. He is the Co-Director of Surgical Services at UHSH for over four (4) years. He is a Member of the UHSH Medical Executive Committee for over four (4) years. He was an Elected Board member of UHS Medical Group for six (6) years. He is the Director of Neurosciences, Quality Optimization, and Performance Improvement at UHSH for 15 years. He is the Chief of Neurosurgery at UHSH for 20 years. He is the Chief of Neurosurgery at Lourdes Hospital for 21 years. He is an Investigator at Regional Clinical Research, Inc. for 17 years. He is a Neurosurgeon at UHS for over six (6) years. He was a Partner at Southern New York Neurosurgical, PC, for 14 years. He received his medical degree from the Indianan University School of Medicine. He completed his Neurological Surgery residency at the University of Minnesota Hospitals and Clinics. He completed his Complex Adult Spinal Deformity fellowship at VA Medical Center Minnesota. He completed his Trauma/Cerebrovascular Neurosurgery fellowship at Hennepin County Medical Center.

Dr. Brian Timm is a Podiatrist at Ascension Lourdes for over seven (7) years. He was a Podiatrist at Family Foot and Leg Center for six (6) years. He received his medical degree from Dr. William School College of Podiatric Medicine. He completed his residency at Our Lady of Lourdes Hospital. He is board certified in Foot and Ankle Surgery and Reconstructive Rearfoot and Ankle Surgery.

Dr. Robert Van Gorder is an Orthopedic Surgeon at Our Lady of Lourdes Hospital for over five (5) years. He was an Orthopedic Surgeon at Tier Orthopedic Associates for two (2) years. He received his medical degree from SUNY Upstate Medical Center. He completed his Orthopedic residency at the University of Vermont. He completed his Orthopedic Sports Fellowship at the University of Rochester. He is board certified in Orthopedics.

Dr. Thomas Van Gorder is an Orthopedic Surgeon at Ascension, Our Lady of Lourdes Hospital, and Lourdes Orthopedics for over five (5) years. He was an Orthopedic Surgeon for Tier Orthopedic Associates for 20 years. He received his medical degree from SUNY Buffalo Medical University. He completed his Orthopedic Surgery residency at SUNY Buffalo.

Dr. Darren Weinheimer is a Podiatrist at the Foot Care Center and Primary Foot Care for 25 years. He is a Podiatric Attending Physician at Lourdes Hospital and Binghamton Hospital Medicaid Clinics for 25 years. He was a Board Member of the Arthritis Foundation of Broome County for five (5) years. He is an Assistant Residency Director at Lourdes Hospital for 13 years. He is Core Teaching Faculty at Binghamton General Hospital for 15 years. He received his medical degree from the Ohio College of Podiatric Medicine. He completed his Rotating Podiatric Residency and his Podiatric Surgical Residency at St. Francis Central Hospital. He is board certified in Podiatric Surgery and Reconstructive Rearfoot and Ankle.

Dr. Mark Wilson is an Orthopedic Surgeon at Lourdes Orthopedics Riverside for over five (5) years. He was a Physician and Partner at Tier Orthopedic Associates, PC, for 12 years. He received his medical degree from SUNY Upstate. He completed his Orthopedic residency at SUNY Upstate. He completed his Sports Medicine Fellowship at Southern California Center for Sports Medicine. He is board certified in Orthopedic Surgery.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office

of Professional Medical Conduct, and the Education Department databases, as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center, in cooperation with Our Lady of Lourdes Hospital, plans to work with its patients to educate them regarding the availability of services offered by local primary care physicians and Our Lady of Lourdes Hospital. The Applicant is committed to serving all persons in need without regard to race, sex, age, religion, sexual orientation, ability to pay, source of payment, or other personal characteristics. A sliding scale fee based on Federal Poverty Income Guidelines and family size will be developed for patients without health insurance coverage. The operating budget projects 2.0% for charity care, 2.0% for private pay, with private pay patients paying reduced fees based on their ability to pay, and 12.9% for Medicaid. The Center will contract with two or more Medicaid-managed care plans and will seek to participate in one of the provider-led designated health homes for Broome County to develop referral and other collaborative arrangements to enhance access to ambulatory surgery services to Medicaid and charity care patients. The Applicant plans to contract with Medicaid-managed Care Plans such as Aetna Health Inc., Capital District Physicians' Health Plan, Inc., Excellus Health Plan, Inc., MVP Health Plan, Inc., and United Healthcare of New York, Inc. The Applicant plans to outreach to the following FQHC, Cornerstone Family Healthcare, and other community-based providers.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification. The Applicant will consider joining any Accountable Care Organization (ACO).

Conclusion

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

Financial Analysis

Total Project Costs and Financing

Total project costs, estimated at \$13,065,769, are as follows:

Renovation & Demolition	\$6,113,782
Design Contingency	611,378
Construction Contingency	611,378
Architect/Engineering Fees	405,439
Other Fees	123,000
Movable Equipment	4,573,694
Interim Interest Expense	533,640
CON Application Fee	2,000
CON Processing Fee	<u>71,458</u>
Total Project Cost	\$13,065,769

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$1,292,325
Lease Tenant Improvement Allowance	\$2,792,125
Bank Loan (7.13% interest, 7-year term)	<u>\$8,981,319</u>
Total	\$13,065,769

Bank of America has provided a letter of interest at the above-stated terms for the bank loan. Bank of America has also provided a letter of interest for the working capital loan at 7.13% interest for a 3-year term.

Operating Budget

The applicant submitted their first- and third-year operating budgets, in 2023 dollars, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Revenues:				
Medicaid FFS	\$944.10	\$56,646	\$947.10	\$101,340
Medicaid MC	\$947.37	\$198,947	\$944.87	\$351,491
Medicare FFS	\$1,834.36	\$752,086	\$2,034.18	\$1,468,677
Medicare MC	\$1,741.97	\$658,463	\$1,934.07	\$1,286,155
Commercial FFS	\$4,768.34	\$2,770,407	\$5,291.17	\$5,412,863
Commercial MC	\$4,397.85	\$1,134,646	\$4,885.23	\$2,213,007
Private Pay	\$1,188.49	\$51,105	\$1,321.32	\$97,778
Other	\$2,404.96	<u>\$310,240</u>	\$2,399.18	<u>\$544,614</u>
Total Revenues		\$5,932,540		\$11,475,925
Expenses:				
Operating	\$1,770.98	\$3,740,319	\$1,705.21	\$6,338,247
Capital	<u>\$1,086.24</u>	<u>\$2,294,129</u>	<u>\$582.33</u>	<u>\$2,164,534</u>
Total Expenses	\$2,857.22	\$6,034,448	\$2,287.54	\$8,502,781
Net Income or (Loss)		<u>(\$101,908)</u>		<u>\$2,973,144</u>
Utilization: (procedures)		2,112		3,717

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

Medicaid FFS	2.84%
Medicaid MC	9.94%
Medicare FFS	19.41%
Medicare MC	17.90%
Commercial FFS	27.51%
Commercial MC	12.22%
Other	6.10%
Private Pay	2.04%
Charity	<u>2.04%</u>
Total	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current and projected Federal and State government reimbursement rates, with private pay payor rates reflecting adjustments based on experience in the region.
- Utilization projections are based on the current caseloads of the participating physicians appropriate to a FASC setting. Each physician has submitted a letter in support of their utilization projections.
- Expense assumptions are based upon staffing, operating, and capital costs as determined based on the experience of the participating physicians as well as the experience of other FASCs in New York State in providing similar service patient care.
- The breakeven, based on the projected utilization, is approximately 101.75% or 2,149 procedures in year one and 77.80% or 2,892 procedures in year three.

The budgets are reasonable.

Lease Rental Agreement

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

Premises:	Approximately 15,995 rentable square feet in an existing building located at 601 Harry L. Drive, Johnson City (Broome County), NY
Landlord:	Spark JC, LLC
Lessee:	Binghamton Project, LLC
Term:	15 years with 2 5-year renewal terms
Rent:	\$591,815 annually (\$49,317.92 monthly or \$37 per square foot.) with a 2.5% annual increase from year 2 going forward.
Provisions:	Triple Net lease

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

Administrative Services Agreement

The applicant submitted an executed administrative services agreement. The terms are summarized below:

Date	April 5, 2022
Operator:	Binghamton Project, LLC
Contractor:	Regent Surgical Management, LLC
Services of contractor:	Assistance to established Operator's administrator, consulting/advisory services related to administration and operational functions, regulatory monitoring, compliance, and quality assurance, oversight of all functions related to accounts receivables, develop and implement a marketing plan, and operate, supervise, and oversee all functions related to billing and preparation of health facility assessments, review rate sheets and assisting with filing necessary appeals.
Term:	7 years with infinite 3-year renewals
Compensation	\$310,107.96 annually (\$25,842.33 monthly)

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Capability and Feasibility

The total project cost of \$13,065,769 will be satisfied by the proposed members' equity contribution of \$1,292,325, a lease tenant improvement allowance of \$2,792,125, and an \$8,981,319 bank loan.

Working capital requirements are estimated at \$1,417,130 based on two months of third-year expenses. The applicant is, however, budgeting a working capital need of \$1,607,675 to address the applicant's understanding of typical start-up issues with a new ASC, including covering the projected loss from operations in Year One. The applicant has submitted a letter of interest from Bank of America to finance \$400,000 of the working capital for a 3-year term at 7.13% interest. The remaining \$1,207,605 will be provided by the members. BFA Attachment A presents the net worth statement of the proposed physician members, the individual member of New York Holdco, LLC, and the internal financial statements through the 6/30/22 fiscal year of Binghamton Health Corporation, the corporate member of New York Holdco, LLC BFA. Attachment A indicates that only New York Holdco, LLC members have sufficient liquid resources to meet their portion of the equity and working capital requirements. Some of the physician members need to demonstrate more liquid resources to fund the equity requirement for this project. These members have resolved this issue through prepayment of equity and personal financing. Based on this information, the physician members will have sufficient liquid resources to fund their portion of this project's equity and working capital requirement.

BFA Attachment B provides the pro-forma balance sheet showing operations will start with \$5,292,125 in equity. Southern Tier Surgery Center, LLC projects a net loss of \$101,908 for the first year and a net income of \$2,973,144 in the third year. Reimbursement rates reflect current and projected Federal and State government rates, with private payers reflecting adjustments based on experience in the region.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement and certified financial statements of members of Southern Tier Surgery Center, LLC
BFA Attachment B	Pro Forma Balance Sheet of Southern Tier Surgery Center, LLC
BFA Attachment C	Organizational Chart and List of Members



Project # 221123-E
Community Inclusion, Inc. d/b/a TRC Community Health Center of Western New York

Program: Diagnostic and Treatment Center County: Chautauqua
Purpose: Establishment Acknowledged: December 5, 2022

Executive Summary

Description

Community Inclusion Inc. d/b/a TRC Community Health Center of Western NY, a New York-based not-for-profit corporation, is seeking approval to become the operator of two extension clinics and a school-based extension clinic currently operated by the Chautauqua County Chapter of NYSARC serving the developmentally disabled community.

Community Inclusion, Inc. was originally incorporated in 1999 as a Community Housing Development Organization (CHDO). The Certificate of Incorporation will be amended to change the purpose from that of a CHDO to a purpose consistent with the operation of a federally qualified health center look-a-like (FQHC LAL), a designation Community Inclusion will pursue once operational.

Adnan Munir, M.D., will serve as the Center's Medical Director. The applicant will have an Affiliation Agreement for backup and emergency

services with UPMC Chautauqua, located 1.2 miles (3 minutes travel time) from the Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The number of projected visits for both sites combined is 19,172 in Years One and Three, with Medicaid utilization projected at 54.75%.

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 or compensation associated with this application.

Table with 3 columns: Budget, Year One 2023, Year Three 2025. Rows include Revenues, Expenses, and 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 an executed lease at 880-896 East Second Street, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease at 186 Lake Shore Drive, acceptable to the Department of Health. [BFA]
3. Submission of an executed facilities uses agreement at 350 East Second Street, acceptable to the Department of Health. [BFA]
4. Submission of an executed Services Agreement acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of the lease for the property located at 186 Lake Shore Drive, acceptable to the Department. [CSL]
6. Submission of a photocopy of the lease for the property located at 890 East 2nd Street, Jamestown, acceptable to the Department. [CSL]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for the Jamestown and Dunkirk sites. [HSP]

Approval conditional upon:

1. This project must be completed by **one year from the date of this 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]
2. 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]
3. 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

April 18, 2023

Need Analysis

Background and Analysis

The service area is Chautauqua County. The population of Chautauqua County in 2021 was 126,807, according to the latest US Census data, and is projected to decrease to 121,953 by 2028. According to Data USA, in 2020, 94.5% of the population in Chautauqua County had health coverage as follows:

Employer Plans	43.8%
Medicaid	22.3%
Medicare	14.4%
Non-Group Plans	12.3%
Military or VA	1.6%

The number of projected visits for both sites combined is 19,172 in Years One and Three. The table below shows the payor utilization for Years One and Three.

Projected Payor Mix		
Payor	Year One	Year Three
Medicaid FFS	11.27%	11.27%
Medicaid MC	43.47%	43.47%
Commercial	13.19%	13.19%
Medicare FFS	20.58%	20.58%
Medicare MC	5.12%	5.12%
Private Pay/Other	6.37%	6.37%

TRC Community Health Center was originally established to meet the unique needs of TRC's core population, individuals with intellectual and developmental disabilities, who have been underserved by existing providers. With this project, NYSARC, Inc. d/b/a The Resource Center is planning to convert portions of their existing Article 28 clinics to an entity that would qualify for Federally Qualified Health Center look-alike status. Health-Related services (such as physical therapy, occupational therapy, and speech-language pathology services) will continue to be provided by NYSARC. NYSARC will transfer the school-based program at Jamestown High School to Community Inclusion as well. Both proposed extension clinics are in a Health Professional Shortage Area for Primary Care as well as for Dental Care and a Medically Underserved Area.

Conclusion

Approval of this project allows TRC Community Health Center of Western NY to provide primary care, dental, and podiatry services to individuals with developmental disabilities within Chautauqua County.

Program Analysis

Project Proposal

Community Inclusion, Inc. d/b/a TRC Community Health Center of Western New York seeks approval to become the new operator of the Article 28 Diagnostic and Treatment Centers located at 890 East 2nd Street in Jamestown (Chautauqua County) from its previous operator Chautauqua County Chapter of NYSARC, Inc d/b/a The Resource Center. The applicant also wishes to certify a new extension clinic to be located at 186 Lakeshore Drive in Dunkirk (Chautauqua County). Upon approval of the project, Community Inclusion, Inc. will qualify for FQHC look-alike status. The health-related services of PT, OT, and SLP will continue to be provided by Community Inclusion, Inc. under the Article 28 license. There will be no change in services at the main site. The extension site will be certified to provide Dental O/P and podiatry. Upon approval of the project, the extension site will be named TRC Community Health Center.

Proposed Operator	Community Inclusion, Inc.
Doing Business As	TRC Community Health Center of Western Center
Site Address	Main Site: 890 East 2nd Street Jamestown, New York 14701 (Chautauqua County) Extension Site: 186 Lakeshore Drive Dunkirk, New York 14048 (Chautauqua County)
Shift/Hours/Schedule	Jamestown Site: 8 am to 4:30 pm Dunkirk Site: 8 am to 4:30 pm
Approved Services	Main Site: Medical Services-Primary Care Dental O/P Podiatry O/P Extension Site: Dental O/P Podiatry O/P
Staffing (1st Year/3rd Year)	76.2 FTEs/76.2 FTEs
Medical Director	Adnan Munir, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by Jamestown Site-UPMC Chautauqua, 1.2 mile/3 min Dunkirk site-Brooks TLC Hospital System, 1.1 miles/4 min

Character and Competence

The proposed members of Community Inclusion, Inc. are:

Member Name	Board Office Held
Todd Jacobson, M.D.	Treasurer
Richard Erickson	Vice President
Patricia Perlee	President
Dawn Columbare	Secretary

Dr. Adnan Munir is the proposed Medical Director. He is a Primary Care Physician at The Resource Center for over 14 years. He is the Medical Director of LSS Nursing Home for over 16 years. He was a Primary Care Physician at WCA Hospital for over nine (9) years. He received his medical degree from the Universidad Tech De Santiago School of Medicine in the Dominican Republic. He completed his Internal Medicine Residency at the Hoboken University Medical Center. He is Board Certified in Internal Medicine.

Dr. Todd Jacobson is an Occupational Health Physician at UPMC Chautauqua for over 38 years. He is the Occupational Health Director for over 28 years. He was the Interim Hospital Medical Director of WCA Hospital for one (1) year. He was a part-time Physician at The Resource Center Clinic for three (3) years.

He was an Internal Medicine Physician in private practice for 10 years. He received his medical degree from SUNY Buffalo. He completed his Internal Medicine Residency at Millard Fillmore Hospital.

Dawn Columbare is a Nursing Education Consultant for seven (7) years. She assists community colleges in achieving national nursing accreditation. The colleges she has contracts with are New River Community College and Virginia Western College. She was the Director of Nursing and a Professor of Nursing at Jamestown Community College for 16 years.

Richard Erickson is the Director of Accounting at the Chautauqua Institution-Ames Avenue for over 17 years. He oversees the accuracy and regulatory compliance of financial operations. He facilitates strategic planning, develops financial policies and procedures, and manages all aspects of the budgetary process. He has also served on the Advisory Committee of the Southwest Chapter of the American Red Cross.

Patricia Perlee retired in 2011. She was the Executive Director of the Joint Neighborhood Project for six (6) years. She was a Case Manager of Independent Health for seven (7) years. She was responsible for the care management of the members enrolled in all commercial and Medicare insurance plans in three counties in Western New York. She identified and managed high-risk and high-cost members to desired outcomes and implemented case management for members requiring out-of-area care. She ensured proper care by conducting reviews of medical records and the appropriateness and continued stay of hospitalized members. She was a Branch Manager at the VNA Healthcare Group for 10 years. She was responsible for all aspects of the interdisciplinary home health care support services team. She managed up to 100 RNs, LPNs, and HHCAs. She handled all aspects of recruitment, staff training, in-service program delivery, performance reviews, and disciplinary procedures. She also assisted with the development of the operating budget.

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

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided 2022 current-year results and first and third-year operating budgets in 2023 dollars, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2022</u>		<u>2023</u>		<u>2025</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-FFS	\$276.62	\$410,226	\$138.86	\$299,930	\$144.75	\$312,659
Medicaid-MC	\$107.46	464,224	\$138.88	1,157,737	\$144.78	1,206,872
Medicare-FFS	\$82.06	278,096	\$89.47	353,042	\$93.08	367,305
Medicare-MC	\$101.71	114,928	\$96.63	94,794	\$100.53	98,624
Commercial-FFS	\$158.46	291,246	\$162.47	410,735	\$172.37	435,749
Private Pay	\$152.75	105,551	\$218.21	266,436	\$231.50	282,662
Other Operating Revenue		697,299		1,073,450		1,097,152
Bad Debt		<u>-48,735</u>		<u>-38,739</u>		<u>-40,558</u>
Total		\$2,312,835		\$3,617,385		\$3,760,465
Expenses:						
Operating	\$236.77	\$3,042,720	\$174.28	\$3,341,276	\$181.32	\$3,476,263
Capital	<u>\$23.43</u>	<u>301,123</u>	<u>\$11.35</u>	<u>217,649</u>	<u>\$11.62</u>	<u>222,820</u>
Total	\$260.20	\$3,343,843	\$185.63	\$3,558,925	\$192.94	\$3,699,083
Net Income (Loss)		<u>(\$1,031,008)</u>		<u>\$58,460</u>		<u>\$61,382</u>
Total Visits		12,851		19,172		19,172
Cost per Visits		\$260.20		\$185.63		\$192.94

* Current Year Other Operating Revenues include a D&TC Medicaid enhancement of \$228,029, Federal & State Grants of \$335,186, and Other Income of \$134,084. Year One Other Operating Revenue includes a D&TC Medicaid enhancement of \$259,181, Federal & State Grants of \$550,186, Other Income of \$134,084, and Medical Oversight of Resource Center revenue of \$130,000. Year Three Other Operating Revenues include similar revenue sources as Year One.

The following is noted with respect to the submitted budget:

- Current year utilization was based on actual visits from January through November 2022 and then annualized for an entire year. For the first and third years, utilization was based on the average of 2020-2022, plus an increase in dental units.
- Medicaid rate for the first year was based on the prospective payment system (PPS) rate from NYSARC's 2021 AHCF report. Annual increases of 2.1% are based on DOH's 2022 Medicare Economic Index (MEI). Medicaid Managed Care was increased by 2% each year based on the average 2020-2022 rate.
- The Medicare rate was increased by 2% each year based on the average 2020-2022 rate.
- Commercial and Private rates were increased by 3% each year based on the average 2020-2022 rate.
- Salaries were projected based on budgeted FTEs and salaries for 2022 plus 2%. Benefits were in relation to payroll expenses. The other costs were based on actuals adjusted for utilization plus 2% per year.
- Rent expense based on lease obligations.

Utilization broken down by payor source for the Current, Year One, and Year Three is as follows:

Payor:	Current Year		Year One		Year Three	
	2021		2023		2025	
	Visits	%	Visits	%	Visits	%
Medicaid-FFS	1,483	11.54%	2,160	11.27%	2,160	11.27%
Medicaid-MC	4,320	33.62%	8,336	43.47%	8,336	43.47%
Medicare-FFS	3,389	26.37%	3,946	20.58%	3,946	20.58%
Medicare-MC	1,130	8.79%	981	5.12%	981	5.12%
Commercial-FFS	1,838	14.30%	2,528	13.19%	2,528	13.19%
Private Pay*	691	5.38%	1,221	6.37%	1,221	6.37%
Total	12,851	100%	19,172	100%	19,172	100%

* Charity Care is included in Private/Self Pay, where sliding fee scale patients are reported.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and surcharges, assessments, or fees due from the Seller under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. As of February 1, 2023, the facility had no outstanding Medicaid audit liabilities or assessments.

Lease Agreements

The applicant has submitted two draft lease agreements; the terms are summarized below:

Lease Agreement #1

Premises:	7,028 sq. ft. located at 880-896 East Second Street, Jamestown, NY
Landlord:	Chautauqua Resources, Inc.
Lessee/Tenant:	Community Inclusion, Inc.
Term:	15 years, renewal two (2), 5-year term
Rental:	\$92,000 per year (\$13.09 per sq. ft.) 2% yearly increase
Provisions:	Tenant will be responsible for maintenance, utilities, insurance, and real estate taxes.

The applicant has provided an affidavit stating that the lease is a non-arms-length arrangement. Two letters from NYS licensed realtors have attested that the rental rate is fair market value.

The applicant has submitted a draft lease agreement; the terms are summarized below:

Lease Agreement #2

Premises:	2,507 sq. ft. located at 186 Lakeshore Drive West, Dunkirk
Landlord:	Chautauqua County Chapter of NYSARC, Inc.
Lessee/Tenant:	Community Inclusion, Inc
Term:	15 years, renewal two (2), 5-year term
Rental:	\$36,000 per year (\$14.36 per sq. ft.) – 2% yearly increase
Provisions:	Tenant will be responsible for maintenance, utilities, insurance, and real estate taxes.

The lease is a non-arms-length arrangement. Two letters from NYS licensed realtors have attested that the rental rate is fair market value.

Facilities Use Agreement

The applicant has submitted a draft Facilities Use Agreement; the terms are summarized below:

Premises:	Space in Jamestown High School at 350 East Second Street, Jamestown, NY 14701
Grants right to use:	Jamestown City School District
Recipient of the right to use	Community Inclusion, Inc.
Term:	Three (3) years
Payment:	\$1

Services Agreement

The applicant has submitted a draft services agreement; the terms are summarized below:

Facility:	Community Inclusion, Inc.
Contractor:	Chautauqua County Chapter of NYSARC, Inc
Services Provided:	Oversight for finance and accounting, purchasing, risk management, and employee benefits coordination. Oversight to ensure compliance with laws and regulations. Oversight of Privacy Programs. Provide legal advice. Assist with information systems. Assist with payroll, accounts payable, budgets, and fiscal filings. Assist human resources. Provide housekeeping and property maintenance.
Term:	One (1) year
Fee:	Chief Finance Officer \$2,800 per month, Chief Compliance Officer tracked at \$100 per hour; Chief Privacy Officer tracked at \$55 per hour, General Counsel tracked at \$100 per hour, Employee Benefit Coordination tracked at \$80 per hour, Information Systems \$8,500 per month, Property and Risk Management at \$1,400 per month, Maintenance tracked at \$75 per hour, Payroll and accounting at \$25,000 per month, and Staff training tracked at \$80 per hour.

The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Capability and Feasibility

There are no project costs or compensation associated with this application. According to the Chief Operating Officer of the Chautauqua County Chapter of NYSARC, Inc., they will support Community Inclusion, Inc., from start-up until profitability via a \$1M line of credit. The terms are 3.25% (first-year interest only) with a five-year amortization period. BFA Attachment A, Chautauqua County Chapter of NYSARC, Inc's September 30, 2022, Financial Statements showed \$12.3M in working capital with a 1.94 current ratio. According to the cash flow analysis, the need for \$500 thousand occurs in the first three months of operation, with repayment starting in the twelfth month, as seen in BFA Attachment B.

Working capital is estimated at \$616,514 based on two months of third-year expenses. BFA Attachment C presents Community Inclusion, Inc.'s pro-forma balance sheet showing operations will start with \$962,203 in equity. The submitted budget projects a net income of \$58,460 in the first year and \$61,382 in the third year. The proposed budget is reasonable.

Conclusion

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

Attachments

BFA Attachment A	Chautauqua County Chapter of NYSARC, Inc., September 30, 2022, Financial Statements
BFA Attachment B	Community Inclusion, Inc, Cash Flow Analysis
BFA Attachment C	Community Inclusion, Inc, Pro Forma Balance Sheet
BFA Attachment D	Community Inclusion, Inc., Post-Transaction Organization Chart



**Project # 221185-E
City Wide Health Facility Inc.**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** June 16, 2022

Executive Summary

Description

City Wide Health Facility, Inc., an existing Article 28 diagnostic and treatment center, requests approval to transfer 100% of shareholders' interest (200 shares) to three new shareholders. City Wide provides radiology services at its main site at 105 Kings Highway, Brooklyn (Kings County), and its extension clinic at 6817 Bay Parkway, Brooklyn (Kings County). There will be no change in services. The Center's existing lease agreements will not change and will remain in place upon approval of this application.

On February 15, 2022, Edward Atbashyan, Alex Zharov, Simon Korenblit, and Alex Korenblit entered into a stock purchase agreement to sell 100% of the issued and outstanding shares of stock in City Wide Health Facility, Inc. to Yakov Khodzhayev, Alexander Sachakov, and Dimitri Cohen. The purchase price was \$3,100,000 plus an estimated \$515,000 for 50% of certain accounts receivables (no-fault and other). The transaction will be finalized upon Public Health and Health Planning Council (PHHPC) approval.

Ownership of the operations, current and proposed, is as follows:

<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Edward Atbashyan	30.00%	0.00%
Alex Zharov	30.00%	0.00%
Simon Korenblit	30.00%	0.00%
Alex Korenblit	10.00%	0.00%
Yakov Khodzhayev	0.00%	61.67%
Alexander Sachakov	0.00%	33.33%
Dimitri Cohen	0.00%	5.00%
Total	100%	100%

Harvey Stern, M.D., who is board certified in Radiology, will continue to serve as the Center's Medical Director. The transfer and affiliation agreement with Maimonides Medical Center, located 2.8 miles and 20 minutes travel time from the Center, will remain in place.

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

The total purchase price, estimated at \$3,615,000, will be funded via \$500,000 shareholders' equity and a \$3,115,000 self-amortizing ten-year loan at prime plus 2.75% or 8.25% as of 9/09/22. ReadyCap Lending, LLC., has provided a letter of interest at the stated terms. There are no project costs associated with this application.

Budget	Year One (2023)	Year Three (2025)
Revenues	\$3,258,420	\$3,258,420
Expenses	<u>3,136,989</u>	<u>3,153,349</u>
Net Income	\$121,431	\$105,071

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 loan commitment acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **June 8, 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. 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

April 18, 2023

Program Analysis

Program Description

City Wide Health Facility, Inc., an existing Article 28 Diagnostic and Treatment Center, is requesting approval to transfer 100% ownership interest from four withdrawing members to three new members. The D&TC is located at 105 Kings Highway in Brooklyn (Kings County), with an extension clinic located at 6817 Bay Parkway in Brooklyn (Kings County). There will be no change in services or staffing as a result of this application.

Character and Competence

The proposed membership City Wide Health Facility, Inc. is as follows:

<u>Member Name</u>	<u>Current</u>	<u>Proposed</u>
Alex Zharov	30.00%	0%
Simon Korenblit	30.00%	0%
Alex Korenblit	10.00%	0%
Edward Atbashshyan	30.00%	0%
Yakov Khodzhaev***	0%	61.67%
Alexander Sachakov***	0%	33.33%
Dmitri Cohen***	0%	5.00%
Total	100%	100%

*** Subject to Character and Competence

Yakov (Jake) Khodzhaev is the Owner and Operator of Caresoft Leasing Corp., a durable medical equipment company where he acts as a liaison with medical billing companies, collection attorneys, medical device manufacturers, and front desk personnel. He is the Owner and Operator of Apex Legal Funding, LLC, a lawsuit finance company that provides financing to plaintiffs in personal injury lawsuits. He manages relationships with attorneys, structures contracts and other deals for the plaintiff, he works closely with medical providers treating the injured party and assembles the performance reporting, and he builds the team to handle the incoming workload, creates a hierarchy of tasks to prioritize tasks, and acts as a team leader. He is the Owner and Operator of New Pacific Inc, a medical claim funding business where he liaises on deals between attorneys, billers, and medical professionals.

Alexander Sachakov is the President of Apex Records and Filing LLC, where he is responsible for assisting medical professionals in running a healthcare facility, developing and implementing practice cost management, assisting in strategic planning and expansion, innovation development and research, implementing advertising and marketing and providing management, consulting, and marketing services. He was previously the Manager of Jamaica Urgent Care, where he led a staff of 14 employees, oversaw all financial operations, supervised, trained, and evaluated all administrative staff, hired and onboarded new staff, and was a point of contact for all new administrative staff. He was previously a Medical Assistant and Phlebotomy Technician.

Dmitri Cohen is the Executive Director of IT Infrastructure Services at the Fashion Institute of Technology, where he has designed and implemented multiple IT-related infrastructure projects; provided guidance on the standard operating procedures; managed and directed a team of 20 people responsible for IT Operations, Systems, Networks, and Telecoms; managed all IT related budgets; and appraised and reviewed the staff on a triannual basis. He was a Consultant at HBO via Sofia Technology, an IT Specialist at Avon Products, Inc., and a Senior UNIX System Engineer at Barnes and Noble.

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.

- *Yakov Khodzhayev disclosed two civil RICO lawsuits. Allstate Insurance Company, et al. v. Baturov, et al., US District Court, Eastern District of New York, Civil Action No.: 21-cv-2967: Allstate commenced this civil action on May 26, 2021, against Yakov Khodzhayev and Caresoft Leasing Corp. as well as 25 other individuals and 26 other corporate entities asserting civil causes of action based on RICO (18 USC 1962), State Common Law and the Federal Declaratory Judgment Act. Allstate alleged that Caresoft Leasing Corp. provided cryo-therapy units to orthopaedic surgery patients insured under Allstate policies, which were not medically necessary and/or provided pursuant to a financial arrangement or for other consideration. On June 14, 2021, the Court dismissed the Complaint and directed Allstate to file separate actions against different groups of original Defendants. The Court, in issuing the Order, created case number 21-cv-3542 for an amended complaint to be filed against Caresoft Leasing Corp. The parties have entered into settlement agreements, and the matters have been dismissed without prejudice with no determination of liability, guilt, or fault.*
- *GEICO v. Khodzhayev, et al., US District Court, Eastern District of New York, Civil Action No.: 21-cv-6569: GEICO commenced this civil action on November 23, 2021, against Yakov Khodzhayev and Caresoft Leasing Corp. asserting civil causes of action based on RICO (18 USC 1962), State Common Law and the Federal Declaratory Judgment Act. GEICO alleged that Caresoft Leasing Corp. provided cryo-therapy units to orthopaedic surgery patients insured under GEICO policies which were not medically necessary and/or provided pursuant to a financial arrangement or for other consideration and not billed according to appropriate fee schedules. There was a Stipulation of Dismissal with Prejudice in the case of Government Employees Insurance Company et al. v. Khodzhayev et al. on September 2nd, 2022.*
- *Mr. Kohdhayev has 91 open Declaratory Judgement Actions commenced by Plaintiff Insurance Companies against Caresoft Leasing, Corp., as well as all medical providers and Durable Medical Equipment vendors that provided goods or services to a particular patient. The individual claims seek a declaration that the Insurance Company is not obligated to pay the pending no-fault claims of the medical providers and any vendors because the patient has breached some term of coverage (most typically is the patient's failure to appear for an Examination Under Oath). Mr. Khodzhayev and Caresoft Leasing Corp. are not licensed to prescribe medical equipment and therefore are not authorized to determine the medical necessity of the equipment.*

The Division of Legal Affairs has independently verified that the open Declaratory Judgment Actions were as reported. Further investigation of the disclosed civil matters by the Division of Legal Affairs found that the civil cases contain no allegations that implicate that the conduct of Caresoft Leasing or Mr. Khodzayev was of concern. There are no allegations of negligence, quality of care issues, or fraud. The allegations are entirely patient-based conduct and name Mr. Khodzayev only as part of the No-Fault Regulatory claim structure. Based upon these findings, the Division of Legal Affairs recommends that the claims against Yakov Khodzayev should not disqualify him as an applicant on a C&C basis due to the civil matters disclosed.

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

Financial Analysis

Operating Budget

The applicant has submitted the current year (2020) and first and third year projected operating budgets 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>Proc.</u>	<u>Total</u>	<u>Proc.</u>	<u>Total</u>	<u>Proc.</u>	<u>Total</u>
Revenues						
Medicaid FFS	\$129.09	\$45,827	\$128.96	\$51,326	\$128.96	\$51,326
Medicaid MC	\$123.67	1,085,916	\$123.66	1,216,226	\$123.66	1,216,226
Medicare FFS	\$160.17	315,379	\$160.19	353,224	\$160.19	353,224
Medicare MC	\$159.40	6,376	\$158.69	7,141	\$158.69	7,141
Commercial FFS	\$194.60	364,288	\$194.66	408,003	\$194.66	408,003
All Other	\$400.85	<u>1,091,518</u>	\$400.82	<u>1,222,500</u>	\$400.82	<u>1,222,500</u>
Total Revenue		\$2,909,304		\$3,258,420		\$3,258,420
Expenses						
Operating	\$179.02	\$2,817,853	\$131.93	\$2,325,782	\$132.86	\$2,342,142
Capital	<u>\$37.24</u>	<u>586,207</u>	<u>\$46.02</u>	<u>811,207</u>	<u>\$46.02</u>	<u>811,207</u>
Total Expenses	\$216.26	\$3,404,060	\$177.95	\$3,136,989	\$178.88	\$3,153,349
Net Income (Loss)		<u>(\$494,756)</u>		<u>\$121,431</u>		<u>\$105,071</u>
Procedures		15,740		17,629		17,629
Cost/Procedure		\$216.26		\$177.95		\$178.88

The following is noted concerning the submitted budget:

- The current reflects the facility's 2020 revenue and expenses.
- Utilization and revenues are based on historical performance plus projections based on Yakov Khodzhayev's referral sources.
- Expenses are based on 2020 operating expenses, decreased in Years One and Three due to the planned reduction in certain marketing, consulting, and administrative costs.

Utilization by payor for the current, first, and third years 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>Payor</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	355	2.26%	398	2.26%	398	2.26%
Medicaid MC	8,781	55.79%	9,835	55.79%	9,835	55.79%
Medicare FFS	1,969	12.51%	2,205	12.51%	2,205	12.51%
Medicare MC	40	0.25%	45	0.25%	45	0.25%
Commercial FFS	1,872	11.89%	2,096	11.89%	2,096	11.89%
All Other	2,723	17.30%	3,050	17.30%	3,050	17.30%
Charity Care	<u>0</u>	<u>0%</u>	<u>0</u>	<u>0%</u>	<u>0</u>	<u>0%</u>
Total	15,740	100%	17,629	100%	17,629	100%

Stock Purchase Agreement

The applicant has submitted an executed stock purchase agreement which will be effectuated by Public Health and Health Planning Council (PHHCP). The terms of the agreement are summarized below:

Date:	February 15, 2022
Seller:	Edward Atbashyan (30%); Alex Zharov (30%); Simon Korenblit (30%); and Alex Korenblit (10%)
Buyer:	Yakov Khodzhayev (61.67%); Alexander Sachakov (33.33%); and Dimitri Cohen (5.00%)
Acquired:	Purchase 100% or 200 shares of all the issued and outstanding stock in City Wide Health Facility, Inc., duly licensed to operate a D&TC for \$3,100,000 plus an estimated \$515,000 for the accounts receivables and other receivables.
Payment:	\$3,615,000: <ul style="list-style-type: none">• \$500,000 deposited into escrow at signing• \$155,000 deposited into escrow at closing• \$2,960,000 at closing

The purchase price for the stock is to be satisfied as follows:

Equity - proposed stockholders	\$500,000
Loan (10-year, interest at prime + 2.75% or 8.25% as of 9/9/22)	3,115,000
Total	\$3,615,000

BFA Attachment A is the net worth summary for the proposed stockholders of City Wide Health Facility, Inc., revealing sufficient resources to cover equity. Yakov Khodzhayev has provided an affidavit stating his willingness to contribute resources disproportionate to ownership interest to cover any equity shortfall.

Lease Extension and Modification Agreement

The applicant has an existing previously approved lease agreement for the site, the terms of which are summarized below:

Date:	November 17, 2015
Premises:	3,664 rentable square feet at 105 Kings Highway, Brooklyn, NY 11223
Landlord:	Tibor 105, LLC.
Lessee:	City Wide Health Facility, Inc.
Term:	It ends December 31, 2035
Rental:	\$98,435 1st year (\$27 per sq. ft.); 3% annual increase
Provisions:	Tenant is responsible for taxes, insurance, utilities, and maintenance.

Consent to Assignment and Second Amendment to Retail Lease

Date:	February 1, 2018
Premises:	3,600 square feet at 6817 Bay Parkway Road, Brooklyn, NY 11204
Landlord:	6817 Bay Parkway, LLC.
Lessee:	City Wide Health Facility, Inc.
Term:	Ends September 30, 2026, with a renewal of one (1) 5-year term.
Rental:	\$180,000 1st year (\$50 per sq. ft.); 3% annual increase; renewal 3% yearly rent increase except in the last year increase is 5%
Provisions:	Tenant is responsible for taxes, insurance, utilities, and maintenance.

The lease arrangement is an arms-length agreement. The applicant has submitted an affidavit attesting there is no relationship between the landlord and the operator. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

Capability and Feasibility

The proposed shareholders will purchase the stock for \$3,100,000 plus an estimated \$515,000 for 50% of certain accounts receivables (no-fault and other). The total purchase price is estimated at \$3,615,000 and will be funded via \$500,000 in shareholders' equity and a \$3,115,000 self-amortizing ten-year loan at prime plus 2.75% or 8.25% as of 9/09/22. ReadyCap Lending, LLC., has provided a letter of interest at the stated terms. There are no project costs associated with this application.

Working capital requirements are estimated at \$522,832, based on two months of first-year expenses funded by equity. A review of BFA Attachment A reveals sufficient resources to meet the equity requirements. Yakov Khodzhayev has provided an affidavit stating his willingness to contribute resources disproportionate to ownership interest to cover any equity shortfall, if necessary.

City Wide Health Facility projects an operating surplus of \$121,431 and \$105,071 in the first and third years. BFA Attachment B is City Wide Health Facility's pro forma balance sheet that shows operations will start with \$934,238 equity. The applicant's budgets appear to be reasonable.

BFA Attachment C, City Wide Health Facility, Inc. 2021 certified financials and internal financial statements as of July 2022 shows positive working capital, positive net assets, and a positive net income of \$79,096 for 2021 and \$264,336 year to date for July 2022. Their cash basis as of July 25, 2022, internal financial statements show positive working capital, positive net assets, and positive net income.

Conclusion

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

Attachments

BFA Attachment A	City Wide Health Facility, Inc., stockholders' net worth statement
BFA Attachment B	City Wide Health Facility, Inc., pro forma balance sheet
BFA Attachment C	City Wide Health Facility, Inc., December 31, 2021, certified financial statement and July 25, 2022, cash basis internal financial statement



Project # 222153-B
CareFullMD Beacon Inc.

Program: DTC County: Dutchess
Purpose: Establishment and Construction Acknowledged: November 30, 2022

Executive Summary

Description

CareFullMD Beacon, Inc. (the Center), an existing proprietary corporation, requests approval for the establishment and construction of a new Article 28 diagnostic and treatment center to be located at 268 Main Street, Beacon (Dutchess County), New York. Upon approval of this application, the Center will provide primary care, X-ray imaging services, and infusion therapy for the residents of Beacon and the surrounding communities.

The proposed Center will be in a newly renovated building with six (6) exam rooms, one (1) treatment room, four (4) infusion bays, and an X-ray room. The Center has entered into a transfer agreement for backup medical services with Vassar Brothers Hospital.

Yitzchok Rottenberg is the sole shareholder of CareFullMD Beacon, Inc. Dr. Daniel J Purcell, MD will serve as the medical director. Dr. Purcell is Board Certified in Emergency Medicine and is currently the Medical Director at Chai Urgent Care Center at 3808 14th Avenue, Brooklyn, NY 11220.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 11,600 visits in Year One and 14,700 in Year Three, with 41% Medicaid and 4% Charity Care.

Program Summary

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

Financial Summary

The total project cost of \$2,169,816 will be met with \$216,982 in equity from the proposed member's personal resources and a bank loan of \$1,952,834 at an interest rate of prime +2.50% (10% as of 1/30/2023) for a ten-year term.

Table with 3 columns: Budget, Year One 2024, Year Three 2026. Rows: Revenues (\$1,692,568 vs \$2,144,893), Expenses (1,541,745 vs 1,814,438), Net Income (\$150,823 vs \$330,455).

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. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **May 18, 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 **October 18, 2023**, and construction must be completed by **February 18, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

April 18, 2023

Need Analysis

Background and Analysis

The primary service area is Beacon in Dutchess County. The population of Dutchess County was 297,112 in 2021, per US Census Bureau population estimate data. Per PAD projection data from the Cornell program on Applied Demographics, the county population is estimated to decrease to 290,918 by 2028, a decrease of 2.1%. According to Data USA, in 2020, 95.5% of the population of Dutchess County had health coverage as follows:

Employer Plans	55.5%
Medicaid	13.6%
Medicare	13.5%
Non-Group Plans	12.1%
Military or VA	0.758%

The applicant projects the following payor mix:

Projected Payor Mix		
Payor	Year One	Year Three
Commercial	39%	39%
Medicare	15%	15%
Medicaid	41%	41%
Private Pay	1%	1%
Charity Care	4%	4%

The proposed location is in a Medically Underserved Area. The applicant projects 11,600 visits in Year 1 and 14,700 in Year 3 of operations.

CareFullMD Beacon Inc has entered into a transfer agreement for backup medical services with Vassar Brothers Medical Center, located 15.1 miles and 26 minutes travel time away. The proposed center will operate seven days a week from 9:00 am to 9:00 pm.

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.

Hospital Admissions per 100,000 Adults for Overall PQIs			
PQI Rates: 2020	Beacon	Dutchess County	New York State
All PQI's	1,007.62	874.50	993.88

Conclusion

Approval of this project will allow for expanded access to Primary Care Services and other Medical Specialties for residents in Dutchess County.

Program Analysis

Project Proposal

CareFullMD Beacon Inc., an existing New York State Corporation, seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 268 Main Street in Beacon (Dutchess County). The proposed center will provide Medical Services-Primary Care including Urgent Care Services and Medical Services - Other Medical Specialties, including Radiology Services and Infusion Therapy.

Proposed Operator	CareFullMD Beacon Inc.
To Be Known As	CareFullMD Beacon
Site Address	268 Main Street Beacon, New York 12508 (Dutchess County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Radiology Infusion Therapy Urgent Care
Hours of Operation	Monday - Sunday, 9:00 am to 9:00 pm
Staffing (1st Year / 3rd Year)	9.10 FTEs / 11.80 FTEs
Medical Director(s)	Dr. Daniel Purcell, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Vassar Brothers Medical Center 15.1 miles / 26 minutes away

Character and Competence

The sole member of CareFullMD Beacon Inc. is:

Name	Ownership Interest
<i>Yitzchok Rottenburg</i>	100.00 %
Total	100.00%

Dr. Daniel Purcell is the proposed Medical Director. He is an Attending Physician in Emergency Medicine at White Plains Hospital for three (3) years. He is the Medical Director at Chai Urgent Care Center for over six (6) years. He is an Emergency Room Attending Physician at NYU Brooklyn Lutheran Medical Center for over seven (7) years. He was an Emergency Room Attending Physician at Mount Sinai Queens for Four (4) years. He was an Emergency Room Attending Physician for over two (2) years. He received his medical degree from Albany Medical College. He completed his Emergency Medicine residency at the University of Massachusetts Medical School. He is board certified in Emergency Medicine.

Yitzchok Rottenburg is a Real Estate Developer at YKY Group LLC for over six (6) years. He has created and managed a team of 19 people to generate and execute real estate investment opportunities. He sourced 11 properties in the City of Poughkeepsie, developed and manages processes for construction and leasing activities, successfully financed bridge and permanent debt for each holding, oversaw leasing and asset management of the properties, and executed value add programs within his portfolio. He ensured regulatory compliance for construction and leasing activities, interfaces with government agencies, and created \$2M in value through real estate development. He is also Salesperson for Postage Plus for over four (4) years. He makes sales for a printing and direct mailing service.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office

of Professional Medical Conduct, and the Education Department databases, as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$2,169,816 and distributed as follows:

Renovation and Demolition	\$1,364,445
Design Contingency	136,445
Construction Contingency	136,445
Architect/Engineering Fees	46,125
Other Fees (Consultant)	51,250
Moveable Equipment	293,290
Financing Costs	70,000
Interim Interest Expense	57,958
CON Fees	2,000
Additional Processing Fees	<u>11,858</u>
Total Project Cost	\$2,169,816

The applicant's financing plan appears as follows:

Equity (Member)	\$ 216,982
Bank Loan (prime + 2.50% (approximately 10% as of 1/30/2023) for a ten-year term)	\$1,952,834

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, during the first and third years, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$150.00	\$156,600	\$150.00	\$198,450
Commercial MC	\$150.00	\$522,000	\$150.00	\$661,500
Medicare FFS	\$120.00	\$69,600	\$120.00	\$88,200
Medicare MC	\$120.00	\$139,200	\$120.00	\$176,400
Medicaid FFS	\$170.71	\$19,802	\$170.71	\$25,094
Medicaid MC	\$165.51	\$767,966	\$165.51	\$973,199
Private Pay	\$150.00	<u>\$17,400</u>	\$150.00	<u>\$22,050</u>
Total Revenues		\$1,692,568		\$2,144,893
Expenses:				
Operating	\$93.56	\$1,085,350	\$93.82	\$1,379,170
Capital	<u>\$39.34</u>	<u>\$456,395</u>	<u>\$29.61</u>	<u>\$435,268</u>
Total Expenses	\$132.91	\$1,541,745	\$123.43	\$1,814,438
Net Income		\$150,823		\$330,455
Utilization: (Visits)		11,600		14,700

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

- Expense assumptions are based on other facilities in the geographical area.
- Utilization is based on the capacity of the physical spaces, the amount of service hours available, and the needs of the community.
- Revenue assumptions are based on current reimbursement rates.

Year One Year Three

Commercial FFS	9.00%	9.00%
Commercial MC	30.00%	30.00%
Medicare FFS	5.00%	5.00%
Medicare MC	10.00%	10.00%
Medicaid FFS	1.00%	1.00%
Medicaid MC	40.00%	40.00%
Private Pay	1.00%	1.00%
Charity Care	<u>4.00%</u>	<u>4.00%</u>
Total	100.00%	100.00%

Lease Rental Agreement

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

Premises	4,923 square feet located at 252-260 Main Street, Beacon, New York.
Lessor	Beacon Center Associates, LLC
Lessee	CareFullIMD Beacon, Inc.
Term	15 years
Rental	Year One- \$123,075 (\$25.00 per sq.ft.) with a 2% annual increase thereafter.
Provisions	The lessee shall be responsible for maintenance, utilities, and real estate taxes.

The applicant has submitted an affidavit indicating that there is no relationship between the landlord and the tenant.

Capability and Feasibility

The total project cost of \$2,169,816 will be met with \$216,982 in equity from the proposed member's resources and a bank loan of \$1,952,834 at an interest rate of prime +2.50% (10% as of 1/30/2023) for a ten-year term. In addition, the applicant submitted a letter of interest regarding the financing.

Working capital requirements are estimated at \$302,466, equivalent to two months of third-year expenses that will be covered with equity from the proposed member's resources. Presented as BFA Attachment A is the net worth statement of the sole member of CareFullIMD Beacon, Inc., indicating the availability of sufficient funds for the equity contribution. Presented as BFA Attachment B is the pro forma balance sheet of CareFullIMD Beacon, Inc. as of the first day of operation, which indicates a positive net asset position of \$519,448.

The submitted budget indicates a net income of \$150,823 and \$330,455 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for primary care services. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet



**Project # 222086-E
Aimer Home Care Corp.**

Program: LHCSA
Purpose: Establishment

County: Rensselaer
Acknowledged: December 7, 2022

Executive Summary

Description

Aimer Homecare Corp., a for-profit corporation, seeks approval for initial licensure as a Licensed Home Care Service Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office located at 5 Springfield Avenue, East Greenbush, New York 12601:

- Rensselaer
- Greene
- Schenectady
- Columbia
- Washington

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care
- Physical Therapy
- Occupational Therapy
- Respiratory Therapy
- Speech-Language Pathology

- Audiology
- Medical Social Services
- Nutrition
- Homemaker
- Housekeeper
- Medical Equipment, Supplies, and Appliances

OALTC Recommendation

Approval is recommended.

Need Summary

This CON meets the need requirements set forth in 10 NYCRR Section 765-1.16 as all counties requested have a presumed need.

Program Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended.

Council Action Date

April 18, 2023

Program Analysis

Program Description

Aimer Homecare Corp., a for-profit corporation, seeks approval for initial licensure as a Licensed Home Care Service Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office located at 5 Springfield Avenue, East Greenbush, New York 12601:

Columbia, Greene, Rensselaer, Schenectady, and Washington Counties.

The applicant proposes to provide the following healthcare services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Equipment, Supplies, and Appliances		

Character and Competence Review

The applicant has authorized 10,000 shares, which are owned by Agustin Prado Guevara and Luisa Puello de Leon.

Agustin Prado Guevara - 5,000 shares
Chief Marketing Officer, Amor Homecare Inc.

Luisa Puello de Leon – 5,000 Shares
Director of Intake Department, Trivium of New York, LLC

The Board of Directors of Aimer Homecare, Corp. comprises the following individuals:

Agustin Prado Guevara
Disclosed above

Luisa Puello de Leon
Disclosed above

Misael Cabrera Prado
Director of Marketing/Business Development Department, Amor Homecare Inc. of Pennsylvania, Connecticut, and North Carolina

Paola Prado Guevara
Director of the Intake Department, Amor Homecare Inc. of Pennsylvania, Connecticut, and North Carolina

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

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

Need Review

This CON meets the need requirements set forth in 10 NYCRR Section 765-1.16 as all counties requested have a presumed need.

Financial Review

In accordance with 10 NYCRR 765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency. See Attachment A.

Conclusion

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

Attachments

OALTC	Financial Attachment
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Project # 222156-E

Right At Home Nassau North Shore

Program: LHCSA
Purpose: Establishment

County: Nassau
Acknowledged: November 25, 2022

Executive Summary

Description

EQ Health, Inc., d/b/a Right at Home Nassau North Shore, a business corporation, requests approval to become the new operator of Right at Home North Shore LI, a Licensed Home Care Services Agency, under Article 36 of the Public Health Law.

Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI (current operator) was approved by the Public Health and Health Planning Council at its June 7, 2012, meeting. The agency was subsequently licensed under license number 1939L001. On August 24, 2022, they entered a management contract with EQ Health, Inc.,

Right at Home North Shore LI currently serves Queens, Nassau, and Suffolk counties from an office located at 400 Post Avenue, Suite 302, Westbury, NY 11590. There will be no changes to the counties served or services provided as a result of this project. Upon completion of this

application, the agency will be known as Right at Home Nassau North Shore. EQ Health, Inc. proposes to operate as a Franchisee of Right at Home, LLC.

OALTC Recommendation

Approval is recommended.

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Program Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended.

Council Action Date

April 18, 2023

Program Analysis

Program Description

EQ Health, Inc., d/b/a Right at Home Nassau North Shore, a business corporation, requests approval to become the new operator of Right at Home North Shore LI, a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The agency currently operates as Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI and serves Queens, Nassau, and Suffolk counties from an office located at 400 Post Avenue, Suite 302, Westbury, NY 11590. There will be no changes to the counties served or services provided as a result of this project. Upon completion of this application, the agency will be known as Right at Home Nassau North Shore. EQ Health, Inc. proposes to operate as a Franchisee of Right at Home, LLC.

Character and Competence

The applicant has authorized 200 shares of stock which are owned as follows:

Zubin Kapadia, Esq. (President, Right at Home North Shore LI) - 200 shares

The applicant has 14 years of healthcare industry experience, including positions in executive management.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

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

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR 765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

Conclusion

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

Attachments

OALTC	Financial Attachment
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MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason W. Riegert, Deputy Director
Bureau of Program Counsel
Division of Legal Affairs

Date: March 3, 2023

Subject: Certificate of Amendment of the Restated Certificate of Incorporation of Glens Falls Hospital Foundation, Inc.

The attached package was prepared by Vincent DiCocco for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memorandum and kindly return the package to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: March 3, 2023

Subject: Certificate of Amendment of the Restated Certificate of Incorporation of Glens Falls Hospital Foundation, Inc.

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (PHHPC) from Kathy Marks, Department of Health General Counsel.
- 2) A May 18, 2022 email to Colleen Leonard and Lisa Thomson requesting approval to amend the purposes and powers stated in Glens Falls Hospital Foundation, Inc.'s Restated Certificate of Incorporation from Richard J. Krainin.
- 3) The Corporate Bylaws of Glens Falls Hospital Foundation, Inc.
- 4) The resolution authorizing the proposed Certificate of Amendment of the Restated Certificate of Incorporation by the Sole Member of Glens Falls Hospital board of governors and by the directors of Albany Med Health System (the sole member of Glens Falls Hospital.)
- 5) The current Restated Certificate of Incorporation of Glens Falls Hospital Foundation, Inc. as well proposed amendment of the Restated Certificate of Incorporation of Glens Falls Hospital Foundation, Inc.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel

Date: March 3, 2023

Subject: Certificate of Amendment of the Restated Certificate of Incorporation of Glens Falls Hospital Foundation, Inc.

Glens Falls Hospital Foundation, Inc. (“GFHF”) requests Public Health and Health Planning Council (“PHHPC”) approval of a proposed Restated Certificate of Amendment of its Certificate of Incorporation.

GFHF is a New York not-for-profit corporation incorporated on September 25, 1995, with the purpose “[t]o establish and maintain a program to solicit, receive and manage inter vivos and testamentary gifts, life income gifts and other split-interest gifts to support the work of the medical, charitable, scientific, research or educational purposes of Glens Falls Hospital and related organizations.” The Public Health Council (“PHC”) consented to the filing of the Certificate of Incorporation of GFHF on January 26, 1996.

Presently, GFHF wishes to amend Section 4(b) of its Restated Certificate of Incorporation to correct a scrivener’s error. Section 4(b) authorizes GFHF to engage in any lawful activity in furtherance of its support of the Hospital, except for activities specified in Section 404(b-v) of the Not-For-Profit Corporation Law. However, Sections 404(o) and 404(t) of the Not-For-Profit Corporation Law refer to the purposes of soliciting contributions for a hospital or facility providing health related services, which are activities that are rooted in the purposes of GFHF. As such, the proposed Amendment corrects references to Section 404 of the Not- For-Profit Corporation Law to allow GFHF to continue providing services to Glens Falls Hospital and related organizations.

Attached is a May 18, 2022, request e-mail from Richard J. Krainin on behalf of GFHF to the Department, the Bylaws of GFHF, the Resolutions of the Board of Trustees of GFHF on April 7, 2022, approving the amendment, the current Restated Certificate of Incorporation of GFHF as well as the proposed Certificate of Amendment of the Restated Certificate of Incorporation of GFHF.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation.

Attachments

From: Krainin, Richard
To: DiCocco, Vincent (HEALTH)
Subject: FW: Request for PHHPC Approval to Amending the Restated Certificate of Incorporation of Glens Falls Hospital Foundation
Date: Friday, November 18, 2022 8:14:15 AM
Attachments: image001.png
image002.png
GFH Foundation CoA (003).pdf
Glens Falls Hospital Foundation - NY - Certified Articles (5.3.22).PDF

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

This is the 5/18 email to Ms. Leonard and Ms. Thomson.



Richard J. Krainin
PARTNER | ARENTFOX SCHIFF LLP
(HE/HIM/HIS)

richard.krainin@afslaw.com | 212.484.3918 DIRECT | 516.662.4285 MOBILE
Bio | My LinkedIn | Subscribe
1301 Avenue of the Americas, 42nd Floor, New York, NY 10019

From: Krainin, Richard
Sent: Wednesday, May 18, 2022 6:52 PM
To: Colleen.Leonard@health.ny.gov; Lisa.Thomson@health.ny.gov
Subject: Request for PHHPC Approval to Amending the Restated Certificate of Incorporation of Glens Falls Hospital Foundation

Greetings Ms. Leonard and Ms. Thomson.

On behalf of my clients, Glens Falls Hospital Foundation (**Foundation**) and Glens Falls Hospital (**Hospital**), I would appreciate your guidance in obtaining PHHPC approval of a corrective amendment to the Foundation's Restated Certificate of Incorporation. [First Attachment]

The Foundation was formed to solicit, receive and manage gifts to support the work of the Hospital, an Article 28 Hospital. [See Section 4(a) of the 2nd attachment—a certified copy of the Foundation's Restated Certificate of Incorporation]

The amendment corrects a scrivener's error in Section 4(b) of the Foundation's Restated Certificate of Incorporation. 4(b) authorizes the Foundation to engage in any lawful activity in furtherance of its support of the Hospital, other than activities described in specified subsections of Section 404 of the Not-For-Profit Corporation Law. The Amendment corrects the subsections of Section 404 of the Not-For-Profit Corporation Law whose activities are to be excluded.

Please let me know what additional information I can provide and to whose attention I should send it.

Thank you very much in advance for your guidance.

--Richard Krainin



Richard J. Krainin
PARTNER | ARENTFOX SCHIFF LLP
(HE/HIM/HIS)

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BY-LAWS

OF

GLENS FALLS HOSPITAL FOUNDATION

100 PARK STREET

GLENS FALLS, NEW YORK 12801

Adopted 7/24/95

Amended 12/1/95

Amended 12/5/00

Amended 9/15/04

Amended 6/16/05

Amended 9/29/15

Amended 7/1/20

Amended 3/3/21

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ARTICLE I

NAME AND LOCATION

The corporation shall be known as GLENS FALLS HOSPITAL FOUNDATION (hereinafter the “CORPORATION”) and shall be located in or near the City of Glens Falls, County of Warren, State of New York.

ARTICLE II

PURPOSES AND POWERS

The purposes for which this corporation has been organized shall be as set forth in the corporation’s Certificate of Incorporation, as in effect from time to time. The CORPORATION shall not enter into any Related Party Transaction, unless such transaction is approved in accordance with the CORPORATION’s Conflict of Interest Policy.

ARTICLE III

MEMBERSHIP

1. **MEMBERSHIP CORPORATION.** The CORPORATION shall be a membership corporation. The sole member of the CORPORATION shall be the GLENS FALLS HOSPITAL (“HOSPITAL”), existing as a type B Charitable Corporation under the New York Not-For-Profit Corporation Law.

2. **ANNUAL MEETING.** The Annual Meeting of the membership of the CORPORATION shall be held in the second quarter of each fiscal year of the CORPORATION for the purpose of approval by the Board of Trustees of the CORPORATION, as such place and time, and upon such notice as shall be fixed by the member.

3. **OTHER MEETINGS.** Regular and special meetings of the member shall be held at such times, places and upon such notice as the member shall fix.

ARTICLE IV

BOARD OF TRUSTEES

1. **RESPONSIBILITY AND AUTHORITY.** Corporate powers shall be vested in a BOARD which shall be responsible for the property, finances, and affairs of the CORPORATION and which shall, through its officers and organization, authorize all acts necessary to maintain and enhance the interest and welfare of the CORPORATION and its programs. The use of the phrase, “entire board”, herein refers to the total number of Trustees which the CORPORATION would have if there were no vacancies.

2. **QUALIFICATIONS AND NUMBERS.** Each Trustee shall be at least eighteen (18) years of age. The initial BOARD shall consist of at least six (6) persons. Thereafter, the number of the Trustees constituting the entire BOARD shall be at least five (5) and no more than thirty

(30), inclusive of the President of the CORPORATION, the President of the Medical Staff of the HOSPITAL and the Chairperson of the Corporation ad hoc Guild Committee, if such Committee exists. The President of the Medical Staff and the Chairperson of the Corporation ad hoc Guild Committee shall be non-voting members. The number of Trustees may be increased or decreased by action of the Trustees, provided that any action of the Trustees to effect such increase or decrease shall require the vote of a majority of the entire BOARD. No decrease shall shorten the term of any incumbent Trustee. BOARD members shall be chosen for their ability to contribute to and support the objectives of the CORPORATION through their wisdom, wealth, and work. Members shall be chosen from as wide a cross section of the community as is feasible as determined by the BOARD. Each member should possess basic qualities of honesty, integrity, a sense of justice and sound moral character. Membership on the Board should reflect a breadth of diversity in keeping with the broadened role of GLENS FALLS HOSPITAL in the community.

3. ATTENDANCE. Failure to maintain an active role in BOARD matters as evidenced by absence from 25% or more BOARD meetings and assigned committee meetings during any fiscal year of a TRUSTEE's term is cause for ineligibility for re-election.

4. VACANCIES. Vacancies occurring on the BOARD may be filled by the BOARD, provided that candidates shall be subject to the approval of the Board of Governors of the HOSPITAL. A Trustee elected on an interim basis shall hold office for the unexpired term of the Trustee who originally created the interim vacancy.

5. CONFLICTS OF INTEREST.

(a.) The BOARD shall adopt written policies regarding conflicts of interest. Such policies shall relate to disclosure of transactions where conflict of interest is a possibility and the responsibility of each TRUSTEE to be alert to possible conflict of interest to him or her or other TRUSTEES. See Appendix A for the current Conflict of Interest Policy.

(b.) Any new members of the BOARD shall be advised of this policy upon assuming the duties of office, and must complete the Conflict of Interest Statement.

(c.) All TRUSTEES must complete the Conflict of Interest Statement annually.

6. REMOVAL AND RESIGNATION. Any Trustee may be removed for cause by vote of the remaining members of the BOARD. A Trustee may resign at any time by giving written notice to the Secretary of the BOARD. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the BOARD, and the acceptance of the resignation shall not be necessary to make it effective.

7. COMPENSATION. Trustees shall serve without compensation except for reimbursement for reasonable expenses. In keeping with the Not-For-Profit status of the CORPORATION, no Trustee shall benefit financially from his position as a Trustee.

8. AUDIT. The Audit Committee shall oversee an annual audit of the

CORPORATION'S financial statements. Only Independent Trustees of the BOARD shall deliberate and vote on such audit functions.

ARTICLE V

OFFICERS

1. OFFICERS OF THE CORPORATION.

- (a.) President of the Corporation. The President/CEO of the CORPORATION (hereinafter "President") shall be the President/CEO of the HOSPITAL and shall represent the BOARD of the CORPORATION in all corporate matters not reserved to the BOARD or its Officers by these By-Laws. The President shall be a voting member of the BOARD and of all committees of the BOARD. The President shall be responsible to the BOARD for the planning, organization, programming, and the control, coordination, and execution of all corporate policies and activities. The President shall have the necessary authority to discharge the above responsibilities subject only to such policies as may be adopted or directives issued by the BOARD or the Executive Committee thereof.
- (b.) Administrative Officers of the Corporation. The President may appoint such Administrative Officers as may be necessary and desirable to manage adequately and efficiently the operations of the CORPORATION and such other activities of the CORPORATION as may be deemed appropriate by the BOARD. Such Administrative Officers shall include, but not be limited to, an Executive Vice President.

2. OFFICERS OF THE BOARD.

- (a.) Officers and Term of Office. The Officers of the BOARD shall be a Chair, Vice Chair, and a Secretary, each of whom shall serve a term of two (2) years. No Officer shall serve more than two (2) consecutive terms.
- (b.) Chair. The Chair shall preside at the Annual Meeting and at all regular and special meetings of the BOARD and of the Executive Committee, and shall perform such other duties as pertain to that office. The Chair shall be a voting member of all committees. The Chair may not be an employee of the CORPORATION.
- (c.) Vice Chair. In the event of absence or disability of the Chair, the Vice Chair shall assume all of the duties of the Chair.
- (d.) Secretary. The Secretary shall be responsible for minutes of the meetings of the BOARD and the Executive Committee.

ARTICLE VI

ELECTIONS

1. TRUSTEES. Trustees shall be elected or reelected at the Annual Meeting of the CORPORATION by a majority of the BOARD. Upon election by the BOARD, the Trustees shall then be approved by the Board of Governors of the HOSPITAL. Members of the Board of Trustees are elected to a three-year (3) term, with the possibility of being elected to serve three (3) additional three-year (3) terms. Should a Trustee resign before a term is completed, a successor may, at any time, be elected by majority vote to serve the remainder of the unexpired term; this newly elected Trustee may serve four (4) full three-year (3) terms in addition to serving the unexpired term.

To provide for a smooth transition from December Annual Meetings to Annual Meetings taking place in the second quarter of the Corporation's fiscal year, one term of each Board Member may be extended by six (6) months.

2. OFFICERS OF THE BOARD. Officers of the BOARD shall be elected at the Annual Meeting of the CORPORATION from among those persons nominated by the Governance Committee and shall serve for a term of two (2) years. No Trustee shall hold the office of Chair for more than two (2) consecutive terms.

ARTICLE VII

MEETINGS

1. ANNUAL MEETING. The Annual Meeting of the Board of Trustees shall be held in the second quarter of each fiscal year. Written notice of the Annual Meeting shall be mailed thirty (30) days in advance thereof to each member of the BOARD. At the Annual Meeting a report regarding activities during the preceding year and the financial status of the CORPORATION for the preceding year shall be submitted by the President or the President's designees.

2. REGULAR MEETINGS. The BOARD shall meet at least annually and may hold such additional meetings as it may set.

3. QUORUMS. A majority shall constitute a quorum for the transaction of all business except for amendments to the By-Laws. Except as otherwise provided by the Not-For-Profit Corporation Law and except as in these By-Laws otherwise provided, the vote of a majority of the Trustees present at the time of the vote, if a quorum is present at such time, shall be the act of the BOARD. All votes of TRUSTEES must be in person or by conference telephone, video or similar communications equipment.

4. MEETINGS. Any TRUSTEE may participate in a meeting of the BOARD or any committee thereof by means of a conference telephone, video, or similar communications equipment allowing all persons participating in such meeting to hear each other at the same time, and allowing each TRUSTEE to participate in all matters before the Board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the BOARD or Committee.

5. UNANIMOUS WRITTEN CONSENT. Any action required or permitted to be taken by the board or any committee thereof may be taken without a meeting if all members of the BOARD or the committee consent in writing or through electronic means to the adoption of a resolution authorizing such action. The resolution and the written consent or consents shall be filed with the minutes of the proceedings of the BOARD. Such action by written consent shall have the same force and effect as the unanimous vote of the TRUSTEES. Any certificate or other document filed under any provision of law that relates to action so taken shall state that the action was taken by unanimous written consent of the BOARD without a meeting.

6. MINUTES. The minutes of each meeting of the Board of Trustees shall reflect all business conducted, including findings, conclusions, and recommendations.

ARTICLE VIII

COMMITTEES

1. AUTHORITY TO CREATE COMMITTEES. Whenever the BOARD shall consist of five (5) or more members, the BOARD may designate from their number three (3) or more Trustees to constitute an Executive Committee, a Finance Committee, a Governance Committee, an Audit Committee and other Standing Committees. Ad hoc Committees may be created for such special purposes as the BOARD shall deem appropriate. Each committee, to the extent provided in the resolution designating it, shall have the authority of the BOARD with the exception of any authority the delegation of which is prohibited by Section 712 of the Not-For-Profit Corporation Law.

The chairs of committees are encouraged to recommend to the Chair of the BOARD, non-board members who have special knowledge, expertise, and/or experience valuable to any Board committee. The Chair of the BOARD may appoint persons who are not members of the Board to serve on committees, other than the Executive Committee and the Audit Committee, with full voting rights.

2. STANDING COMMITTEES. The Chair of the BOARD shall appoint annually committees as provided below.

- (a.) Executive Committee. The voting membership of the Executive Committee shall consist of (i) the Chair, Vice Chair, Secretary, and immediate past Chair of the BOARD, (ii) the President of the CORPORATION, and (iii) the Chairs of the Standing Committees as specified herein. The Executive Vice President of the CORPORATION shall serve as non-voting members. Actions of the Executive Committee are binding on the BOARD and the CORPORATION for matters considered in the normal course of business. If the BOARD meets no more often than annually, the Executive Committee shall meet at least quarterly.
- (b.) Finance Committee. There shall be a Finance Committee consisting of a Committee Chair and at least two (2) Trustees at large appointed by the Chair of the BOARD. The CORPORATION'S finance staff shall be non-voting members of the Finance Committee, and shall provide support to the Finance Committee. This Committee shall provide policy direction to the

CORPORATION'S finance staff on the following matters: (i) the discharge of responsibility for management of corporate assets, (ii) the provision of proper trust of endowment funds; and (iii) the receipt and review of reports of investments and income and disbursements of operating funds. The Committee shall receive from the President an annual budget which the Committee shall review, approve, and transmit to the BOARD for its approval no later than at the last full BOARD meeting prior to the beginning of the fiscal period covered by the budget.

(c.) Governance Committee. The Governance Committee shall consist of at least five (5) Trustees. It shall be Chaired by the Vice-Chairman of the Board. The purpose of the Governance Committee shall be to coordinate, evaluate, plan, and design the organizational and governing structure of the Board of Trustees. To fulfill this purpose, the Committee shall:

- (1.) Continually seek to identify new potential members and leaders to and for the Board of Trustees.
- (2.) Nominate at the Annual Meeting of the Board of Trustees, and at other times as vacancies occur, candidates for Officers in accordance with these By-Laws. The slate of nominations shall be sent with the agenda at least one (1) month prior to the meeting at which the election will occur.
- (3.) Be responsible for developing an orderly progression of Officers, particularly the Chairman, to ensure the continuity of leadership of the BOARD.
- (4.) Recommend to the BOARD at its Annual Meeting, or at other times as vacancies occur, candidates for membership to the BOARD. Be responsible for evaluating and recommending modifications to these By-Laws.
- (5.) Be responsible for the development of an on-going orientation and continuing education program for the Board of Trustees. Be responsible for monitoring BOARD member participation in these programs.
- (6.) Set standards for and review the performance of the BOARD and report thereon to members of the BOARD. As part of this, the Committee shall develop a program and procedure for ongoing assessment of the BOARD and Trustee effectiveness.

(d.) Audit Committee. The Audit Committee shall be comprised entirely of Independent Trustees. Independent Trustees are those Trustees who: (a) are not, and have not been within the last three years, an employee of the CORPORATION or an affiliate of the CORPORATION, and do not have a relative who is, or has been within the last three years, a key employee of the

CORPORATION or an affiliate of the CORPORATION; (b) have not received, and do not have a relative who has received, in any of the last three fiscal years, more than \$10,000 in direct compensation from the CORPORATION or an affiliate of the CORPORATION; and (c) are not a current employee of or do not have a substantial financial interest in, and do not have a relative who is a current officer of or has a substantial financial interest in, any entity that has made payments to, or received payments from, the CORPORATION for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of \$25,000 or two percent of such entity's consolidated gross revenues. The CORPORATION'S finance staff shall be non-voting members of the Audit Committee, and shall provide support to the Audit Committee. The Audit Committee shall:

- (1.) Review and maintain the annual conflict of interest statements of the Trustees.
- (2.) Oversee all audit functions, which shall include reviewing with the independent auditor the scope and planning of the audit prior to the audit's commencement; upon completion of the audit, reviewing and discussing with the independent auditor: (A) any material risks and weaknesses in internal controls identified by the auditor; (B) any restrictions on the scope of the auditor's activities or access to requested information; (C) any significant disagreements between the auditor and management; and (D) the adequacy of the corporation's accounting and financial reporting processes; and annually considering the performance and independence of the independent auditor.

3. **OTHER COMMITTEES.** Other Committees may be appointed by the Chair of the BOARD on a regular, or Ad hoc basis, as deemed necessary.

ARTICLE IX

INDEMNIFICATION

Every Trustee or Officer of the CORPORATION and his or her personal representatives shall be indemnified by the CORPORATION against all costs and expenses reasonably incurred by or imposed upon him or her in connection with any action to which he or she was a party by reason of his or her being a Trustee or Officer, except if he or she was finally adjudicated to have acted in bad faith and to be liable by reason of willful misconduct in the performance of his or her duties as such Trustee or Officer. "Costs and expenses" shall include, but without limiting the generality thereof, attorneys' fees, damages, and reasonable amounts paid in settlement. The CORPORATION is hereby authorized to purchase and maintain insurance for such indemnification of its Trustees and Officers to the maximum extent permitted by law.

ARTICLE X

CORPORATE SEAL

The Corporate Seal, if any, shall be in such form as the Board of Trustees shall prescribe.

ARTICLE XI

TAX YEAR

The Tax Year of the CORPORATION shall be the calendar year.

ARTICLE XII

DISSOLUTION

Subject to and in accordance with the provisions contained in the Not-For-Profit Corporation Law, a majority of the BOARD may petition a court of competent jurisdiction for dissolution of the CORPORATION.

Upon dissolution of the CORPORATION, any assets after the payment of debts shall be turned over to the HOSPITAL as a fund to be held for such specific purposes as the Board of Governors of the HOSPITAL shall direct.

ARTICLE XIII

AMENDMENT OF BY-LAWS AND
CERTIFICATE OF INCORPORATION

By-Laws may be adopted, amended or repealed by the BOARD at any annual, regular or special meeting, provided that the notice of such meeting shall contain a concise statement of the proposed amendments and shall be given at least seven (7) days prior to the scheduled date of such meeting. Any proposed adoption, amendment or repeal of these By-Laws or to the Certificate of Incorporation will not become effective until approved by the Board of Governors of the HOSPITAL.

Two-thirds of the membership of the BOARD shall constitute a quorum for adoption, amendment or repeal of the By-Laws or Certificate of Incorporation and such adoption, amendment or repeal shall be by a vote of two-thirds of those present.

Notwithstanding anything in these By-Laws to the contrary, the provisions of Article II and this Article XIII shall not be amended without the prior written consent of Albany Medical Center, a New York not-for-profit corporation.

ARTICLE XIV

EMERITUS MEMBERSHIP

1. PURPOSES.

- (a.) To recognize long, faithful and especially distinctive service of Glens Falls Hospital Foundation Trustees.
- (b.) To engage retired Glens Falls Hospital Foundation Board of Trustees in the

on-going work of the Foundation and Glens Falls Hospital.

2. STRUCTURE & MEMBERSHIP. The Emeritus category of membership of the Glens Falls Hospital Foundation is an honorary designation to recognize exemplary service, and is a non-voting membership on the Board of Trustees. Election to Emeritus status is by recommendation of the Governance Committee and majority vote of the Glens Falls Hospital Foundation Board of Trustees. There is no term of office or mandatory retirement date. Emeritus Trustees will be invited to attend Foundation meetings, will receive regular updates including advance mailings for meetings of the Glens Falls Hospital Foundation Board of Trustees, and will be invited to special events of/for the Glens Falls Hospital Foundation Board of Trustees.

3. NOMINATIONS. Retired members of the Glens Falls Hospital Foundation Board of Trustees are eligible to participate as Members Emeritus of the Foundation Board.

RESOLUTIONS
of the
BOARD OF TRUSTEES
of
GLENS FALLS HOSPITAL FOUNDATION

April 7, 2022

WHEREAS, Glens Falls Hospital Foundation (the “Foundation”) is a supporting corporation of Glens Falls Hospital, its sole member (the “Hospital”);

WHEREAS, paragraph 4(a) of the Foundation’s Restated Certificate of Incorporation (“Incorporation Certificate”) provides that the Foundation is formed to establish and maintain a program to solicit, receive and manage gifts to support the work of the Hospital and related organizations;

WHEREAS, paragraph 4(b) of the Incorporation Certificate authorizes the Foundation to engage in any and all lawful activities incidental to its paragraph 4(a) purpose, but not those activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(v);

WHEREAS, the Board of Trustees of the Foundation (the “Board”) deems it reasonable, necessary, desirable, and appropriate, and in the best interests of the Foundation to amend paragraph 4(b) of the Incorporation Certificate to remove activities mentioned in Sections 404(o) and (t) from the activities that the Foundation is excluded from engaging in;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:


1. The Board authorizes, subject to approval of the Hospital and Albany Medical Center, that paragraph 4(b) of the Incorporation Certificate be amended to read as follows:

“To engage in any and all lawful activities incident to the foregoing. Nothing herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(n), (p) through (r), (u) or (v).”

2. Each Officer of the Board and the President/CEO of the Foundation, are each hereby designated an “Authorized Officer” of the Foundation for purposes of these resolutions.

3. Each Authorized Officer is hereby authorized, empowered and directed to take all actions necessary to effectuate the amendment of the Incorporation Certificate.

The foregoing resolutions were duly adopted by the Board of Trustees of the Foundation on April 7, 2022.


Secretary

**APPROVAL AND CONSENT
OF THE SOLE MEMBER OF
GLENS FALLS HOSPITAL FOUNDATION**

Glens Falls Hospital, as the sole member of Glens Falls Hospital Foundation, hereby ratifies, approves, authorizes and consents to the matters and transactions described on Schedule I attached hereto.

This instrument shall become effective as of the 28 day of April, 2022.

Glens Falls Hospital, as the sole member of Glens Falls Hospital Foundation

By: Paul Seiner

Title: Interim President/CEO

RESOLUTIONS
of the
BOARD OF TRUSTEES
of
GLENS FALLS HOSPITAL FOUNDATION

April 7, 2022

WHEREAS, Glens Falls Hospital Foundation (the “Foundation”) is a supporting corporation of Glens Falls Hospital, its sole member (the “Hospital”);

WHEREAS, paragraph 4(a) of the Foundation’s Restated Certificate of Incorporation (“Incorporation Certificate”) provides that the Foundation is formed to establish and maintain a program to solicit, receive and manage gifts to support the work of the Hospital and related organizations;

WHEREAS, paragraph 4(b) of the Incorporation Certificate authorizes the Foundation to engage in any and all lawful activities incidental to its paragraph 4(a) purpose, but not those activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(v);

WHEREAS, the Board of Trustees of the Foundation (the “Board”) deems it reasonable, necessary, desirable, and appropriate, and in the best interests of the Foundation to amend paragraph 4(b) of the Incorporation Certificate to remove activities mentioned in Sections 404(o) and (t) from the activities that the Foundation is excluded from engaging in;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

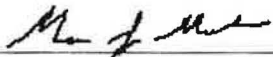
1. The Board authorizes, subject to approval of the Hospital and Albany Medical Center, that paragraph 4(b) of the Incorporation Certificate be amended to read as follows:

“To engage in any and all lawful activities incident to the foregoing. Nothing herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(n), (p) through (r), (u) or (v).”

2. Each Officer of the Board and the President/CEO of the Foundation, are each hereby designated an “Authorized Officer” of the Foundation for purposes of these resolutions.

3. Each Authorized Officer is hereby authorized, empowered and directed to take all actions necessary to effectuate the amendment of the Incorporation Certificate.

The foregoing resolutions were duly adopted by the Board of Trustees of the Foundation on April 7, 2022.



Secretary

**APPROVAL AND CONSENT
OF ALBANY MED HEALTH SYSTEM**

Albany Med Health System hereby ratifies, approves, authorizes and consents to the amendment of Paragraph 4(b) of Glens Falls Hospital Foundation's Restated Certificate of Incorporation pursuant to the resolutions of the board of trustees of Glens Falls Hospital Foundation described on Schedule I attached hereto.

This instrument shall become effective as of the 4th day of May, 2022.

Albany Med Health System

By: 
Title: Pres. CEO

Schedule I

Resolutions of the Board of Trustees of Glens Falls Hospital Foundation
Presented at the April 7, 2022 meeting of the
Glens Falls Hospital Foundation Board of Trustees
(see attached Resolutions)

RESOLUTIONS
of the
BOARD OF TRUSTEES
of
GLENS FALLS HOSPITAL FOUNDATION

April 7, 2022

WHEREAS, Glens Falls Hospital Foundation (the “Foundation”) is a supporting corporation of Glens Falls Hospital, its sole member (the “Hospital”);

WHEREAS, paragraph 4(a) of the Foundation’s Restated Certificate of Incorporation (“Incorporation Certificate”) provides that the Foundation is formed to establish and maintain a program to solicit, receive and manage gifts to support the work of the Hospital and related organizations;

WHEREAS, paragraph 4(b) of the Incorporation Certificate authorizes the Foundation to engage in any and all lawful activities incidental to its paragraph 4(a) purpose, but not those activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(v);

WHEREAS, the Board of Trustees of the Foundation (the “Board”) deems it reasonable, necessary, desirable, and appropriate, and in the best interests of the Foundation to amend paragraph 4(b) of the Incorporation Certificate to remove activities mentioned in Sections 404(o) and (t) from the activities that the Foundation is excluded from engaging in;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:


1. The Board authorizes, subject to approval of the Hospital and Albany Medical Center, that paragraph 4(b) of the Incorporation Certificate be amended to read as follows:

“To engage in any and all lawful activities incident to the foregoing. Nothing herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(n), (p) through (r), (u) or (v).”

2. Each Officer of the Board and the President/CEO of the Foundation, are each hereby designated an “Authorized Officer” of the Foundation for purposes of these resolutions.

3. Each Authorized Officer is hereby authorized, empowered and directed to take all actions necessary to effectuate the amendment of the Incorporation Certificate.

The foregoing resolutions were duly adopted by the Board of Trustees of the Foundation on April 7, 2022.


Secretary

200701000 328

RESTATED CERTIFICATE OF INCORPORATION
OF
GLENS FALLS HOSPITAL FOUNDATION

(UNDER SECTION 805 OF THE NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW)

The undersigned, being the Chief Executive Officer of Glens Falls Hospital Foundation (the "Corporation"), in accordance with Section 805 of the Not-for-Profit Corporation Law of the State of New York ("NPCL"), does hereby certify as follows:

1. The name of the Corporation is Glens Falls Hospital Foundation.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on March 12, 1996, under Section 402 of the Not-For-Profit Corporation Law of the State of New York.
3. The Certificate of Incorporation is hereby amended to effect the following amendments:

A. Paragraph THREE of the Certificate of Incorporation, which provides for the corporation's status as a charitable corporation, is hereby amended to read in its entirety as follows:

"THREE: The corporation shall be a charitable corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York."

B. Paragraph SIX of the Certificate of Incorporation, which paragraph sets forth the names and addresses of the initial directors of the Corporation, is hereby omitted in its entirety, as such information is not required to be set forth in a restated certificate of incorporation in accordance with Section 805(c) of the NPCL.

C. Paragraphs SEVEN, EIGHT and NINE of the Certificate of Incorporation are hereby re-numbered as Paragraphs SIX, SEVEN and EIGHT, respectively.

D. Paragraph EIGHT(c) of the Certificate of Incorporation (formerly Paragraph NINE(c)), having to do with the dissolution of the Corporation, is hereby amended to read in its entirety as follows:

"(c) Upon the dissolution, final liquidation, or winding up of the corporation, the Board of Directors shall, subject to any requisite approval and jurisdiction of the Supreme Court of the State of New York, after paying or making provision for the payment of all of the corporation's liabilities, dispose of all of the assets of the corporation exclusively for the purposes of Glens Falls Hospital, or any of Glens Falls Hospital's affiliates as are then organized and

operated exclusively for the same or similar not-for-profit charitable purposes as shall at the time qualify as exempt organizations under Section 501(c)(3) of the Code (or the corresponding provision of any subsequent federal tax laws), as the Board of Directors shall determine.”

E. The following new Paragraph NINE is hereby added to the Certificate of Incorporation:

“NINE: Notwithstanding anything to the contrary in this Certificate of Incorporation, the provisions of Paragraphs FOUR and EIGHT(c) and this Paragraph NINE shall not be amended without the prior written consent of Albany Medical Center, a New York not-for-profit corporation.”

4. This Restated Certificate of Incorporation was unanimously authorized by the members of the Board of Directors of the Corporation and the sole member of the Corporation, Adirondack Health Services, Inc.

5. The text of the Certificate of Incorporation of the Corporation, as amended hereby, is restated to read in its entirety as follows:

ONE: The name of the corporation is Glens Falls Hospital Foundation.

TWO: The corporation is a corporation as defined in Section 102(a)(5) of the Not-For-Profit Corporation Law of the State of New York.

THREE: The corporation shall be a charitable corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

FOUR: The corporation is formed for the following reasons and for the following purposes:

(a) To establish and maintain a program to solicit, receive and manage inter vivos and testamentary outright gifts, life income gifts and other split-interest gifts to support the work of the medical, charitable, scientific, research or educational purposes of Glens Falls Hospital and related organizations.

(b) To engage in any and all lawful activities incidental to the foregoing. Nothing herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(v).

FIVE: The office of the corporation is to be located in Warren County in the State of New York.

SIX: The duration of the corporation is to be perpetual.

SEVEN: The Secretary of State, pursuant to Section 402(a)(6), is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the corporation served upon him is: 100 Park Street, Glens Falls, NY 12801.

EIGHT: For the regulation of the internal affairs of the corporation, it is hereby provided:

- (a) No part of the assets, income, profits or net earnings of the corporation shall inure to the benefit of, or be distributable to, its member, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article FOUR hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of this Certificate of Incorporation, the corporation shall not carry out any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law).
- (b) The corporation shall, to the extent applicable, comply with the provisions of Section 4947 and 508 of the Internal Revenue Code of 1986 (or the corresponding provisions of any subsequent Federal tax laws), insofar as such sections: (i) Require the corporation to distribute income for each taxable year allocable to charitable purposes in such manner as not to subject the corporation to tax under Section 4942 of the Code; (ii) Prohibit the corporation, its directors, or its members, from engaging in any act of self-dealing as defined in Section 4941 of the Code; (iii) Prohibit the corporation from retaining any excess business holdings as defined in Section 4943 of the Code; (iv) Prohibit the corporation from making investments which jeopardize charitable purposes as specified in Section 4944 of the Code; or (v) Prohibit the corporation from making taxable expenditures as defined in Section 4945 of the Code.
- (c) Upon the dissolution, final liquidation, or winding up of the corporation, the Board of Directors shall, subject to any requisite approval and jurisdiction of the Supreme Court of the State of New York, after paying or making provision for the payment of all of the corporation's liabilities, dispose of all of the assets of the corporation exclusively for the purposes of Glens Falls Hospital, or any of Glens Falls Hospital's affiliates as are then organized and operated exclusively for the same or similar not-for-profit charitable purposes as shall at the time qualify as exempt organizations under Section 501(c)(3) of the Code (or the corresponding


provision of any subsequent federal tax laws), as the Board of Directors shall determine.

- (d) Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish or operate a hospital or to provide hospital service or health-related service, or to operate a home care service health agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law.

NINE: Notwithstanding anything to the contrary in this Certificate of Incorporation, the provisions of Paragraphs FOUR and EIGHT(c) and this Paragraph NINE shall not be amended without the prior written consent of Albany Medical Center, a New York not-for-profit corporation.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF this Restated Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 8th day of June, 2020 :


By: Dianne Shugrue
Title: Chief Executive Officer

**CERTIFICATE OF AMENDMENT OF THE RESTATED
CERTIFICATE OF INCORPORATION OF
GLENS FALLS HOSPITAL FOUNDATION
(UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW)**

FILED BY:

**ARENTFOX SCHIFF LLP
1301 Avenue of the Americas
New York, NY 10019**

**CERTIFICATE OF AMENDMENT OF THE RESTATED
CERTIFICATE OF
INCORPORATION OF
GLENS FALLS HOSPITAL FOUNDATION
(UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW)**

The undersigned, being the Interim President/CEO of Glens Falls Hospital Foundation (the "Corporation"), in accordance with Section 803 of the Not-For-Profit Corporation Law of the State of New York (the "Not-For Profit Corporation Law"), does hereby certify as follows:

1. The name of the Corporation is Glens Falls Hospital Foundation.
2. The Restated Certificate of Incorporation of the Corporation was filed by the State of New York Department of State on July 1, 2020 under Section 805 of the Not-For-Profit Corporation Law, restating the Certificate of Incorporation of the Corporation that was filed by the State of New York Department of State on March 12, 1996 under Section 402 of the Not-For-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.
4. Paragraph FOUR(b) of the Restated Certificate of Incorporation, which provides for the purposes for which the Corporation is formed, is hereby amended to read in its entirety as follows:

“(b) To engage in any and all lawful activities incidental to the foregoing. Nothing herein shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law, Sections 404(b) through (n), (p) through (r), (u) or (v).”
5. The above certificate amendment was authorized by the trustees of the Corporation and approved by the board of governors of Glens Falls Hospital (the sole member of the Corporation) and by the directors of Albany Med Health System (the sole member of Glens Falls Hospital) in accordance with each such organization’s respective bylaws.
6. The Secretary of State of the State of New York, pursuant to Section 803(a)(6) of the Not-For-Profit Corporation Law, is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State

shall mail a copy of any process against the Corporation served upon the Secretary is: 100 Park Street, Glens Falls, NY 12801.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF this Certificate of Amendment of the Restated Certificate of Incorporation of Glens Falls Hospital Foundation has been signed and the statements made herein affirmed as true under penalties of perjury this 16th day of May, 2022:

Paul Scimeca
Name: Paul Scimeca
Title: Interim President/CEO

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Mark A. Schweitzer, Associate Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: March 15, 2023

Subject: Proposed Dissolution of St. Teresa's Nursing Home,
Inc.

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letter from applicant's consultant requesting approval of the proposed Certificate of Dissolution of St. Teresa's Nursing Home, Inc.;
- 3) An executed, proposed Certificate of Dissolution and Plan of Dissolution of St. Teresa's Nursing Home, Inc.;
- 4) The Resolution of the Board of Trustees of St. Teresa's Nursing Home, Inc., approving and authorizing the dissolution;
- 5) The Resolution of the Board of Trustees of Catholic Health Care System, the sole member of St. Teresa's Nursing Home, Inc., approving and authorizing the dissolution;
- 6) The Resolution of the Board of Trustees of Providence Health Services, the sole member of Health Care System, approving and authorizing the dissolution
- 7) Certificate of Incorporation of St. Teresa's Nursing Home, Inc., dated January 30, 1968, Certificate of Amendment of Certificate of Incorporation dated June 18, 1987, and associated corporate documents and consents.
- 8) The Amended and Restated Bylaws of St. Teresa's Nursing Home, Inc., adopted June 25, 2008.
- 9) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of St. Teresa's Nursing Home, Inc.

Attachments.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel

Date: March 15, 2023

Subject: Proposed Dissolution of St. Teresa's Nursing Home, Inc.

St. Teresa's Nursing Home, Inc. requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

St. Teresa's Nursing Home, Inc. is a New York not-for-profit corporation that received approval from the New York State Department of Social Services to establish and operate an Article 28 facility on December 19, 1967, and filed its Certificate of Incorporated on January 30, 1968. A Restated Certificate of Incorporation to enlarge the corporate purposes, to establish and operate a diagnostic and treatment center to provide for Comprehensive Outpatient Rehabilitation Facility Services (CORF), was approved by the Public Health Council on April 8, 1988.

St. Teresa's Nursing Home, Inc. was the licensed operator of a Nursing Home located at 120 Highland Avenue in the City of Middletown, NY, County of Orange, until January 31, 2013, when it transferred its operations and assets to HRNC Operating, LLC, d/b/a Highland Rehabilitation and Nursing Center, as approved in Certificate of Need Application Number 121103. Because St. Teresa's Nursing Home, Inc. has ceased operations and gone dormant, its Board of Trustees and the Boards of Trustees of its member believe it is in the best interests of St. Teresa's Nursing, Inc. to dissolve. St. Teresa's Nursing Home, Inc. has no assets or liabilities.

The Board of Trustees of St. Teresa's Nursing Home, Inc. approved and authorized dissolution and authorized the filing of the Certificate of Dissolution on September 27, 2021. The Board of Trustees of Catholic Health Care System, as sole corporate member of St. Teresa's Nursing Home, Inc., approved and authorized the dissolution of St. Teresa's Nursing Home, Inc. on September 27, 2021. The Board of Trustees of Providence Health Services, as sole corporate member of Catholic Health Care System, approved and authorized the dissolution of St. Teresa's Nursing Home, Inc. on December 14, 2021.

The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of St. Teresa's Nursing Home, Inc. and resolutions of the board of trustees of St. Teresa's Nursing Home, Inc., the board of trustees of Catholic Health Care System, as the sole corporate member of St. Teresa's Nursing Home, Inc., and the board of trustees of Providence Health Services, as the sole corporate member of Catholic Health Care System, authorizing the dissolution, are included for PHHPC's review. A letter from the consultant for St. Teresa's Nursing Home, Inc. advocating for dissolution, is also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution.

Attachments.

Cicero Consulting Associates VCC, Inc.

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Maiale
Patrick Clemente

925 Westchester Ave. • Suite 201 • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

Albany Unit
William B. Carmello
Joseph F. Pofit
Albert L. D'Amato
Mark Van Guysling
Rosemarie Porco
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg
Martha H. Pofit
Frank T. Cicero, M.D.
Rose Murphy

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

January 24, 2022

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
NEW YORK STATE DEPARTMENT OF HEALTH
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

RE: Dissolution of St. Teresa's Nursing Home, Inc.

Dear Ms. Leonard:

On behalf of our client, St. Teresa's Nursing Home, we are writing to seek approval from the Public Health and Health Planning Council (PHHPC) for the dissolution of St. Teresa's Nursing Home, which is a New York State not-for-profit corporation whose Amended Certificate of Incorporation was approved by PHHPC on August 25, 2006. In 2013, the assets of St. Teresa's Nursing Home, until that time a certified nursing home, were transferred to a new owner/operator. St. Teresa's Nursing Home has no assets or liabilities and has been financially dormant for a number of years. St. Teresa's Nursing Home hopes to formally dissolve as soon as possible.

In furtherance of this request, please find the following documents:

1. Proposed Certificate of Dissolution;
2. Restated Certificate of Incorporation;
3. Amended and Restated Bylaws; and
4. Board Resolutions authorizing the dissolution.

Please feel free to call me if you require other information. Thank you for your consideration in this matter.

Sincerely,

Frank M. Cicero

Frank M. Cicero

cc: Sarah D. Strum, Esq., Senior Vice President of Compliance, ArchCare



CERTIFICATE OF DISSOLUTION

OF

ST. TERESA'S NURSING HOME, INC.

Under Section 1003 of the Not-for-Profit Corporation Law

- 1) The name of this corporation is St. Teresa's Nursing Home, Inc.
- 2) The Certificate of Incorporation of St. Teresa's Nursing Home, Inc. was filed by the Department of State of the State of New York on January 30, 1968.
- 3) The names and addresses of each of the officers and directors of the corporation are as follows:

Francis J. Serbaroli, Chairman- One Vanderbilt Avenue, New York, NY 10017
Thomas E. Alberto- 35 Prospect Park West Apt. 13A Brooklyn, NY 11215
Steve Bujno – 246 West End Avenue, Apt 4A, New York, NY 10023
John Cahill- 1011 First Avenue 20th Floor New York, NY 10022
Dr. Tara A. Cortes- 433 First Avenue, 5th Floor New York, NY 10016
John T. Dunlap- 230 Park Avenue 21st Floor New York, NY 10177
Monsignor Charles J. Fahey- Nottingham, 1301 Nottingham Rd, Jamesville, NY 13078
Thomas J. Fahey, Jr., M.D.- 300 East 66th Street New York, NY 10065
Eric P. Feldmann- 16 Hampshire Road Rockville Centre, NY 11570
Sister Seline Flores, Providence Rest, 3304 Waterbury Avenue, Bronx, NY 10465
John Gleason, 250 Park Avenue, New York, NY 10017
Karen Gray- 235 East 45th Street New York, New York 10017
George Irish- 300 West 57th Street, 26th Floor New York, NY 10019
Clarion E. Johnson, MD- 5504 Dorset Avenue Chevy Chase, Maryland 20815
Rory Kelleher- 1165 Fifth Avenue New York, NY 10029
Monsignor Joseph LaMorte- 1011 First Avenue, 19th Floor New York, NY 10022
Scott LaRue, ex-officio- 205 Lexington Avenue New York, NY 10016
Thomas M. O'Brien, Vice-Chair- PO Box 2326 Bonita Springs FL. 34133
Kathryn Rooney- 1475 Hylan Boulevard Staten Island, NY 10305
Joseph Saporito, 43 Somerset Place, Matawan, NJ 07747
G.T. Sweeney- 100 Church Street New York, NY 10007
Gennaro (Jerry) Vasile, Ph.D., 21908 Masters Circle Estero, FL 33928-6949
Bishop Gerald Walsh- 1011 First Avenue New York, NY 10022

- 4) The corporation is a charitable corporation.
- 5) At the time of authorization of the corporation's Plan of Dissolution as provided in Not-for-Profit Corporation Law §1002, the corporation holds no assets which are legally required to be used for a particular purpose.
- 6) The corporation elects to dissolve.
- 7) Dissolution of the corporation was authorized by the majority vote of the board of directors, followed by two-thirds vote of the members.



8) Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution was approved by the Attorney General. A copy of the approval of the Attorney General is attached.

X Frank Serbaroli
5B87D899C891C2DE11E9FC57F917FEAC contract.wiki
(Signature)

Frank Serbaroli
(Print or Type Name of Signer)

Chairman of the Board of Directors
(Capacity of Signer)

Plan of Dissolution

Of

St. Teresa's Nursing and Rehabilitation Center

The Board of Trustees of St. Teresa's Nursing and Rehabilitation Center, The Board of Trustees of Catholic Health Care System and Providence Health Services have all considered the advisability of voluntarily dissolving the corporation and have determined that dissolution is in the best interest of the corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.

New York State Public Health and Health Planning Council

3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.



Francis J. Serbaroli
Chair

September 27, 2021

Date

**RESOLUTION OF THE
BOARD OF TRUSTEES
OF
ST. TERESA'S NURSING AND REHABILITATION CENTER**
(Dissolution of St. Teresa's Nursing and Rehabilitation Center)

WHEREAS, St. Teresa's Nursing and Rehabilitation Center (the "Corporation" or "Nursing Home") is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York.

WHEREAS, St. Teresa's Nursing and Rehabilitation Center previously operated a Nursing Home located at 120 Highland Avenue Middletown, NY 10940. St. Teresa's Nursing and Rehabilitation Center last operated on or about January 31, 2013, when it was transferred to The Highland Rehabilitation and Nursing Center and currently has no assets or liabilities.

WHEREAS, the Board of Trustees of St. Teresa's Nursing and Rehabilitation Center have considered the advisability of voluntarily dissolving the corporation.

WHEREAS, pursuant to Article III of St. Teresa's Nursing and Rehabilitation Center's bylaws, St. Teresa's Nursing and Rehabilitation Center shall make a recommendation to Catholic Health Care System and to Providence Health Services with respect to any dissolution for the Nursing Home.

WHEREAS, the Board of Trustees of St. Teresa's Nursing and Rehabilitation Center after due consideration, have deemed it advisable and in the best interests of the Corporation to approve and recommend for approval to the Catholic Health Care System Board of Trustees and Providence Health Services a Plan of Dissolution and authorize the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

NOW THEREFORE, BE IT:

RESOLVED, that the Corporation shall dissolve voluntarily; and it is further

RESOLVED, that the Board of Trustees of St. Teresa's Nursing and Rehabilitation Center hereby approves and recommends for approval to the Catholic Health Care System Board of Trustees and Providence Health Services the dissolution of St. Teresa's Nursing and Rehabilitation Center; and it is further

RESOLVED, that the Board of Trustees of St. Teresa's Nursing and Rehabilitation Center hereby approves and recommends for approval to the Catholic Health Care System Board of Trustees and Providence Health Services the Plan of Dissolution in the form attached hereto and the authorizing of the filing of a Certificate of Dissolution with the New York State Department

of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

Adopted at a duly noticed meeting of the St. Teresa's Nursing and Rehabilitation Center Board of Trustees on September 27, 2021.



Francis J. Serbaroli
Chair

**RESOLUTION OF THE
BOARD OF TRUSTEES
OF
CATHOLIC HEALTH CARE SYSTEM**
(Dissolution of St. Teresa's Nursing and Rehabilitation Center)

WHEREAS, St. Teresa's Nursing and Rehabilitation Center (the "Corporation" or "Nursing Home") is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York.

WHEREAS, St. Teresa's Nursing and Rehabilitation Center previously operated a Nursing Home located at 120 Highland Avenue Middletown, NY 10940. St. Teresa's Nursing and Rehabilitation Center last operated on or about January 31, 2013, when it was transferred to The Highland Rehabilitation and Nursing Center and currently has no assets or liabilities.

WHEREAS, the Board of Trustees of St. Teresa's Nursing and Rehabilitation Center has approved and recommended for approval to the Catholic Health Care System Board of Trustees for the voluntarily dissolution of the corporation and have determined that dissolution is in the best interest of the corporation.

WHEREAS, pursuant to St. Teresa's Nursing and Rehabilitation Center's bylaws, Catholic Health Care System is the sole member of the Nursing Home, and shall make a recommendation to Providence Health Services with respect to any dissolution for the Nursing Home.

WHEREAS, the Board of Trustees of Catholic Health Care System have considered the advisability of voluntarily dissolving the corporation.

WHEREAS, the Board of Trustees of Catholic Health Care System after due consideration, have deemed it advisable and in the best interests of the Corporation to adopt and approve a Plan of Dissolution and authorize the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

NOW THEREFORE, BE IT:

RESOLVED that the Corporation shall dissolve voluntarily; and it is further

RESOLVED, that the Board of Trustees of Catholic Health Care System hereby approves and recommends for approval to Providence Health Services the dissolution of St. Teresa's Nursing and Rehabilitation Center; and it is further

RESOLVED that the Board of Trustees of Catholic Health Care System hereby approves and recommends for approval to Providence Health Services the Plan of Dissolution in the form attached hereto and the authorizing of the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

Adopted at a duly noticed meeting of the Catholic Health Care System Board of Trustees on September 27, 2021.



Francis J. Serbaroli
Chair

**RESOLUTION
OF THE MEMBERS OF
PROVIDENCE HEALTH SERVICES**

(Dissolution of St. Teresa's Nursing and Rehabilitation Center)

WHEREAS, Providence Health Services ("Providence") is the sole corporate member of the Catholic Health Care System ("CHCS") and as such has certain reserved powers; and

WHEREAS, St. Teresa's Nursing and Rehabilitation Center (the "Nursing Home") is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York; and

WHEREAS, CHCS is the sole corporate member of the Nursing Home and as such has certain reserved powers to approve the plan of dissolution of the Nursing Home; and

WHEREAS, the Nursing Home previously operated an Article 28 residential health care facility at 120 Highland Avenue Middletown, NY 10940, which ceased operations on or about January 31, 2013 following an asset purchase by The Highland Rehabilitation and Nursing Center, and currently has no assets or liabilities; and

WHEREAS, the Board of Directors of the Nursing Home has approved and recommended for approval to Providence Health Services for the voluntarily dissolution of the Nursing Home and have determined that dissolution is in the best interest of the Nursing Home; and

WHEREAS, the CHCS Board of Trustees has approved and recommended for approval to Providence Health Services the voluntarily dissolution of the Nursing Home and have determined that dissolution is in the best interest of the Nursing Home; and

WHEREAS, the bylaws of the Nursing Home grant the authority to Providence Health Services as the Sponsor of the Nursing Home sole authority to approve any dissolution of the Nursing Home; and

WHEREAS, the Providence Health Services has considered the advisability of voluntarily dissolving the Nursing Home; and

WHEREAS, the Providence Health Services, after due consideration, have deemed it advisable and in the best interests of the Nursing Home to adopt and approve a Plan of Dissolution and authorize the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

NOW THEREFORE, it is

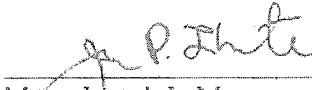
RESOLVED, that the Nursing Home shall dissolve voluntarily; and it is further

RESOLVED, that the Providence Health Services does hereby adopt and approve the Plan of Dissolution in the form attached hereto; and it is further

RESOLVED, that the Providence Health Services hereby authorizes the filing of a Certificate of Dissolution with the New York State Department of State, subject to the consent of the Attorney General of the State of New York; and it is further

RESOLVED, that the officers of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, nonmaterial amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions.

Adopted at a duly constituted meeting of the Providence Health Services Board of Trustees on December 14, 2021.



Msgr. Joseph LaMorte
Vice President

ST. TERESA'S NURSING HOME, INC.

ATTACHMENT 7

CERTIFICATE OF INCORPORATION OF ST. TERESA'S NURSING HOME,
INC., AND ALL AMENDMENTS
AND ASSOCIATED DOCUMENTS

663358

CERTIFICATE OF INCORPORATION

OF

ST. TERESA'S NURSING HOME, INC.

PURSUANT TO THE MEMBERSHIP CORPORATION LAW AND THE PUBLIC HEALTH LAW.

We, the undersigned, for the purpose of forming a nursing home company pursuant to the Membership Corporations Law and the Public Health Law of the State of New York hereby certify:

I

The name of the proposed corporation is ST. TERESA'S NURSING HOME, INC. (hereinafter referred to as the "Company").

II

The purposes for which the Company is to be formed are to provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

III

The territory in which the operations of the Company will be principally conducted is the State of New York.

3320

OF DEPARTMENT OF HEALTH

IV

The principal office of the Company is to be located in the City of Middletown, County of Orange, State of New York.

V

The number of directors of the Company shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Company. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Company.

VI

The names and residences of the directors of the Company until the first annual meeting are:

Name	Address
Mary Grace Muha (Name in Religion: Sister Mary Grace)	Middletown, N. Y. 130 Highland Ave.
Josephine Grace (Name in Religion: Sister Helena Dolores)	130 Highland Ave. Middletown, N. Y.
Emerentiana Pouliot (Name in Religion: Sister Emerantiana)	130 Highland Ave. Middletown, N. Y.
Rose Marie Burke (Name in Religion: Sister Ann Dolores)	Middletown, N. Y. 130 Highland Ave.
Edward A. Munns	20 South Broadway Yonkers, N. Y.

VII

The names and residences of the subscribers to this Certificate of Incorporation are:

<u>Name</u>	<u>Address</u>
Mary Grace Muha (Name in Religion: Sister Mary Grace)	130 Highland Ave. Middletown, N. Y.
Josephine Grace (Name in Religion: Sister Helena Dolores)	130 Highland Ave. Middletown, N. Y.
Emerentiana Pouliot (Name in Religion: Sister Emerentiana)	130 Highland Ave. Middletown, N. Y.
Edward A. Munns	20 South Broadway Yonkers, N. Y.
Richard M. Goldwater, Esq.	60 East 42nd St. New York, N. Y.

VIII

The duration of the Company is for a period of two years from the date of the filing of this Certificate by the Secretary of State.

IX

The real property of the Company shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law.

X

The Company has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XII

All income and earnings of the Company shall be used exclusively for its corporate purposes.

XI

No part of the net income or net earnings of the Company shall inure to the benefit or profit of any private individual, firm or corporation.

XII

XIII

All of the subscribers to this Certificate of Incorporation are of full age. At least two-thirds of them are citizens of the United States and at least one of them is a resident of the State of New York. At least one of the persons named as a director of the Company is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 4th day of December, 1967.

Mary Grace Muna
Mary Grace Muna

Josephine Grace
Josephine Grace

Emerentiana Poulot
Emerentiana Poulot

Edward A. Munnis
Edward A. Munnis

Richard B. Goldwater
Richard B. Goldwater

STATE OF NEW YORK)

COUNTY OF Orange)

SS.

On this 15th day of December, 1967 before me personally came MARY GRACE MUHA, JOSEPHINE GRACE and EMERENTIAMA POULIOT, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation of ST. TERESA'S NURSING HOME, INC. and they duly acknowledged to me that they executed the same.

ANNA L. GIBBONS
Notary Public in the State of New York
Orange County Clerk's No. 211
Commission Expires March 31, 1968

Anna L. Gibbons
Notary Public

STATE OF NEW YORK)

COUNTY OF Westchester)

SS.

On this 4th day of December, 1967 before me personally came EDWARD A. MUNNS to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation of ST. TERESA'S NURSING HOME, INC. and he duly acknowledged to me that he executed the same.

ADELINE A. LOFSTEIN
NOTARY PUBLIC
IN THE STATE OF NEW YORK
Appointed for Westchester County

Adeline A. Lofstein
Notary Public

STATE OF NEW YORK)

COUNTY OF New York)

SS.

On this 13th day of December, 1967 before me personally came RICHARD M. GOLDWATER, to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation of ST. TERESA'S NURSING HOME, INC. and he duly acknowledged to me that he executed the same.

Leon Liner
Notary Public

LEON LINER
Notary Public, State of New York
No. 60-2169565
Qualified in Westchester County
Term Expires March 30, 1968

CONSENT TO INCORPORATION BY
COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health of the State of New York, do this 26 day of December, 1967, pursuant to Article 28-A of the Public Health Law hereby certify that I consent to the filing of the foregoing Certificate of Incorporation of ST. TERESA'S NURSING HOME, INC. with the Secretary of State of the State of New York.

Hollis S. Ingraham, M.D.
Commissioner of Health
By: *Robert P. Whalen*
Robert P. Whalen, M.D.
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the Ninth Judicial District, wherein is located the principal office of St. Teresa's Nursing Home, Inc. hereby approves the within Certificate of Incorporation of St. Teresa's Nursing Home, Inc. and the filing thereof.

Dated: ~~December~~ 1967.
January 13, 1968
Gosken, W. J.
Justice of the Supreme Court



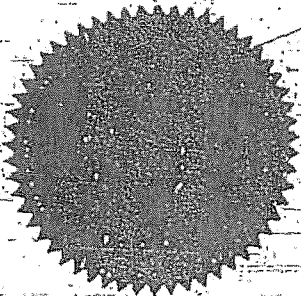
State of New York - Department of Social Services

State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on
 the nineteenth day of December, 1967, due inquiry and investiga-
 tion having been made, the Board approved the application of ST.
 TERESA'S NURSING HOME, INC., No. 5-92, a membership corporation,
 for approval of the proposed certificate of incorporation pursuant
 to Section 35 of the Social Services Law and Article 26-A of the
 Public Health Law, empowering it to establish, maintain and operate
 an 80 bed nursing home in the City of Middletown, County of Orange,
 State of New York.



In Witness Whereof, the State Board of
 Social Welfare has caused these presents to be
 signed in accordance with the provisions of the
 statutes and its by-laws, and the official seal of
 the Board and of the Department to be here-
 unto affixed, this twentieth day of
 December, in the year one thousand
 nine hundred and sixty-seven.

[Signature]
 Secretary

663358

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CERTIFICITY OF
INCORPORATION
OF
ST. TERESA'S NURSING HOME
INC.

PURSUANT TO THE MEMBER-
SHIP CORPORATION LAW AND
THE PUBLIC HEALTH LAW

Dated: December 1957.

GOLDWATER & FLYNN
COUNSELLORS AT LAW
90 EAST 42ND STREET
NEW YORK

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 30 1968

TAX
BILLING FEE \$ 5.00

John P. Lemery
Secretary of State

RECEIVED

R. B. Long

State of New York — Department of Social Services



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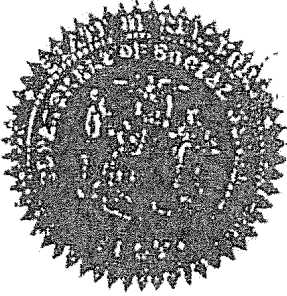
State Board of Social Welfare

Albany

759868

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the fifteenth day of April, 1969, due inquiry and investigation having been made, the Board approved the proposed Certificate of Extension of Existence of ST. TERESA'S NURSING HOME, INC., No. 5-92 pursuant to Section 45 of the General Corporation Law of the State of New York.



In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this sixteenth day of April, in the year one thousand nine hundred and sixty-nine.

Secretary

CERTIFICATE OF EXTENSION OF
EXISTENCE OF
ST. TERESA'S NURSING HOME, INC.
(a Membership corporation)

Pursuant to Section 45 of the General Corporation Law

do, the undersigned, MARY GRACE MUHA, President, and
RICHARD N. GOLDWATER, Secretary, of ST. TERESA'S NURSING HOME,
INC. C E R T I F Y:

1. The name of the corporation is St. Teresa's Nursing Home
Inc.
2. The Certificate of Incorporation was filed in the office
of the Secretary of State on January 30, 1968.
3. The term of existence specified in the original Certificate
of Incorporation will expire on January 30, 1970.
4. The duration of the corporation shall be perpetual.

IN WITNESS WHEREOF, we have executed this Certificate
this 7th day of February, 1969.

Mary Grace Muma, President

Richard N. Goldwater, Secretary

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.

On the 7th day of February, 1969, before me personally
came Mary Grace Muma and Richard N. Goldwater, to me known and
known to me to be the persons described and who executed the
foregoing Certificate of Extension of Existence and they thereupon

severally duly acknowledged to me that they executed the same.

Richard M. Goldwater
Notary Public

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.

Mary Grace Muha and Richard M. Goldwater, being severally duly sworn, depose and say, each for himself deposes and says, that she, Mary Grace Muha is the President of St. Teresa's Nursing Home, Inc. and he, Richard M. Goldwater is the Secretary of said Corporation, that they were duly authorized to execute and file the foregoing Certificate of Extension of Existence of said Corporation by the votes, cast in person or by proxy, of a majority of the members of record of said Corporation, at a meeting of the members called for that purpose upon like notice as that required for the annual meetings of the Corporation, the said meeting having been held at 130 Highland Avenue, Middletown, on February 26, 1969.

Mary Grace Muha
Mary Grace Muha, President

Richard M. Goldwater
Richard M. Goldwater, Secretary

SWORN to before me this
26th day of February,
1969.

Richard M. Goldwater
Notary Public

3

CONSENT TO FILING CERTIFICATE OF EXTENSION
OF EXISTENCE BY COMMISSIONER OF HEALTH

I, HOLLIS B. INGRAHAM, M.D., Commissioner of Health of the
State of New York, do this 27 day of May, 1969, pursuant
to Article 28-A of the Public Health Law, hereby certify that
I consent to the filing of the foregoing Certificate of Ex-
tension of Existence of St. Teresa's Nursing Home, Inc. with
the Secretary of State of the State of New York.

Hollis B. Ingraham, M.D.
Commissioner of Health

By: 
Donald G. Dickson, M.D.
Deputy Commissioner

750965-4

CERTIFICATE OF EXTENSION
OF EXISTENCE OF

ST. TERESA'S NURSING HOME,
INC.
(a Membership Corporation)

Pursuant to Section 45 of
the General Corporation Law

Dated: February 26, 1969.

GOLDWATER, S FLYNN
COUNSELLORS AT LAW
60 EAST 42ND STREET
NEW YORK

663 358-8 2 yrs due

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SECRETARY OF STATE

MAY 28 1969

STATE OF NEW YORK

John P. Conway

Secretary of State

John P. Conway

State of New York — Department of Social Services

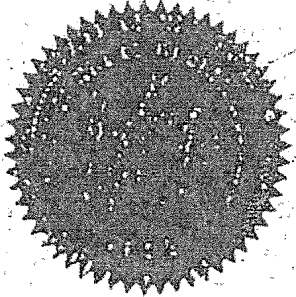
State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the fifteenth day of April, 1969, due inquiry and investigation having been made, the Board approved the proposed Certificate of Amendment Relating to the Disposition of Assets Upon Dissolution and Non-Profit Character of ST. TERESA'S NURSING HOME, INC., No. 5-92, pursuant to Section 30 of the Membership Corporations Law, Section 35 of the Social Services Law, and Article 28-A of the Public Health Law of the State of New York.

In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board, and of the Department to be hereunto affixed, this twenty-sixth day of May, in the year one thousand nine hundred and sixty-nine.



Secretary

CERTIFICATE OF AMENDMENT
RELATING TO THE DISPOSITION OF ASSETS
UPON THE DISSOLUTION AND NON-PROFIT
CHARACTER OF
ST. TERESA'S NURSING HOME, INC.
(a Membership Corporation)

Pursuant to Section Thirty of The Membership Corporation Law

We, the undersigned, MARY GRACE MUHA, President and RICHARD M. GOLDWATER, Secretary, of ST. TERESA'S NURSING HOME, INC. a membership corporation duly organized and existing pursuant to the Membership Corporations Law and the Public Health Law of the State of New York, for the purpose of amending the Certificate of Incorporation of St. Teresa's Nursing Home, Inc. relating to the disposition of the assets upon dissolution and the non-profit character of St. Teresa's Nursing Home Inc. pursuant to Section 30 of the Membership Corporations Law, do hereby make, sign and acknowledge this Certificate and do certify as follows:

1. The name of this Corporation is ST. TERESA'S NURSING HOME, INC.
2. The Certificate of Incorporation was approved by the State Board of Social Welfare on December 19, 1967, consented to by the Commissioner of Health on December 26, 1967, and filed in the office of the Secretary of State of the State of New York on January 30, 1968.
3. The provision of the Certificate of Incorporation to be eliminated by the execution and filing of this Certificate of Amendment is -

XII. No part of the net income or net earnings of the company shall inure to the benefit or profit of any

2

private individual, firm or corporation.

4. The provision to be substituted for the foregoing is -

"XII. The Company is organized and shall be operated as a non-profit organization, shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Article II hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Company shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Company shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Company shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.


Upon the dissolution of the Company the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Company, distribute all of the remaining assets of the Company exclusively for the purposes of the Corporation or for a similar public use or purpose, to such organization or organizations organized and operating exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provision of any future United States Internal Revenue Law; or to the United States of America, the State of New

York, or a local government within the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of this Company. In no event shall the assets of this Company upon dissolution be distributed to a director, officer, employee or member of this Company.

The dissolution of this Company and any distribution of the assets of this Company incident thereto shall be subject to such law, if any, then in force as may require the approval or consent thereto by any Court or judge thereof having jurisdiction or by any governmental department or agency or official thereof."

IN WITNESS WHEREOF, we have made, signed and acknowledged this Certificate the 26th day of February, 1969.


Mary Grace Muha, President


Richard M. Goldwater, Secretary

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.

MARY GRACE MUHA and RICHARD M. GOLDWATER, being severally duly sworn, depose and say, and each for himself deposes and says that she Mary Grace Muha is the President of St. Teresa's Nursing

Home, Inc. and he, Richard M. Goldwater, as the Secretary thereof, that they were duly authorized to execute and file the foregoing Certificate of Amendment relating to the disposition of assets upon the dissolution and non-profit character of St. Teresa's Nursing Home, Inc. pursuant to Section 30 of the Membership Corporations Law, by the concurring vote of a majority of the members of the Corporation present at a special meeting held at 130 Highland Avenue, Middletown, on the 26th day of February, 1969, upon notice pursuant to Section 43 of the Membership Corporations Law and that they subscribed such Certificate by virtue of such authority.

Mary Grace Mahan
Mary Grace Mahan, President

Richard M. Goldwater
Richard M. Goldwater, Secretary

SWORN to before me this

26th day of February,

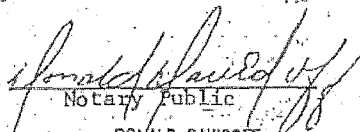
1969.

Wanda W. Van Gorder
Notary Public

WANDA W. GOLDWATER
NOTARY PUBLIC, City of New York
No. 31,106025
Qualified in New York County
Commission Expires March 30, 1969

STATE OF NEW YORK) ss:
COUNTY OF ORANGE)

On this 26th-day of February, 1969, before me personally came MARY GRACE MUHA and RICHARD M. GOLDWATER, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Amendment relating to the disposition of assets upon the dissolution and non-profit character of St. Teresa's Nursing Home, Inc., and they severally acknowledged to me that they executed the same.


Notary Public

DONALD DAVIDOFF
Notary Public, State of New York
Commission Expires March 30, 1970

CONSENT TO FILING CERTIFICATE OF AMENDMENT
RELATING TO THE DISPOSITION OF ASSETS UPON
THE DISSOLUTION AND NON-PROFIT CHARACTER OF
ST. TERESA'S NURSING HOME, INC. BY THE
COMMISSIONER OF HEALTH

I, HOLLIS B. INGRAHAM, M.D., Commissioner of Health of
the State of New York, do this 27 day of May 1969,
pursuant to Article 28-A of the Public Health Law, hereby certify
that I consent to the filing of the foregoing Certificate of
Amendment Relating to the Disposition of Assets Upon the
Dissolution and Non-Profit Character of St. Teresa's Nursing
Home, Inc. with the Secretary of State of the State of New York.

Hollis B. Ingraham, M.D.
Commissioner of Health

By 
Donald G. Dickson, M.D.
Deputy Commissioner

759668 - P

CERTIFICATE OF AMENDMENT
RELATING TO THE DISPOSITION
OF ASSETS UPON THE
DISSOLUTION

AND NON-PROFIT CHARACTER OF
ST. TERESA'S NURSING HOME,
INC.
(a Membership Corporation)

Pursuant to Section 30 of
the Membership Corporation
Law

Dated: February 26, 1969

GOLDWATER & FLYNN
COUNSELLORS AT LAW
60 EAST 42ND STREET
NEW YORK

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John P. Flynn
SECRETARY OF STATE
36 Orange

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION

OF

ST. TERESA'S NURSING HOME, INC.

(Under Section 113 of the Not-For-Profit Corporation Law)

873664

We, the undersigned, President and Secretary of ST. TERESA'S NURSING HOME, INC., certify:

1. The name of the corporation is ST. TERESA'S NURSING HOME, INC.

2. The name under which the corporation was originally incorporated was ST. TERESA'S NURSING HOME, INC.

3. The Certificate of Incorporation of the corporation was filed with the Department of State on January 30, 1968 and the corporation was formed pursuant to the Membership Corporation Law and the Public Health Law.

4. The post office address within the State of New York to which the Secretary of State shall mail a copy of any notice required by law is 130 Highland Avenue, Middletown, New York 10940.

5. Under Section 201 (Purposes) of the Not-For-Profit Corporation Law, St. Teresa's Nursing Home, Inc. is a Type D Not-For-Profit Corporation as defined in this chapter. D

IN WITNESS WHEREOF, we have executed this Certificate this 3rd day of December, 1970.

S. Mary Anne

President

Ther. [unclear]

Secretary

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

MOTHER MARY GRACE, being duly sworn, deposes and says, that she is the President of St. Teresa's Nursing Home, Inc.; that she has read the foregoing Certificate of Type of Not-For-Profit Corporation of St. Teresa's Nursing Home, Inc., under Section 113 of the Not-For-Profit Corporation Law and knows the contents thereof; that the same is true to her own knowledge, except as to matters therein stated to be alleged upon information and belief; and that as to those matters she believes it to be true.

SISTER HELENA DOLORES
Notary Public - State of New York
Residing in Orange County, New York
Commission expires March 30, 1971
Sworn to before me this
1st day of December, 1970.

Mother Mary Grace
Mother Mary Grace, President

Sister Helena Dolores
Notary Public

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

RICHARD M. GOLDWATER, being duly sworn, deposes and says; that he is the Secretary of St. Teresa's Nursing Home, Inc.; that he has read the foregoing Certificate of Type of Not-For-Profit Corporation of St. Teresa's Nursing Home, Inc., under Section 113 of the Not-For-Profit Corporation Law and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
1st day of December, 1970.

Richard M. Goldwater
Richard M. Goldwater, Secretary

Richard M. Goldwater
Notary Public, State of New York
No. 31-2635270
Qualified in New York County
Commission Expires March 30, 1971

1130/68 663358

873661-8

Middlebrook Center
 CERTIFICATE OF TYPE
 OF
 NOT-FOR-PROFIT CORPORATION
 OF
 ST. TERESA'S NURSING HOME, INC.
 (Under Section 113 of the Not-For-Profit Corporation Law)

DATED: December , 1970.

J.S.

GOLDWATER & FLYNN
 COUNSELLORS AT LAW
 60 EAST 42ND STREET
 NEW YORK

STATE OF NEW YORK
 DEPARTMENT OF STATE
 FILED DEC 7 1970
 TAMS
 BILLING

John P. ...
 Secretary of State

By *NB*
33
Type D

B

1970

C F S

CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION

C F S

OF ST. TERESA'S NURSING HOME, INC.

Pursuant to the Provisions of Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, James J. Murray, President, and Richard M. Goldwater, Secretary, of ST. TERESA'S NURSING HOME, INC., a Not-For-Profit Corporation, duly organized and existing under the Not-For-Profit Corporation Law and the Public Health Law of the State of New York for the purposes of amending the Certificate of Incorporation relating to the enlargement of the powers of the Corporation pursuant to the Provisions of Section 803 of the Not-For-Profit Corporation Law, do hereby make, sign and acknowledge this Certificate and do certify as follows:

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1. The name of this Corporation is St. Teresa's Nursing Home, Inc.

2. a. The Certificate of Incorporation was filed in the Office of the Secretary of the State of New York on January 30, 1968, after approval and consent by the Commissioner of Health on December 26, 1967, and the State Board of Welfare on December 19, 1967, and a Justice of the Supreme Court on January 15, 1968;

b. A Certificate of Extension of the Existence of St. Teresa's Nursing Home, Inc. was filed in the Office of the Secretary of State on May 28, 1969, pursuant to Section 45 of the General Corporation Law after approval by the State Board of Social Welfare on April 15, 1969, and the Commissioner of Health

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of the State of New York on May 27, 1969;

c. A Certificate of Amendment relating to the Disposition of Assets upon the Dissolution and Non-Profit Character of St. Teresa's Nursing Home, Inc. was filed on May 28, 1969, pursuant to Section 30 of the Membership Corporations Law, Section 35 of the Social Services Law and Article 28-A of the Public Health Law after approval of the Commissioner of Health on May 27, 1969, and the State Board of Social Welfare on April 15, 1969;

d. A Certificate of Type of Not-For-Profit Corporation of St. Teresa's Nursing Home, Inc. was filed on December 7, 1970, under Section 113 under the Not-For-Profit Corporation Law

3. The Corporation is a corporation as defined in Sub-paragraph A-5 of Section 102 of the Not-For-Profit Corporation Law and is, and will continue to be, a Type D Corporation after the filing of the within Amendment enlarging its purposes under Section 201.

4. The purposes of the Corporation are to be enlarged by amending Section II of the Certificate of Incorporation to read as follows:

II

The purposes for which the Company is to be formed are as follows:

a. To provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own,

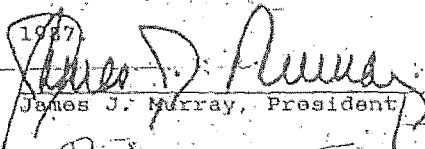
income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of ^{Article 28-A of} the Public Health Law;

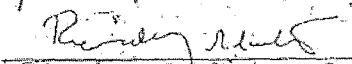
b. To operate a diagnostic and treatment center to provide for Comprehensive Outpatient Rehabilitation Facility Services (CORF).

5. The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served, and the post office address within the State to which the Secretary of State shall mail a copy served upon such Secretary is c/o Richard M. Goldwater, 60 E. 42nd Street, New York, NY 10165.

6. This amendment to the Certificate of Incorporation was authorized by a vote of a majority of all members entitled to vote thereon of a meeting of members.

IN WITNESS WHEREOF, we have executed this Certificate of Incorporation this 18th day of June, 1967

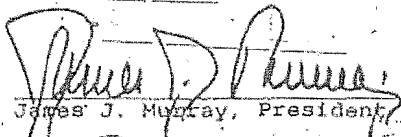

James J. Murray, President

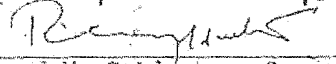

Richard M. Goldwater, Secretary

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STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

JAMES J. MURRAY and RICHARD M. GOLDWATER, being severally
duly sworn, depose and say, and each for himself deposes and says
that he, James J. Murray, is the President of St. Teresa's
Nursing Home, Inc. and he, Richard M. Goldwater, is the Secretary
thereof, that they were duly authorized to execute and file the
foregoing Certificate of Amendment relating to the Enlargement of
Powers of the Corporation of St. Teresa's Nursing Home, Inc.,
pursuant to the Provisions of Section 803 of the Not-For-Profit
Corporation Law, by the concurring vote of a majority of the
members of the Corporation present at a special meeting held at
120 Highland Avenue, Middletown, New York on the 18th day of
June, 1987, upon notice pursuant to Section 43 of the Membership
Corporation Law and that they subscribed such Certificate by
virtue of such authority.


James J. Murray, President


Richard M. Goldwater, Secretary

Sworn to before me this
18. day of June, 1987.


Notary Public

MARIE T. DUNLEAVY
Notary Public, State of New York
No. 01DU104635
Qualified in Kings County
Commission Expires April 30, 1989

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

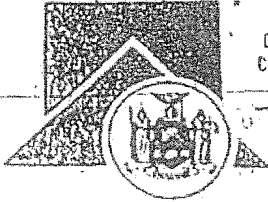
DAVID AXELROD, M.D.
COMMISSIONER

CONSENT
TO FILING A CERTIFICATE OF AMENDMENT
OF A CERTIFICATE OF INCORPORATION
BY THE
COMMISSIONER

I, DAVID AXELROD, M.D., Commissioner of Health of the State of New York, do this 27 day of July, 1987, consent to the filing with the Secretary of State of the Certificate of Amendment of the Certificate of Incorporation of St. Teresa's Nursing Home, Inc., as executed on the 18th day of June, 1987 pursuant to Section 104(e) of the Not-for-Profit Corporation Law and Section 2454 of the Public Health Law.


David Axelrod, M.D.
Commissioner of Health

0000 0256



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

CORRECTION LETTER

April 8, 1988

Sister Mary Grace
Administrator
St. Teresa's Nursing Home, Inc.
120 Highland Avenue
Middletown, NY 10940

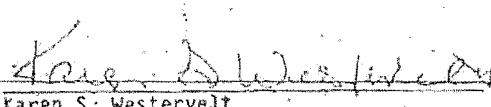
Re: Application No. 840842 - St. Teresa's Nursing Home (Orange Co.)

Dear Sister Mary Grace:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of St. Teresa's Nursing Home is APPROVED; the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of July 25, 1986.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the New Rochelle Area Office of the New York State Office of Health Systems Management, 145 Huguenot Street, 6th Floor, New Rochelle, NY 10801, (914) 632-3701 within 30 days of receipt of this letter.


Karen S. Westervelt
Executive Secretary

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NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEABL STREET, ALBANY, NEW YORK 12243-0001

CESAR A. PERALES
Commissioner



DAVID EMIL
Deputy Commissioner
and General Counsel

July 21, 1987

Richard M. Goldwater
Attorney at Law
60 East 42nd Street
New York, New York 10165

Re: St. Teresa's Nursing
Home, Inc.

Dear Mr. Goldwater:

The draft certificate of amendment of the above which you submitted has been given careful consideration and I am of the opinion that an executed original certificate containing the same statement of purposes as those submitted in the draft would not require the approval of the State Department of Social Services under the provisions of applicable statutes. If otherwise in proper form, such an executed original certificate should be received for filing by the Secretary of State.

The proposed wording of the purposes is set forth in your draft certificate as follows:

The purposes for which the Company is to be formed are as follows:

a. To provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of Article 28-A of the Public Health Law;

b. To operate a diagnostic and treatment center to provide for Comprehensive Outpatient Rehabilitation Facility Services (CORE).

This letter is not to be construed as an approval by the State Department of Social Services, or any officer of the Department, but as a statement that the approval of the State Department of Social Services would not be required for a certificate of amendment containing the foregoing statement of purposes. When it is apparent on the face of a certificate that approval of the Department is not required under the provisions of the statutes, it has been the policy of the Department to indicate neither approval nor disapproval.

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You may send the executed original certificate of amendment to the Secretary of State together with this letter.

If your organization intends to solicit contributions in this State, please contact the Charities Registration Section of the Department of State. That office will advise you whether or not the organization is required to register with the Secretary of State pursuant to Article 7-A of the Executive Law.

Sincerely,

Yvette Kitchen

Yvette Kitchen
Assistant Counsel
Bureau of Child Welfare
Services Law

Enclosure
YK:rj



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

JAMES G. McSPARRON
DEPUTY FIRST ASSISTANT
ATTORNEY GENERAL

Telephone: (518) 474-7206

July 21, 1987.

Richard M. Goldwater, Esq.
60-East 42nd Street
New York, New York 10165

Dear Mr. Goldwater:

RE: ST. TERESA'S NURSING HOME, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment to the certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application. Approval is contingent upon your seeking the approval of the Departments of Health and Social Services pursuant to Section 404 of the Not-For-Profit Corporation Law.

Very truly yours,

ROBERT ABRAMS
Attorney General

BY

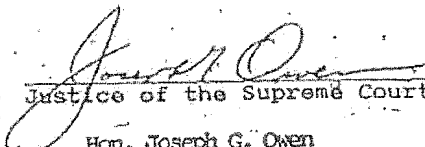

RICHARD S. REDLO
Assistant Attorney General

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CONSENT

Pursuant to the Provisions of Section 801 of the Not-
For-Profit Corporation Law, the undersigned, ^{Acting} Justice of the
Supreme Court, Ninth Judicial District, wherein is located the
principal office of St. Teresa's Nursing Home, Inc., hereby
approves the within Certificate of Amendment of the Certificate
of Incorporation of St. Teresa's Nursing Home, Inc. and the
filing thereof.

Dated: May 18, 1988
Goshen, New York


Acting Justice of the Supreme Court
Hon. Joseph G. Owen
Acting Supreme Court Justice

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CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
ST. TERESA'S NURSING HOME, INC.
TO PERMIT THE OPERATION OF A
DIAGNOSTIC AND TREATMENT
CENTER TO PROVIDE FOR
COMPREHENSIVE OUTPATIENT
REHABILITATION FACILITY
SERVICES.

BILLED

(A Not-For-Profit Corporation)

Pursuant to the Provisions
of Section 803.

Dated: May 1968.

Richard M. Goldwater
COUNSELLOR AT LAW
60 EAST 42ND STREET #3122
NEW YORK

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUN 1 - 1988

AMT. OF CHECK \$ 40
FILING FEE \$ 30
TAX \$ _____
COUNTY FEE \$ _____
COPY \$ _____
CERT \$ _____
REFUND \$ _____
SPEC HANDLE \$ 10

BY:

*Orange
Type D*

C F S

NFP type D
1/30/68 Orange
LF 273664-31
663352-8

83849

MAY 9 6 52 AM '88

FILED

NFP
ret add 130 Highland Ave
Middletown NY

RECEIVED
MAY 31 11 16 AM '88

MAY 29 11 16 AM '88

4928 0800

September 26, 2006
(the "Effective Date")

AMENDED AND RESTATED BYLAWS

OF

ST. TERESA'S NURSING HOME, INC.

ARTICLE 28 CO-ESTABLISHMENT

ARTICLE I

Purposes

Section 1. Certificate of Incorporation. The name and purposes of the St. Teresa's Nursing Home, Inc. (the "Nursing Home") shall be as set forth in its Certificate of Incorporation. These Bylaws, the powers of the Nursing Home and of its Member and directors and officers, and all matters concerning the conduct and regulation of the affairs of the Nursing Home shall be subject to such provisions in regard thereto, if any, as are set forth in the Certificate of Incorporation.

Section 2. Location. The principal office of the Nursing Home in the State of New York shall initially be located at the place set forth in the Certificate of Incorporation of the Nursing Home.

Section 3. Corporate Seal. The Board of Directors may adopt and alter the seal of the Nursing Home.

Section 4. Purpose of the Nursing Home. The Nursing Home is devoted to caring for the sick and disabled with compassion in the tradition of Catholic Health Care. It seeks to deliver high quality care, to treat all patients with dignity, and to provide a caring environment for patients at the Home. As a participating member of the Catholic Health Care System, the Nursing Home is also committed to furthering the System's ability to promote high quality care, to enhance its services, and to operate effectively as a Health Care System.

ARTICLE II

Membership in the Catholic Health Care System

Section 1. Participation in the Catholic Health Care System ("CHCS" or the "System"). The Nursing Home is a full participating member of CHCS, a health care delivery system composed of hospitals, nursing homes and other entities located in the metropolitan New York area and the Hudson Valley (each hospital, nursing home and other entity, including the Nursing Home, is

referred to herein as a “CHCS Institution”). Providence Health Services (“Providence”) is the sponsors (the “Sponsor”) of the System.

Section 2. Multiple Levels of Authority. Providence is the sponsor (the “Sponsor”) of the Nursing Home and its related entities, and as such exercises certain powers set forth in Article III of these Bylaws. CHCS is the sole corporate member (the “Member”) of the Nursing Home. It holds powers as Member and as an organization co-established with the Nursing Home pursuant to Article 28 of the New York Public Health Law. The Board of the Nursing Home oversees the operation of the facility in accordance with the powers and procedures set forth in these Bylaws and the Nursing Home’s Certificate of Incorporation.

Section 3. Purpose of CHCS. The CHCS Institutions, including the Nursing Home, have come together through CHCS and Providence to fulfill the Catholic mission common to each, to promote a commitment to high quality patient care throughout the System, to create efficiencies by streamlining management and operations, and to enhance the financial strength of the CHCS Institutions and the System as a whole.

Section 4. Ethical and Religious Directives. The purposes and operations of the Nursing Home shall be carried out in conformity with the values and teachings of the Roman Catholic Church and with the Ethical and Religious Directives for Catholic Health Care Services of the National Conference of Catholic Bishops as interpreted by the Archbishop of New York.

ARTICLE III

Sponsor: Reserved Powers of Providence

Section 1. General. Providence shall hold and exercise certain reserved powers related to mission, governance and property matters as the Sponsor of the Nursing Home and Related Entities.

Section 2. Approvals by Providence related to Mission and Corporate Identity. Approval by Providence, taking into consideration a recommendation by CHCS, shall be required for:

- (i) Any amendments to the Bylaws of the Nursing Home or any Related Entity that change the powers reserved to Providence in such Bylaws;
- (ii) A change in the mission of CHCS, the Nursing Home, or any Related Entity; and
- (iii) Any merger, joint venture, dissolution, bankruptcy filings, or change in the corporate member of the Nursing Home or any Related Entity.

Approvals by Providence for actions set forth in (ii) and (iii) of this Section, shall also take into consideration the recommendation of the Nursing Home or Related Entity which shall make a recommendation to Providence and to CHCS about the action.

Section 3. Approvals by Providence for Property Matters. In order to preserve the mission and philosophy of the Nursing Home, approval by Providence, taking into consideration a recommendation by CHCS, shall be required for the following matters:

- (i) Any Nursing Home or Related Entity real property transaction or capital projects involving the sale, pledge, transfer or other encumbrance of real property or other fixed assets of the Nursing Home or Related Entity equal to or above a value of \$400,000;
- (ii) Any lease of real property for a period equal to or greater than 9 years;
- (iii) Any debt incurrence by any one of or group of the CHCS Institutions, including the Nursing Home or any Related Entity in an amount equal to or greater than \$400,000 secured by the property, revenues, or other assets of the Nursing Home or Related Entity, and any unsecured debt incurrence by any one of or group of the CHCS Institutions, including the Nursing Home or any Related Entity, in an amount greater than \$3,000,000; and
- (iv) Any disposition of artifacts of significant historical or artistic value.

For purposes of these Bylaws, “Related Entity” means any individual, partnership, joint venture, association, corporation, trust, estate, limited liability company, limited liability partnership, or any other legal entity that directly or through one or more intermediaries is controlled by the Nursing Home. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Related Entity, whether through corporate membership, ownership of voting securities, by contract or otherwise. Ownership of ten percent (10%) or less of the voting securities, member units, or other equitable interest of any entity shall not constitute control for purposes of this Section. Providence, CHCS and other CHCS member Nursing Homes and Hospitals shall not be considered a Related Entity of the Nursing Home for purposes of these Bylaws.

ARTICLE IV

Member: CHCS Reserved Powers

Section 1. General. CHCS is the sole member of the Nursing Home. As long as the Nursing Home has only one Member, the terms “Members,” “any Member,” “Majority of Members,” “quorum of Members” and similar expressions contained in these Bylaws shall be deemed to mean the sole Member. CHCS shall take action and exercise the powers reserved hereunder in accordance with the provisions of its bylaws and Certificate of Incorporation.

Section 2. Powers and Rights. CHCS shall have such powers and rights as are vested in CHCS by law, the Certificate of Incorporation of the Nursing Home, and these Bylaws.

Section 3. Limited Liability. CHCS, in accordance with Section 517 of the New York Not-for-Profit Corporation Law, shall not be personally liable or responsible for the debts, liabilities or obligations of the Nursing Home.

Section 4. Reserved Powers of CHCS. Approval or action by CHCS shall be required with respect to the following matters pertaining to the Nursing Home or any Related Entity of the Nursing Home.

- (a) CHCS Recommendations to Providence; Property Matters and Corporate Identity. CHCS shall make a recommendation to Providence with respect to the matters set forth below. In making its recommendation, CHCS shall take into consideration the recommendation or approval by the Board of the Nursing Home or the Related Entity in each case:
 - (i) Any Nursing Home or Related Entity real property transactions or capital projects involving the sale, pledge, transfer or other encumbrance of real property or other fixed assets of the Nursing Home or Related Entity equal to or greater than \$400,000 in value;
 - (ii) Any lease of real property for a period equal to or greater than nine (9) years;
 - (iii) Debt incurrence by any one of or group of the CHCS Institutions, including the Nursing Home or any Related Entities, secured by the property, revenues, or other assets of the Nursing Home or Related Entity in an amount equal to or greater than \$400,000, and of any unsecured debt incurrence by any one of or group of the CHCS Institutions, including the Nursing Home or any Related Entity, in an amount greater than \$3,000,000;
 - (iv) Any disposition of artifacts of significant historic or artistic value, and
 - (v) Any merger, joint venture, dissolution, or bankruptcy filing, or change in the corporate member, for the Nursing Home or any Related Entity.
- (b) Corporation Governance. Subject to the powers reserved to Providence in Article II of these Bylaws, the CHCS Board of Trustees shall have sole authority for the following matters related to governance:
 - (i) Amendment to the Bylaws and Certificate of Incorporation of the Nursing Home; and
 - (ii) Appointment and removal of the members of the Board of Directors and the Chairman of the Board of Directors of the Nursing Home.

- (c) Administrative and Property Matters. Approval by the CHCS Board of Trustees, after taking into consideration the recommendation of the Nursing Home Board of Directors, shall be required for the following actions by the Nursing Home:
- (i) Adoption of the operating and capital budgets of the Nursing Home or Related Entity;
 - (ii) Adoption or amendment of the business and strategic plan for the Nursing Home or any Related Entity;
 - (iii) Formation or purchase of an entity that is a Related Entity of the Nursing Home;
 - (iv) Any real estate transaction involving the sale, pledge or transfer of real property with a value above \$30,000 and below \$400,000 or any capital project involving the sale, pledge or transfer of fixed assets with a value above \$30,000 and below \$400,000;
 - (v) Approval of management contracts or contracts above \$1 million in remuneration;
 - (vi) Program or services changes by the Nursing Home or a Related Entity that result in: (a) closure or establishment of a licensed service or program; or (b) change in location of a licensed service or licensed program outside the service area of Nursing Home or Related Entity; and
 - (vii) Approval of any merger, purchase, joint operating agreement or other affiliation (each an “Affiliation”) with a third party, or withdrawal from, disposition of an interest in or dissolution of any such Affiliation.
- (d) CHCS Approvals: Consultation with Facilities. CHCS shall have the authority to approve the following actions, after consultation with the Nursing Home:
- (i) Adopt criteria or guidelines for manage care contracting;
 - (ii) Adopt system-wide benefit program or plans, including but not limited to health, dental and other medical benefits, severance and pension;
 - (iii) Adopt system-wide measures, standards and initiatives to improve health care quality; and
 - (iv) Changes to the facility’s IT infrastructure, platform, operating systems, or applications so that the Nursing Home can participate in the IT operating platform, infrastructure and/or system and shared applications of CHCS.

- (e) Joint Authority: Facility President and Executive Director.
- (i) The CHCS Executive Vice President for Continuing Care (“the CHCS EVP for Continuing Care”) shall serve as the President of the Nursing Home. After consulting with the Board of Directors of the Nursing Home, the CHCS CEO shall have the authority to hire and remove the CHCS EVP for Continuing Care, to set the annual compensation and benefits for the EVP for Continuing Care, and to conduct an annual performance evaluation.
 - (ii) The CHCS EVP for Continuing Care and the Board of Directors of the Nursing Home shall have joint authority to hire the Executive Director of the Nursing Home. Accordingly, the approval of both the CHCS EVP for Continuing Care and the Nursing Home Board of Directors shall be required to hire the Nursing Home Executive Director, to set annual compensation and benefits for the Executive Director, and to conduct an annual evaluation of the Executive Director. The CHCS EVP for Continuing Care and the Board of Directors of the Nursing Home shall each have the authority to remove the Executive Director, provided that the CHCS EVP for Continuing Care shall consult with the Board of Directors and the Board of Directors shall consult with the EVP for Continuing Care before taking such action.
- (f) Conflict Resolution. Any disagreement between the Nursing Home Board of Directors and CHCS regarding a decision to hire, set annual compensation and benefits for, conduct an annual evaluation of, or fire the Executive Director of the Nursing Home shall be referred to the CHCS Board of Trustees which shall review the matter and make a recommendation regarding resolution to both parties.

ARTICLE V

Board of Directors of the Nursing Home

Section 1. In General. The governance of the Nursing Home shall be vested in a Board of Directors (the “Board”), except as otherwise provided in these Bylaws. The Board shall have and shall execute all powers and perform all the duties relating to oversight of the Nursing Home, its property, and the conduct of its affairs as specified in these Bylaws.

Section 2. Number. The Board of Directors shall consist of not less than three (3) nor more than fifteen (15) Directors. The Chairman of the Board of CHCS shall at all times be an *ex officio* Director without vote.

Section 3. Emeritus Directors. Emeritus Directors may be elected from time to time by CHCS. An Emeritus Director may serve in an advisory capacity, but shall not be entitled to vote or count toward a quorum at any meeting.

Section 4. Election. The Directors of the Nursing Home other than the *ex-officio* Director shall be appointed by CHCS, taking into consideration candidates for the Board recommended by the Nursing Home Board of Directors. Directors other than the *ex-officio* Director shall be divided as nearly as possible into three (3) classes of equal numbers.

Section 5. Term of Office. The members of the Board of Directors shall be divided into three (3) classes of as nearly equal number as possible, with each class serving a staggered term of three (3) years. Directors other than the *ex-officio* Director may not serve (in addition to any term for which they may have been elected by CHCS pursuant to Section 7 of this Article) more than three (3) consecutive three (3) year terms. However, following absence from office of one (1) year, a person who has previously served three (3) consecutive terms in office as a Director may be re-elected.

Section 6. Resignation; Removal. Any Director may resign at any time by giving written notice of such resignation to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. Any or all of the Directors may be removed without cause by CHCS.

Section 7. Vacancies. In case of a vacancy in the Board of Directors, a successor for the balance of the term of such vacancy shall be appointed by CHCS.

Section 8. Qualification. The Board of Directors shall consist only of persons who are dedicated to assuring the Nursing Home's provision of high quality of health care consistent with its missions. Among other persons, the Board shall include persons (i) who are at least eighteen (18) years of age; (ii) who are knowledgeable and skilled in the area of health care; (iii) who are from the community served by the Nursing Home; (iv) who are knowledgeable in financial and business affairs and (v) who are willing to accept responsibilities placed by law upon Nursing Home Directors. At least one (1) licensed physician shall be a member of the Board of Directors. No person shall serve as a Director unless, in the judgment of CHCS, such person is able to make a positive contribution to the management or direction of the affairs of the Nursing Home.

Section 9. Orientation and Education. A comprehensive orientation program and a continuing education program shall be provided for members of the Board of Directors. These programs shall reference the Nursing Home's Corporate Compliance Program.

ARTICLE VI

Meetings of Directors

Section 1. Annual Meeting. The annual meeting of the Board of Directors shall be held on a day in the second quarter, to be selected by the Chairman of the Board, at the Nursing Home or some other suitable place for the election of Officers, the appointment of an Executive Committee and other standing and special committees, and for action on such other matters as may be brought before the meeting. The annual report of the Nursing Home shall be presented to the Directors at this meeting, shall be filed with the records of the Nursing Home and shall be entered in the minutes of the meeting.

Section 2. Regular Meetings. Regular meetings shall be held in January, March, July and November of each year or at such times as the Board may designate.

Section 3. Special Meetings. Special meetings may be held whenever the Chairman of the Board shall deem the same necessary or advisable, or upon written request of one-third (1/3) of the Directors to the Secretary, the Secretary then being required to send immediately notice of such meeting, which shall take place no later than twelve (12) days from the date upon which the Directors made such request to the Secretary. The notice shall state the purpose for which the meeting is being called. No other business shall be transacted except such as is stated in the notice.

Section 4. Notice. Notice of the date, time, place and purpose of each meeting of Directors shall be given by telegram, facsimile, first class mail or delivering a written notice thereof personally to the Directors not less than ten (10) days prior to the date of the meeting. Notice need not be given to any Director who submits a signed waiver of notice before or after the annual meeting or any special meeting. Attendance of a Director at any meeting shall constitute a waiver unless the Director protests during the meeting that such notice was not properly given.

Section 5. Minutes. Minutes of meetings of the Board of Directors shall reflect pertinent business conducted and shall be regularly distributed to all Directors.

Section 6. Quorum and Voting. Except as may otherwise be required by law or by these Bylaws, in order to constitute a quorum for the transaction of business at a meeting of Directors, there shall be present in person a majority of the Directors. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except as otherwise provided in these Bylaws.

Section 7. Presence through Communication Equipment. Any one (1) or more Directors may participate in a meeting of the Board or any committee thereof by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 8. Voting. Each Director shall be entitled to one (1) vote. There shall be no voting by proxy.

Section 9. Action by Written Consent. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all Directors or all Directors serving on any committee as the case may be, consent in writing to a resolution authorizing the action. Any such action shall be filed with the minutes of the Board or committee.

ARTICLE VII

Duties and Powers of Board of Directors

Section 1. Standard of Care; No Compensation. The Directors shall discharge their duties in good faith and with that degree of diligence, care and skill ordinarily prudent persons would exercise under similar circumstances. A Director shall not receive compensation for services

performed in his capacity as Director, but shall be entitled to reimbursement for reasonable expenses incurred in the performance of his or her duties as Director.

Section 2. Role of the Board. Subject to powers vested elsewhere in these Bylaws and the Nursing Home's Certificate of Incorporation, the Board of Directors shall serve as the governing board of the Nursing Home, shall oversee its property and affairs, develop and preserve the assets of the Nursing Home, and oversee the quality of care of patients through the appointment of a qualified medical staff. The Board shall have power to hold meetings, appoint committees, appoint an Advisory Council, employ necessary medical and administrative staff and employees and to suspend, censure or expel any of them subject to the personnel policies of the Nursing Home and without prejudice to their contract rights, if any. The Board shall authorize expenditures to carry out the purposes of the Nursing Home and promote its best interests. The Board of Directors shall report on a regular basis to CHCS on the current status of the Nursing Home and its affairs.

Subject to the powers vested in CHCS by these Bylaws and the Nursing Home's Certificate of Incorporation, the Board of Directors shall establish policies for the management and operation of the Nursing Home and shall determine its objectives and goals and shall annually, reexamine such policies, objectives and goals. The Board also shall be responsible for the approval of settlements of administrative proceedings or litigation to which the Nursing Home is a party; the oversight of the Nursing Home's quality improvement processes, including but not limited to policies and procedures and physician credentialing; the management of the Nursing Home's facilities; and oversight of corporation compliance and audit functions.

Section 3. Chairman. The Chairman of the Board of Directors shall preside at meetings of the Board and shall be a member *ex-officio* of all committees. In the absence of the Chairman, one of the Vice Chairmen of the Board shall preside at meetings of the Board. The Chairman shall verify reports of the Board and have power to exercise all such acts as may be incident to his office or as provided by law.

Section 4. Vice Chairman. The Vice Chairmen of the Board shall act as deputies of the Chairman. Each Vice Chairman shall perform such duties and shall have and exercise such powers as from time to time may be assigned to him by the Chairman of the Board or the Board of Directors.

Section 5. Advisory Council. The Board of Directors may at any time designate persons who are not Directors as members of an Advisory Council. The members of the Advisory Council may upon invitation attend meetings of the Board of Directors or of any committee of the Board. Members of the Advisory Council shall not be entitled to vote either at meetings of the Board or of any committee of the Board.

Section 6. Annual Evaluation. The Board of Directors shall evaluate its own process of governance annually.

ARTICLE VIII

Officers

Section 1. Principal Officers. At each annual meeting of the Board of Directors, the Board shall elect by a majority vote the following principal Officers of the Nursing Home who shall serve for a term of one (1) year or until their successors have been elected:

- (i) One (1) or more Vice Chairmen of the Board,
- (ii) a Treasurer, and
- (iii) a Secretary.

Section 2. Other Officers. The Board of Directors shall elect from time to time, one (1) or more Vice Presidents, and a Medical Director and may elect one (1) or more Assistant Secretaries and/or Assistant Treasurers, such Officers to have the powers and duties hereinafter prescribed and to serve at the pleasure of the Board. Such Officers need not be Directors except as otherwise provided in these Bylaws. In the event of the disability of, or vacancy in the office of, the Secretary, the Assistant Secretary shall perform all the duties of the Secretary pending the election of a new Secretary. In the event of the disability of, or vacancy in the office of, the Treasurer, the Assistant Treasurer shall perform all the duties of the Treasurer pending the election of a new Treasurer.

Section 3. President. The President shall be an Officer of the Nursing Home and of CHCS. CHCS shall have sole authority to appoint and remove the President, to set annual compensation and benefits for the President and to conduct an annual performance evaluation of the President, after consulting with the Nursing Home Board of Directors. The Board of Directors shall delegate to the President the power to appoint additional agents and employees of the Nursing Home and to prescribe their respective authorities and duties.

Section 4. Chairman of the Board. The Chairman of the Board of Directors shall be appointed by CHCS for a term of three (3) years and shall be eligible to serve two (2) additional three (3) year terms as Chairman of the Board of Directors regardless of the number of years served as a Director.

Section 5. Vacancies. In the event that a vacancy shall occur in the office of Chairman of the Board or the President, the Board of Directors or, the Executive Committee, may appoint an Acting Chairman of the Board or Acting President to fill such vacancy pending appointment of a successor by CHCS. The Member shall be promptly notified of such appointment. In the event that there is a vacancy in the office of Treasurer or Secretary of the Board, the Board may appoint an Acting Treasurer or Acting Secretary pending election of a successor.

ARTICLE IX

Duties and Powers of Officers

Section 1. President/CEO. The President/CEO shall be an *ex-officio*, non-voting member of the Board of Directors, and an *ex-officio* non-voting member of all Board Committees, with the

exception of the Executive Committee. He or she shall be responsible for carrying into effect the policies, programs and resolutions approved or adopted by the Board of Directors for the Nursing Home, including preparation of annual operating plans, budget and longer term objectives. He or she shall act as the duly authorized representative of the Board of Directors in all matters in which the Board of Directors has not formally designated some other person to so act and shall keep the Board informed at its regular meetings of matters related to Board policies and programs and such other information as the Board needs to fulfill its duties as specified in these Bylaws. The President shall also keep the Board of Trustees of CHCS informed of administrative, fiscal and other matters necessary for CHCS to fulfill its responsibilities specified in these Bylaws.

Section 2. Executive Director/Administrator. The Executive Director shall be the chief operating officer of the Nursing Home. The Executive Director shall be and shall employ a qualified Nursing Home Administrator pursuant to the laws of the State of New York and responsible for management of the Nursing Home. He or she shall manage the day-to-day operations, staff and provision of services at the Nursing Home, subject to such policies as may be adopted by the Board of Directors, the CHCS Board of Directors and directives as given by the President. The Executive Director shall keep the Board of Directors informed at its regular meetings of the Nursing Home operations affecting quality of care, corporate compliance, service delivery, facility operations, and employee relations. He or she shall act as the duly authorized representative of the Board of Directors on all matters for which the Board delegates him or her as such.

Section 3. Medical Director. The Medical Director shall be a physician licensed to practice medicine in the State of New York and shall, subject to the authority of the President, and the Executive Director, have authority over and responsibility for the functioning of the Medical Staff.

Section 4. Secretary. The Secretary shall, subject to these Bylaws and the direction of the Board:

- (i) Keep the Minutes of the meetings of the Board of Directors and the Executive Committee.
- (ii) Perform such other duties as may from time to time be prescribed by the Board of Directors.

Section 5. Treasurer. The Treasurer shall have custody of all funds of the Nursing Home and shall be responsible for all receipts and reimbursements. He shall see that a true and accurate accounting of the financial transactions of the Nursing Home is made and shall render to the President and Directors, whenever requested and at least annually, an account of the financial condition of the Nursing Home and of his transactions as Treasurer.

ARTICLE X
Committees

Section 1. In General. The Board, by resolution adopted by a majority of the entire Board, shall designate from among its members an Executive Committee, and shall approve establishment of a Finance Committee, an Audit and Compliance Committee, a Planning Committee, a Governance Committee, and a Quality Committee. The Board may from time to time designate such other ad hoc or standing committees as the Board may deem appropriate. Where appropriate, the Board may appoint non-Board members to Board committees.

Section 2. Special Committees. The Board may also appoint and specify the duties of special committees of the Board. Special committees shall be discharged upon the completion of their function.

Section 3. Meetings; Quorum and Voting. Each standing and special committee shall hold regular meetings at least annually if not otherwise specified. A special meeting of any committee shall be called by the Secretary in accordance with Article VI, Section 3 upon the request of the Chairman of the Board, the President or a majority of the members of such committee. In order to constitute a quorum for the transaction of business at a meeting of a standing or special committee, there shall be present in person a majority of the committee members unless otherwise specifically provided in these Bylaws. The act of a majority of the committee members at a meeting at which a quorum is present shall constitute the act of the committee. A written record of the proceedings, recommendations and actions of each standing and special committee shall be maintained. Standing committees shall report to the Board of Directors as specified in Sections 4 through 8 of this Article. Special committees shall report to the Board of Directors at least annually.

Any committee member may resign by giving written notice of such resignation to the Chairman of the Board or any member may be removed from committee membership by the same authority by which he was appointed. In the case of a vacancy on a standing or special committee, the Board, by resolution adopted by a majority of its members, shall elect a successor for the balance of the term of such vacancy.

Section 4. Executive Committee. The Executive Committee shall consist of the Chairman of the Board, each Vice Chairman of the Board, if any, the Chairman of the Finance Committee, the Chairman of the Quality Committee, the Chairman of the Planning Committee and additional Directors not exceeding three (3), selected by the Board. The Chairman of CHCS may serve ex-officio without vote on the Executive Committee. The Executive Committee shall meet as needed and shall have authority to transact regular business of the Nursing Home between meetings of the Board; provided, however, that the Executive Committee is not empowered to act with respect to any reserved powers described in these Bylaws; and provided that no action so taken shall be beyond the authority of the Board or in conflict with the expressed policies of the Board. The presence of a majority of the members of the Committee shall constitute a quorum for the transaction of business at any meeting. The authority of the Executive Committee shall be subject to the limitations set forth in the New York Not-For-Profit Corporation Law and the New York Public Health Law and Regulations. Any action taken by

the Executive Committee shall be reported to the Board at the next meeting of the Board. It shall be the obligation of the Executive Committee to conduct at least annually an evaluation of the President.

Section 5. Finance Committee. The Finance Committee shall consist of a Vice Chairman of the Board, if any, the Treasurer, and at least two (2) other Directors selected by the Board of Directors who shall have experience in the area of business and finance. The Board of Directors shall select the Chairman of the Finance Committee. The Finance Committee may include members who are not Directors, if such members are duly appointed by majority vote of the Board. The Finance Committee shall meet at least quarterly and shall report to the Board of Directors in relation to the financial operation of the Nursing Home. This shall include, without limitation, review and recommendation to the Nursing Home Board of Directors and the CHCS Board of Trustees regarding approval of the annual budget and any revisions thereto; recommendation to the Nursing Home Board of Directors and the CHCS Board of Trustees as to approval of the annual audit by independent public accountants; recommendations to the Board as to the financial feasibility of proposed new construction, major renovations, new programs, etc.; periodic reports to the Board as to performance against financial goals; and supervision of investment of operating and endowment funds.

Section 6 Audit and Compliance Committee. The Audit and Compliance Committee shall consist of at least three (3) Directors with expertise in corporate compliance and audit. All three Directors shall be independent Directors of the Nursing Home Board of Directors. The Audit and Compliance Committee shall meet at least three (3) times annually and shall report to the full Board of the Nursing Home in relation to compliance and audit:

- (i) Review and recommend to the Board policies and procedures for Corporate Compliance;
- (ii) Recommend a Compliance Officer to the Board for appointment;
- (iii) Receive and review regular reports from the Compliance Officer and others as appropriate on:
 - overall implementation of the Compliance Program;
 - compliance monitoring results;
 - audits or evaluations of high-risk areas;
 - follow-up investigations of alleged violations of the compliance program; including any disciplinary or corrective actions taken; and
 - training of employees on compliance;
- (iv) At least annually, assess the effectiveness of the Nursing Home's compliance program and plan and recommend modifications in organizational structure, and policies and procedures to the Board where necessary to assure compliance;

- (v) Review and recommend to the Board approval of the annual audit by independent public accountants and periodically receive and review internal audit reports.

Section 7. Planning Committee. The Planning Committee shall consist of at least four (4) Directors with diverse backgrounds. The Board of Directors shall select the Chairman and members of the Planning Committee. The Committee shall meet semi-annually and, subject to the powers vested elsewhere by these Bylaws, shall be responsible for the development and annual review of a long-range plan for the Nursing Home. The planning process shall define and analyze the areas of need, establish general goals and specific objectives relative to each need, identify and select alternative courses of action, provide for implementation of the plan of action and for evaluation of the effect of program activities in the context of the health needs of the community. The long-range plan shall include a capital plan developed in consultation with the Finance Committee. The Planning Committee shall also review all new services lines proposed for the Nursing Home. The Planning Committee shall then make recommendations to the Board with respect to the long-range plan of the Nursing Home.

Section 8. Governance Committee. The Governance Committee shall have three (3) or more members who shall be selected by the Board of Directors on the basis of their experience and interest. The Governance Committee shall have the duty to

- (i) Recommend to the full Board candidates for election by CHCS to the Nursing Home Board;
- (ii) Review the Bylaws on an annual basis;
- (iii) Conduct an annual performance evaluation of the Board of Directors and how well it has fulfilled its duties as set forth in these Bylaws and general fiduciary duties; and
- (iv) Make such other recommendations to improve facility governance as it deems appropriate.

Section 9. Quality Committee. The Quality Management/Performance Improvement Committee shall fulfill the responsibility of the Board of Directors in monitoring and supporting a program to assess and improve the quality of care in the Nursing Home. The Quality Committee shall consist of at least three (3) members of the Board of Directors selected by the Board of Directors which shall also select the Chairman of the Committee. The Committee shall meet at least quarterly and report to the full Board at each regularly scheduled Board meeting. The Committee shall:

- (i) Develop and recommend to the full Board an annual plan to assess and continuously improve quality;
- (ii) Receive and review regular reports from the Nursing Home's quality and medical staff summarizing the findings, actions and results of the Nursing

Home's program to assess and improve health care quality, including all actions taken in response to state or federal surveys of health care quality;

- (iii) Review quality indicators generated for public reporting or by the Nursing Home for quality improvement purposes and examine all findings by public bodies regarding the quality of care at the Nursing Home;
- (iv) Review and, as appropriate, recommend to the Board required changes in the procedures, methods and systems for gathering, analyzing and using data to assess and improve the quality of care; and
- (v) At least annually, assess the effectiveness of the Nursing Home's quality program and recommend modifications in organizational structure, staffing patterns, and care delivery where necessary to promote high quality, compassionate care.

ARTICLE XI Procedure for Meeting

All meetings of the Board of Directors and committees of the Nursing Home shall be conducted in accordance with procedures and rules of order as shall be acceptable to the Board.

ARTICLE XII Medical Staff

Section 1. Appointment. The Board of Directors shall appoint the members of the Medical Staff in accordance with the provisions of these Bylaws and the Bylaws of the Medical Staff. Medical Staff members shall be appointed to terms of two (2) years only, with such terms being renewable by the Board and the Medical Board as described in these Bylaws and the Bylaws of the Medical Staff.

Section 2. Bylaws of Medical Staff. The organization, appointments, selection of officers and committees, determination of privileges, meetings and procedures of the Medical Staff shall be set forth in the Bylaws of the Medical Staff, which are subject to the approval of the Board of Directors. The Board of Directors, acting directly or by delegation to a Committee of the Board, shall make a determination within ninety (90) days after the Medical Board transmits its recommendation concerning these issues to the Board or Committee of the Board.

ARTICLE XIII Dissolution

Upon the dissolution of the Nursing Home, the Board of Directors of the Nursing Home shall, after paying or making provision for the payment of all of the liabilities of the Nursing Home, distribute all of the remaining assets of the Nursing Home exclusively for the purposes of the Nursing Home or for a similar use or purpose, to such organization or organizations operated,

supervised or controlled by or in connection with Providence and organized and operated exclusively for charitable purposes.

ARTICLE XIV Conflicts of Interest

Conflicts of interest are those circumstances in which personal, financial or professional interests may conflict with the interests of the Corporation. Members of the Board of Directors, officers, senior management, and members of committees with board delegated powers shall be required to provide full disclosure of conflicts in conformance with the Nursing Home's Conflicts of Interest Policy and Procedure (the "Conflicts Policy"). The Board of Directors shall furnish to members of the Board of Directors, officers, senior management and members of committees with Board-delegated powers a copy of such policy, as revised from time to time. Each Board member, officer, senior manager and members of committees with board delegated powers shall file with the Nursing Home a Conflict of Interest Statement at such times as such filing is required by the Conflicts Policy.

ARTICLE XV Indemnification

Section 15.1 Authorized Indemnification. Unless clearly prohibited by law or Section 15.2 of these Bylaws, the Nursing Home shall indemnify, any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by or in the right of the Nursing Home, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this Section, (a) is or was a Director or officer of the Nursing Home or (b) in addition is serving or served in any capacity, at the request of the Nursing Home, including as a member of a committee of the Board of Directors of the Nursing Home, or as director or officer of any other Nursing Home, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Nursing Home shall have consented to such settlement) and reasonable expenses, including attorneys' fees, and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

Section 15.2 Prohibited Indemnification. The Nursing Home shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Directors in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 15.3 Advance of Expenses. The Nursing Home shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Nursing Home, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a

threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Nursing Home, with interest, for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or Section 15.2 of these Bylaws. An Indemnified Person shall cooperate in good faith with any request by the Nursing Home that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

Section 15.4 Indemnification of Others. Unless clearly prohibited by law or Section 15.2 of these Bylaws, the Board of Directors may approve Nursing Home indemnification as set forth in Section 15.1 of these Bylaws or advancement of expenses as set forth in Sections 15.1 and 15.3 of these Bylaws, to a person (or the testator or intestate of a person) who is or was employed by the Nursing Home or who is or was a volunteer for the Nursing Home, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at the request of the Nursing Home in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

Section 15.5 Determination of Indemnification. Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court the Board of Directors shall, upon written request by the Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these Bylaws. Before indemnification can occur, the Board of Directors must explicitly find that such indemnification will not violate the provisions of Section 15.2 of these Bylaws. No director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested directors is not obtainable, the Board of Directors shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-laws.

Section 15.6 Binding Effect. Any person entitled to indemnification under these Bylaws has a legally enforceable right to indemnification which cannot be abridged by amendment of these Bylaws with respect to any event, action or omission occurring prior to the date of the amendment.

Section 15.7 Insurance. To the extent permitted by law, directors' and officers' liability insurance may inure the Nursing Home for any obligation it incurs as a result of this Article XV or operation of law and it may insure directly the directors, officers, employees, or volunteers of the Nursing Home for liabilities against which they are not entitled to indemnification under this Article XV as well as for liabilities against which they are entitled or permitted to be indemnified by the Nursing Home.

Section 15.8 Nonexclusive Rights. The provisions of this Article XV shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board of

Directors is authorized to enter into agreements on behalf of the Nursing Home with any directors, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article XV subject in all cases to the limitations of Section 15.2 of these Bylaws.

ARTICLE XVI

Volunteers and Auxiliaries.

Groups interested in rendering services and undertaking activities designed to promote the best interest of the Nursing Home may be approved by the Board of Directors and shall function under their own bylaws and rules, subject in each instance to the prior approval of the Board of Directors before the same are effective.

ARTICLE XVII

Authority to Contract for Internal Management

Subject to any applicable provisions of law, the Board of Directors shall have authority to contract for the internal management of the Nursing Home's facilities with a Roman Catholic Religious Order or Community approved by Providence. In the event such a contract is entered into, such Roman Catholic Religious Order or Community shall have the right to nominate from among its members persons who are Administrators licensed by the State of New York to serve as Administrator of the Nursing Home.

ARTICLE XVIII

Gender

As used in these Bylaws, all references to the masculine gender shall be deemed to include the feminine.

APPROVED BY THE BOARD OF TRUSTEES OF
THE CATHOLIC HEALTH CARE SYSTEM

DATE: September 8, 2004



Francis J. Serbaroli, Chair of the Board of Trustees

Dated: September 28, 2022

ST. TERESA'S NURSING HOME, INC.

ATTACHMENT **9**

PETITION FOR DISSOLUTION

-----X

In the Matter of the Application of :
ST. TERESA'S NURSING HOME, INC. : VERIFIED
PETITION

For Approval of Certificate of Dissolution :
pursuant to Section 1002 of the :
Not-for -Profit Corporation Law :

-----X

TO:

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau, Transactions Section
28 Liberty Street
New York, New York 10004

Petitioner, ST. TERESA'S NURSING HOME, INC. by Francis J. Serbaroli, Chairman, Board of Directors, of the corporation, for its Verified Petition alleges:

1. ST. TERESA'S NURSING HOME, INC., whose principal address is located in the county of New York, was incorporated pursuant to New York's Not-for-Profit Corporation Law on December 1, 1967. A copy of the Certificate of Incorporation (and all amendments) and the complete and current By-laws are attached as Exhibit A.

2. The names, addresses and titles of the corporation's directors and officers are as follows:

- Francis J. Serbaroli, Chairman- One Vanderbilt Avenue, New York, NY 10017
- Thomas E. Alberto- 35 Prospect Park West Apt. 13A Brooklyn, NY 11215
- Steve Bujno – 246 West End Avenue, Apt 4A, New York, NY 10023
- John Cahill- 1011 First Avenue 20th Floor New York, NY 10022
- Dr. Tara A. Cortes- 433 First Avenue, 5th Floor New York, NY 10016
- John T. Dunlap- 230 Park Avenue 21st Floor New York, NY 10177
- Monsignor Charles J. Fahey- Nottingham, 1301 Nottingham Rd, Jamesville, NY 13078
- Thomas J. Fahey, Jr., M.D.- 300 East 66th Street New York, NY 10065
- Eric P. Feldmann- 16 Hampshire Road Rockville Centre, NY 11570
- Sister Seline Flores, Providence Rest, 3304 Waterbury Avenue, Bronx, NY 10465
- John Gleason, 250 Park Avenue, New York, NY 10017
- Karen Gray- 235 East 45th Street New York, New York 10017
- George Irish- 300 West 57th Street, 26th Floor New York, NY 10019
- Clarion E. Johnson, MD- 5504 Dorset Avenue Chevy Chase, Maryland 20815
- Rory Kelleher- 1165 Fifth Avenue New York, NY 10029

Monsignor Joseph LaMorte- 1011 First Avenue, 19th Floor New York, NY 10022
Scott LaRue, ex-officio- 205 Lexington Avenue New York, NY 10016
Thomas M. O'Brien, Vice-Chair- PO Box 2326 Bonita Springs FL. 34133
Kathryn Rooney- 1475 Hylan Boulevard Staten Island, NY 10305
Joseph Saporito, 43 Somerset Place, Matawan, NJ 07747
G.T. Sweeney- 100 Church Street New York, NY 10007
Gennaro (Jerry) Vasile, Ph.D., 21908 Masters Circle Estero, FL 33928-6949
Bishop Gerald Walsh- 1011 First Avenue New York, NY 10022

3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation at paragraph three thereof and are as follows:

II. the purposes for which the Company is to be formed are to provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

4. The corporation is a charitable corporation.

5. The corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit B (the "Plan").

6. The corporation is dissolving because the corporation, which owned and operated a skilled nursing facility, sold its assets at 120 Highland Avenue Middletown, NY 10940 and its operating certificate which transaction closed on or about January 31, 2013. The corporation is not aware of any ongoing or completed audit or inquiry by the Internal Revenue Service ("IRS") in the past three years or if the corporation paid any excise taxes or disclosed an excess benefit transaction or diversion of assets on its information returns to the IRS.

7. The Board of Directors of ST. TERESA'S NURSING HOME, INC., met at a duly called meeting on proper notice on September 27, 2021 at which a quorum of 19 directors out of 23 total directors was present, and unanimously approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary or other duly authorized officer is attached hereto as Exhibit C.

8. After the Board of Directors of ST. TERESA'S NURSING HOME, INC., approved the Plan, the Board of Trustees of Catholic Health Care System, at a duly called meeting on proper notice on September 27, 2021 at which a quorum of 19 trustees out of 23 total trustees was present, and unanimously approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary or other duly authorized officer is attached hereto as Exhibit D.

9. After the Board of Directors of ST. TERESA'S NURSING HOME, INC., and the Board of Trustees of Catholic Health Care System approved the Plan, the sole member, Providence Health Services, received and reviewed it and at a duly called meeting on proper

notice on December 14, 2021 at which a quorum of 4 trustees out of 4 total trustees was present, and unanimously approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary or other duly authorized officer is attached hereto as Exhibit E.

10. The corporation has no assets or liabilities as of the date hereof.

11. The corporation is not required to file a final financial report with the Charities Bureau because the organization is exempt from registration with the Charities Bureau.

12. A copy of the Public Health and Health Planning Council approval to the Plan is attached to the Certificate of Dissolution.

13. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of ST. TERESA'S NURSING HOME, INC., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed
this __ day of April, 2022.

Frank Serbaroli

5B87D899CB31C2DE11E9FC57F917FEAC contractworks

Signature

Francis J. Serbaroli, Chairman

VERIFICATION AND CERTIFICATION

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

Francis J. Serbaroli, being duly sworn, deposes and says:

I am the Chairman of the Board of Directors of ST. TERESA'S NURSING HOME, INC., the corporation named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors and by the corporation's sole member.

Signature

Sworn to before me this

____ day of _____, 20__.

Notary Public

Pursuant to the authority vested in the Commissioner of Health by Section 2803 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 amending sections 405.11 and 415.19, to be effective upon filing with the Secretary of State, to read as follows:

Section 405.11 is amended by adding a new subdivision (g) as follows:

(g) (1) The hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 550;

(ii) for gowns, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 41;

(iii) for surgical masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 21; and

(iv) for N95 respirator masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 9.6.

(3) A hospital shall be considered to possess and maintain the required PPE if:

(i) it maintains all PPE on-site; or

(ii) it maintains PPE off-site, provided that the off-site storage location is within New York State, can be accessed by the hospital within at least 24 hours, and the hospital maintains at least a 10-day supply of all required PPE on-site, as determined by the calculations set forth in paragraph (2) of this subdivision. A hospital may enter into an agreement with a vendor to store off-site PPE, provided that such agreement requires the vendor to maintain unduplicated, facility-specific stockpiles; the vendor agrees to maintain at least a 60-day supply of all required PPE, or a 90-day supply in the event the Commissioner increases the required stockpile amount pursuant to this subdivision (less the amount that is stored on site at the facility); and the PPE is accessible by the facility 24 hours a day, 7 days a week, year round. In the event the Department finds a hospital has not maintained the required PPE stockpile, it shall not be a defense that the vendor failed to maintain the supply.

(iii) Any PPE stored outside of New York State shall not count toward the facility's required 60-day stockpile.

(4) The Commissioner shall have discretion to increase the stockpile requirement set forth in paragraph (1) of this subdivision from 60 days to 90 days where there is a State or local public health emergency declared pursuant to Section 24 or 28 of the Executive Law. Hospitals shall possess and maintain the necessary 90-day stockpile of PPE by the deadline set forth by the Commissioner.

(5) The Department shall periodically determine the number of staffed beds in each hospital. Hospitals shall have 90 days to come into compliance with the new PPE stockpile requirements, as set forth in paragraph (2) of this subdivision, following such determination by the Department. Provided further that the Commissioner shall have discretion to determine an applicable bed

calculation for a hospital which is different than the number of staffed beds, if circumstances so require.

(6) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers, and providers are strongly encouraged to rotate inventory through regular usage and replace what has been used in order to ensure a consistent readiness level and reduce waste. Expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(7) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the hospital's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the hospital with a fourteen-day grace period, solely for a hospital's first violation of this section, to achieve compliance with the requirement set forth herein.

(8) In the event a new methodology relating to PPE in hospitals is developed, including but not limited to a methodology by the U.S. Department of Health & Human Services, and the Commissioner determines that such alternative methodology is appropriate for New York hospitals and will adequately protect hospital staff and patients, the Commissioner shall amend this subdivision to reflect such new methodology.

Section 415.19 is amended by adding a new subdivision (f) as follows:

(f) (1) The nursing home shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 24;

(ii) for gowns, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 3;

(iii) for surgical masks, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 1.5; and

(iv) for N95 respirator masks, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 1.4.

(v) For the purposes of this paragraph, the term "applicable positivity rate" shall mean the greater of the following positivity rates:

(a) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period April 26, 2020 through May 20, 2020; or

(b) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period January 3, 2021 through January 31, 2021; or

(c) 20.15 percent, representing the highest Regional Economic Development Council average COVID-19 positivity rate, as reported to the Department, during the periods April 26, 2020 through May 20, 2020 and January 3, 2021 through January 31, 2021.

(3) A nursing home shall be considered to possess and maintain the required PPE if:

(i) it maintains all PPE on-site; or

(ii) it maintains PPE off-site, provided that the off-site storage location is within New York State, can be accessed by the nursing home within at least 24 hours, and the nursing home maintains at least a 10-day supply of all required PPE on-site, as determined by the calculations set forth in paragraph (2) of this subdivision. A nursing home may enter into an agreement with a vendor to store off-site PPE, provided that such agreement requires the vendor to maintain unduplicated, facility-specific stockpiles, the vendor agrees to maintain at least a 60-day supply of all required PPE (less the amount that is stored on-site at the facility), and the PPE is accessible by the facility 24 hours a day, 7 days a week, year round. In the event the Department finds a nursing home has not maintained the required PPE stockpile, it shall not be a defense that the vendor failed to maintain the supply.

(iii) Any PPE stored outside of New York State shall not count toward the facility's required 60-day stockpile.

(4) The Department shall determine the nursing home's average census annually, by January 1st of each year, and shall communicate such determination to each facility. Nursing homes shall have 90 days to come into compliance with the new PPE stockpile requirements, as set forth in paragraph (2) of this subdivision, following such determination by the Department.

(5) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers, and providers are strongly encouraged to rotate inventory through regular usage and replace what has been used in order to ensure a consistent readiness level and reduce waste. Expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(6) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the nursing home's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the nursing home with a fourteen day grace period, solely for a nursing home's first violation of this section, to achieve compliance with the requirement set forth herein.

(7) In the event a new methodology relating to PPE in Residential Health Care Facilities is developed, including but not limited to a methodology by the U.S. Department of Health & Human Services, and the Commissioner determines that such alternative methodology is appropriate for New York nursing homes and will adequately protect facility staff and patients, the Commissioner shall amend this subdivision to reflect such new methodology.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803 of the Public Health Law (PHL) authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities, including hospitals and nursing homes.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

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

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout

the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the

Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are strongly encouraged to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time and reduce waste. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a general hospital or nursing home, in which case costs will be the same as costs for private entities.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no addition paperwork.

Local Government Mandates:

General hospitals and nursing homes operated by local governments will be affected and will be subject to the same requirements as any other general hospital licensed under PHL Article 28.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that general hospitals and nursing homes have adequate stockpiles of PPE necessary to protect hospital staff from communicable diseases, compared to any alternate course of action.

Federal Standards:

No federal standards apply to stockpiling of such equipment at hospitals.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a general hospital or a nursing home. Currently there are five general hospitals in New York that employ less than 100 staff and qualify as small businesses, and there are 79 nursing homes in New York qualify as small businesses given that they employ less than 100 staff.

Compliance Requirements:

These regulations require all general hospitals and nursing homes to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Professional Services:

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

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each covered facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are strongly encouraged to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby

helping to balance facility expenditures over time and reduce waste. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes.

Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Small Business and Local Government Participation:

The Department contacted hospital and nursing home associations, individual hospitals and health systems, and health care labor unions for input regarding these regulations and the

underlying methodology. Input from these stakeholders has been incorporated into the regulations.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by 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 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

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

Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties 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	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

There are 47 general hospitals located in rural areas as well as several licensed nursing homes.

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

These regulations require all general hospitals and nursing homes, including those in rural areas, to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as

part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time and reduce waste. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes.

Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Rural Area Participation:

The Department contacted hospital and nursing home associations, individual hospitals and health systems, and health care labor unions for input regarding these regulations and the underlying methodology, including associations representing facilities in rural areas of the State. Input from these stakeholders has been incorporated into the regulations.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

These regulations are needed on an emergency basis to ensure hospital and nursing home staff, as well as the patients and residents for whom they provide care, are adequately protected during the 2019 Coronavirus (COVID-19) or another communicable disease outbreak. These regulations are specifically meant to address the lessons learned in New York State from 2020 to 2021 during the COVID-19 pandemic with respect to PPE. Notwithstanding the end of the State disaster emergencies relating to COVID-19, infections in nursing homes across the state persist and hospitals remain at the front lines of response. Further, a possible resurgence of COVID-19 or another communicable disease outbreak, and possible interruptions to the PPE supply chain again as seen during the COVID-19 pandemic, necessitates that hospitals and nursing homes continue to have an adequate supply of PPE to protect these vulnerable populations and the staff who provide care.

New York State first identified COVID-19 cases on March 1, 2020 and thereafter became the national epicenter of the outbreak. However, as a result of global PPE shortages, many hospitals and nursing homes in New York State had difficulty obtaining adequate PPE necessary to care for their patients and residents. New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak.

These regulations are needed on an emergency basis to ensure that hospitals and nursing homes Statewide do not again find themselves in need of PPE from the State's stockpile should another communicable disease outbreak occur, COVID-19 or otherwise. It is critically important that PPE, including masks, gloves, respirators, face shields and gowns, is readily available and used when needed, as hospital and nursing home staff must don all required PPE to safely

provide care for patients and residents with communicable diseases, while ensuring that they themselves do not become infected with a communicable disease.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a resurgence of COVID-19 or another communicable disease outbreak.

Of note, the regulations, although effective for 60 days by law, include an early termination provision requiring the Commissioner to amend the regulations to follow an alternative PPE stockpile methodology, in the event a new methodology relating to PPE in hospitals and/or Residential Health Care Facilities is developed and the Commissioner determines that such alternative methodology is appropriate for New York hospitals and nursing homes and will adequately protect facility staff and patients.

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, Sections 2.1 and 2.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, Section 2.6 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:

Subdivision (a) of section 2.1 is amended to read as follows:

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health and Health Planning Council at its next scheduled meeting:

* * *

[Monkeypox] Mpox

* * *

Section 2.5 is amended to read as follows:

A physician in attendance on a person affected with or suspected of being affected with any of the diseases mentioned in this section shall submit to an approved laboratory, or to the laboratory

of the State Department of Health, for examination of such specimens as may be designated by the State Commissioner of Health, together with data concerning the history and clinical manifestations pertinent to the examination:

* * *

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* * *

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) With the training or assistance of the State Department of Health, 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:

- Amend sections 2.1 and 2.5 to reflect The World Health Organization's (WHO) decision to change the name of "monkeypox" to "Mpox" in an effort to reduce the stigma that monkeypox comes with and deal with possible misinformation falsely suggesting that monkeys are the main source of spreading the virus.
- 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.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

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

United States Census data:

Allegany County	Greene County	Schoharie County
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The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the 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.

New York continues to experience significant community levels of COVID-19 disease. The levels of COVID-19 illness that hospitals are still experiencing is the equivalent of a regular flu season, but for more than 36 months in a row. New York still has a 7-day average of over 1,300 cases per day, and over 1,700 people in the hospital affected by COVID each day. Regrettably, New York still averages about 20 deaths per day associated with COVID-19.

Severe Acute Respiratory Syndrome Coronavirus -2 (SARS-CoV2) still mutates, although the current dominant strain is BQ1, a subvariant of Omicron, new more contagious variants continue to emerge. The threat from emerging variants includes their unknown virulence affecting morbidity and mortality. It is also unknown how well existing vaccines or pharmacotherapeutics will protect against emerging variants. Several monoclonal antibody treatments are no longer authorized for use by FDA, because they do not work against new Omicron strains.

In fall and early winter of 2022-23, New York experienced large increases in COVID-19, influenza, and respiratory syncytial virus (RSV) that taxed the healthcare system. While this “triple-demic” has since eased, COVID continues to cause significant morbidity and mortality to New Yorkers.

New York is also uniquely subject to rare diseases, due to its size, congestion, and status as a major international travel hub. Earlier this year, as part of an Ebola virus outbreak in Uganda, travelers from the country were funneled to five airports in the US, with JFK and Newark airports being two of those. If individuals with contacts to known cases were identified, measures would need to be taken to protect the public health. Similarly, an outbreak of Marburg virus is currently taking place in Equatorial Guinea. Marburg is similar to Ebola and outbreaks like this highlight the ongoing outsized roles that New York may have in international infectious disease cases and outbreaks.

Furthermore, a polio outbreak has affected multiple counties in the State of New York, with one paralytic case and detections of genetically related virus in six counties, indicating circulation and transmission of the virus likely in hundreds of people. Currently, four polio infections have been identified in Israel, with at least one of those resulting in a case of paralytic polio. There is significant regular travel that takes place between New York and Israel, and with spring break and religious holidays, that amount of travel between the two areas is expected to increase, which may put more of the population at risk of becoming exposed to poliovirus.

The emergency regulations are needed to continue requiring clinical laboratories to report all test results, including negative and indeterminate results, for communicable diseases such as COVID-19, polio and other communicable infections; 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 or Ebola.

Based on the ongoing burden of multiple outbreaks seen across the state, the Department has determined that these regulations are necessary to promulgate on an emergency basis to control the spread of highly contagious communicable diseases 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 225, 576, and 2803 of the Public Health Law, Sections 2.1 and 2.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, Section 2.6 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 publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (a) of section 2.1 is amended to read as follows:

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health and Health Planning Council at its next scheduled meeting:

* * *

[Monkeypox] Mpox

* * *

Section 2.5 is amended to read as follows:

A physician in attendance on a person affected with or suspected of being affected with any of the diseases mentioned in this section shall submit to an approved laboratory, or to the laboratory of the State Department of Health, for examination of such specimens as may be designated by

the State Commissioner of Health, together with data concerning the history and clinical manifestations pertinent to the examination:

* * *

[Monkeypox] Mpox

* * *

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) With the training or assistance of the State Department of Health, 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:

- Amend sections 2.1 and 2.5 to reflect The World Health Organization's (WHO) decision to change the name of "monkeypox" to "Mpox" in an effort to reduce the stigma that monkeypox comes with and deal with possible misinformation falsely suggesting that monkeys are the main source of spreading the virus.
- 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:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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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.”

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

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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.

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

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

Rural Area Participation:

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

JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 2803 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 400.26, and amending sections 600.1 and 710.2, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new section 400.26 is added, to read as follows:

Section 400.26. Health Equity Impact Assessments.

(a) In accordance with Public Health Law § 2802-b, applications under Article 28, meeting the criteria set forth in this section, shall include a health equity impact assessment. The purpose of the health equity impact assessment is to demonstrate how a proposed project affects the accessibility and delivery of health care services to enhance health equity and contribute to mitigating health disparities in the facility's service area, specifically for medically underserved groups.

(b) Definitions. For the purposes of this section the following terms shall have the following meaning:

(1) "*Independent entity*" means individual or organization with demonstrated expertise and experience in the study of health equity, anti-racism, and community and stakeholder engagement, and with preferred expertise and experience in the study of health care access or delivery of health care services, able to produce an objective written assessment using a standard format of whether, and, if so, how, the facility's proposed project will impact access to and delivery of health care services, particularly for members of medically underserved groups.

(2) “*Conflict of Interest*” means having a financial interest in the approval of an application or assisting in drafting any part of the application on behalf of the facility, other than the health equity assessment.

(3) “*Stakeholders*” shall include individuals or organizations currently or anticipated to be served by the facility, employees of the facility including facility boards or committees, public health experts including local health departments, residents of the facility’s service area and organizations representing those residents, patients of the facility, community-based organizations, and community leaders.

(4) “*Meaningful engagement*” shall mean providing advance notice to stakeholders and an opportunity for stakeholders to provide feedback concerning the facility’s proposed project, including phone calls, community forums, surveys, and written statements. Meaningful engagement must be reasonable and culturally competent based on the type of stakeholder being engaged (for example, people with disabilities should be offered a range of audiovisual modalities to complete an electronic online survey).

(c) In accordance with Public Health Law 2802-b, applications for the construction, establishment, change in establishment, merger, acquisition, elimination or substantial reduction, expansion or addition of a hospital service or health-related service of a hospital that require review or approval by the public health and health planning council or the commissioner, shall include a health equity impact assessment; provided, however, that a health equity impact assessment shall not be required for the following:

(1) projects that do not require prior approval but instead only require a written notice to be submitted to the Department prior to commencement of a project pursuant to Part 710 of this Title;

(2) minor construction and equipment projects subject only to limited review pursuant to Part 710 of this Title, unless such project would result in the elimination, reduction, expansion or addition of beds or services;

(3) establishment (new or change in ownership) of an operator, including mergers and acquisitions, unless such establishment would result: (i) the elimination of a hospital service or health-related service; (ii) a 10 percent or greater reduction in the number of certified beds, certified services, or operating hours or (iii) a change of location of a hospital service or health-related service; and

(4) applications made by a diagnostic and treatment center whose patient population is over fifty percent combined patients enrolled in Medicaid or uninsured, unless the application includes a change in controlling person, principal stockholder, or principal member of the facility.

(d) A health equity impact assessment shall be performed by an independent entity without a conflict of interest, using a standard format provided by the Department, and shall include:

(1) meaningful engagement of stakeholders commensurate to the size, scope and complexity of the facility's proposed project and conducted throughout the process of developing the health equity impact assessment, to incorporate and reflect community voices;

(2) a description of the mechanisms used to conduct meaningful engagement;

(3) a documented summary of statements received from stakeholders through meaningful engagement as submitted to, or prepared by, the facility or independent entity. The Department reserves the right to request and review individual statements as submitted, or prepared by the facility or independent entity, while reviewing the health equity impact assessment.

(4) documentation of the contractual agreement between the independent entity and the facility;

(5) a signed attestation from the independent entity that there is no conflict of interest; and

(6) a description of the independent entity's qualifications.

(e) When submitting an application to the Department requiring a health equity impact assessment, the application must include:

(1) a full version of the application and a version with proposed redactions, if any, to be shared publicly; and

(2) a signed written acknowledgment that the health equity impact assessment was reviewed by the facility, including a narrative explaining how the facility has or will mitigate potential negative impacts to medically underserved groups identified in the health equity impact assessment. The narrative must also be made available to the public and posted conspicuously on the facility's website until a decision on the application is rendered by the public health and health planning council or the commissioner.

Paragraph (5) of subdivision (b) of section 600.1 is amended to read as follows:

(b) Applications to the council shall contain information and data with reference to: (5) the following documents shall be filed:

* * *

(5) the following documents shall be filed:

* * *

(iii) a health equity impact assessment, if applicable, pursuant to section 2802-b of the Public Health Law and section 400.26 of this Title;

(iv) such additional pertinent information or documents necessary for the council's consideration, as requested.

Subdivision (b) of section 710.2 is amended to read as follows:

(b) The application setting forth the scope and concept of the project shall include the following if applicable:

* * *

(11) a health equity impact assessment, if applicable, pursuant to section 2802-b of the Public Health Law and section 400.26 of this Title.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 2803(2)(a) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health (Commissioner), to effectuate the provisions and purposes of Article 28 of the PHL. Chapter 766 of the Laws of 2021 and Chapter 137 of the Laws of 2022 amended Article 28 of the PHL by adding a new Section 2802-b, requiring health equity impact assessments to be submitted to the Department of Health (Department) for certain applications requiring review or approval by PHHPC or the Commissioner.

Legislative Objectives:

The legislative objective of PHL § 2802-b is to ensure the establishment, ownership, construction, renovation, and change in service of health care facilities defined in Article 28 (including general hospitals, nursing homes, diagnostic and treatment centers, and midwifery birth centers) do not adversely impact the public health of, service delivery to, or access to hospital and health-related services for medically underserved groups. Applications for select projects will be required to include a health equity impact assessment as part of the application process. The purpose of the assessment is to ensure community members, including members of medically underserved groups, are meaningfully engaged and considered in the development of proposed facility projects, encourage facilities to understand the health equity impacts of proposed projects and mitigate potential negative impacts from proposed projects, and allow the Department and PHHPC to consider how proposed projects will impact medically underserved groups when approving or denying applications. The intended impact of this legislation is to embed equity into structural decision-making processes, which will help New York's health care facilities stay accountable to enhancing health equity in their communities.

Needs and Benefits:

These regulations are necessary to implement PHL § 2802-b. Specifically, the regulations set forth criteria that: (1) qualifies an independent entity to conduct an objective health equity impact assessment; (2) defines a conflict of interest such that it would prevent an otherwise independent entity from performing an objective health equity impact assessment; (3) specifies requirements for meaningful engagement with stakeholders as part of the health equity impact assessment; (4) defines the type of applications for which a health equity impact assessment is and is not required; and (5) clarifies standards for completion of the health equity impact assessment, including the use of a template issued by the Department and inclusion of a narrative statement from the facility in response to the findings of the assessment.

In addition, the regulations require facilities to integrate health equity into their decision making and planning processes to promote the maximum utilization of resources and ensure that medically underserved groups are not negatively impacted by proposed establishment, ownership, construction, renovation, and/or change in service applications. Requiring a demonstration of meaningful engagement with stakeholders will ensure that the people whom the health care facilities serve have a voice in proposed projects. This assessment is critical for Article 28 facilities to consider when making changes to their services, facilities and ownership. The regulations ensure that a facility reviews the findings of the health equity impact assessment and develops a narrative statement for how it will mitigate potential for exacerbating health inequities in underserved communities.

Costs:**Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:**

The proposed regulation will require a health equity impact assessment to be completed with the submission of certain applications and will therefore require health care facilities to pay

for such an assessment to be performed. Facilities are required to utilize an independent entity without a conflict of interest to complete the health equity impact assessment. The projected costs associated with performing such an assessment are not easily identifiable, as they will vary greatly depending on the size, scope and complexity of a facility's proposed project. However, the Department anticipates these costs could range anywhere from \$500 to upwards of \$30,000. These costs are unavoidable in the regulations, as PHL § 2802-b requires health equity impact assessments to be performed by independent entities.

Costs to State and Local Governments:

There is no impact on costs to state and local governments associated with this regulation unless they operate an Article 28 health care facility, in which case they may be required to submit a health equity impact assessment pursuant to the proposed regulations. The proposed regulations also define "stakeholders" to include local health departments, so local health departments may be asked to comment as part of a facilities' meaningful engagement of stakeholders. In this instance, local health departments may bear minimal costs associated with staff time but there are no major operational costs to local governments.

Costs to the Department of Health:

This regulation will result in an operational cost to the Department of Health due to the hiring of staff responsible for reviewing and analyzing data from health equity impact assessments submitted to the Department.

Local Government Mandates:

There is no impact on local government mandates associated with this regulation.

Paperwork:

This regulation will require Article 28 health care facilities to conduct a health equity impact assessment as part of their application. These facilities will need to contract with an independent entity to conduct a health equity impact assessment and document such agreement in appropriate records. Facilities also must submit documentation of their agreements with independent entities conducting health equity impact assessments.

In addition, the proposed regulation will require facilities to review their health equity impact assessments and develop a narrative on how they intend to mitigate potential harms to medically underserved groups. Facilities must submit this narrative along with their health equity impact assessments as part of the application.

Duplication:

This regulation does not have any duplications in state or federal law. There is some overlap between the health equity impact assessment and some of the required content for the certificate of need (CON) process. Specifically, Schedules 16-24 of the CON [excluding Schedule 23] application include questions for facilities to answer regarding the community need and impact on certain populations for changes in health care facilities. However, these questions are minimal and do not require “meaningful community engagement” to complete. This regulation is a means of ensuring “meaningful community engagement” and a full impact assessment focused on health equity for facilities participating in the certificate of need process.

Alternatives:

One alternative to the proposed regulation the Department considered was requiring all CON applications under Article 28 of the Public Health Law to be subject to the health equity

impact assessment requirement. However, this alternative was ultimately not incorporated into the regulation because the Department decided to focus on the potential health equity impacts of proposed projects that involve access to or delivery of health services, and to exempt proposed projects such as routine repairs or maintenance. Another alternative the Department considered was to articulate more stringent requirements on the types of individuals or organizations that qualify to serve as independent entities for purposes of conducting health equity impact assessments. However, this alternative was not incorporated into the proposed regulation because the Department did not want to limit the types of individuals or organizations with expertise and qualification that may prove to offer invaluable insight through their assessments.

Federal Standards:

There are no federal statutes or standards with respect to health equity impact assessments as a component of the CON process for facilities.

Compliance Schedule:

This regulation will become effective after publication of Notice of Adoption in the New York State Register.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

Local governments and small businesses will not be affected by this rule, unless they operate a general hospital. Where a local government or small business operates a general hospital, they will be similarly affected as any other regulated entity under the rule. There are over 150 Article 28 health care facilities owned by municipalities and local governments in the State. The Department does not anticipate a change in establishment applications by such applicants as a result of the proposed regulation.

Compliance Requirements:

Pursuant to Public Health Law (PHL) § 2802-b, health care facilities regulated under Article 28 of the PHL will be required to have a health equity impact assessment performed by an independent entity when submitting certain applications to the Department for approval by the Public Health and Health Planning Council (PHHPC) or the Commissioner of Health (Commissioner). The regulations will help to further define what an independent entity is for purposes of performing a health equity impact assessment, the types of applications requiring such an impact assessment and the documentation required to be submitted to the Department.

Professional Services:

The regulations require a health equity impact assessment to be performed by an independent entity without a conflict of interest.

Compliance Costs:

The proposed regulation will require a health equity impact assessment to be completed with the submission of certain applications and will therefore require local governments and

small businesses operating health care facilities regulated under Article 28 of the PHL to pay for such an assessment to be performed. Facilities are required to utilize an independent entity without a conflict of interest to complete the health equity impact assessment. The projected costs associated with performing such an assessment are not easily identifiable, as they will vary greatly depending on the size, scope and complexity of a facility's proposed project. However, the Department anticipates these costs could range anywhere from \$500 to upwards of \$30,000. These costs are unavoidable in the regulations, as PHL § 2802-b requires health equity impact assessments to be performed by independent entities.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not require any special technology and does not impose an unreasonable financial burden on anyone.

Minimizing Adverse Impact:

Minimal flexibility exists to minimize impact since these new requirements are statutory and apply to all Article 28 of the PHL health care facility operators.

Small Business and Local Government Participation:

The Department has taken steps to notify stakeholders about the effects of this regulation and has provided the opportunity for them to comment on the proposed regulations. In addition, the regulation will be presented to PHHPC on March 30, 2023, where there will be an opportunity for public comment prior to being published in the State Register and subject to a 60-day public comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Number of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by 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 2020 United States Census:

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 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:

Pursuant to Public Health Law (PHL) § 2802-b, health care facilities regulated under Article 28 of the PHL will be required to have a health equity impact assessment performed by an independent entity when submitting certain applications to the Department for approval by the Public Health and Health Planning Council (PHHPC) or the Commissioner of Health (Commissioner).

Compliance Costs:

Per SAPA § 202-bb(3)(c), it is not anticipated that there will be any significant variation in cost for different types of public and private entities in rural areas.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not require any special technology and does not impose an unreasonable financial burden in rural areas.

Minimizing Adverse Impact:

Minimal flexibility exists to minimize impact since these new requirements are statutory and apply to all Article 28 of the PHL health care facility operators.

Rural Area Participation:

The Department has taken steps to notify stakeholders on the effects of this regulation and has provided the opportunity for them to comment on the proposed regulations. In addition, the regulation will be presented to PHHPC on March 30, 2023, where there will be an opportunity for public comment prior to being published in the State Register and subject to a 60-day public comment period.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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